House of Representatives

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H. CON. RES. 507

Mrs. JONES of Ohio. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H. Con. Res. 507.

The SPEAKER pro tempore (Mr. ISAKSON). Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

REDUCING PREEXISTING PAYGO BALANCES

Mr. NUSSLE. Mr. Speaker, pursuant to House Resolution 602, I call up the bill (H.R. 5708) to reduce preexisting PAYGO balances, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill. The text of H.R. 5708 is as follows:

H.R. 5708

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

SECTION 1. Reduction of Preexisting PAYGO Balances.

Upon the enactment of this Act, the Director of the Office of Management and Budget shall reduce any balances of direct spending and receipts legislation for all fiscal years under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 to zero.

The SPEAKER pro tempore. Pursuant to House Resolution 602, the gentleman from Iowa (Mr. NUSSLE) and the gentleman from South Carolina (Mr. SPRATT) each will control 30 minutes.

The Chair recognizes the gentleman from Iowa (Mr. NUSSLE).

Mr. NUSSLE. Mr. Speaker, I yield myself such time as I may consume.

I rise in favor of the bill before us, H.R. 5708. It is a bill that would prevent the automatic spending cuts in Medicare and other entitlements.

Under the Budget Enforcement Act of 1990, entitlement and tax legislation must be offset on a year-by-year basis. We do this so that it will not increase the deficit or reduce the surplus.

NOTICE

If the 107th Congress, 2d Session, adjourns sine die on or before November 22, 2002, a final issue of the Congressional Record for the 107th Congress, 2d Session, will be published on Monday, December 16, 2002, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Friday, December 13. The final issue will be dated Monday, December 16, 2002, and will be delivered on Tuesday, December 17, 2002.

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By order of the Joint Committee on Printing.

MARK DAYTON, Chairman.
If such legislation is not offset, then automatic spending cuts, often called a sequester, are triggered in selected entitlement programs, including Medicare. This so-called pay-as-you-go rule, or what we refer to around here often as PAYGO, expired at the end of September. The Office of Management and Budget is still required to trigger a sequester for previously enacted legislation.

On various occasions during which the Federal Government was running large surpluses, this Congress saw fit to depart from the PAYGO rule for selected measures. This was the case with the tax bill enacted last year. Similarly this year on both sides of the aisle, we have promoted initiatives to provide prescription drug benefit coverage under Medicare, and we also did so without offsetting entitlement cuts or tax increases.

But as we know, last year’s recession and the shock of the terrorist attacks are still affecting our economy and have changed the budget outlook considerably. As a result, these and other such measures could trigger what we refer to as a PAYGO sequester several weeks after the Congress adjourns. Should we enact this bill, the Office of Management and Budget has estimated that Medicare and other entitlements should be reduced by almost $125 billion in fiscal year 2003. Given various rules that exempt certain programs from sequesteration, or that limit the size of any sequester, the maximum sequester would still be substantial, about $31 billion, all of which would have to be absorbed in 1 year.

The magnitude of these cuts would be so great as to cause a 4 percent reduction in certain Medicare payments and cuts ranging in the billions in such key programs as crop insurance, the Department of Defense health fund, payments to States for child support enforcement, education, SCHIP, and the September 11 victims compensation fund. With the other body unable to pass even a budget this year, we were obviously unable to reach an agreement on legislation to extend PAYGO and other budget rules. It is my hope that this can be done next year as part of a normal budget process.

I would close by reminding our Members and colleagues that the PAYGO rule, which has been the taming of deficits over the past 7 years, and it is my hope that a successor to PAYGO can be developed and coupled with caps on discretionary appropriations.

Mr. Speaker, in short, what this bill does is prevents automatic spending cuts in Medicare and other entitlements. As we know in years past, particularly in years of surplus while the PAYGO rule was used, it was not a perfect rule because it suggested that tax cuts and entitlement reforms go on without PAYGO. If this bill is enacted, every year in a very routinized way, the last bill has taken care of this concern in years of surplus. That would have been the intention this year. However, this controversy looms as a result of the fact that we have had this triple threat of a downturn in the economy, the terrorist attacks, and the war on terrorism.

Mr. Speaker, I believe all of us want to avoid draconian cuts to Medicare and to all other entitlements or to prevent tax increases in order to pay for this during a time of recession. What we need is a plan, and we have a plan. The House passed a plan. The President has endorsed that plan, we can get back to surpluses, we can get back to fiscal discipline. But in the meantime, let us take this ministerial opportunity to take care of this unfortunate situation so that we can avoid something automatic happening while Congress is not in session.

Mr. Speaker, I reserve the balance of my time.

Mr. SPRATT. Mr. Speaker, I yield 4 minutes to the gentleman from Texas (Mr. Stenholm).

(Mr. STENHOLM asked and was given permission to revise and extend his remarks.)

[1900]

Mr. STENHOLM. Mr. Speaker, a year ago the Blue Dogs warned about the danger of making long-term commitments for tax cuts or new spending programs. We were concerned that the projections were unrealistic assumptions and that the projected surpluses could vanish as quickly as they materialized. We were concerned that the large tax cuts and increased spending would drive up the deficit and the national debt. Our warnings were ignored, and now we are told we will be borrowing virtually all of our Social Security surplus for the next decade and beyond.

After passing legislation that would rack up an additional of $127 billion next year alone, Congress is considering legislation that would wipe the slate clean to remove all those costs from the ledger. The bill before us wipes the slate clean just not for this year and next but for each of the next 5 years, allowing us to avoid responsibility for legislation adding over $550 billion in new national debt.

I do not want to cut Medicare or veterans benefits, farm assistance, or child support enforcement. However, we object strongly to clear your scorecard for the next 5 years, which allows Congress and the President to ignore the impact of legislation that will increase the deficit for the next 5 years without working to plan to stem the tide of red ink.

I agree with what the gentleman from Iowa (Mr. Nussle) said a moment ago. This is not the time to be talking about spending cuts or tax increases. I agree. But why not in 2004, 2005, 2006, 2007, and 2008? Why do we compel tonight to do something we are going to wipe the slate clean for the next 5 years when we have constantly and the motion to recommit tonight will allow us to do just that? The motion that the gentleman from Kansas (Mr. Moore) will offer will say we do not object to wiping the scorecard clean for 2002 and 2003. Obviously 9/11/01 has made a big change in the economics of this country. But let us sit down in the next Congress and let us work on the details of how we are in fact going to deal with these exploding deficits. Let us not exempt new tax cuts or new spending increases from the hard decisions that this body should be trying to make in order to get back our budget under control. That is what we object to. I do not understand the rationale of why we need to do this for 2004, 2005, 2006, 2007, and 2008. And I would be glad to yield to the chairman if he could answer that question because he made a very compelling argument a moment ago of why we should not do it now.

I do not want to cut Medicare right now. In fact, we need to do just the opposite. We do have to recognize the rationale of the situation we are in today, but why do we do it for these outyears? I do not understand that.

Just yesterday Federal Reserve Chairman Alan Greenspan reiterated the importance of restoring the budget enforcement rules for the Federal budget. We should abide by the chairman’s request of this body. “It’s important for Congress and the administration to have a long-term budget structure which we continuously update and evaluate so that we have a mechanism to make judgments . . . relative priorities within the overall budget choice process or with respect to the economy . . . we need to get the process back to where it was. We need to reestablish the basic caps on discretionary spending, on PAYGO, introduce new things like triggers or other things which give us a vehicle to function with.”

I believe the chairman has agreed with that in the past. I certainly do. Earlier this year Chairman Greenspan told the Committee on the Budget that failure to preserve budget enforcement rules would be a grave mistake. Tonight we are about to do just that. We are about to make a grave mistake saying we are going to waive all PAYGO rules, all discretionary caps, everything for the next 5 years in order to do what? Accomplish somebody’s political agenda? Or are we going to seriously roll up our sleeves in the next Congress and deal with it?


Mr. NUSSELLE. Mr. Speaker I yield myself such time as I may consume.

Mr. Speaker, while I certainly enjoy the philosophical discussion of budget process and budget enforcement with maybe the best of them, the fact of the matter is that this is a real vote and
you are either going to vote yes to prevent automatic sequestration of Medicare or you are not. It is either a vote to allow OMB, or not even allow, to force OMB for automatic sequestration of Medicare or you are not. So a vote in favor of this bill prevents Medicare cuts. A vote against this bill or a vote even for that matter for the motion to recommit allows Medicare cuts, and it is that simple.

So we will have a lot of time to talk about budget process for many years, weeks, months to come, but the fact of the matter is that this is a real bill. It has real consequences, and therefore it should be passed.

Mr. Speaker, I reserve the balance of my time.

Mr. SPRATT. Mr. Speaker, I yield 4 minutes to the gentleman from Florida (Mr. DAVIS).

Mr. DAVIS of Florida. Mr. Speaker, I would like to respond to the comments just stated by the Chairman of the Committee on the Budget. It is correct to say that probably every Member of this body is opposed to cutting Medicare spending to fund the effects of the tax cut whose size in retrospect was way too large for our condition of the economy and the cost to our country of maintaining security at home and abroad, but there is another point involved here in the motion to recommit, and this is what we need to debate.

We are not cutting taxes tonight or spending money. We are engaged in accounting. We just spent a year preaching to corporate America about the need to be open and honest to shareholders and investors and to the public about admitting when they were in deficit and doing the math correctly, and here we are tonight in direct defiance of that principle because what we are voting upon is whether we are going to be honest first with ourselves and then with the American people that we are in deficit and in balance only because we are relying upon the Social Security Trust Fund. Every Member of Congress who went home the last campaign campaigned upon fiscal responsibility, the virtues of balancing the budget and paying down the debt, and there are many Democrats and some Republicans that increasingly will argue for that. It has had benefits in terms of interest rates. It has benefits in terms of preparing Social Security and Medicare for the retirement of the baby boomers. One of the key principles that brought Democrats and Republicans together to balance the budget was the principle of pay as you go because pay as you go has meant, until today after this vote, that if you want to increase spending, Medicare or other discretionary spending under formulas or programs, or if you wanted to increase taxes, you had to pay as you go. You had to consider the impact that would have on the balanced budget, growing of the deficit.

Tonight we are throwing those rules out. We are saying for the next 5 years, whether it is increased spending or additional tax cuts, we do not care what impact it has on the size of the deficit. We are going to dig deeper.

Let us think back to the things we said to corporate America and what we promised the people we represent. Let us think back to what we said and what we will say tonight. Let us allow to ourselves we made a mistake in terms of the size of the tax cut. We need to come straight with the American public. It starts by coming straight with ourselves and start the year after this. Let us vote for the motion to recommit because what the motion to recommit says, and my colleagues are going to hear this over and over again, is let us commit, let us make the President commit to a plan to get back to a balanced budget, to stop relying upon the Social Security Trust Fund. The motion to recommit says it is not going to happen tomorrow. We have got security problems we need to deal with. We have got funding at home we need to deal with, but we need to have a plan, and we need to be honest with the folks at home just as we said to corporations across America, we have got a problem, we have got a growing deficit and we are going in the direction wrong. It starts by reinstating the PAYGO principle. I would ask my colleagues, Democrats and Republicans, that care about fiscal responsibility and the growing budget deficit to vote for the motion to recommit.

Mr. NUSSLE. Mr. Speaker, I reserve the balance of my time.

Mr. SPRATT. Mr. Speaker, I yield 3 minutes to the gentleman from Washington (Mr. McDERMOTT).

Mr. McDERMOTT. Mr. Speaker, I want to thank the gentleman from South Carolina (Mr. SPRATT) for yielding me this time.

Mr. Speaker, I think that I want to caution my colleagues on the Democratic side do not get excited. You guys understand this President is in total control of this country, and he lied to us about taxes and now it is coming home to roost. Do not get exercised because you have got to save your voice. We are going to have 2 years of this stuff where they can do anything they want. This bill is simply giving them the keys to the hen house. The fox has now got it. He has got votes in the Senate, he has got votes in the House, and the President now has the stuff here and he does not have to balance any budget anymore.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. ISAKSON). The Chair would respectfully rule that the gentleman not make such personal references to the President of the United States. The gentleman may proceed in order.

Mr. McDERMOTT. But you all understand where it is coming from, do you not? I mean it is not falling out of the sky. This is a concentrated effort, and what they wanted to do was they wanted to give all those taxes away so there would be no money to deal with social programs, and now it happens and they are suddenly afraid. They were fools before. They were saying, well, you can give it all away and we do not have to worry. We will just stiffen our spine and when the people come in here begging to get their tax cut. Then they suddenly found out that the people coming in here were veterans.

I mean we are going to war. We are going to create a whole bunch more veterans. Are we going to take care of them? Are we going to take care of the people that come here and after you come back and want to balance the budget and you lose your rules, you gave them away on whatever this is, the 15th of November. Vote for the recommittal.

Mr. NUSSLE. Mr. Speaker, I yield myself such time as I may consume.

As again for the benefit of the Members, a yes vote is to follow the budget, follow our plan that we have put in place, and a no vote cuts Medicare, crop insurance, military health, child enforcement, veterans education, and the victims of September 11. It is that simple. Again, these are good discussions, nice philosophical arguments, but the facts are still the facts. If you vote for the motion to recommit, you are cutting Medicare. If you vote yes, you are allowing votes to come out to follow the budget plan that has been put in place.

Mr. Speaker, I continue to reserve the balance of my time.

Mr. SPRATT. Mr. Speaker, I yield myself such time as I may consume.

Let me make clear that the motion to recommit will wipe clean the scorecard, $125 billion on the scorecard this
year. It will wipe it clean for 2003. It will only apply to the future and it will only require that the President give us a budget which shows some light at the end of the tunnel, a balanced budget by 2006. So for this year and next year, it will allow us the freedom of movement without being concerned about it.

Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. BENTSEN). (Mr. BENTSEN asked and was given permission to revise and extend his remarks.)

Mr. BENTSEN. Mr. Speaker, this will probably be the last legislative item that I will debate in my House career; and it is ironic that, given that when I came here as a Member of the House we heard about how we had deficits as far as the eye can see, and, in fact, even before we came to Congress, a staff of this body back in the 1980s went through a quadrupling of the national debt and we went through Gramm-Rudman I and Gramm-Rudman II, and we never could seem to get a hand on it, until 1995, with the Budget Control and Enforcement Act, and we imposed PAYGO and spending caps. Then we extended it in 1993. Then when I got here the Republicans extended in 1997. Then, lo and behold, we got control of the deficit, and we began to argue about how much public debt we could pay down.

Now, in the age of deficits again where we are going to have a $200 billion or greater current fiscal year, apparently, we are going to repeal all the rules. We might as well repeal the Unified Budget Act and go back to the pre-68 rules when we do not know what the real budget is, the Committee on Appropriations can spend what they want to, the Committee on Ways and Means and Energy and Commerce committee can spend what they want to, and at some point, at some point, the American people will pay the tab.

I ask you, is that is where we are heading with this. I do not think this is where the chairman wants to go, but I understand he has to follow his orders. But how ironic, coming in when it was deficits as far as the eye can see, and we had a chance to pay down the debt and we started to do it. I leave on a note where once again it is deficits as far as the eye can see; and we are not doing anything to correct it. In fact, we are stepping on the gas to make it even worse.

I think we are going to regret this day for a long time when we see our national debt balloon far beyond anything this country has ever seen before, and I do not think there is any Member of this House who has an idea of how they are going to deal with it, particularly if they do this today. So I hope we will defeat this really unsatisfactory piece of legislation.

Mr. NUSSLE. Mr. Speaker, I reserve the balance of my time.

Mr. SPRATT. Mr. Speaker, I yield 4 minutes to the gentleman from North Carolina (Mr. PRICE). Mr. PRICE of North Carolina, Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise in support of the motion to recommit, which our distinguished colleague from South Carolina (Mr. Spratt) is proposing. Today’s vote represents a fork in the road of Federal budgeting. We must decide whether to continue down the path of deeper budget deficits or to take those first difficult steps toward returning to a balanced budget.

The pay-as-you-go rule expired at the end of fiscal year 2002. However, PAYGO sequestration for prior laws extends through 2006. These PAYGO rules, which were adopted as part of the 1990 bipartisan budget agreement, have been crucial to the progress that we made during the 1990s to go from record budget deficits to budget surpluses, surpluses that let us retire $400 billion in the national debt.

With the help of PAYGO and statutory limits on discretionary spending, we were able to improve the bottom line of the budget for 8 consecutive years, culminating in surpluses for fiscal years 1998 through 2000. Unfortunately, the 10-year, $3.6 trillion surplus that was projected in those years ago has almost disappeared, and the budget has fallen back into annual deficit.

Now more than ever, it is essential that we reaffirm our commitment to the deficit and sequestration, that help us reestablish budget discipline and return the Federal Government to a balanced budget. That is why I am disappointed that the Republican leadership has decided to bring to the floor legislation that would eliminate PAYGO sequestration for all future years to which the law applies.

Mr. Speaker, no one wants across-the-board cuts to Medicare or veterans’ education or child support enforcement or Social Security, or any other domestic entitlement. And contrary to the assertion of the chairman of the Committee on the Budget, the motion to recommit would do no such thing.

The Republican solution, that we ignore the long-term budget deficits facing our Nation, will not make them go away. We should not ignore our budget problems; we should work to solve them.

The Spratt motion to recommit would avoid domestic spending cuts by clearing the PAYGO scorecard for 2002 and 2003. But unlike H.R. 5708, the Spratt motion would require the President to submit a budget that achieves balance within 5 years, excluding the Social Security trust fund surplus, before clearing the PAYGO scorecard for fiscal years 2004 through 2006. The motion to recommit would, therefore, hold Republicans and the President to their professed goal of achieving fiscal balance and protecting Social Security trillions in the future. The motion would reverse course and move the budget back into surplus.

Mr. Speaker, for several months we have been urging the President to hold bipartisan budget negotiations to chart a path back to fiscal control. It is well past time for the President to present Congress with a budget that acknowledges the new fiscal realities coming out of our Nation’s retirement. We will allow Republicans and the President to hold Republicans and the President to their retirement. It is now or never. We must decide whether to continue down the path of deeper budget deficits or to take those first difficult steps toward returning to a balanced budget.

Mr. Speaker, this is not some type of rhetorical debating society we are having tonight or some place to nurse our arguments. This is a group of Members who feel it is important enough to stand up in this body tonight to issue the American people about the disreputable fiscal course that this Congress and this administration have embarked upon, leading us to exploding deficits again and an accumulation of a national debt at exactly the wrong moment in our Nation’s mystery, when we have close to 80 million Americans, so-called baby boom generation all pregnancy locked in a recession for a few short years; and the decisions that we need to make today to prepare the next generation to deal with that challenge are not being made. In fact, one of the fiscal disciplinary rules that has worked well to rein in spending, to maintain balance in our budgetary choices, they are seeking to waive over the next 5 years.

I think everyone agrees that this bill before us is a recognition of a failed budgetary policy of large tax cuts that were not paid for and new spending programs were not paid for. To avoid the inevitable across-the-board cuts with Medicare and veterans benefits and farm programs, we have to pass this legislation.

But I for the life of me do not understand why we cannot deal with the fiscal mess created this fiscal year, give them a little leeway in the next fiscal year, but then support a motion to recommit that calls upon the President to submit a balanced budget plan that leaves our hands and their hands off from Social Security surpluses in the following years so we have a chance to reverse the fiscal course that we have embarked upon.

What is different today than in the past is we do not have the luxury of the 1990s to bring the budget back into balance and to run surpluses to reduce the debt before the baby boomers start their retirement. It is now or never. We either make the right choice now or another philosophical debate, but at that time we are going to be much deeper in the hole; and I cannot think of anything
more morally irresponsible than to leave the next generation with this mountain of debt for them to bail the country out of.

Mr. NUSSLE. Mr. Speaker, I reserve the balance of my time.

Mr. Speaker, I yield 2 minutes to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. Mr. Speaker, in 1990, President Bush, looking at runaway deficits, put his political career on the line, convened a bipartisan summit on the budget and produced some very important budget rules to get a handle on these out-of-control deficits. Perhaps the most important facets of those rules were pay-as-you-go requirements, requirements that if you spend more tax money, you have got to show where it is accounted for in the budget so you do not run the deficits deeper. If you cut revenue, you got to show where it is accounted for and reduce spending so you do not run those deficits deeper. Those pay-as-you-go requirements have been critical to getting us to a surplus.

Now we are once again dealing with another President and runaway deficits, and we are looking at a completely different set of facts.

It was the chairman’s lead with interest accounts of the majority in terms of their agenda for the Congress ahead: make the tax cuts permanent, add prescription drug coverage to Medicare. On the one hand you reduce revenue, on the other hands you increase spending. I am wondering now how does all this add up? With this legislation we see they have no intention whatsoever of making it add up. They are going to do it on the deficit. They are going to run up the debt.

Now, the motion to recommit deals with every spending problem that the chairman has illustrated tonight. Medicare fraud programs, the like of it. This will be the greatest self-indulgent act of the self-indulgent baby boom generation if we do not pay our way now and rely on the kids to bail out the debt that this will bring upon the country. There is not a family I represent that plans for their retirement. It is accounted for and reduce spending so you are unwilling to balance the budget? The gentleman’s plan does not balance the budget, the plan runs up on the debt. The gentleman has run into the budget rules that require pay-as-you-go requirements and tonight he eliminates those budget rules. This is Katie-bar-the-door on deficit spending and the chairman of the Committee on the Budget owes a great deal of personal responsibility for this action.

Mr. Speaker, I reserve the balance of my time.

Mr. SPRATT. Mr. Speaker, I yield 15 seconds to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. Mr. Speaker, I would just say back to my friend, the gentleman from Iowa, the issue is over 5 years, can we not agree we ought to balance the budget? The gentleman’s plan does not balance the budget, the plan runs up on the debt. The gentleman’s plan is how we pay for it. I see the revenue cuts, I see the spending increases, and the question I had was, How is this paid for?

I believe that by eliminating the budget rules, as you do in this resolution, the answer is clear: you have no intention of paying for it. You will pay for it on the debt that you will pass on to our children.

We would propose in our motion to recommit another way. Let us at least agree that by 5 years from now, by 5 years from now, on a bipartisan basis, we will be having plans to get us to a balanced budget and stop the debt on our children.

Mr. NUSSLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the very distinguished gentleman who just spoke suggested that he read with interest our plan, and we all appreciate the fact that he did read with interest our plan. At least we have a plan to read. Since September 11, the Democrats in both bodies have yet to present a plan on how to deal with this.

We understand that you oppose our position. We understand that you oppose the President’s plan. We understand that you oppose the direction that we have taken, and that is fine. You have a right to do so.

But I also understand that you are going to complain, you also need to propose; and as of yet, your side has yet to propose an alternative. That is why tonight we are forced to continue to go down the road that we are going, continue to follow the plan that we have put into place in the House, together with the President, and that is why tonight it is important for us to vote down the motion to recommit, which would not follow that plan, and allow this bill to pass so that we do not provide cuts in Medicare and crop insurance, which I know are important to the gentleman as well as to myself and our States, as well as to military health, child enforcement, veterans’ education and the victims of September 11.

It is, again, not a philosophical discussion, as the gentleman from Wisconsin said. These are real issues that are going to affect people in a real way. We want to prevent the cuts from happening, not even a plan on how to accomplish what you are demanding from the President, even from your side, not even an idea, not even a plan.

A few are bold enough to come down and say raise taxes. A few are bold enough to come down and say that entitlements should be increased. But, by and large, I have not seen anything that has gotten close to a majority of support from the Democratic side.

So I would suggest to the gentleman that while he reads with interest our plan, we wait with interest for yours.

Mr. SPRATT. I yield 30 seconds to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. Mr. Speaker, I thank the gentleman for yielding me time.

I would just say in response to my friend from Iowa, the question I had about the gentleman’s plan is how we pay for it. I see the revenue cuts, I see the spending increases, and the question I had was, How is this paid for?

I believe that by eliminating the budget rules, as you do in this resolution, the answer is clear: you have no intention of paying for it. You will pay for it on the debt that you will pass on to our children.

Mr. TANNER. Mr. Speaker, right now, I do not believe that the majority of the people in this country realize that we are in debt over $6 trillion; we are paying $1 billion a day in interest. I also believe that the majority of the people in this country are unwilling to make cuts to bring the budget into balance, or we are unwilling and do not have the courage to raise...
the revenue for a first class, world class military, a first class system of education, a health care system second to none.

Last year we ran a unified deficit of $159 billion. The statutory debt ceiling will probably have to be increased again next year, creating further incentive for Congress to borrow more money, and it is in this light we are asked to vote on a bill that throws out the PAYGO rules, and for erasing the $60 billion that we are engaged in to cause the PAYGO rules have failed. We are passing on more and more debt to our children. Those are the facts.

I would say to the gentleman from Iowa, many of us are in control of this place, you are in charge, and all we are asking is that there be some plan put in place before we throw these rules out, these budgetary rules for 5 years, to at least get us, talk with us to get back to a plan that will let us get back in 5 years.

Mr. Speaker, I came here in 1988 because our country was awash in red ink and, sadly, tonight, in 2002, we are back awash in a sea of red ink for as far as the eye can see. We are engaged in a generational mugging of the young people of this country on a scale that is massive and has never before been done, and we are unwilling, all of us, Democrats, Republicans, Independents, you name it, we are unwilling to face up to it. If my colleagues will not talk to us and bring these bills where we up to it. If my colleagues will not talk to us and bring these bills where we are asking is that there be some plan put in place before we throw these rules out, these budgetary rules for 5 years, to at least get us, talk with us to get back to a plan that will let us get back in 5 years.

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Mr. NUSSLE. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, budgeting is about choices about putting together a plan. We did so together with the President this last year. All of the items that we find on the PAYGO scorecard fit within that plan. All of the items as a result need to be taken care of as a result of that plan. This is our proposal to do so to avoid automatic sequestration by OMB.

There has been a number of comments made tonight and I just want to respond to them. First of all, there have been those who say they want to sit down and they want to talk about the future budget, and that is fine. But you need a ticket to the dance and your ticket to the dance is to come up with a plan. Now, the Blue Dogs say they have a plan. Well, it is kind of interesting, the Blue Dogs, so-called Blue Dog plan was basically the Republican budget with a trigger. All right. That is kind of interesting. They did not really come up with any other ideas, except for the Republican budget with a trigger. Okay. It did not get any votes, and it did not get the majority of the votes, and, as a result, it really does not qualify much as a plan because it was our plan.

There were really no other plans brought to the table. There were individual bills, however; substitutes, individual proposals. The gentleman from Texas had a farm bill that evidently does not qualify at all if in fact you do not have a budget. The gentleman wrote it, wrote it under our budget, supported it, worked hard on it, I compliment the gentleman on it; I voted for it, because it fit within our budget plan. But tonight, would I say to the gentleman and to any of my colleagues. Yet should we have automatic spending cuts? Should we have automatic cuts in Medicare in order to pay for it? No. And that is what this bill tonight does. It basically says we should not have automatic cuts in Medicare in order to accomplish that.

Mr. NUSSLE. I yield the gentleman from South Carolina. Mr. SPRATT. Mr. Speaker, would it be the chairmen's intention in the next Congress to introduce legislation, pass it through our committee, bring it to the floor, which would reinstate discretionary spending caps and the PAYGO rule for 5 additional years?

Mr. NUSSLE. Reclaiming my time, Mr. Speaker, the gentleman and I need to discuss that. I would be not only very happy to consider that, but I would even go further with regard to budget process issues, but I am a number of them that should be discussed, now that we have an opportunity to do so.

I would hope that we can do that quietly and calmly and with sober regard to the consequences of our actions. We have not done that. Unfortunately, people around here do not necessarily follow the budget process as well as they should; and as a result, demagoguery has reigned with regard to many of these budget rules in the past with messages past that we have tried to bring to the floor.

I would hope that we could bring a budget process reform bill to the floor;
There was no objection.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Kansas (Mr. MOORE) is recognized for 5 minutes in support of his motion to recommit.

Mr. EDWARDS. Mr. Speaker, will the gentleman yield?

Mr. MOORE. I yield to the gentleman from Texas.

(At this point, Mr. EDWARDS asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS. Mr. Speaker, I rise in support of the motion to recommit and in opposition to the Republican deficit tax.

Mr. Speaker, if the House Republican leadership continues forward with its fiscally irresponsible tax policies, it will be responsible for passing the largest tax increase in American history—the deficit tax. The deficit tax is real. It is permanent. It is a tax on small businesses and families across America. In fact, on a per capita basis, the deficit tax cost each American citizen over $1000 last year. Very simply, as the $6 trillion national debt is increased, it increases the interest payments on that debt, which must be paid by taxing hard-working American families.

As one wag put it, that is, there’s even another burden resulting from increasing the national debt. It is called higher interest rates on loans for homes, cars, credit cards and small business. When the economy gets back on its feet, borrowing hundreds of billions of dollars to finance a huge national deficit will drive up interest rates. And, in effect, a tax increase on families and businesses.

We all know that this measure tonight to address the pay-go rules was necessary for this year and next in order to prevent major cuts in entitlement programs such as Medicare and veterans benefits. However, by opposing the Moore motion to recommit, the Republican leadership in this House is throwing out fiscal discipline rules for several years after that. I will vote for this measure, because we cannot allow Medicare and veterans benefits to be slashed, but the Republican leadership, by forcing an up or down vote on suspending pay-go rules for the next four to five years, is leading this House down the path of higher national debt, higher annual deficits, and, yes, a deficit tax on our families and our children for the rest of their lives.

House Republicans may brag about tax cuts at election time, but they should be honest in telling our families and children that they are imposing a permanent deficit tax that will take dollars out of their paychecks for generations to come.

Instead of partisan budget bills, what this Congress should do for the good of our economy and the future of our children is to sit down on a bipartisan basis and make tough decisions on how to balance the federal budget.

That would be the right thing to do.

Mr. MOORE. Mr. Speaker, a year ago, several of my colleagues and I who believe in fiscal responsibility urged caution in making long-term commitments for tax cuts or new spending programs. We were concerned that budget projections were based on unrealistic economic assumptions and that the projected surplus might never materialize. We were concerned that large tax cuts and spending programs could drive up the deficit and add to our $6.3 trillion national debt. Our warnings were ignored.

This year, Congress will be borrowing virtually the full Social Security surplus for the next decade. There were those who said we will have enough money for everything. That turned out not to be true, Mr. Speaker. Next year we will have a deficit of $127 billion.

Today Congress will consider legislation that would wipe the slate clean for the next 5 years. This would allow Congress to avoid responsibility for legislation, adding billions more to the national debt by wiping clean the PAYGO scorecard. What is worse, this bill provides no safeguard for the future. Mr. Speaker; no guarantees that our children and grandchildren will not suffer under a massive national debt, now at $6.3 trillion.

American families live by three basic rules: number one, do not spend more money than you make; number two, pay your debts; number three, invest in the basics of the future. I think Congress should live by those same simple rules.

I am glad that American families do not use Congress’ accounting methods, Mr. Speaker. American families cannot wipe the slate clean when they over-spend. The Blue Dogs have repeatedly said that Congress and the President need to sit down and develop a plan to deal with our escalating national debt: no recriminations, no finger-pointing, or blaming, but just sit down and try to come up with a plan out of this crisis. Unfortunately, our calls have been ignored, leaving us in the situation we face today.

This motion to recommit requires as a condition of waiving the PAYGO rules that the President present a balanced budget next year. The President would be required to put us on a path to balancing the budget by 2008 without borrowing the Social Security surplus, a goal that I believe every Member of this Congress wants.

This motion to recommit allows the slate to be wiped clean for fiscal year 2003 to avoid sequestration, because it is too late to do anything about the current fiscal year. There would be no cuts in any programs that have been commented on by the chairman of the Committee on the Budget. This is the least we can do to stop the bleeding, to turn back red ink and get us in the black again, and to get our country out of the deficit ditch and back on the way to fiscal responsibility.

Mr. NUSSELE. Mr. Speaker, I rise in opposition to this motion to recommit. The SPEAKER pro tempore. The gentleman from Iowa (Mr. NUSSELE) is recognized for 5 minutes.

Mr. NUSSELE. Mr. Speaker, I rise in opposition to this motion to recommit. The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

The question was taken; and the Ayes had it as follows:

AYES

Mr. SPRATT. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—aye votes 187, noes 201, not voting 43, as follows:

Abercrombie
Adler
Allen
Andrews
Baird
Baldwin
Barrett

Bentsen
Berkley
Berman
Berry
Blumenauer
Bowser
Boucher

Brady (PA)
Brown (RI)
Brown (OH)
Capps
Capuano
Capps
Carson (IN)
Carson (OK)

Capuano
Capps
Capuano
Carson (IN)
Carson (OK)
Messes. ABORMERCIBLE, UDALL of Colorado and SNYDER changed their vote from "no" to "aye." So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. ISAACS). The question is on the passage of the bill. The question was taken; and the ayes appeared to have it.

RECORDED VOTE

Mr. NUSSELE. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered. The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—aye 366, noes 19, not voting 46, as follows:

[Roll No. 482]

AYES—366

[Table listing votes]
Ms. WATERS changed her vote from "aye" to "no."

Ms. RIVERS changed her vote from "no" to "aye."

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION
Mr. BERERUTER. Mr. Speaker, on November 14, 2002, this Member unavoidably missed two roll call votes. On Roll Call Number 481 (motion to recommit on H.R. 5708, a bill to reduce pre-existing PAYGO Balances), this Member would have voted "no." On Roll Call Number 482 (final passage of H.R. 5708), this Member would have voted "aye."

ARMED FORCES TAX FAIRNESS ACT OF 2002
Mr. THOMAS. Mr. Speaker, pursuant to House Resolution 609, I call up the bill (H.R. 5063) to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services and ask for its immediate consideration.

The Clerk read the title of the bill.

MOTION OFFERED BY MR. THOMAS
Mr. THOMAS. Mr. Speaker, I offer a motion.

The SPEAKER pro tempore (Mr. SIMPSON). The Clerk will designate the motion.

The text of the motion is as follows:

A motion offered by Mr. Thomas that the House concur in the Senate amendments with the respective amendment printed in House Report 107-784, as follows:

Senate amendments:

Strike out all after the enacting clause and insert:

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SECTION 1. Short Title; etc. (a) Short Title.—This Act may be cited as the “Armored Forces Tax Fairness Act of 2002.”
(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986. (c) Table of Contents.—The table of contents for this Act is as follows: Sec. 1. Short Title; etc. TITLE I—IMPROVING TAX EQUITY FOR MILITARY PERSONNEL Sec. 101. Exclusion from gross income of certain death gratuity payments. Sec. 102. Exclusion of gain from sale of a principal residence by a member of the uniformed services or the Foreign Service. Sec. 103. Exclusion for amounts received under Department of Defense Homeowners Assistance Programs. Sec. 104. Expansion of combat zone filing rules to contingency operations. Sec. 105. Above-the-line deduction for overnight travel expenses of National Guard and Reserve members. Sec. 106. Modification of membership requirement for exemption from tax for certain veterans’ organizations. Sec. 107. Clarification of treatment of certain dependent care assistance programs. TITLE II—OTHER PROVISIONS Sec. 201. Revision of tax rules on expatriation. Sec. 202. Extension of IRS user fees. Sec. 203. Partial payment of tax liability in installments. TITLE I—IMPROVING TAX EQUITY FOR MILITARY PERSONNEL Sec. 101. Exclusion from gross income of certain death gravity payment. (a) In General.—Subsection (b)(3) of section 134 (relating to certain military benefits) is amended by adding at the end the following new subparagraph: “(C) Exception for death gravity adjustment made by law.—Subparagraph (A) shall not apply to any adjustment to the amount of death gravity payable under chapter 75 of title 10, United States Code, which is pursuant to a provision of law enacted after September 9, 1996;” (b) Conforming Amendment.—Subparagraph (C) of section 134(b)(3) is amended by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”. (c) Effective Date.—The amendments made by this section shall apply to the date of the enactment of this Act. (d) Table of Contents.—The table of contents for this Act is as follows: Sec. 1. Short Title; etc. TITLE I—IMPROVING TAX EQUITY FOR MILITARY PERSONNEL Sec. 101. Exclusion from gross income of certain death gravity payment. (a) In General.—Subsection (d) of section 121 (relating to exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph: “(9) Members of Uniformed Services and Foreign Service.—(A) In General.—At the election of an individual residing at a principal residence, the taxable year beginning on the date of the death of an individual whose spouse is serving on qualified official extended duty as a member of the uniformed services or of the Foreign Service of the United States;” (b) Maximum Period of Suspension.—The 5-year period described in subsection (a) shall not be extended more than 10 years by reason of service in a combat zone designated by the Secretary of Defense as such a zone by operation designated in this Act. (c) Effective Date.—The amendments made by this section shall apply to the date of the enactment of this Act. TITLE II—OTHER PROVISIONS Sec. 201. Revision of tax rules on expatriation. (a) In General.—Section 201(a)(13) (relating to certain property) is amended by striking “or” at the end of paragraph (6) and by striking the period at the end of paragraph (7) and inserting “or” and adding at the end the following new paragraphs: “(9) Qualified military base realignment and closure fringe.”; (b) Qualified Military Base Realignment and Closure Fringe.—Section 201 is amended by redesignating subsection (a) as subsection (b) and inserting at the end the following new subsection: “(c) Qualified Military Base Realignment and Closure Fringe.—The term ‘qualified military base realignment and closure fringe’ means 1 or more payments under the authority of section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) to offset the adverse effects on housing values as a result of a military base realignment or closure.”; (c) Effective Date.—The amendments made by this section shall apply to the date of the enactment of this Act. TITLE III—EXPANSION OF COMPETE ZONE FILING RULES TO CONTINGENCY OPERATIONS. (a) In General.—Section 7508(a) (relating to time for performing certain acts postponed by reason of service in combat zone) is amended— (1) by inserting “or when deployed outside the United States” after the individual’s permanent duty status while participating in an operation designated by the Secretary of Defense as a contingency operation (as defined in section 101(a)(13) of title 10, United States Code) or which became such a contingency operation by operation of law” after “section 112”; (2) by inserting in the first sentence “or at any time during the period of such contingency operation” after “for purposes of such section” and (3) by inserting “or operation” after “such an area”, and
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(a) DEDUCTION ALLOWED.—Section 162 (relating to certain trade or business expenses) is amended by redesignating subsection (p) as subsection (q) and inserting after subsection (q) the following new subsection:

"(p) TREATMENT OF EXPENSES OF MEMBERS OF RESERVE COMPONENT OF ARMED FORCES OF THE UNITED STATES.—The amendments made by section 708 of chapter 77 in the table of sections for chapter 77 are amended by inserting "or contingency operation" after "combat zone".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any period for performing an act which has not expired before the date of the enactment of this Act.

TITLE II—OTHER PROVISIONS


(a) GENERAL.—(1) In general.—The table of sections for chapter 77 is amended by inserting after section 709 the following new section:

"SEC. 709. ABOVE-THE-LINE DEDUCTION FOR OVERNIGHT TRAVEL EXPENSES OF NATIONAL GUARD AND RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.

"(a) DEDUCTION ALLOWED.—Section 162 (relating to certain trade or business expenses) is amended by redesignating subsection (p) as subsection (q) and inserting after subsection (q) the following new subsection:

"(p) TREATMENT OF EXPENSES OF MEMBERS OF RESERVE COMPONENT OF ARMED FORCES OF THE UNITED STATES.—The deductions allowed by section 162 which consist of expenses, in amounts not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2001.

SEC. 106. MODIFICATION OF MEMBERSHIP REQUIREMENT FOR EXEMPTION FROM TAX FOR CERTAIN VETERANS' ORGANIZATIONS.

(a) IN GENERAL.—(1) Paragraph (B) of section 501(c)(19) (relating to list of exempt organizations) is amended by striking "or widowers" and inserting ", widowers, or ancestors or lineal descendants of such individuals.

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

SEC. 107. CLARIFICATION OF THE TREATMENT OF CERTAIN DEPENDENT CARE ASSISTANCE PROGRAMS.

(a) IN GENERAL.—Section 131(b) (defining qualified military benefit) is amended by adding at the end the following new paragraph:

"(4) CERTIFICATION OF DEPENDENT CARE ASSISTANCE PROGRAMS.—For purposes of paragraph (1), such term includes any dependent care assistance program for any individual described in paragraph (1)(A) of this Act.

(b) CONFORMING AMENDMENTS.—(1) Section 131(b)(3)(A) is amended by inserting "and paragraph (4)" after subparagraph (B)."
"(2) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—

"(A) the individual—

"(i) became a citizen of the United States before the date of a certificate of loss of nationality, and

"(ii) was a citizen of another country and, as of the expiration date, continued to be a citizen of, and is taxed as a resident of, such other country;

"(B) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expiration date occurs, or

"(C) is treated as an individual who ceases to be a lawful permanent resident of the United States by reason of subparagraph (B) of section 797(a)(8).

"(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship before a diplomatic or consular officer of the United States issues to the individual a certificate of loss of nationality

"(A) after the individual relinquishes United States citizenship, or

"(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

"(ii) an eligible deferred compensation plan

"(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (B) if—

"(i) the individual is a covered expatriate, and

"(ii) the distribution occurred before the date of the event described in paragraph (1)(A)(ii), or

"(iii) the distribution occurred before the date of an event described in paragraph (1)(B).

"(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship before a diplomatic or consular officer of the United States issues to the individual a certificate of loss of nationality by a statement, in writing, that the individual renounces United States citizenship, or

"(A) after the individual relinquishes United States citizenship, or

"(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

"(ii) the individual's United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

"(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)-(4)),

"(B) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

"(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship by the United States Department of State as of—

"(A) the later of—

"(i) the date an individual relinquishes United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)-(4)),

"(ii) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)-(4)),

"(iii) the individual relinquishes United States citizenship, or

"(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.
"(i) QUALIFIED TRUST.—The term ‘qualified trust’ means a trust which is described in section 7701(a)(30)(E).

(ii) VESTED INTEREST.—The term ‘vested interest’ means an interest, which, as of the day before the expatriation date, is vested in the beneficiary.

(iii) NONVESTED INTEREST.—The term ‘nonvested interest’ means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan as defined in section 403(b), (10), or (34).

(3) DETERMINATION OF BENEFICIARIES’ INTEREST IN TRUST.—

(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary’s interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the instrument and the manner of wishes or similar document, historical patterns of trust distributions, and the existence and functions performed by a trust protector or any similar adviser.

(B) OTHER DETERMINATIONS.—For purposes of this section—

(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiary of that trust.

(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

(a) the methodology used to determine that taxpayer’s trust interest under this section, and

(b) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary’s trust interest under this section.

(4) TERMINATION OF DEFERRAL, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

(i) any period during which recognition of income is deferred shall terminate on the day before the expatriation date, and

(ii) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and continue until—

(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

(5) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6232A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6221A.

(6) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this section.

(7) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

(a) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

(A) the gift, bequest, devise, or inheritance is—

(i) shown on a timely filed return of tax imposed by chapter 22 as a taxable gift given by a covered expatriate, or

(ii) included in the gross estate of the covered expatriate for purposes of chapter 22 and shown on a timely filed return of tax imposed by chapter 22 of the estate of the covered expatriate,

(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States,

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new graph:

(8) TERMINATION OF UNITED STATES CITIZENSHIP.—

(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual’s citizenship is treated as relinquished under section 877A(e)(3).

(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.

(9) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(A) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

"(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship—

(2) Availability of Information.—

(A) IN GENERAL.—Section 6101(i) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(4) CONFORMING AMENDMENTS.—

(A) Section 877 is amended by adding at the end the following new subsection:

(F) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.

(B) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

(F) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.

(5) CLERICAL AMENDMENT.—The section is amended by inserting "(f)" after "(e)".

(6) EFFECTIVE DATE.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A) whose expatriation date (as so defined) occurs on or after September 12, 2002.

(7) GIFTS AND REQUESTS.—Section 102(e)(4) of the Internal Revenue Code of 1986, as added by this section, shall apply to gifts and requests received on or after September 12, 2002, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(8) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(a)(2) of the Internal Revenue Code of 1986 (as added by this section) shall not in any event occur before the 90th day after the date of the enactment of this Act.
SEC. 202. EXTENSION OF INTERNAL REVENUE SERVICE USER FEES.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

"SEC. 7527. INTERNAL REVENUE SERVICE USER FEES.

"(a) GENERAL RULE.—The Secretary shall establish a program requiring the payment of user fees for—

"(1) requests to the Internal Revenue Service for ruling letters, opinion letters, and determinations, and

"(2) other similar requests.

"(b) PROGRAM CRITERIA.—

"(1) GENERAL.—The fees charged under the program required by subsection (a)—

"(A) shall vary according to categories (or subcategories) established by the Secretary,

"(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

"(C) shall be payable in advance.

"(2) EXCIPTIONS, ETC.—

"(A) IN GENERAL.—The Secretary shall provide for such exemptions (and reduced fees) under such program as the Secretary determines to be appropriate.

"(B) EXEMPTION FOR CERTAIN REQUESTS REGARDING PENSION PLANS.—The Secretary shall not require payment of user fees under such program for requests for determination letters with respect to the qualified status of a pension benefit plan maintained solely by 1 or more eligible employers if such plan is a qualified employer stock ownership plan.

"(C) EXEMPTION FOR CERTAIN REQUESTS REGARDING ELEIGIBLE EMPLOYEES.—The Secretary shall not require payment of user fees under such program for requests for determination letters with respect to the qualified status of a pension benefit plan maintained solely by 1 or more eligible employers if such plan is a qualified employer stock ownership plan.

"(3) AVERAGE FEES REQUIREMENT.—

"(A) IN GENERAL.—For purposes of paragraphs (1) and (2), the Secretary is required to enter into installment agreements in each category (and subcategories) established by the Secretary for purposes of subparagraph (B) and (C) establishing the average time for (and difficulty of) complying with requests in each category (and subcategory), and

"(B) shall be payable in advance.

"(C) EXEMPTIONS, ETC.—

"(1) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

"(2) Section 1051 of the Revenue Act of 1987 is repealed.

"(3) Section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is repealed.

"(4) Section 503(a) of the Job Creation and Worker Assistance Act of 2002 is amended by striking any other provision of law, any fees collected pursuant to section 503 of the Internal Revenue Code of 1986, as added by subsection (a), shall not be exempted by the Internal Revenue Service unless provided by an appropriations Act.

"(D) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made after the date of the enactment of this Act.

"SEC. 203. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

"(a) In General.—

"(1) Section 6159(a) (relating to authorization of agreements) is amended—

"(A) by striking "satisfy liability for payment of", and inserting "pay", and

"(B) by inserting "full or partial" after "facilitate".

"(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting "full" before "payment".

"(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159 is amended by redesigning subsections (d) and (e) as subsections (e) and (f), respectively, and inserting after subsection (c) the following new subsection:

"(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTIBILITY EVERY TWO YEARS.—The Secretary shall review for collectibility every 2 years an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.

"(e) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

Amend the title so as to read: "An Act to amend the Internal Revenue Code of 1986 to improve tax equity for military personnel, and for other purposes.

Amendment printed in House Report 107–784:

Strike all after the enacting clause and insert the following:

"SECTION 1. Section 114 of Public Law 107–229 is amended by striking "the date specified in section 107(c) of this joint resolution" and inserting "March 31, 2003."

"SEC. 2. (a) IN GENERAL.—

"(1) TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002.—The Temporary Extended Unemployment Compensation Act of 2002 (26 U.S.C. 3304 note) is amended by adding at the end the following:

"SEC. 210. EXTENSION OF PROGRAM IN HIGH UNEMPLOYMENT STATES.

"(a) IN GENERAL.—

"(1) A new account for purposes of paragraph (2) shall be established to which all amounts received after December 28, 2002, and before February 2, 2003, shall be credited.

"(b) EFFECTIVE DATE.—The temporary extension of unemployment compensation payable to an individual under this section shall be payable only out of the account established for such individual under section 203, if—

"(1) such account was at any time augmented in the manner described in section 203(c); and

"(2) such account (as so augmented)—

"(A) was exhausted before December 29, 2002; and

"(B) remains available, for weeks beginning on or after December 29, 2002, by virtue of section 211.

"SEC. 211. PHASE-OUT PROVISIONS.

"(a) IN GENERAL.—In the case of an individual who is receiving temporary extended unemployment compensation for a week of unemployment ending on or after December 29, 2002, the provisions of this title and of any agreement then in effect shall be applied in a manner such that any amounts remaining in an account established for such individual under section 203 as of that date shall continue to remain available to the same extent and in the same manner as if section 208(2) had been amended by striking "January 1" and inserting "February 2."

"(b) COORDINATION PROVISION.—After any amounts (in an account established under section 203) remaining available for the benefit of an individual by virtue of subsection (a) are exhausted, section 210 shall apply to such individual in accordance with its terms.

"SEC. 3. (a) EXTENSION.—The table of contents of Public Law 107–147 is amended by inserting after the item relating to section 209 the following:

"210. Extension of program in high unemployment States."

"211. Phase-out provisions.

"SEC. 4. (a) EXTENSION.—The table of contents of Public Law 107–148 is amended by inserting the following:

"210. Extension of program in high unemployment States."

"211. Phase-out provisions.

"SEC. 5. (a) EXTENSION.—The table of contents of Public Law 107–149 is amended by inserting the following:

"210. Extension of program in high unemployment States."

"211. Phase-out provisions.

"SEC. 6. (a) EXTENSION.—The table of contents of Public Law 107–150 is amended by inserting the following:

"210. Extension of program in high unemployment States."

"211. Phase-out provisions.

"SEC. 7. (a) EXTENSION.—The table of contents of Public Law 107–151 is amended by inserting the following:

"210. Extension of program in high unemployment States."

"211. Phase-out provisions.

"SEC. 8. (a) EXTENSION.—The table of contents of Public Law 107–152 is amended by inserting the following:

"210. Extension of program in high unemployment States."

"211. Phase-out provisions.

"SEC. 9. (a) EXTENSION.—The table of contents of Public Law 107–153 is amended by inserting the following:

"210. Extension of program in high unemployment States."

"211. Phase-out provisions.

"SEC. 10. (a) EXTENSION.—The table of contents of Public Law 107–154 is amended by inserting the following:

"210. Extension of program in high unemployment States."

"211. Phase-out provisions.

"SEC. 11. (a) EXTENSION.—The table of contents of Public Law 107–155 is amended by inserting the following:

"210. Extension of program in high unemployment States."

"211. Phase-out provisions.

"SEC. 12. (a) EXTENSION.—The table of contents of Public Law 107–156 is amended by inserting the following:

"210. Extension of program in high unemployment States."

"211. Phase-out provisions.

"SEC. 13. (a) EXTENSION.—The table of contents of Public Law 107–157 is amended by inserting the following:

"210. Extension of program in high unemployment States."

"211. Phase-out provisions.

"SEC. 14. (a) EXTENSION.—The table of contents of Public Law 107–158 is amended by inserting the following:

"210. Extension of program in high unemployment States."

"211. Phase-out provisions.

"SEC. 15. (a) EXTENSION.—The table of contents of Public Law 107–159 is amended by inserting the following:

"210. Extension of program in high unemployment States."

"211. Phase-out provisions.

"SEC. 16. (a) EXTENSION.—The table of contents of Public Law 107–160 is amended by inserting the following:

"210. Extension of program in high unemployment States."

"211. Phase-out provisions.

"SEC. 17. (a) EXTENSION.—The table of contents of Public Law 107–161 is amended by inserting the following:

"210. Extension of program in high unemployment States."

"211. Phase-out provisions.

"SEC. 18. (a) EXTENSION.—The table of contents of Public Law 107–162 is amended by inserting the following:

"210. Extension of program in high unemployment States."

"211. Phase-out provisions.
and the gentleman from California (Mr. STARK) each will control 15 minutes.

The Chair recognizes the gentleman from California (Mr. THOMAS).

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume. I want to thank the gentleman from California for the courtesy so that we can expeditiously examine this very modest bill. As we discussed under the rule earlier, there are three provisions in the bill: one, to correct a flaw dealing with the continuation of TANF; welfare reform; secondly, to make sure that the unemployment program, in a modest way, continues until the House reconvenes in the 108th Congress; and the third is to provide the administration with some legal protection if they decide to make some decisions which would allow some adjustments in the Medicare program.

Mr. Speaker, I reserve the balance of my time.

Mr. STARK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I ask and was given permission to revise and extend my remarks.

Mr. STARK. Mr. Speaker, I suspect that many people will vote for this bill, but it cannot go unnoticed that the bill does not do nearly enough. It is a day late and a dollar short. It does not really improve Medicare and deal with many of the providers. It merely gives the administration, hopefully, the right to correct a glitch in the way physicians are reimbursed. There is some great discussion going on that they may already have that. The fight seems to be that correcting the physician glitch will cost 43 billion bucks and the question is, Do we get billed again for that or does the administration? And does it fit, or increase the deficit or does it not? So there is no guarantee that your physician friends will get their problem corrected. There is some that the hospitals, nursing homes, rural hospitals, teaching hospitals and the uninsured will absolutely get nothing.

As to the welfare reform bill, there may be a lot of blame as to why we have not reauthorized it; but in any event, since 1996, the day it was passed, the funding for welfare reform, or welfare payments in this country has dropped by 11 percent. We are not doing anything to increase it and that is tragic because the program is more than a family benefit check. It is child care and job training; it is education, the very foundations of self-sufficiency.

It is too bad now, particularly that we do not worry about PAYGO anymore, that we cannot at least deal with the millions of poor families even a tenth as well as we deal with the very rich in the tax cuts that we have given them. Fourteen million families eligible for child care assistance do not receive it and millions of Americans out of work are not getting unemployment. We are not doing an adequate job in unemployment, where this bill really falls down. I will turn soon to my colleague from Maryland, the ranking member of the Subcommittee on Human Resources, to explain that to you. We have spent trillions of dollars in tax cuts for the rich and we are tomorrow night to talk about a mere billion dollars to extend unemployment benefits for only a small portion of Americans who are struggling. Again, it is not fair and it is not adequate.

There was a time when we in Congress could hold up our heads high and say that we took care of all Americans who took care of themselves. We are not even doing that. I think that it is tragic that here we are in the last hours of this Congress and we are attending to something that I do not think any bill at this time could correct all the problems. It is kind of a sad commentary that we have come this far and left so many people impoverished and unaided by a government that has given so much to the wealthy.

Mr. Speaker, I reserve the balance of my time.

Mr. THOMAS. Mr. Speaker it is my pleasure to yield 1 minute to the gentleman from California (Mr. HERGER), the chairman of the Subcommittee on Human Resources of the Committee on Ways and Means.

Mr. HERGER. Mr. Speaker, I rise in support of H.R. 5063, as amended. This bill would temporarily extend unemployment benefits for an additional 5 weeks. It also will extend the funding and rules for the Nation's welfare reform program through March 31, 2003, allowing us additional time to reauthorize the historic 1996 law.

Mr. Speaker, we must keep the pressure on to reauthorize welfare reform for 5 years as quickly as possible. This will be our goal in the next Congress, and we look forward to working with both Republicans and Democrats to get this job done.

I urge my colleagues to support this bill.

Mr. STARK. Mr. Speaker, I am pleased to yield 3 minutes to the distinguished gentleman from Maryland (Mr. CARDIN), the ranking member of the Subcommittee on Human Resources.

Mr. CARDIN. Mr. Speaker, let me thank the gentleman from California for yielding me this time. As the chairman of the Committee on Ways and Means has said, this is a modest bill and rules for the Nation’s welfare reform program through March 31, 2003, allowing us additional time to reauthorize the historic 1996 law.

Mr. Speaker, it does deal, as the chairman of the Subcommittee on Human Resources said, with a 3-month extension of TANF. That is better than what was in the continuing resolution. It guarantees that our States will receive at least their first quarter payments. That is important. But I know we are all disappointed that we were unable to complete the structure for skilled nursing facilities, rehabilitation therapists, hospitals, home health. There were provisions in here that were noncontroversial for our military. None of that was able to get accomplished in this Congress, and I am particularly disappointed that we were unable to do that.

But, Mr. Speaker, I want to talk about the third area, unemployment insurance. Yes, there is a modest improvement in the underlying legislation, but I think we should be very disappointed that we have done nothing at all to help the 1.8 million Americans who will have exhausted their unemployment insurance benefits before we will have an opportunity to revisit this again next year. That is particularly disappointing when you recognize the fact that in every prior recession, in a bipartisan way, we have extended Federal unemployment insurance benefits as a safety net to those who are hurt by the recession through no fault of their own.

We have $25 billion in the Federal unemployment trust account. The money is there. The number of people suffering from long-term unemployment benefits has tripled since last year. We know that if we provide assistance that money will get back into the economy quickly and help us in the recovery. That is why in every prior recession, we have been very clear in providing additional help through the Federal unemployment insurance system. Yet in this recession we have failed. I think that is extremely disappointing, and I would hope that we could have done better.

Mr. THOMAS. Mr. Speaker, it is my pleasure to yield 2 minutes to the gentleman from Pennsylvania (Mr. ENGLISH), a member of the Committee on Ways and Means.

Mr. ENGLISH. Mr. Speaker, more than 800,000 unemployed workers throughout the U.S. and over 35,000 in Pennsylvania alone are faced with the grim reality that their unemployment benefits will end just 3 days after Christmas. With the economy in such bad straits and so many working families suffering, we cannot stand by and let the Grinch steal Christmas from the unemployed whose holidays are already constrained by an extended period of unemployment. This cutoff is hanging like a sword of Damocles, like a Grinch, over these families; and we need to act today.

This bill removes the December 28 cutoff on benefits. It allows more than 800,000 unemployed workers nationwide who will already be receiving extended benefits to continue receiving benefits when the current program expires. This bill extends federally funded benefits by up to 5 weeks.
Ms. DUNN. Mr. Speaker, as we all know, the extended unemployment benefits we passed last year are due to expire on December 28. Without an extension thousands of dislocated workers will lose the unemployment benefits they need to make ends meet as they search for new employment. Unfortunately, extended benefits have not been extended in areas like Washington State, where unemployment rates continue to be high and jobs are very tough to find.

Extending the Federal unemployment benefits for an additional 5 weeks will help about 45,400 dislocated workers living in Washington State alone. It is the least that we in Congress can do before adjourning for the year to ensure that every family has a happy holiday season. This bill is a targeted approach to help individuals who need it most. It is a step toward providing temporary assistance at a time when our country is getting back on the track to recovery.

I urge my colleagues to vote for this important bill, and I hope that the other body will adopt this bill before leaving for the year.

Mr. STARK. Mr. Speaker, I yield 3 minutes to the gentleman from Washington (Mr. MCDERMOTT). Mr. MCDERMOTT. Mr. Speaker, this is a really interesting bill because it really kind of lays it out cold-bloodedly. The President, or the White House, has had 2 million jobs lost since right after the election, do not do right by these families.

When the White House announced their special interests for this session, they said we want homeland security, we want Federal judges and we want terrorism insurance. Not one single word about the economy.

I come from a State where there is 7 percent unemployment. The Northwest is the highest in the country. And anybody who exhausts their benefits before January 1 gets nothing. Oh, excuse me.

They get 5 weeks after the first of the year. That is all they get is 5 weeks. As the gentleman from Maryland (Mr. CARDIN) has already said, we have $25 billion sitting in a fund to deal with this, and you come out here with a 5-week plan. I mean Merry Christmas, folks. Are you going to send turkeys around at Thanksgiving also as part of this program? Why can you not ever admit that you fouled up the economy and the people you have put out of work and take care of them when you have the money sitting there? It is sitting there. I cannot understand how you are going to go home to people and say, well, we are sorry, we will be back in on January 7 and we will pass something real quick; so do not worry, it is not going to be. I mean you are saying at Christmas time to people you are not going to take care of them.

Our unemployment in this country, we have gone up 2 percent in long-term unemployment in the last 6 months, and there is no question between now and February an estimated 1.8 million people are going to lose their unemployment insurance, and you are not doing anything for them, just a little tiny Band-Aid. And it is pretty clear where your priorities are. You are willing in the last bill to take off all the financial controls to spend on defense, to go $100 billion, $200 billion, $300 billion; but you will not give anything but 5 weeks of unemployment to the people who have lost their jobs in this mess you have created.

I urge my colleagues to join me in standing up to the Grinch and making sure that America is going to have a happy holiday season. This bill is a targeted approach to help individuals who need it most. It is a step toward providing temporary assistance at a time when our country is getting back on the track to recovery.

I urge my colleagues to vote for this important bill, and I hope that the other body will adopt this bill before leaving for the year.

Mr. STARK. Mr. Speaker, I yield 3 minutes to the gentleman from Washington (Mr. MCDERMOTT). Mr. MCDERMOTT. Mr. Speaker, I yield myself such time as I may consume.

I appreciate the gentleman’s argument that we are giving someone 5 weeks. That is like saying we picked up a hitchhiker on the West Coast and drove him within three blocks of the Statue of Liberty and he is complaining because we did not drop him right at the door. As a matter of fact, we did not wait until he finished his business and then took him back to California. Because the facts are, and the gentleman is from Washington State so let us use Washington State, there are people in Washington State who have received more than 1 year of unemployment benefits. They have received 26 weeks, an additional 26 weeks, and the 5 weeks the gentleman from Washington (Mr. MCDERMOTT) was talking about was part of, on top of those months and plus 13 weeks which was a 50/50 match between the State and the Federal Government. And of course States have their own programs in which they can continue to extend it.

So for the gentleman to take the time to create the impression that all we are doing is 5 weeks is to say that at the very least that is 5 weeks on top of 26 weeks, on top of 26 weeks, on top of an additional 7. So when you really look at it in terms of the way in which the benefits have been provided, a short way of saying it is there are people who have received unemployment benefits for better than a year.

Mr. Speaker, I reserve the balance of my time.

Mr. STARK. Mr. Speaker, I yield myself such time as I may consume.

I guess that the distinguished chairman of the Committee on Ways and Means and the gentleman from Washington State (Ms. DUNN), the previous speaker, said it all. It is the least we can do, and it is a modest bill. We could do better. We should do better.
We have never had a modest tax cut coming from the other side of the aisle. It is only modest when we try to help the least fortunate among us. So while one never looks a gift horse in the mouth, I am sure that the few people it does help will be happy. I intend to support only what we could have had the leadership to do better for more people in this country.

Mr. KUCINICH. Mr. Speaker, last month’s New York Times predicted that if there is to be an economic recovery in our future, it will be a “jobless recovery.” Millions of Americans who are unemployed, an economic recovery that does not provide more jobs is no recovery at all. And of course, as consumer confidence plunged to a nine year low in October, any economic recovery—with or without more job openings—seems strongly in doubt.

For this reason, H.R. 5063’s plan to extend the Temporary Emergency Unemployment Compensation (TEUC) program, which is presently scheduled to expire on December 28, 2003, provides immediate relief and provides an extremely limited amount of additional unemployment relief.

According to the Center on Budget and Policy Priorities, between now and February 2, 2003, 1.8 million jobless workers in need of assistance will fail to receive it under this plan. Only three states, Arkansas, Oregon, and Washington, are eligible for the five-week extension of the TEUC program authorized by this bill.

And when one considers that the number of long-term unemployed who are looking for work after 27 weeks almost doubled over the last year, that the Economic Policy Institute has reported there are 2.7 unemployed workers for every job opening, and that the Congressional Budget Office expects the unemployment rate to remain near 6 percent until the second half of 2003, it is clear to me that American workers deserve a better and more comprehensive unemployment plan.

In fact, the bill’s proposal represents an enormous missed opportunity. The failure to provide benefits for the first six weeks of benefits to those who have already exhausted their federal benefits is a missed opportunity to provide a dose of immediate, well-targeted economic stimulus.

In addition, the federal unemployment trust funds will have an estimated surplus of $24 billion at the end of this year. And yet, the Republican proposal is estimated to cost less than $1 billion, leaving $23 billion unused, helping no one. This approach seems inconsistent with the basic purpose of the trust funds: to build large resources when work is plentiful in order to provide relief to unemployed workers when they need it most, that is, when that time is now.

It is unfortunate that no alternative to the proposal contained in H.R. 5063 was allowed by the majority’s rule. An effective alternative proposal would have recognized that American workers from the heart of this nation, and that Federal unemployment insurance was intended for those workers during tough times like today. An effective alternative proposal would have also recognized that the number of unemployed Americans is as high today as it was during the Great Depression and that the Federal extended benefits program was enacted in March. This time, workers may receive much less.

In a so-called “jobless recovery,” millions of Americans will remain jobless. Under today’s so-called unemployment plan, 1.8 million Americans will also be without unemployment compensation. We can do better for American workers.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I will be voting for this bill, reluctantly. I feel it is a feeble attempt to run away from the challenges that face us, and to shirk our responsibilities to the American people. But because it is the only legislation the Majority is giving us the opportunity to vote on, and because it will get us to do something to help to some struggling people, I’ll support it.

Every day, I receive a deluge of letters and calls from my constituents—doctors, hospitals, patient-advocacy groups, and nursing homes—letting me know that they are in trouble. Jobless rates are up. The October 1 Medicare Cliff passed us by, and we did almost nothing to mitigate the damages. Doctor reimbursements have been slashed, we are short of nurses and have lost funds to bring in new ones. Our long-term care facilities are on the brink of financial disaster. We do not provide appropriate funds for vital services, these services could be lost. Reimbursement rates are so low in some sectors that medical facilities lose money by treating patients, so Medicare patients may soon be denied care in some areas due to financial limitations. I understand that emergencies do happen. Sometimes, we need to bend and maneuver the rules of the House to get issues handled expeditiously. But, we have seen these problems on the horizon for months. We all knew it. I, with many of my colleagues have been pushing hard for real change—bold steps to take care of the challenges that face our constituents and our health care system. But good bills have been languishing here in the House. There was always an excuse for inaction. We have run out of excuses though.

I and my Democratic colleagues have consistently supported a package with provisions that would improve reimbursements to doctors and hospitals serving Medicare patients, would eliminate the 15 percent reduction in home health payments, would strengthen Medicare+Choice programs, and would help rural providers. But, unfortunately, these provisions were defeated.

Instead, the Majority has gutted an excellent bill from the other body that would have helped our men and women serving in the military receive fair tax relief, and would have stopped the horrible practice of some wealthy individuals who renounce their U.S. citizenship in order to avoid their responsibilities to pay taxes. In a time of war, what kind of a signal are we sending people in uniform, by sacrificing their needs, in order to play politics, and benefit the worst tax-evaders?

What we have before us today is a mockery of what good legislation can be. It is a band-aid approach to bypass surgery. It is a token for few, but an insult to the many health care providers who are struggling to meet the needs of our nation’s sick. If it gets past the Senate, it will provide a brief extension for welfare recipients in programs such as Temporary Assistance for Needy Families (TANF), and child assistance, it extends, for a short time, comprehensive and comprehensible economic relief to those who are now receiving benefits and who live in a few selected states. Those in other states, and those 1 million workers whose benefits have expired, but who are still struggling in our failing economy to find work, receive no help.

I will vote for this bill, because it is better than nothing. But, I feel the Republican leadership has squandered an opportunity to do good. They should have brought us this bill as it passed the other body, so we could show our commitment to the people in our military. They should have worked with the Senate to get real relief to the unemployed, which would have provided a stimulus to our economy, rather than giving a free pass to tax dodgers overseas. They should have worked with the Senate to ensure adequate reimbursements to our health providers, so that services will be there for the people on Medicare.

Instead, we have a bill that will go nowhere once it leaves the House. I hope we will do more for the American people in the 108th Congress.

Mr. DINGELL. Mr. Speaker, I support the provision in this bill that extends the welfare program and the related Temporary Medical Assistance (TMA) program through the end of March. TMA allows families leaving welfare for work to keep their Medicaid insurance coverage. My only question is why my Republican colleagues would extend such an important program for one quarter when it would make much more sense to extend it for one year, two years, or more.

Similarly, I support the effort in this bill to prevent payment cuts to physicians in Medicare. However, I regret that the bill does not accomplish nearly enough.

We do need to help physicians under Medicare, but we also need to help other providers. Hospitals, home health agencies, and nursing homes are in a similar situation. I hear from my constituents on these issues nearly every day. We cannot turn a blind eye to their problems because, like physicians, their role in caring for Medicare beneficiaries is critical.

This bill also neglects to provide States with any Medicaid fiscal relief, which is urgently needed to prevent hundreds of thousands of low-income Americans from losing their health insurance coverage. States are already cutting back on coverage—and as a result, pregnant women and children, senior citizens in nursing homes, working disabled, and women with breast or cervical cancer all across the country may soon find themselves without health insurance.

Ultimately, I will support this bill, because doing something is better than doing nothing. Yet, it seems callous for the House Republican Leadership to let Congress leave without addressing these critical issues. We should be preventing millions of Americans from losing their health insurance and protecting the Medicare program for America’s seniors.

Mr. STARK. Mr. Speaker, I yield back the balance of my time.

Mr. THOMAS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). All time for debate has expired.

Pursuant to House Resolution 609, the previous question is ordered.

The question is on the motion offered by the gentleman from California (Mr. THOMAS).

The motion was agreed to.

A motion to reconsider was laid on the table.
CONFERENCE REPORT ON H.R. 3210, TERRORISM RISK PROTECTION ACT

Mr. OXLEY. Mr. Speaker, pursuant to House Resolution 607, I call up the conference report on the bill (H.R. 3210) to ensure the continued financial capacity of insurers to provide coverage for risk associated with terrorism.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.


The SPEAKER pro tempore. The gentleman from Ohio (Mr. OXLEY) and the gentleman from New York (Mr. LAFAULCE) each will control 30 minutes.

The Chair recognizes the gentleman from Ohio (Mr. OXLEY).

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that all Members may revise and extend their remarks and include extraneous material on the conference report.

The SPEAKER pro tempore. The SPEAKER pro tempore. Pursuant to the unanimous consent, the rules are suspended and the Members may revise and extend their remarks and include extraneous material on the conference report.

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Mr. Speaker, after very many fits and starts, the terrorism reinsurance package will finally become a reality, despite persistent opposition by many in this body who stalled passage of this bill for almost a year by seeking to unilaterally limit the fiscal impact of claims resulting from a terrorist attack.

Our Nation has been faced with numerous economic dislocations as a result of the September 11 attacks as it continues to prepare for the specter of future attacks. A case in point is the legitimate concern raised that the market relating to terrorism coverage has evaporated, forcing primary insurers to increase prices or withdraw coverage, so we have had both an unavailability and an affordability problem. This is not an insurance industry problem, because if the insurance industry cannot reinsure the risk of future terrorist attacks, or will not, it

This bill is absolutely necessary to the well-being of the American economy to protect U.S. jobs and against future terrorist attacks. We need this backstop in place now.

I would be remiss if I did not point out the considerable accomplishments made by my colleague and subcommittee chairman, the gentleman from Louisiana (Mr. BAKER). Without his hard work and dedication, this legislation would not have been possible. Also I recognize the important contributions to this effort by our full committee ranking member, the gentleman from New York (Mr. LAFAULCE), and our subcommittee ranking member, the gentleman from Pennsylvania (Mr. KANJORSKI), here in the House, as well as Senators DODD, SARBANES, and GRAMM.

Our House conference report was signed by every single conferee on our committee, and its bipartisan support is a testament to the work of the President and these Members.

I just want to take this opportunity to thank my good friend, JOHN LAFAULCE, I think he is probably handling his last bill in his role as ranking member on the committee. But I want to personally thank him for his dedication and service to our Nation, and particularly his hard work on this very, very important legislation on terrorism insurance. We have worked continuously for the last 2 years, and I just want to say thank you for your dedication and hard work. We are going to miss you, John, and all of the opportunities we have had to work together on numerous issues; and we wish you the very best in your retirement.

Mr. LAFAULCE. Mr. Speaker, I yield myself such time as I may consume.

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Mr. OXLEY. Mr. Speaker, pursuant to House Resolution 607, I call up the conference report on the bill (H.R. 3210) to ensure the continued financial capacity of insurers to provide coverage for risk associated with terrorism.

The Clerk read the title of the bill.

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will either not offer terrorism coverage or will price it out of the reach of most consumers and leave areas of the country particularly susceptible to terrorist attacks without coverage, and, most importantly, stall or scuttle future building projects. The consequences of such uncertainty for our economy and for consumers, should this continue, could be devastating.

The conference report achieves what I believe is an acceptable balance. The bill makes the interests available by constructing a short-term Federal backstop with minimal government intrusion into the insurance market by ending 3 years after a private sector mechanism emerges. In addition, it requires significant contributions by industry that keeps industry on the hook for substantial losses, thereby protecting the American taxpayer.

More importantly, the bill also avoids making this important economic package a Trojan horse for tort reform, a favorite of many in this body and many in the White House, some of whom worked long and hard for over a year to derail this bill in order to advance their own agenda of the expense of economic growth and the protection of American businesses.

Rather, the bill before us tonight provides for prudent measures that protect the interests of taxpayers and maintains the legitimate rights of victims by, one, creating an exclusive Federal cause of action governed by applicable state law for all suits for property loss, personal injury or death arising out of a terrorist event; secondly, consolidating claims into a single Federal district court; and, third, ensuring that the Federal Government will not be directly or indirectly responsible in its role as a reinsurer for any punitive damages.

I support this important response to mitigate the economic fallout from the threat of future attacks on this Nation, and I urge my colleagues to support this conference report as I have and all the Democratic conference have, and then I would urge the President to sign it into law swiftly.

Mr. Speaker, I reserve the balance of my time.

Mr. OXLEY. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Ohio (Chairman OXLEY) for their determination and leadership in moving this legislation that will strengthen our economic security, I urge my colleagues to support this terrorism insurance legislation that will help create jobs, strengthen economic growth, and reduce the impact of any future terrorist attack.

Mr. LAFAULCE. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania (Mr. KANJORSKI), the distinguished ranking member of the Sub-committee on Capital Markets, Insurance and Government Sponsored Enterprises responsible for the terrorism insurance legislation.

Mr. KANJORSKI. Mr. Speaker, I rise in support of the conference report on the Terrorism Risk Insurance Act. We need this economic stabilization to provide an inoculation for our ailing economy.

Since last year’s terrorist attacks, insurance rates for businesses have risen significantly across the country. One recent report by the Insurance Information Institute found that insurance rates have increased by 30 percent or more after last year’s terrorist attacks. One of the primary factors contributing to these dramatic increases is the lack of terrorism insurance.

With commercial development stalling, workers are also missing out on jobs. That is why it is imperative that we pass this terrorism insurance legislation to protect American jobs and strengthen our economy as we protect ourselves against future terrorist attacks.

Without coverage, the economic impact of another terrorist attack would indeed be devastating. The U.S. could face a string of bankruptcies, loan defaults and layoffs that would intensify the black hole facing the American economy. I am please to say that we have produced legislation that is a direct response to the uncertainty in the insurance market that is hindering the economy and costing American jobs.

Under this legislation, private insurance would pay for damages up to a certain amount, and the Federal Government would guarantee against catastrophic losses. By establishing a temporary Federal reinsurance program to shore up the insurance market, it will help provide much-needed confidence and certainty, while also minimizing government regulation, which would only go into effect if a terrorist attack occurred. This compromise that limits market disruptions, encourage economic stabilization, and facilitate the transition to a viable private market for terrorism risk insurance.

Most importantly, we have carefully crafted a package with much-needed taxpayer protections, including mandatory payback and recoupment. This ensures the availability and affordability of terrorism insurance in the market, while also maintaining the flexibility to protect taxpayers and policyholders.

I applaud President Bush and the gentleman from Ohio (Chairman OXLEY) for their determination and leadership in moving this legislation that will strengthen our economic security, I urge my colleagues to support this terrorism insurance legislation that will help create jobs, strengthen economic growth, and reduce the impact of any future terrorist attack.
ideologies should not be made part of public policy. We can start by looking at this case as a case in chief as to how legislation can be accomplished and how it cannot be accomplished and why 1 year lost of construction time and investment is not worth the attempt to win some political point or political benefit.

I compliment the chairman of the committee and the chairman of my subcommittee; and particularly I want to compliment, pay respect to, the rank and file member from western New York. Without his diligence and without their diligence, we probably could be arguing until the cows come home.

Fortunately, everybody realized that America needs this bill. The insurance industry, which is probably the least likely industry that wants Federal involvement, recognized that this is a role government should play. But most of all, Mr. Speaker, the American people and the American economy need this bill.

I urge my colleagues to support this conference report to their fullest extent.

Mr. OXLEY. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Texas (Mr. DeLay), the majority whip, soon to be majority leader.

Mr. DeLAY. Mr. Speaker, I thank the chairman for yielding me time.

Mr. Speaker, the chairman has done a lot of hard work on this bill, and I rise to support the Terrorism Risk Insurance Act. This legislation before us and to highlight the important work still to be done on this issue.

I had my doubts about this legislation from the very beginning. The most accurate assessment of the risk to Americans is developed by the private marketplace, free from government interference. However, terrorism insurance is not always available, and sometimes it is available only at prices people cannot pay. But the most troubling aspect of this bill is the flaw that leaves American taxpayers holding the bag and trial lawyers running away with the loot.

The House passed a bill containing strong liability protections. The most important was an outright ban on punitive damages. We now have a conference report that lacks this ban.

Mr. Speaker, President Bush’s top four economic advisors explained it best in a June 10 letter. They said very directly, “Punitive damages are designed to punish criminal or near criminal wrongdoing. American taxpayers that are attacked by terrorists should not be subject to predatory lawsuits. The availability of punitive damages in terrorism cases would result in inequitable relief for injured parties, and threaten bankruptcies for American businesses.”

I wish these were the only problems with this bill. But the most troublesome aspect is the prospect that taxpayers dollars may be negotiated away in an out of court settlement. There is no sufficient mechanism in this bill to protect a raid on the Treasury by predatory trial lawyers.

Unfortunately, there is an industry in America that profits from tragedy and suffering. Businesses and property owners and victims who have lost their lives are innocent bystanders in terrorist attacks. My concern is that we are handing this industry additional tools to take advantage and compound these tragic events.

President Bush repeatedly said during this election that we need to stand with the “hard hats” and not the trial lawyers, and I agree with that.

However, this bill falls very short of President Bush. He agreed that there is more work left to protect victims of terrorism, to shore up the Federal Treasury, and he pledged to work with us next year to resolve these flaws.

I want to thank President Bush for that pledge to protect the taxpayers.

As long as I have been in Congress I have guided this legislation, and we are working to fix the problems with this bill.

We are going to lock the doors of the Federal Treasury against trial lawyers who would exploit flaws in this new law to soak the taxpayers.

I am going to stand with hard-working Americans. I am going to stand with those “hard hats,” and I am going to oppose anyone who seeks to plunder the Federal Treasury.

Mr. LAFalCE. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Manhattan (Mrs. MALONEY).

Mrs. MALONEY. New York of New York. Mr. Speaker, I thank the gentleman for yielding me time and for his fine leadership on this committee and on this legislation.

I rise in strong support of the conference report for the Terrorism Risk Protection Act, which provides a Federal safety net in the form of a loan program to the insurance industry in the event of another terrorist attack.

September 11 cost the insurance industry more than $40 billion and many insurers have since dropped terrorist insurance on commercial real estate properties.

The lack of comprehensive and affordable terrorism insurance has blocked billions in development deals, halting construction and costing jobs.

The bill provides loans to insurers for 90 percent of damages over a deductible and can apply to terrorist events over $5 million. Very importantly, it sunsets 3 years after passage.

This is an economic stimulus bill for New York City and the country. Carl Loeb of New York City Partnerships estimates that passage of this bill will add 1 percent to the GDP of New York City, and some economists believe it will have the same impact for the Nation. It is extremely important to get our economy moving again. It is about jobs, putting people to work, and not letting terrorists cut off credit.

As an example of the impact of the lack of terrorism insurance is the situation facing the managers of the Conde Nast building in Times Square. This 48-story property is a New York City landmark that houses a publishing empire and the famous NASDAQ market which provides broadcast updates on the stock market.

While the building’s owners have always carried insurance to cover the $430 million mortgage, after September 11 terrorism coverage insurance alone for the building skyrocketed to $5 million a year. The building’s owners were unable to pay this high amount while the bank holding the mortgage demanded that they carry full coverage. As a result, this situation has led to prolonged litigation.

Passage of this legislation will resolve the situation for the Conde Nast building and for many other properties like it across the Nation.

Importantly, this is not just a New York City or New York State problem. According to a recent report by the Mortgage Bankers Association, the lack of terrorist insurance has led to significant cost increases of commercial real estate property around the country. The MBA alone believes the downgrades have cost its industry $8 billion in canceled or delayed projects.

I am very pleased that today’s bill contains a compromise on the tort reform issue.

Finally, I want to thank the chairman of the committee, and to the Democratic leader of the Committee on Financial Services, I want to thank very much the gentleman from New York (Mr. LAFalCE) for his tireless work on this issue and so many others. He stood for principle throughout consideration of the debate on this bill and, I would say, all legislation before the committee. We will truly miss his contributions to the Committee on Financial Services and to this Congress. I believe this will probably be the last bill that the gentleman will manage on the floor, and we are grateful every much the gentleman’s wonderful leadership and all of his fine work for his district, New York State, and I would say for the country.

Mr. OXLEY. Mr. Speaker, I am pleased to yield 4 minutes to the gentleman from Louisiana (Mr. BAKER), the chairman of the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises.

Mr. BAKER. Mr. Speaker, I appreciate the chairman yielding me this time and want to commend his leadership on this most important matter, and certainly the gentleman from New York (Mr. LAFalCE) and the
gentleman from Pennsylvania (Mr. KANJORSKI), who have worked tirelessly with us topropound a resolution to this most difficult problem.

The important point I wish to speak to tonight is the significance of the mechanism we assist the insurance industry while requiring repayment of taxpayer dollars. When one of these tragic events occurs, certainly the most important thing we can do is to keep our economy working and not have this tragic event of terrorism which takes the lives of innocent human beings, which causes the destruction of properties, to extend into the workforce and cause people to lose their employment by the loss of construction jobs or other opportunities. Without the passage of this act, should there be another unfortunate event, which all of us hope never occurs, we would face very uncertain times.

The industry was able to respond, gratefully, to the horrific events in New York. An insurant is deputized and we do not know what ability they may have if we suffer an event on such a grand scale again.

Tonight we are responding to those eventualities by saying yes, we will help you. I will help you. If times of short-term liquidity, when your bank account is low, when you have paid out the claims and you cannot meet the next obligation, but we are going to require that industry to put their money up first; we do not go to the taxpayer as the first stop. But then we say to those companies, here is the taxpayer loan and it is in fact a loan where we are going to enable you to continue to operate by extending credit to you during this time of crisis, but we are going to expect you to pay it back.

That is a unique standard. This House has acted in other areas of concern relating to business operation in times of short-term attack and not required the extension of taxpayer funds to be repaid. Tonight, we establish a new standard. Yes, we are willing to help big business; yes, we are willing to do what is necessary to keep our economy going, but when the economy returns and the industry is enjoying a profit, we are going to expect to get our money back. I think that is not only entirely appropriate, but the highest standard of conduct for this committee, I believe. We did not ever open the taxpayer checkbook to industry of any sort without demanding a high standard of conduct. Tonight we are setting it: You are going to give us the money back.

Now, the Secretary of the Treasury does have the discretion, should we be in desperate economic circumstance where the imposition of the repayment would not be wise, meaning it would raise the premiums on homeowners, on business owners, or that the industry simply cannot generate the resources to pay the money back. So we have a balanced approach. We say yes, we will help in times of crisis and we expect you to pay us back, but if economic conditions do not warrant it, the Secretary of the Treasury shall report to this Congress why he believes that the repayment should not occur.

I think this is an excellent balance utilizing common sense and taxpayer responsibilities. It all is driven to do: to ensure that our economy functions, that terrorists do not win, that innocent working people are not harmed, and that at the end of the day our economic interests are protected.

I wish to commend all of the parties who have contributed mightily to this effort and say, job well done.

With regard to those issues concerning punitive damages, I agree with our whip. I do believe that we should be very careful in opening the doors to allow those who choose to file unwarranted litigation and suits and take 30 or 40 or 50 percent of the award that is granted, particularly in the area of punitive damages, which for a public policy reason, and I hope it is an area that with the President’s leadership we can return to next year and resolve in the favor of the American taxpayer.

Mr. LAFALCE. Mr. Speaker, I yield 4 minutes to the gentleman from Texas (Mr. BENTSEN), a departing Member of Congress and a very distinguished representative who is here with his lovely daughter to witness what I think will probably be his final remarks in Congress.

Mr. BENTSEN. Mr. Speaker, I thank the gentleman for yielding me this opportunity. Tonight we are responding to those issues concerning tort reform. Yet I do not think the majority of the committee felt, a little bit too much about the imposition of the repayment. We have a system in place to make sure that those companies will provide a backstop using the credit of the American taxpayer, but that we would not do it forever, that it would have a sunset, and that there would have to be some payback mechanism; that if we were going to extend the credit, we needed a way that we could recoup the losses to the taxpayer.

As the gentleman said, that was a rather unprecedented approach. It has survived in this legislation, and it was not supported across the board by a number of Republicans and Democrats, but it did survive. I think a lot of credit goes particularly to the gentleman from Louisiana (Mr. BAKER), because he was quite adamant in that regard.

In addition, I want to address the question of tort, because we discussed that in the committee when we first moved the bill on this side of the aisle here in the House. I recall that the comments of my dear colleague, the gentleman from Texas (Mr. DELAY), my neighbor in Texas, the majority whip, soon to be majority leader. As I see the final conference report, there are a number of changes that are designed to protect the taxpayers from excessive litigation: number one, all tort claims are consolidated; number two, they are all Federal claims and not State claims; number three, if I read it properly, no claims can be made against Federal taxpayer dollars.

There are some who, unfortunately, sought to use this bill as a proxy for the issue of tort reform. Yet I do not think that was what the gentleman from Ohio, the chairman, wanted to do; and quite frankly I do not think that is what the gentleman from Louisiana wanted to do, because they understood what the core problem was.

Over the last year and a half, almost, they have been working on this legislation, I have had the privilege of being the business leader, one commercial developer, one insurance person who has said that the tort issue is an issue that must be
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addressed. The concern they had was that there was no insurance market available and that development had come to a screeching halt.

Tonight, we finally have a product which is prudent for the American taxpayer, which seeks a very fine precedent going forward for many grantees. Congress, in looking at the extension of Federal credit, I hope our colleagues will adopt this package. I wish we could have done it sooner, but thank goodness we are doing it now. I commend the chairman, Mr. Oxley, the chairman of the subcommittee, and my colleague, the gentleman from New York, and the ranking member for the work they have done.

Mr. Oxley, Mr. Speaker. I yield myself such time as I may consume.

Mr. Speaker, let me recognize my good friend, the gentleman from Texas (Mr. Edwards), who also is involved in his last bill on the floor, at least for a while. He has been a principal member of our subcommittee and has provided reasoned judgment throughout a number of the issues that the committee has dealt with over the last 2 years. I want him to know he has my personal thanks and recognition for his excellent contributions.

Mr. Speaker, I yield 3 minutes to the gentlewoman from New York (Mrs. Kelly), chairman of the Subcommittee on Oversight and Investigations.

Mrs. Kelly. Mr. Speaker, I thank the gentlewoman from Ohio for yielding time to me.

Mr. Speaker, on September 11, our world fundamentally changed with the cowardly act of a handful of terrorists. Passage of this bill represents another step toward dealing with the critical problem of the absence of terrorism insurance. The losses of September 11 and the continuing terrorist threat demonstrate that we must provide basic protections for our economy.

The September 11 attacks resulted in the largest single hit to our insurance industry in history. Since then, businesses and insurance markets have faced a new reality. Insurers are being asked to insure terrorism risk when they have no realistic way to determine the fair price for that risk, or, in the vast majority of cases, being able to obtain or reinsuranace for it.

Moreover, no one can presently calculate the proper odds for where or when the next attack will occur. We do know, however, that our government and our insurance and investment community have no realistic way to deter a terrorist attack; now, not after another attack; extremely likely, and we must plan now for the terrorist threat that another terrorist attack is extremely likely, and we must plan now for the government should react to an attack; now, not after another attack. We have learned countless lessons from September 11 on homeland security, and the need for this legislation is one of them.

This conference report is a good solution to the problem and deserves our support. I ask my colleagues on both sides of the aisle to join me in support of jobs by voting for this conference report.

I thank the gentleman from Ohio (Chairman Oxley) for his leadership, and I thank his wonderful staff for their work on this issue.

Mr. Speaker, I include for the RECORD the following letters regarding terrorism insurance:

HON. SUE KELLY, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR CONGRESSWOMAN KELLY: Our members, the owners of REITs and others in real estate in New York City, appreciate the leadership you have provided in dealing with the critical problem of the absence of adequate terrorism insurance coverage.

I understand from a recent conversation with one of our members, Douglas Durst, that you are looking at some specific examples of the problems the absence of terrorism insurance coverage has created. Those examples follow.

A REIT portfolio, which includes major office complexes in Boston, San Francisco, D.C. as well as a trophy midtown Manhattan building, can get only $250 million in terrorism coverage for the entire portfolio which has a billion dollars in value. In more terrorism incident, it is likely that even this limited coverage will be lost given the not uncommon 30-day cancellation clause.

Other examples from across the country, including hospitals, airports, transportation centers and other vital private and public investments that are not covered by terrorism insurance, along with a vivid description of the ripple effects this problem is having on the overall economy, appear in the May 23rd Joint Economic Committee report to Congress.

It is most important that enactment of some form of national legislation for terrorism insurance coverage occur quickly.
We appreciate your efforts to resolve this critical problem. Sincerely,

DEBORAH B. BECK,
Executive Vice President.

WHEN & MALKIN LLP.

Re: terrorism insurance.

Hon. SUSAN KELLY,
Longworth House Office Building,
Washington, DC.

Dear Congresswoman KELLY: Thank you for your efforts to date to highlight the extremely difficult insurance market for commercial real estate owners and developers in New York City and other major cities across the United States.

Our firm represents a portfolio of over 8,000,000 square feet of office space located in Manhattan, including the Empire State Building that as a result of the events of September 11th, is once again the tallest building in New York. Because of our recent experience trying to renew the insurance for these buildings underscores the problems that Congress needs to address.

The casualty amount of property insurance that we have been able to obtain at any price is $200 million dollars for this portfolio, less than half of our coverage of the $550 million maintained for the past 12 months. This level of insurance is significantly below replacement cost of any one of our properties, leaving our investors with significant risk.

Of concern, this $200 million dollar program does not cover any loss between $75 million and $100 million. This “hole” in coverage further places our investors at risk and limits our ability to obtain future financing.

The program outlined above specifically excluded terrorism. We have only managed to secure a $25 million dollar terrorism program because of insurance providers’ general unwillingness to issue coverage.

We also feel it necessary to purchase a $50 million pollution liability program in the event of a chemical or biological attack. This hole in coverage further places our investors at risk and limits our ability to obtain future financing.

In summary, it is clear that the insurance industry has limited its exposure in major cities, resulting in reduced capacity, limited competition and exorbitant premiums. The insurance industry’s unwillingness to provide adequate levels of coverage at reasonable rates will translate into higher rents for tenants, which historically assumed by the insurance industry will now be shifted to the lessee.

The increased an astonishing 500%.

We urge Congress to consider the legislative provisions that will address the unquantifiable risk to these major cities, resulting in reduced capacity, spurring development, and creating jobs.

We urge all of my colleagues to approve this measure and send it to the President, because it is not a question of if but when, and what magnitude we will face a terrorist attack using conventional weapons or, just as likely, weapons of mass destruction.

The casualties could be large and the liability beyond comprehension.

Mr. LA Falce. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support this bill and encourage everyone to vote for it. It is a shame we were not able to pass it a year ago, about the time we reported our bill out of committee and passed it on the floor of the House; but I do think this is a much better bill now than the one we passed earlier.

Mr. Speaker, I yield back the balance of my time.

Mr. Oxley. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this, as I indicated in my opening remarks, is a very, very important piece of legislation. It is critical that the Congress act. The President has called for us to act.

Let me cite from an article today in The Washington Post regarding the threat of attack that “terrorist groups may be planning a new wave of attacks on Western targets. Even before the purported bin Laden tape surfaced on the al-Qaeda website that ran on Tuesday, the CIA, FBI, and National Security Agency had detected a significant spike in intelligence chatter over the previous 10 days that strongly indicated new assaults are being planned, officials in U.S. intelligence agencies said.”

In congressional testimony last month, CIA Director George Tenet warned that recent attacks in Yemen, Kuwait, and Bali signal an escalation in terrorist activity characterized as “as bad as it was last summer, before the airliner hijacking assaults on the World Trade Center and the Pentagon.”

“Whatever threat environment level was high then and it has not lessened,” a senior administration official said yesterday. “Bin Laden’s appearances have always been carefully orchestrated, and unfortunately, they have often presaged a major al Qaeda attack or domestic threat.”

Mr. Speaker, it is time that this Congress act. I appreciate the strong bipartisan support that this legislation has
entertained over the last several months. This is a good example of Congress at its best, but it is even more important that we provide this framework for protection of the American economy. This bill does exactly that. I ask my colleagues for strong support for this important piece of legislation.

Ms. JACKSON-LEE of Texas. Mr. Speaker, the September 11 terrorist attacks have devastated many industries and sectors changing the landscape of the American economy, including the insurance industry.

The uncertainty caused by the terrorist events on September 11, 2001, has resulted in the possibility of serious problems for the insurance industry and the insured from additional severe terrorist attacks. To illustrate this, reinsurance companies provide insurance against massive losses for insurance companies. As the terrorist incidents continue, many primary companies, because they cannot receive reinsurance, have sent notice cancellations to businesses indicating that they will not receive coverage for losses caused by terrorist activities. If both small and large businesses continue to be unable to receive insurance, it will contribute to the further instability of the American economy. Insurance provides a very important element of the stability needed by businesses to continue functioning and invest.

Furthermore, the conference report requires that punitive damages be awarded where a business is found liable for losses caused by terrorist attacks. This constitutes a good example of Congress at its best, but it is even more important that we provide this framework for protection of the American economy. This bill does exactly that. I ask my colleagues for strong support for this important piece of legislation.

Mr. NEY. Mr. Speaker, I just want to take a quick moment to comment on an important provision in the bill. H.R. 3210 contains a study of group life insurance. I would like to clarify that it was the House that the term “group life insurance,” as it appears in the text, is used in its typical and customary sense to mean “an insurance contract under which an insured person receives life insurance, accidental death coverage, accidental death coverage, or a combination of both for a number of persons under a single contract and that provides such coverage on the basis of a group selection of risks.”

Under this bill “each insurer will be responsible for paying out a certain amount in claims a deductible—before Federal assistance becomes available. This deductible is based on a percentage of direct earned premiums from the previous calendar year, and rises from 7 percent during the first year to 10 percent in year 2 of the previous calendar year, and rises from 7 percent in year 1, plus the last few months of year 2002; $12.5 billion for year 3. For losses above an insurer’s deductible, the Federal government will cover 90 percent, while the company pays 10 percent.”

If the Federal government pays for insured losses during the course of a year, the Treasury Secretary will be required to recoup the difference between total industry costs (individual insurers’ losses up to their deductibles, plus the industry’s 10 percent cost share above the deductibles) and the following fixed dollar amounts per year: $10 billion for year 1, plus the last few months of year 2002; $12.5 billion for year 2, and $15 billion for year 3. The recoupment will be accomplished through a surcharge on policyholders. The Secretary has discretion on the timing of the surcharge, but the surcharge cannot be more than 3 percent of the premium paid for a policy in a given year. Losses covered by the program will be capped at $100 billion; above this amount, Congress is to determine the procedures for and the source of any payments. The Secretary may assess civil penalties on participating insurance companies for submission of false or misleading information or failure to repay the Secretary for any amount required to be repaid.”

I lend my support to this bill. Congress can and must continue insurance in the critical sectors of our economy, and those who most need assistance. The underlying bill holds the promise of protecting the insurance industry and the millions of Americans dependent on it. The version of the bill before us today goes a long way toward restoring confidence to our nations lenders and should help bolster our struggling economy. As such, I urge my colleagues to support the measure before us tonight.

Mr. BERETZNER. Mr. Speaker, this Member rises today to express his support for the conference report of the Terrorism Risk Protection Act (H.R. 3210). This conference report will help ensure that businesses are able to acquire property and casualty insurance while still providing taxpayer protection against terrorist losses. This Member is pleased that the House and Senate conferees have reached an agreement on terrorism insurance which President President George W. Bush is expected to sign. This Member is a cosponsor of H.R. 3210. This conference report was agreed to on November 29, 2001, by a vote of 227-193.

This Member would like to thank the distinguished gentleman from Ohio (Mr. OXLEY), the Chairman of the House Financial Services Committee, for both introducing this legislation and for his efforts in bringing this conference report to the House Floor. Additional appreciation is expressed to the distinguished gentleman from Louisiana (Mr. BAKER) who also played a crucial role in crafting the conference report on H.R. 3210. Moreover, this Member would also like to thank the distinguished gentleman from New York (Mr. LAFAUCHE), the Ranking Minority Member of the Financial Services Committee, for his bipartisan cooperation and assistance on this conference report.

The uncertainty caused by the terrorist events on September 11, 2001, has resulted in the possibility of serious problems for the insurance industry and the insured from additional severe terrorist attacks. To illustrate this, reinsurance companies provide insurance against massive losses for insurance companies. As the terrorist incidents continue, many primary companies, because they cannot receive reinsurance, have sent notice cancellations to businesses indicating that they will not receive coverage for losses caused by terrorist activities. If both small and large businesses continue to be unable to receive insurance, it will contribute to the further instability of the American economy. Insurance provides a very important element of the stability needed by businesses to continue functioning and invest.

As a Member of the House Financial Services Committee, which has jurisdiction over the important elements of the limited Federal role in commercial insurance in the September 11 terrorist attacks, this Member supports this conference report for the following two reasons. First, obviously it helps ensure that commercial insurance continues to be available for businesses—and available at affordable costs. Second, it provides necessary taxpayer protections against possible severe terrorist losses to businesses. Under this conference report, a temporary Federal terrorism insurance program would be established within the Treasury Department. Under this program, Federal funds would be provided to property and casualty insurance companies when losses reach the "trigger" level. In particular, Federal funds would pay 90 percent of the terrorism-related losses of insurance companies that exceed 7 percent of the company’s premiums in 2003; 10 percent of a company’s premiums in 2004; and 15 percent of a company’s premiums in 2005. Each insurance company would pay for 10 percent of insured losses up to those thresholds and 10 percent of the losses above those levels. This Federal terrorism insurance program would cover industry-wide losses up to $1.5 billion per year.

It is also very important to note that this conference report provides for the mandatory repayment of some of the Federal funds used to cover insured losses. Under this conference report, for 2003, the insurance industry must repay the Federal assistance which is the difference between the sum of all insured losses paid by the industry and $10 billion. For 2004 and 2005, these repayments would be made for the difference between the sum of all insured losses and $12.5 billion and $15 billion, respectively. These repayments would be collected through a surcharge on the policies of all commercial insurance policyholders. Therefore, this conference report is not an insurance company bailout; it protects the American taxpayer against a big hit while continuing to maintain insurability against terrorist attacks.

Furthermore, this conference report also provides taxpayer protection from punitive damages in lawsuits which claim terror-related losses or injuries. To illustrate this, this conference report requires all terror-related lawsuits to be considered in state courts rather than in state courts. Moreover, this conference report does not set a Federal standard for awarding punitive damages in terror-related lawsuits. However, it instead allows the state law in which the terrorist act occurred to prevail with respect to punitive damages. Most important, this conference report requires that punitive damages awarded through these lawsuits will be deducted by Federal funds used to cover losses from terrorism. For my Nebraska constituents, it is important to note that punitive damages are not allowed under Nebraska state law in Nebraska state courts.

In conclusion, Mr. Speaker, this conference report balances the need of businesses to continue to receive commercial insurance
against terrorist acts at affordable costs, with taxpayer liability protection. As a result, this Member urges his colleagues to support the conference report of H.R. 3210.

Mr. OXLEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The conference report was agreed to. A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill, H.R. 3758.

The SPEAKER pro tempore. The question to the request of the gentleman from Nevada?

There was no objection.

CONFERENCE REPORT ON H.R. 4628, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2003

Mr. GIBBONS submitted the conference report and statement on the bill (H.R. 4628) to authorize appropriations for the fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

□ 2145

CONFERENCE REPORT ON S. 1214, MARITIME TRANSPORTATION SECURITY ACT OF 2002

Mr. LoBIONDO. Pursuant to House Resolution 665, I call up the conference report on the Senate bill (S. 1214) to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes, and ask for its consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 665, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of November 13, 2002, at page H8561.)

The SPEAKER pro tempore. The gentleman from New Jersey (Mr. LoBIONDO) and the gentlewoman from Florida (Ms. BROWN) each will control 30 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. LoBIONDO) and the gentlewoman from Florida (Ms. BROWN).

Mr. LoBIONDO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of the Maritime Transportation Security Act of 2002. I would first like to thank the members of the conference committee who have provided the leadership and vision to create this landmark legislation, especially the gentleman from Alaska (Chairman YOUNG), the ranking member, the gentleman from South Carolina (Mr. OBERSTAR), Senator HOLLINGS, and Senator MCCAIN and Senator LOTT.

The Maritime Transportation Security Act of 2002 establishes a comprehensive national system to increase port security and vigilance for our ports and waterways. This legislation was developed to prevent a terrorist attack along our Nation's largest and perhaps most vulnerable border, consisting of 95,000 miles of coastline with hundreds of ports. The United States maritime industry contributes $742 billion to the gross domestic product each year, and a ripple effect of an attack on an American port would be absolutely devastating.

The goal of S. 1214 is to deter terrorist attacks against ocean shipping without adversely affecting the flow of U.S. commerce through our ports. Striking this balance has been a key and essential element of my approach to this issue, and I believe that this bill achieves this goal.

S. 1214 requires the Coast Guard to conduct vulnerability assessments of our United States ports. The results of the assessments will be used to implement a national maritime transportation security planning system, consisting of a comprehensive national plan, specific area plans, and local vessel and marine facility plans.

S. 1214 also establishes a requirement for the Coast Guard to assess the effectiveness of security systems in certain foreign ports and to deny entry to vessels from ports that do not maintain effective security. Under S. 1214 individuals who enter secure areas on vessels or facilities are required to have background checks and transportation security cards that will be issued by the Federal Government.

The Maritime Transportation Security Act authorizes grants for enhanced facilities security at U.S. ports for the next 6 fiscal years. These grants will help cover the costs of port security improvements and fund research and development projects to determine which technologies will best improve port security.

I have personally visited ports located in and around my home State of New Jersey and have seen the security challenges facing these facilities. Securing our ports is a critical Federal responsibility and the grant program will help protect our ports from terrorists and other threats.

Shipping containers are particularly adaptable to use by a terrorist, and S. 1214 contains several provisions to improve the security of our containers. The bill requires the Secretary of the Department in which the Coast Guard is operating to maintain a cargo tracking, identification and screening system for shipping containers shipped to and from the United States.

Finally, the bill requires the establishment of performance standards to enhance the physical security of shipping containers, including standards for container sealers.

Mr. Speaker, this bill contains other important security enhancements concerning enhanced vessel crew member identification, Coast Guard sea marks and vessel transponders to track the movement of vessels in United States waters.

Equally significant, the bill contains several additional security enhancements and other Coast Guard provisions previously passed by the House. The Coast Guard, as one of the Nation's five armed services, has a key role in homeland security, particularly as it relates to port security and defense readiness. These provisions strengthen the authority of the Coast Guard to confront the terrorist threat facing us today. Strong maritime homeland security requires a strong Coast Guard with the resources it needs to protect the country from a terrorist attack.

During my chairmanship of the Subcommittee on Coast Guard and Maritime Transportation, I have long said that the Coast Guard needs three things, essentially, to be successful: More money, more manpower, and more modern assets. Fortunately, this measure addresses all three needs and will help the Coast Guard to keep serving America both proudly and successfully.

The bill authorizes expenditures for the United States Coast Guard for fiscal year 2003. Title V of the bill authorizes approximately $6 billion for Coast Guard programs and operations for fiscal year 2003. The bill funds the Coast Guard at levels requested by the President of the United States. An injection of $550 million in additional operating resources will also allow the Coast Guard to address chronic budget shortfalls. The bill fully embraces the President's call for an additional 2,000 Coast Guard personnel.

Many of the Coast Guard's most urgent needs are similar to those experienced by the Department of Defense, including spare parts shortages and personnel training deficits. Title V authorizes $725 million for Coast Guard acquisitions. This funding will help the Coast Guard to repair and replace the Coast Guard's vital assets, especially the Coast Guard's deep water program, which is so long overdue.

Immediately following the events of September 11, 2001, the Coast Guard launched the largest home port security operation since World War II. And as part of operation Noble Eagle and Operation Enduring Freedom, the Coast Guard established ports and coast line patrols with 55 cutters, 42 aircraft, and hundreds of small boats.

Over 2,800 Coast Guard reservists were immediately deployed to support the recapitalization of the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes.

The bill fully embraces the country from a terrorist attack. Strong maritime homeland security requires a strong Coast Guard with the resources it needs to protect the country from a terrorist attack.

The SPEAKER pro tempore (Mr. OXLEY). Mr. Speaker, I yield back the balance of my time.
United States from terrorists. The con-
dom to help protect the people of the
grams and policies within their com-
ber of Congress has examined the pro-
I support this conference report.
I wish her the best of luck in the fu-
ing us shortly, and I want to take the
accomplishment of this magnitude is
hard with long hours on this bill. An
four U.S. ports. However, without substan-
additional Coast Guard resources, we are not going to be able to signifi-
cantly enhance maritime security.
Mr. Speaker, I want to take this op-
tunity to commend the men and
women of the Coast Guard who, as I
said before, have done such an excep-
tional job in service to their country.
America benefits from a small Coast
Guard that is equipped to stop terror-
ists and drug smugglers and support
the country’s defense to respond to na-
tional emergencies. We must now act
to put the Coast Guard on a sound fi-
nancial footing to be ready to respond
to increasing homeland security de-
mands and to carry out other critical
missions.
Finally, Mr. Speaker, I would like to
take this opportunity to thank the
hard working House staff members who
really have made this bill possible.
Both from the House and Senate side
the staff members worked extremely
hard with long hours on this bill. An
accomplishment of this magnitude is
in large part due to their efforts.
I would like to single out one person
in particular, Rebecca Dye, who I have
had the pleasure of working with as my
tenure as chairman of the Sub-
committee on Coast Guard and Mar-
time Transportation, who has worked
tirelessly throughout the 2 years that I
have been chair and especially worked
tirelessly on this bill. She will be leav-
ing us shortly, and I want to take the
opportunity to say what is our loss will
be the gain for the United States of
America. I thank Rebecca very much
for her service to this committee, and
I wish her the best of luck in the fu-
ture.
Mr. Speaker, I urge all Members to
support this conference report.
Mr. Speaker, I reserve the balance of
my time.
Ms. BROWN of Florida. Mr. Speaker,
yield myself such time as I may con-
sume.
Mr. Speaker, I rise today in strong
support of the conference report on S.
1214, the Maritime Transportation Se-
The events of September 11, 2001 has
changed America forever. Every Mem-
er of Congress has examined the pro-
grams and policies within their com-
mittee to determine what they need to
do to protect the people of the United
States from terrorists. The con-
ference report we are considering today
will provide the framework to secure
our seaports and coastal communities
from terrorist actions.
Each year 95 percent of the U.S. im-
ports and exports are moved by ships.
U.S. consumers are dependent upon for-
ereign oil for the gas they use in their
to transportation system can give when the
island nations do not have a balance of
the just-in-time delivery system of the
container ships to resupply their
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ereign oil for the gas they use in their
to transportation system can give when the
island nations do not have a balance of
the just-in-time delivery system of the
container ships to resupply their
manufacturing line.
We have recently seen the impact
that a shutdown of the marine transpor-
tation system can cause when the
West Coast waterfront employees locked
out the longshoremen from unload-
ing ships in port. A terrorist at-
tack in our ports could have had an even more devastating impact on our
Nation’s economy.
Each year thousands of Americans
enjoy cruises out of Florida ports. Cruise terminals and ships must ensure that cruises are not just enjoyable but
also safe. The cruise ship industry is
already working closely with the Coast
Guard to protect the vacationing pub-
l. This legislation will help make the
working relationship even closer.
On October 3, 2001, I introduced H.R.
3013, the Ports and Maritime Security
Act of 2001. This legislation is very
similar to the conference report we are
considering today. They both require
port vulnerability assessments of our
Nation’s ports, they both require ter-
mal security plans, and they both es-
ablish a new grant system to help
ports and terminal operators pay for
security improvement. I believe that S.
1214 will lead to major improvements
in securing the international maritime
transportation system from threats of
terrorists and from being used to de-
lider a weapon of mass destruction to the
United States.
Section 70105 restricts access to se-
ure areas of terminals to individuals
that have a biometric security card
that have passed a background inves-
tigation. This legislation would allow
those individuals that have unescorted access to a secure
area, such as those people that have ac-
cess to open containers or cargo mani-
ests, will need a card.
Two provisions in S. 1214 are in par-
ticular interest to my home Port of
Jacksonville and the 12 other ports
throughout the Nation that have tre-
mendous importance in times of war.
In awarding the security grants estab-
lished under Section 70107, the Sec-
retary is directed to make it a priority
Grants that have great defense im-
portance, such as the Port of Jackson-
vile, to receive funds. Without secur-
ing these military load center ports,
our troops that are deployed overseas
may not receive the vital supplies they
need.
We are contemplating military ac-
tion in Iraq. Funding for these specific
ports is vital, not only for the security
of the soldiers protecting our freedom,
but for the citizens and communities
who proudly support these important
ports.
The second provision ensures that
the Secretary can award grants to
ports for securing measures they have
already taken since September 11, 2001.
In addition, S. 1214 contains the text
of H.R. 3507, the Coast Guard Author-
ization Act for Fiscal Year 2003. This
act contains many provisions to im-
portant housing for Coast Guard per-
to, to provide compensated leave
for Coast Guard personnel that are in
isolated duty locations, and to improve
maritime safety.
I would like to thank the gentleman
from Alaska (Chairman YOUNG), the
gentleman from New Jersey (Mr.
LOBIONDO), and the ranking member,
the gentleman from Minnesota (Mr.
OBERSTAR) for the bipartisan effort
they have used to develop this legisla-
tion.
Mr. Speaker, I reserve the balance of
my time.
Mr. LOBIONDO. Mr. Speaker, I yield
such time as he may consume to the
gentleman from Alaska (Mr. YOUNG),
the chair of our full committee, who has
done such a great job in helping
pull this together.
(Mr. YOUNG of Alaska asked and was
given permission to revise and extend
his remarks.)
Mr. YOUNG of Alaska. Mr. Speaker,
I thank the gentleman for yielding me
time.
Mr. Speaker, I want to thank the
gentleman from New Jersey (Mr.
LOBIONDO) for his great work as chair-
man of the subcommittee. I run my
committee a little different than most
of the other chairman. I like to have
my subcommittee chairmen that han-
dle the bill to do the work, and I deeply
appreciate what an outstanding job he
has done with the Coast Guard. And he
has Coast Guard facilities in his dis-
trict and represents the Coast Guard
quite well and the ports, which is
something that I think this bill will
help take care of.
We have a serious problem, which I
think we have met in this bill, and that
is maritime transportation without
screening. We do that. We really think
that this will make sure that some-
thing cannot, it could happen, but
not readily happen because of the pas-
sage of this legislation, product dam-
aging to the Nation through our ports,
and we will be ability to make sure
that does not occur. Of course, the
Coast Guard plays an immense role in
that.
Mr. Speaker, I know that the gen-
tleman from New Jersey (Mr.
LOBIONDO) has done this before; but I,
too, would like to acknowledge Re-
becca Dye, who not only been a
staffer for me for many, many years on
the committee, her husband worked for
the government; and even better, Re-
becca is going to move on. This is her
last presentation. She has been nomi-
nated by the President to be a mem-
ber of the Federal Maritime
Commission, and I expect her nomina-
tion to be approved by the Senate very
shortly. I am very proud of her actions.
and ability to go forth and serve in an industry that I deeply respect, and that is the maritime industry. She has been a great professional, has done an outstanding job, and formerly served in the Coast Guard as a Reservist. She knows her business.

I would also like to thank Patty Seeman for her hard work, and Ed Lee for his hard work, and of course Liz Megginson, chief of staff.

This bill has been a long time coming. I had to work with Senator Hollings, and I love him to death; but working with Senator Hollings can sometimes be difficult. Working with Senators always is difficult, and I know that I am not supposed to say that. The next rule change, we will be able to do that.

Mr. Speaker, I think this is a good piece of legislation. I know the hour is late and this is a so-called lame duck session; but this is one part of this lame-duck session that should be proud of. It protects our Nation, supports the Coast Guard, and helps our ports. I am extremely proud of this legislation. I urge my colleagues to vote for this legislation, if we have a recorded vote. I thank all Members who have worked together to achieve this. Our plan is the gentleman from Minnesota (Mr. Oberstar), the ranking member.

We have done a good job on this legislation.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. Wurth) reminds Members to avoid improper references to the Senate.

Ms. Brown of Florida. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia (Mr. Scott).

Mr. SCOTT. Mr. Speaker, I rise in support of the bill, which I believe will go a long way towards securing our ports against potential terrorist threats.

The events of 9-11, as devastating as they were, exposed our vulnerability to terrorist attacks. None of us believe future threats will be restricted to the tools of war used on that day, so it is important for all of us to closely examine all of our security issues, particularly our port security.

My district includes the port of the Virginia, and I love him to death; but working with Senator Hollings, and I love him to death; but working with Senator Hollings can sometimes be difficult. Working with Senators always is difficult, and I know that I am not supposed to say that. The next rule change, we will be able to do that.

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We have done a good job on this legislation.
Mr. Speaker, I rise today in strong support of the Conference Report on S. 1214, the “Maritime Transportation Security Act of 2002.” Last year, Congress enacted landmark legislation to help protect the aviation industry from terrorist attacks. Today, we finalize legislation to help secure U.S. ports, vessels, and our international transportation system from terrorist attack.

In addition to the benefits that this bill will bring to the security of nation’s ports, this measure also makes important changes to our nation’s maritime policy that will help us compete in the global marketplace and gives needed resources and flexibility to the Coast Guard and the men and women that make up this great agency, allowing it to better protect our nation’s shores. I strongly urge my fellow members to support this bill.

Mr. OBERSTAR. Mr. Speaker, I rise today in strong support of the Conference Report on S. 1214, the “Maritime Transportation Security Act of 2002.” Last year, Congress enacted landmark legislation to help protect the aviation industry from terrorist attacks. Today, we finalize legislation to help secure U.S. ports, vessels, and our international transportation system from terrorist attack.

More than six million containers arrive in the United States each year from foreign ports...
November 14, 2002

CONGRESSIONAL RECORD—HOUSE

H8813

carrying goods that are vital for consumers and manufacturers. Virtually all of the oil imported into the United States arrives by ship. We are a nation dependent upon international shipping.

Yet this transportation system can also be used to facilitate a terrorist attack or an act of delivering a weapon of mass destruction to the heartland of America. It is far easier for a country to put a nuclear bomb in a container and ship it to the United States and have it detonated by a Global Positioning System receiver than it is to build a missile system to deliver a nuclear warhead.

Securing America’s seaports and the cargo we import from being used by a terrorist is a daunting task. There are more than 95,000 miles of coastline in the United States. One only has to look at the volume of drugs imported each year by sea to see just how porous our borders are. However, it is a challenge we must address.

The Conference Report on S. 1214 is modeled after the successful Oil Pollution Act of 1990 (OPA). OPA established a strong command and control system—and clarified that the Coast Guard has the ultimate authority to determine how best to clean up an oil spill. S. 1214 establishes a similar system to develop and implement plans to deter terrorist attacks on our ports and on vessels operating in and out of our ports. The system includes development of national plans, area security plans, facility security plans, and vessel security plans.

To help ports, local governments, and facility operators pay for these security improvements, S. 1214 establishes a port security grant program to provide a 75 percent matching grant to seaports that are found to have vulnerabilities pursuant to the Coast Guard. Many ports and facilities in the United States have made security improvements since September 11, 2001. S. 1214 allows the Secretary to make grants to ports and local governments to reimburse these entities for any security improvements they have made since that date that are consistent with their facility security plans.

However, protecting the United States must begin overseas. By the time that a weapon of mass destruction reaches a port or vessel, it is too late. The Coast Guard’s mandate and control system was established after the successful Oil Pollution Act of 1990 (OPA), which included a reporting system for oil spills.

S. 1214 also helps protect our marine terminals by establishing a transportation security card system that allows for the enhancement and worker protection provisions were not included last year in the USA Patriot Act that requires all commercial truck drivers who haul hazardous materials to undergo a criminal background check before receiving their Commercial Driver License and hazmat endorsement. Because these provisions enacted in the Patriot Act leave behind a vague and confusing regime, many states have not begun to implement the requirements. Even the U.S. Department of Transportation has acknowledged that a problem exists in Section 1012 of the USA Patriot Act and has advised state motor vehicle departments that these provisions “cannot be implemented without rulemaking by DOT.”

I believe that the provisions in S. 1214 that provide an individual with the right to appeal the denial of a security card and the protection of information collected during that person’s background investigation should be extended to commercial vehicle drivers that are subject to the Patriot Act. These standards have been developed on a bipartisan basis with the support of labor and employers. If the Department of Transportation fails to include these standards in the regulations they prescribe to implement the Patriot Act by the end of the year, we should move forward on legislation to correct these problems early next year.

Finally, I would like to thank Chairman Young, Mr. LoBiondo, and Ms. Brown for the cooperative effort that they have put forth to develop this bipartisan port security legislation. Together, we have succeeded in crafting meaningful legislation to improve the security of the marine transportation system against terrorist acts.

I urge my colleagues to support the Conference Report on S. 1214. Mr. SHAW, Mr. Speaker, I rise in support of this legislation, which represents the next crucial step in improving America’s transportation security. This bill coordinates various federal law enforcement efforts with local port authorities. It develops uniform standards that help pay for technology upgrades and other security infrastructure at our ports. I am very pleased that this bill authorizes $6 billion for the Coast Guard, an agency that is severely overworked and underserved.

This legislation is of particular importance to the State of Florida and its 14 publicly owned deepwater seaports, including Port Everglades, Port of Palm Beach and Port of Miami.
in South Florida. The challenge of protecting against potential threats to security in Florida is unique due to the state’s extensive coastline, vigorous international trade, and passenger cruise activities. Our geography dictates that we must be prepared as a front-line homeland defense point against terrorism as well as illegal immigration and drug trafficking.

Florida seaports represent some of the busiest bulk cargo and container ports in the nation, and improved security at our seaports is critical for protection of the state’s citizens and millions of visitors, as well as the state’s continued economic vitality.

The treat of terrorism and other crimes to Florida seaports is well documented. A 1999 state-commissioned study found that the Floridas ports are highly vulnerable and called for a recommended comprehensive security plans at each Florida seaport. In 2002, the State of Florida enacted legislation mandating that such action be undertaken.

As the Chairman of the Florida Congressional Interdiction (HITRON) Mission, I am pleased that this bill does not penalize the Florida ports that have been proactive in taking the necessary steps to improve security. A shining example of such a port is Port Everglades in my district. Even before September 11, Port Everglades has laid out a comprehensive security improvement plan. Since that day, the port has expended its efforts, turning a 48 month plan to improve security into an impressive, 18 month, $37 million plan that is now near completion.

I commend the Broward County Board of County Commissioners, the Port Everglades Authority, and the City of Fort Lauderdale for their leadership on this matter. The gentleman from North Carolina, Mr. COBLE, for his leadership on this matter. The gentleman from North Carolina, Mr. COBLE, for his leadership on this matter, as well as the gentleman from North Carolina, Mr. COBLE, for his leadership on this matter.

As one of the first Members of Congress to introduce comprehensive seaport security legislation, and as the chairman of a highly vulnerable and beleaguered subcommittee, I am gratified that we have finally completed our work on this most important issue. It is overdue.

Mr. BORSKI. Mr. Speaker, I rise today to support the U.S. Coast Guard’s Armed Drug Interdiction (HITRON) Mission. The HITRON Mission is a unique and important weapon in the arsenal against illegal drugs and terrorism. The MH-68A armed helicopter, which was designed, assembled and maintained in Philadelphia, Pennsylvania, is an integral part of the HITRON mission. I thank all involved. Because of the late hour of the evening, I am not going to have been heavily involved in some of the issues we will be talking about later; and in particular, the gentleman from California (Ms. PELOSI), our esteemed ranking member.

She will graduate, I am told, to ex officio status. It was graduation. We know she is nearby when we need her. The gentleman from California (Ms. PELOSI) has made a significant contribution to the Permanent Select Committee on Intelligence work during her 10 years of service on the committee. Most notable, however, has been her determination to work collectively to rebuild and reenergize our Nation’s intelligence capabilities after the September 11 attacks. She has been working with remarkable efficiency and effectively in a fashion that puts national security first before politics or partisanship. I say to the gentleman from California (Ms. PELOSI), or Madam Leader, on this to be, we thank you for your efforts.

This conference report authorizes funds for fiscal year 2003 intelligence-related activities, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System.

I want to take a very short moment to highlight several provisions of the
Mr. Speaker, I reserve the balance of my time.
proliferation of weapons of mass destruction, protecting our civil liberties as we try to gain as much intelligence as possible around the world to protect our forces, and also the prevention of war, as well as protecting us from terrorism. I hope that we will go forward with the protection of security, which is essential to our country’s security, that we will recall that each one of us takes an oath to protect and defend the Constitution of the United States, and as we protect and defend our country we must honor our oath to protect the Constitution and the civil liberties contained therein.

I am very pleased that President Bush has made stopping the proliferation of weapons of mass destruction a high priority. It is a pervasive problem, not only in Iraq but in other places in the world and it must have our attention. The United States must have a policy which is consistent to stop that proliferation.

Mr. Speaker, the capability to acquire intelligence is integral to the security of the American people. The conference report makes an important contribution to maintaining that capability. I commend the chairman for his leadership and I urge his adoption.

Mr. Speaker, I reserve the balance of my time.

Mr. GOSS. Mr. Speaker, I yield such time as he may consume to the distinguished member from Nebraska (Mr. BEREUTER), the vice chairman of the committee and the chairman of the subcommittee that fuses capability and policy, a very challenging job these days.

(Mr. BEREUTER asked and was given permission to revise and extend his remarks.)

Mr. BEREUTER. Mr. Speaker, I rise in strong support of the conference report.

Mr. Speaker, the conference report addresses a number of pressing intelligence needs. This Member will focus his remarks on only two.

First, the legislation takes important steps to strengthen the intelligence community’s analytical core. In recent years certain circumstances have demanded that we focus on terrorists, proliferators and drug traffickers. These are far more difficult targets to track then was the old Soviet Union. Frankly, many in the community took far too long to adapt to these new threats. It did not reach out aggressively to recruit human intelligence sources that could have provided us invaluable information.

The community lost far too many skilled analysts whose job it is to provide early warning. This legislation provides much needed funding to build a dynamic, wide-ranging global analytical capability.

A second important component of the intelligence authorization relates to terrorist finances. One of the major intelligence initiatives in the wake of 9/11 has been an attack on the financial assets of terrorist organizations and their supporters.

Terrorist networks such as al Qaeda obviously cannot function without significant financing. And al Qaeda, for example, is supported by, one, a shadowy network of laundered, money lenders, and banked-down artists; two, businesses and charities serving as front organizations; and, three, unscrupulous facilitators and middlemen. However, with the decision of the executive branch to fully exploit the existing terrorist financial remains and with the granting of additional authorities under the U.S. PATRIOT Act, we are now aggressively attacking the money flow. To date over $100 million of suspected terrorist money has been seized or frozen by the United States and its allies and that is just the beginning.

Mr. Speaker, this is an important and powerful tool in the war on terrorism. In order to maintain responsible oversight of this effort, the Intelligence Authorization Act will require semi-annual reports on the number of assets seized, as well as the number of entities or individuals found to have engaged in financial support for terrorism.

It will also require information on the total number of requests for asset seizures that have been granted, denied or modified. This important oversight will ensure the war against terrorism financing remains on track.

In closing, this Member would congratulate the distinguished chairman of the committee, the gentleman from Florida (Mr. Goss) and the distinguished gentleman from California (Ms. Pelosi) for the leadership they have demonstrated in bringing forth a genuinely bipartisan product. I will say in her existing capacity we will certainly miss the gentleman’s long and very important experience and contributions to the Permanent Select Committee on Intelligence.

The conference report is a very serious effort. Each and every member of the committee dedicated long hours to the drafting of the legislation. Each member recognizes the importance of our action. This body can justifiably be proud of our efforts of the HPSCI, I believe, and particularly the leadership of the gentleman from Florida (Mr. Goss) and the gentleman from California (Ms. Pelosi).

Finally, and of crucial importance, the staff of the committee is truly excellent in their knowledge and commitment to our oversight and our authorization responsibilities.

Mr. Speaker, this Member strongly urges adoption of the conference report of H.R. 4628.

Ms. PELOSI. Mr. Speaker, I yield 5 minutes to the gentleman from Georgia (Mr. BISHOP), a distinguished member of the committee and the ranking member of the Subcommittee on Technical and Tactical Intelligence of the Permanent Select Committee on Intelligence.

Mr. BISHOP. Mr. Speaker, I thank the gentlewoman for yielding me time. Mr. Speaker, I rise in support of this conference report, but before I get started I want to express my own personal gratitude to the leadership of this committee, and most especially to the gentleman from Nebraska (Mr. BEREUTER), the gentlewoman from California (Ms. PELOSI), for the hard work she has done in leading the Democrats on this committee and the contributions that she has made to the committee as a whole. I believe very strongly lead- ership has worked through the Permanent Select Committee on Intelligence to make the world and our country a little more of hope, a little less of fear and a little better because she traveled here, and we are very grateful for her leadership and we will miss her very much. Although she has gone on to more responsibility and we expect equally great things from her there, I do want to say that we certainly are appreciative of her hard work, and we will miss her, and it has meant a tremendous amount to our country and our intelligence community.

The committee worked hard to provide the resources that our military and our intelligence community require to prevail in the war on terrorism and to safeguard all of our other national security interests. The gentleman from Florida (Mr. Goss) and the ranking member, the gentlewoman from California (Ms. Pelosi), my counterparts on the Subcommittee on Technical and Tactical Intelligence of the Permanent Select Committee on Intelligence, the gentleman from Delaware (Mr. CASTLE) and all of the other committee members deserve great credit for this important bipartisan authorization act.

In addition, this conference report adds substantial funds to the budget of the National Imagery and Mapping Agency to enable NIMA to award a contract for a major modernization program. I remain very concerned that the administration failed to budget enough funds for this effort despite the large budget increases following September 11.

The capabilities that this modernization effort will provide are essential for the kind of flexible military operations on display in Afghanistan.

When our bill was being debated in the House earlier this year, I indicated my concern about the Department of Defense’s apparent neglect of the communications and exploitation infrastruc-ture needed to support the large fleet of unmanned aerial vehicles that the Department intends to procure over the next several years. These drones performed magnificently in Afghanistan, but this potential will never be realized without a larger investment in telling where the vehicles are from the aircraft and get it exploited. I had hoped the administration would signal its intention to fix these problems, but
this has not happened. Congress must address this matter next year if the administration fails to do so in the fiscal year 2004 budget request.

This conference report also requires that some changes and initiatives be undertaken, in particular, with respect to the sharing of information within and between the intelligence and law enforcement communities. There is more work to be done in this area, but the direction in this conference report, if implemented faithfully, will go a long way toward ensuring that we understand the importance of protecting sources and methods, but believe that this can be done within a much more expansive information-sharing paradigm.

Finally, I wanted to speak to the implementation of the proposed compensation reform plan. Section 402 of the bill is similar to section 402 of the House bill. The Senate amendment had no similar provision. Section 402 delays implementation of the Central Intelligence Agency membership reform until February 1, 2004. Prior to that date, the director of Central Intelligence may conduct a pilot project to assess the efficacy and fairness of a revised personnel compensation plan and report to the Permanent Select Committee on Intelligence 45 days after completion of the pilot project. Section 402 includes a sense of the Congress that an employee personnel evaluation mechanism with evaluation training for managers and employees of the CIA and the National Security Agency should be phased in first and then followed by introduction of a new compensation plan.

Mr. Speaker, this was a concern that was raised by the employees that has contributed to a great deal of concern and perhaps some problems that we might anticipate if it were implemented, and I am happy that the conference report reflects the concerns raised on this issue, and that we will first, as an example of large-scale implementation, first have the pilot program instituted so any kinks or problems can be worked out.

With that, I think it is a good conference report. I think we have done good work, and I urge my colleagues to support it.

Mr. GOSS. Mr. Speaker, I reserve the balance of my time.

Ms. PELOSI. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. PELOSI), the ranking member of the Subcommitte on Terrorism and Homeland Security, and acknowledge the valuable contribution that subcommittee has made to our nation’s security.

Ms. HARMAN. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Mr. Speaker, during this term of Congress, much of my time and passion has been devoted to the activities of this committee in the completion of this conference report. It is a great committee with great bipartisan leadership, membership, and staff. It is with relief, pride and some sadness that I stand here at midnight to urge passage of the conference report.

My special appreciation goes to our ranking member, the esteemed gentlewoman from California (Ms. PELOSI), who achieved this first and who over all of the years that I have served with her on this committee, has distinguished herself with fairness, probity, intelligence, and leadership skills. We will miss her, and we will welcome her back as an ex officio member of the committee.

I would also like to use my last statement of the 107th Congress to state my respect and praise for the gentleman from Indiana (Mr. ROEMER), another departing member. It is fitting that one of the last votes of this Congress will fulfill his promise to the families of the 9-11 victims. The gentleman from Indiana (Mr. ROEMER) has worked tirelessly and passionately to enact an independent commission to investigate the 9-11 attacks. That commission will be part of this conference report. In fact, the bold actions of the gentlewoman from California (Ms. PELOSI) and the gentleman from Indiana (Mr. ROEMER) saved the commission proposal in the Senate from a certain defeat by a committee of conference, and reflects the vote a majority of this House took some months ago.

I would finally like to recognize that other colleagues are departing: the gentleman from Delaware (Mr. CASTLE), the gentleman from California (Mr. CONDIK), and especially the gentleman from Georgia (Mr. CHAMBLISS), who is moving to the other body where he will serve on its intelligence committee. I would advise the gentleman if he gets lonely over there, he can come home for advice and counsel.

Mr. Speaker, this is our first real chance after 9-11 to set new directions in the intelligence community, and we must do it. We no longer can rely on more funding, more training, and more support to penetrate, prevent and disrupt the plans of terrorist organizations.

I would say that the Department of Homeland Security legislation that we passed yesterday provides for an integrated strategy to protect the homeland, but that strategy must be built on world-class intelligence. This bill provides that critical base. I urge its passage.

Ms. PELOSI. Mr. Speaker, I yield 4 minutes to the gentleman from Indiana (Mr. ROEMER), a departing member of the Permanent Select Committee on Intelligence, yet one who has demonstrated leadership right up to the last day of the Congress to ensure that we have an independent commission and that it would be one that will make our country safer.

Mr. ROEMER. Mr. Speaker, I thank the gentlewoman from California (Ms. PELOSI) for those kind and generous words.

Abraham Lincoln, when he went from Springfield, Illinois, to Washington, D.C. to take on a new job that he was elected to by the people of the United States, stood on a platform in Springfield, Illinois, and looked out at his hometown people and said to these people and their kindness, “I owe everything to you.”

To the people of Indiana that I have served for the last 12 years in this distinguished body, I owe them everything, for the privilege and the humble responsibility of casting votes on their behalf with common sense and unity, as we have and will tonight, to try to make this a more secure Nation and a Nation that works together in a bipartisan way to accomplish things.

When I talk about people, I want to commend the gentleman from Florida (Mr. Goss), the chairman of the committee, for his distinguished leadership to bring this bill to the floor tonight in a most dangerous and precarious world.

I want especially to congratulate the gentlewoman from California (Ms. PELOSI), my good friend and our leader. I have two buttons in my pocket tonight with the gentlewoman’s name on them that I will give to my 5-year-old daughter, Sarah, and my 2-year-old daughter, Grace. I think the talent and the dreams of women and people around the world are boundless tonight because of what example she has set. It is not just getting elected, and not only being a woman; it is being a leader and bringing a bill to the floor and keeping this body working into the night to get these things accomplished, like an independent commission.

We live in a world where planes can wreak devastation, and a vial of smallpox that can fit in a pocket can kill millions. Therefore, this bill tonight, as the last bill of the 107th Congress, is indeed vital for our national security.

We outline new language, training and proficiency programs in this bill which are funded at higher levels. We improve information sharing to decrease the problems of communication across the piping beam and the CIA, and we put more emphasis on human intelligence, which is the most important work that we could do, not just relying on satellites in the sky.
independent commission is the ability for this commission to have subpoena power, to threaten the subpoena, to ultimately deliver on it and to get deposition and to pry open doors that want to remain closed. We have that in this bill, especially if Senator McCains and Senator Feingold are the appointment that has been promised to them out of the five Republican appointments and that helps get us to this level of six votes that can trigger subpoenas. That is crucial in this. I hope that the majority and that gentlemen’s agreement and that codified promise is in this bill and in the legislation’s intent.

I also hope that we will follow the good path of the joint inquiry. Led by that staff and this great staff here on the floor tonight, we have uncovered a lot of questions, we have a lot of suggestions and recommendations for fixing the problems that led to 9-11, but we have so much more to do in front of us, we need to depend commission in a seamless way can undertake and make recommendations for.

In summing up, Mr. Speaker, there is a Shakespeare play where one character says to the other in a bragging way, ‘I come from the deep’ and the other character says, ‘Well, anybody can do that, but will they come?’ Will they come? I hope and I pray for this most distinguished people’s House that we will call forth the very best in committee and bring forth the very best ideas and challenge these people in this great country to vote in the next 2 years on great ideas put forward by Republicans and Democrats and some in bipartisan ways to keep this country strong, to move us in a positive direction and do it in the spirit of the founders of this great Nation.

I appreciate the service to this country and wish good things for the people of this body. Thank you very much and Godspeed.

Mr. GOSS. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Illinois (Mr. LAHOO), a very valued member of our committee and well known to the Members of this body.

Mr. LAHOO. I thank the gentleman for yielding me this time.

Mr. Speaker, I do not think there are two other people in the Chamber that I have more regard for than the chairman of the committee and the ranking member. Both people are very, very hardworking people. They have done extraordinary work for the country. The leadership of Chairman Goss and our ranking member, the gentleman from Illinois (Mr. PeLOSI), has just been extraordinary, particularly given what happened after 9-11 and particularly given the events that we have been through in the House and as members of the joint committee studying what happened prior to 9-11. I have really appreciated the opportunity to work with both of these people. I want to say a word about my friend from Indiana (Mr. ROEMER) because I know he will be leaving and his service has been valued very much by all the members of the committee. I know that you will be missed, Tim, and I know that it will be a great loss to our committee. And also to you, Madam Leader, you will also be missed and thank you for your service to the committee.

I rise in very, very reluctant opposition to the conference report. As those people on the committee know, I have projected very strenuously the idea of a commission. Almost from the very first day that this idea has been proposed, I thought it was a bad idea. I have thought it was a bad idea because what is going to happen is you are going to have people with little or no experience, and many of us on the committee have tried to gain experience over the years and tried to gain knowledge in terms of what the community is about, the intelligence-gathering community and how they do their work and what the failures are, and to have some kind of a concept of a so-called blue ribbon committee, I think, really is going to fall far short of what people’s expectations are.

I know that people think this commission is going to provide a lot of answers and provide a lot of opportunity to assuage the feelings of the family members of the victims. I think we are holding out a real, real big false hope to the families. I have always felt that. Many of us on the committee have tried to become experts. It is difficult to do. But there are people who are experts. I consider Chairman Goss and I consider Ranking Member PELOSI experts because of the time that they have devoted. I think the gentleman from Indiana (Mr. ROEMER) is an expert because of the time he has devoted. But to try and get 10 people from the outside to come in and understand all of this in such a short period of time I think is a very big false hope. It just does not make sense.

I really think this is a mistake. I want people to understand that this is a good bill, it is a good conference report in every other regard except for the idea of holding out a false hope to the families that are left behind of the victims, that somehow this blue ribbon commission is going to be the panacea, that is going to answer all the questions, that is going to lay the blame where it belongs. I know I have characterized this as the blame game commission and I know you do not like to hear me say that, but that is how I feel about it. There are people here that want to try and fend blame within the government, whether it is in the CIA or the FBI or within the administration. I characterize this as no more than that, an opportunity for 10 citizens to try and come together and understand something that is so complicated and so complex that it makes you hold out little hope to people that this will really give the answers to the families that have been left behind. It will not. It simply will not. I think that hopefully our joint committee can offer some answers out of the kind of work that we have done for the last year and will continue to do until the final report is written.

The idea that this is a blue ribbon commission where people are going to be paid, I think, detracts from what kind of a blue ribbon commission is it. It is right in the bill that there are going to be people who are going to be paid for this. Why do we have to pay people? Do we have to have a commission? I wish I would have had an opportunity to at least strike that out of the bill, but we do not have an opportunity to strike these kinds of things out of conference reports. I think the idea of compensation, it degrades the commission; it degrades the idea that it is a blue ribbon commission.

The final thing that I would say to my friends here in the House and to colleagues is that this really is an opportunity. I think, for people just prior to a political election to lay on the table some kind of a report to try and lay blame at the foot of an administration. That is how I see it. This report will come out maybe a few days or a month or two before the next Presidential election. I have no idea what the report will say, but I know there are people out there that want to find blame. I have the feeling that that is what this commission will be out to do, to look for those who made mistakes, to look for those, to find fault with institutions in our government that probably in some ways did not serve the interest the way they should have.

As one Member, and I hate to do it because I know a lot of work has gone into this bill, into this conference report, but I intend to vote against it. I think this is a terrible mistake. It seems to me terrible that we want the families out there to think that when this report comes in from some so-called blue ribbon commission, it is going to answer. It is not going to answer.
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(Mr. LAHOOD), my good friend, feel better. I have tremendous respect for him, and he knows that and I think he does for me. But as I reflect on the time it takes for the efforts gone forth, and I want to commend, as the rest of my colleagues have done, and I want to commend the chairman and ranking member for their efforts and the efforts of the staff, but as I have observed the time necessary to go into this kind of depth, I think the blue ribbon commission is very necessary to get the answers that we ought to be able to get. So we reflect on the joint committee and the ability of Members, all the other things that demand our time and so on. I think it becomes pretty clear that we need this extra assistance to give the country and to give those families the information that they need, and they will not be satisfied with anything less.

So I tonight rise in appreciation to support this conference report because its time has come, and the people in this country ought to know that this committee under this leadership, the gentleman from Florida (Mr. Goss), the gentlewoman from California (Ms. Pelosi), have done everything that they can possibly do to protect our country to be sure that one of their principles of safety, principles of war and principles of safety, is to have good reliable intelligence and to be timely and to be accurate.

So I am very happy to support this conference report. I think it supports the global efforts to counterterrorism and other threats to international security, and the conference report, like the House bill passed in July, reflects a commitment of this committee to invest in the people of the intelligence community and intelligence disciplines across the board, especially human intelligence. The conference reports include the provisions on language training and proficiency maintenance found in the House bill. The conference report unfortunately delays the effective date of the provisions found in the House bill, setting forth a new authorization for the innovative language training program known as the National Flagship Initiative under the National Security Education Program, NSEP. Although disappointing, it should be noted that both the House and Senate have endorsed the National Flagship Initiative and the conference report provides a provision to enhance our ability to export translation and proficiency maintenance across the board, especially human intelligence.

Over the last few months, the House and Senate intelligence committees have made significant progress in the joint investigation they have been conducting into the circumstances surrounding the terrorist attacks of September 11. The inquiry, however, has focused on our intelligence agencies and must soon conclude its work. So I support the establishment of the independent commission. I have been disappointed in how long it has taken for the agreement to be reached on whether a commission would be established and how it would be structured, but we are there.

While the final language on the commission may not be satisfactory to everyone, I believe it is important that a commission with a broad mandate and independent authorities be established by statute. I will follow with great interest its work, especially with respect to its investigation beyond the topics addressed by the joint inquiry. I urge the support of this report.

Ms. PELOSI. Mr. Speaker, I yield 3½ minutes to the very distinguished gentleman from Massachusetts (Mr. Frank).

Mr. FRANK. Mr. Speaker, I congratulate the members of this committee for the product and the way in which they have done it. I was particularly impressed by the very gracious remarks of the chairman of this committee about his opposite, the ranking minority member, and frankly at a time when there is some political sniping going on that seems to me wholly inaccurate, having him so generously acknowledge the gentleman from California (Ms. Pelosi) has played on the single most important national security issue now before this Congress is a very impressive act, and I appreciate his doing that. But I want to stress that what we have here is the gentlewoman from California in her role on this committee having played a wholly responsible constructive role at the center of national policy. I would ask people to contrast that with some of the silly political assassination efforts that are going on.

Speaking of silly, I want to talk about an amendment we need. We have had a policy for driving gay people out of the military. Men and women be allowed to help defend this country, and it has been called the policy of Don’t Ask, Don’t Tell. We have a new name for it. It is called Don’t Ask, Don’t Tell, Don’t Translate, because the Army in its wisdom pursuant to a dictate given to it by this body in its wisdom has just thrown out over the past year nine linguistic specialists, six of whom were studying Arabic. Apparently the Army feels that worrying about what people do in their private lives may undermine the ability to translate from Arabic. As the gentleman from Wisconsin (Mr. Obey), the ranking member of the Committee on Appropriations said, it is a good thing for Lawrence Arabia they were around when he was getting involved in the Middle East. The notion that they would take people who were studying Arabic, one member of this group had completed 30 weeks of training, he was getting very good marks, he trying to learn Arabic, in the notion that we do not want him because he is gay. I understand that anti-gay prejudice gets a certain leeway here. I have been fighting against that, but to put it ahead of national security seems to me excessive. We have been told that we have a problem because we do not have enough skillful linguists. So when they kick out six Arabic speakers, two Korean speakers, and someone who speaks Mandarin Chinese, I am appalled. And let us be clear that while there is a policy on the books of which I do not approve, it is not self-executing. The military has the discretion not to apply it in some cases, and to expel from the military American citizens who are motivated by the most profound patriotism and are in the process of learning Arabic at a time when that is essential to national security, to kick them out because they are gay is preposterous, and while it is late in the session and late in the evening, too late I hope for my colleagues to bring up that bankruptcy bill they were playing with, I hope when we return next year we will look at this Don’t Ask, Don’t Tell, Don’t Translate policy when the new Federal Government at this time should deprive itself of skillful people who want to work for national security in translating from Arabic into English and from Chinese and Korean into English. The notion that we are preventing ourselves this greatly needed asset because some people do not like people like me is as silly as I can think. We are not here talking about trivia. We are not talking about anything superfluous. We are talking about prejudice being elevated over national security.

Mr. Speaker, I include in the RECORD at this point an article from the AP by Margie Mason and an article from the New Republic by Nathaniel Frank which document this particular piece of stupidity.

[Military dismisses 6 gay Arab linguists amid shortage of translators]

[From the Associated Press]

[SAN FRANCISCO]—Nine Army linguists, including six trained to speak Arabic, have been dismissed from the military because they are gay.

The soldiers’ dismissals come at a time when the military is facing a critical shortage of translators and interpreters for the war on terrorism.

Seven of the soldiers were discharged after telling superiors they are gay, and the two others got in trouble when they were caught together after curfew, said Steve Ralls, spokesman for the Servicemembers Legal Defense Network, a group that defends homosexuals in the military.

Six were specializing in Arabic, two were studying Korean and one was fluent in Mandarin Chinese. All were at the Defense Language Institute in Monterey, the military’s primary language training center.

The government has aggressively recruited Arabic speakers since the Sept. 11 attacks.

“We face a drastic shortage of linguists, and the direct impact of Arabic speakers is a critical problem,” said Learned Hand, who documented the need for more linguists in a report to Congress as part of the National Commission on Terrorism.

One of the discharged linguists said the military’s policy on gays is hurting its cause.
“It’s not a gay-rights issue. I’m arguing military proficiency issues they’re throwing out good, quality people,” said Alastair Gamble, a former Army specialist.

Gamble joined the Army for the Army Training and Doctrine Command at Fort Monroe in Tidewater, Va., confirmed the dismissals occurred between October 2001 and September 2002 but declined to comment further on the cases.

He said 316 linguists enrolled in the Arabic course this year at the Monterey Institute and 365 graduated.

The military’s “don’t ask, don’t tell” policy allows gays to serve provided they keep quiet and don’t display affection.

Gamble and former Pfc. Robert Hicks were discovered in Gamble’s room during a surprise inspection in April, Gamble said.

After their discharges, Gamble and Hicks applied for other federal jobs where they could use their language skills in the war on terrorism, but neither was hired, Gamble said.

[From the New Republic, Nov. 18, 2002]

“DON’T ASK, DON’T TELL.” V. THE WAR ON TERRORISM

(By Nathaniel Frank)

On October 25, one week after CIA Director George Tenet warned that the United States now faces a terrorist threat every bit as grave as it did the summer before the September 11 attacks, congressional Relations issued the most sobering report to date: “America remains dangerously unprepared to prevent and respond to a catastrophic terrorist attack. In all likelihood, the next attack will result in even greater casualties and widespread disruption to American lives and the economy.”

The key to preventing that kind of calamity, most experts agree, is intelligence. And one of the basic requirements of good intelligence is the ability to speak its language. Unfortunately, study after study has indicated that the U.S. government faces a severe shortage of Arabic speakers.

Gamble reports that his physical fitness test. Gamble reports that his physical fitness test. Gamble reports that his health and welfare

In August this year, after conducting a nine-week intelligence course that trains a small number of soldiers as language specialists, the.GAO report cited as one of the Army’s “greatest foreign language needs.”

And Gamble was a catch for DLI in other ways, too. He had studied German for seven years in high school and continued in college, where he also studied Latin and linguistics.

Once in the Army, he completed interrogation training, a nine-week intelligence course that trains a small number of soldiers to collect information through direct questioning techniques. He then spent six weeks working as a Arabic language specialist. While seeking a position that would allow him to work with U.S. allies, where his performance won him a Certificate of Commendation from his commander.

He entered DLI in June 2001 to study Arabic and earned a perfect 300 on his physical fitness test. Gamble reports that his grades placed him at the top of his class and that several commanders thought he was the strongest student in the class.

In April, Gamble was finishing his second semester at DLI. Gamble reports that during a surprise inspection at 3:30 a.m., he was caught in his room with his boyfriend, also an army language specialist. Gamble says he had never before broken visitation policies. But Gamble’s boyfriend was near the end of his course and preparing to relocate to Goodfellow Air Force Base in Texas. As their separation approached, they decided they could risk one night of sexual activity.

The two men were found in bed, nearly a dozen people saw the room while Gamble was escorted to his First Sergeant’s office. Gamble reports that he was not even being discharged.

“...and I was absolutely embarrassed,” he recalls. “There’s really nothing like having someone who’s your age, but a bit older, say something about whether or not lube is sufficient evidence to prove homosexuality. It’s like getting felt up; it’s horrifying and it’s such a turn-off.”

After two weeks, Gamble was officially notified that his unit was initiating an investigation into his sexual orientation. He says he was not yet thinking about being discharged.

A few days later, his boyfriend was discharged as well.

Gamble and his boyfriend are not alone. The Servicemembers Legal Defense Network (SLDN), a legal aid and advocacy organization that assists men and women harmed by "don't ask, don't tell," released its latest quarterly report that it had assisted six other Arab speakers recently discharged for "non-security reasons" but chose to speak publicly. SLDN reports that all seven soldiers were fired while in the midst of, or having completed, the intensive DLI language training course.

The army has cast the firings as routine enforcement of Army regulations. Harvey Perritt, a spokesman for U.S. Army Training and Doctrine Command, told the Chronicle reporter Randy Shilts interviewed two Arab-language specialists fired from the Army for being gay. According to Shilts, the NHS contacted the two when the Gulf War began, begging them to return to service to help the war effort. (The two men declined.)

But, regardless of what you believe about gays in the military, that’s just not true. Both during the Gulf war and after the September 11 attacks, the military has authorized “stop-loss” orders, allowing branch superiors to retain soldiers who would otherwise have been discharged for committing minor physical shortcomings, or other reasons.

What’s more, the military even has a history of suspending personnel policies regarding gays and lesbians during wartime, when it needs maximum retention of soldiers. In 1991, the Wall Street Journal reported that the Pentagon had allowed homosexual members of the service to return to duties despite their discharge under the "don’t ask, don’t tell" policy.

While both of these men are military specialists, the military even has a history of suspending personnel policies regarding gays and lesbians during wartime, when it needs maximum retention of soldiers.

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Terrorism is less about squadrons and battalions than about deceiving the behavior of a shadowy enemy who attacks in secret. For national security’s sake, let’s hope our leaders are finally ready to acknowledge in public what they’re admitted privately for quite some time. It is no longer true that our nation’s freedoms and survival, not the open homosexuality of patriotic Americans standing ready to serve.

Mr. Speaker, I yield myself such time as I may consume.

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For his best-selling 1993 book, Con-
Mr. Speaker, I am pleased to thank so many people who made this bill possible, my distinguished chairman for sure, all of the members of the committee acting in bipartisan fashion, and I want to commend the wonderful staff that we have. I want to acknowledge the Democratic side of our counsel Mike Sheehy who heads up the Democratic staff. We do not really think in terms of Democrat and Republican. It just somehow breaks down that way.

But we act in a very bipartisan way, members and staff. Chris Healey, Beth Larson, Ilene Romack, Wyndie Parker, Carolyn Bartholomew, Bob Emmett, Kirk McConnell, Marcel Lettre and, again, Mike Sheehy, who heads up our side. I want to commend Tom Sample, who is the major honcho staff person of the Committee, Chris Bartow, Mike Moorman and all of the other members of the staff for all of their hard work.

Mr. Speaker, I want to just respond briefly, because the hour is late, very briefly, to the very serious concerns and the very real problems that are expressed by the gentleman from Illinois (Mr. LAHOOD). The purpose of the commission is not to assign blame; it is to find out why and how 9–11 happened. I agree with the gentleman, if the purpose is to assign blame, we should not have the commission. That would not be constructive. But we must try our very best to make sure that a 9–11 or anything like it does not happen again; and in order to do that, we have to get to the bottom of it.

This commission will build on the work of the Joint Inquiry, in which this committee and the Senate committee have been engaged, and we are very pleased with the work of our staff director, Eleanor Hill, and the very, very able staff of the inquiry. It will build on that.

But this commission, the purpose of it is to have fresh eyes take a new fresh look at what happened and also to go beyond those agencies of government that the inquiry has looked at, to look at every agency of government that had any responsibility for protecting the American people from terrorism.

So with that, Mr. Speaker, I would just say as we go into this commission, we are not hallowed ground. There is no place for politics or assigning blame here, but we do have a responsibility to reduce risk to the American people, to find answers as to why 9–11 happened, to prevent it from happening again, to provide comfort to the families who have been a source of strength. We try to console them. They are an inspiration and a source of strength to us, as the gentleman from Indiana (Mr. ROEMER) indicated.

Whatever we do, the important honor to the memory of those who lost their lives on September 11. I think our work in the Joint Inquiry is an excellent product, will be an excellent product when the report comes out, and that this work of the independent commission will bring honor to the memory of those who died as well.

Mr. Speaker, I urge our colleagues to support the conference report.

Mr. Speaker, I yield back the balance of my time.

Mr. GOSS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to point out that we always have in the intelligence community many options and many things to consider; and while we do it on a bipartisan basis, we do not always agree on what are the best ways to proceed when you are dealing with some very complex questions of national security. Part of the richness of the judgment of our committee, I think, is do we have many perspectives, and we have heard some of them here tonight. I think that bodes well for our institution.

I would also, in addition to thanking the gentleman from Indiana (Mr. ROEMER) for his persistence and commitment to the idea of where we go next from the Joint Committee with our review process, like to underscore that the Members have been very helpful in this breakthrough. Certainly, Members of the other body as well, but I want to thank the gentleman from Georgia (Mr. CHAMBLISS) in particular, who has been referred to already as the gentleman from California (Ms. HARMAN), the Subcommittee on Terrorism and Homeland Security effort, which was very important and a landmark piece for our work. The gentleman from Georgia (Mr. CHAMBLISS) was also a man who was instrumental in the breakthrough on the commitment that we came through on the independent commission. So I think that he is owed a special thanks for that.

For the family groups, the survivors of 9–11, Stephen Push and Kristin Breitweiser and so forth, we referred to them and spent hours talking to them, I suppose, collectively between all of us.

We all know that we have a responsibility, and I totally agree with my distinguished ranking member about the oversight and the advocacy role of our committee is on their behalf as well.

So we take that very seriously, and we will continue to need to be asked, did we miss something? Did we do our oversight right? I think the commission on oversight, on the 9–11 review, will in fact come back to the congressional oversight and find out if we did our job properly.

I think we are accountable on these commissions. I am certainly prepared for that, and I would love the opportunity to answer questions and give the point of view of the committee, because I am very proud of the effort that our committee has put into that. But it does not mean we have all the wisdom or judgment in the world.

Besides that review, we have tried very hard to make sure we understand the nature of the threat we are fighting in the war on terrorism and anthrax and propaganda and all the other misdeeds that we are taking risks on, doing hard work and sometimes, sadly, getting killed. Those people we owe a responsibility to.

The oversight and the advocacy role of our committee is on their behalf as well, to make sure they have the tools, the training, the capabilities they need to do their job, to protect all of us and to make sure in this very specialized area of intelligence they are operating in bounds, because we have promised the American people, our constituency, that we will make sure that we never violate our pledge to the American people that we will not spy on the American people. We will preserve our liberty. So we take that very seriously and we shall.

Then I think we come to the next question, and that is the question of catching the perpetrators of 9–11. Certainly we have not got them all, and certainly we have learned in the past 48 hours or so that Osama bin Laden himself may still be alive. This is ongoing. It will require patience, and it will require commitment. I would thank the members of the committee, the members of the staff and all who have helped us in that commitment, because the commitment remains before this body.

On behalf of the American people, I urge support for this very important bill.

Mr. GIBBONS. Mr. Speaker, I rise in support of the Intelligence Authorization bill, and I thank my friend and colleague from Florida for yielding me this time.

This is a very good bill. It addresses intelligence needs that were not identified in past years by the Intelligence Committee. But only in the past year, after the deaths of innocent Americans, and innocent citizens of other countries,
are these needs getting the broad attention they deserve.

Throughout much of the 1990’s, after the end of the Cold War, there was a debate about whether America really needed to spend so much money on defense. As for intelligence, some people even thought there was no longer any need for the CIA. I believe that debate is now over.

The bill before you today will help the intelligence agencies increase and sharpen their effectiveness—especially against terrorist groups.

If you want to know the plans and intentions of terrorist groups you have to have HUMINT—“human intelligence.” This is the information you get from human sources—also known as “assets” or “agents” or simply “spies.” I want to emphasize that this year’s intelligence authorization bill does a great deal to strengthen our HUMINT capability. For one thing, there is money to hire more CIA operations officers.

Those operations officers are doing a great job, but they are few and far between. We need more, and this bill will help ensure that there will be more. This bill also provides money to hire more intelligence analysts and linguists. Likewise, there is money for more foreign language training. It is not hard to understand that if your operations officers and analysts have not learned the language of your enemy, you will not succeed in learning his plans and intentions.

These HUMINT and foreign language-related items are just some of the good provisions of this Intelligence Authorization bill. They are long overdue.

The clock is ticking, and America’s enemies continue with their planning. I urge your support for our intelligence professionals, and I urge your support for this bill.

Mr. GOSS. Mr. Speaker, I yield back the balance of my time, and I move the point of order that a quorum is not present.

Mr. GOSS. The gentleman from Florida?

Mr. DAVIS of Virginia. Mr. Speaker, I object to the request of the gentleman from Florida?

Mr. KERNS changed his vote from ‘‘yea’’ to ‘‘nay.’’

Mr. ALLEN changed his vote from ‘‘nay’’ to ‘‘yea.’’

So the conference report was agreed to.

The yeas and nays were announced as above recorded.

A motion to reconsider was laid on the table.

Stated for: Mr. PASCRELL. Mr. Speaker, on rollcall No. 483, it was unavoidably absent. Had I been present, I would have voted ‘‘yea.’’

Mr. GOSS. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4628 and the conference report just considered and passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

TRIBUTE TO TERRY MORRIS

Mr. TOM DAVIS of Virginia, Mr. Speaker, I rise to honor my friend, my neighbor, Terry Morris, the Tally Clerk of the House, who is going to retire this December after 33 years of service to the House of Representatives.
Mr. Speaker, Terry accepted a position as Assistant Tally Clerk 33 years ago, and 16 years later he took over the helm as the Chief Tally Clerk, responsible for all votes in the House of Representatives. At the time of his retirement, Terry will have served longer in the House than all but 5 of the 435 currently serving Members.

During Terry Morris’ tenure, the House has voted on the Gulf War, giving 18-year-olds the right to vote, impeaching, on antiterrorism measures in the wake of the attacks on September 11, and on authorizing the President to use military force against the threat of weapons of mass destruction from Iraq.

Terry’s professional objectivity and down-to-earth style have made him many friends among Members on both sides of the aisle, particularly among new Members, whom he assists in familiarizing themselves with voting procedures. Terry’s service has spanned both Democratic and Republican majorities, during which time his goal has always been to serve the whole House of Representatives, regardless of party.

Perhaps Terry’s most unusual and important day as Tally Clerk came on December 10, 1998, when the House passed four votes over a period of 2 hours on four separate articles of impeachment, two of which passed and two of which failed. Terry has been quoted as saying, “Of the thousands of votes I had taken in my career, I knew this would be the most significant.”

Terry is originally from Madison, Wisconsin, where he majored in political science at the University of Wisconsin at Madison. Terry and his wife, Barbara, have two sons, Tim, a senior at Mary Washington College in Fredericksburg, Virginia, and Christopher, a sophomore at Bishop O’Connell High School in Arlington, Virginia. Terry is an avid golfer and tennis player, and one of the founders of the Capitol Hill Tennis Club. In his retirement, Terry intends to spend more time golfing, playing tennis and visiting friends around the country.

So we wish you Godspeed, Terry. We thank you for everything that you have given of yourself to this institution. We are the better for having known you, and the poorer for your leaving. We will not forget you.

Mr. OBEY. Mr. Speaker, will the gentleman yield?

Mr. TOM DAVIS of Virginia. I yield to the gentleman from Wisconsin.

Mr. OBEY. Mr. Speaker, let me simply say in addition to being educated at the University of Wisconsin, where he did receive a degree in political science, I would point out that I knew him before he worked here when he was a page in the Wisconsin Legislature, when he looked just a little bit younger than both he and I look tonight.

I just want to say that I know that every day the American people look in on this institution on C-SPAN and they see these faces at the desk, they have no idea who these people are and what they do. They have no idea the contribution they make to the Republic. Terry has done everything except the one thing which is impossible: It has been impossible for him to make us look better than we deserve, and so we are going to have to let it go at that. Terry, we wish you luck in retirement.

Ms. WATERS. Mr. Speaker, will the gentleman yield?

Mr. TOM DAVIS of Virginia. I yield to the gentleman from California.

Ms. WATERS. Mr. Speaker, I would just like to take a moment to add to the words of my colleagues about a most unusual man.

Terry Morris sits at that desk, impeccable in his dress, never a hair out of place, a smile on his face, serving day in and day out. He goes so far as to remind Members they have not voted by looking for them in every imaginable way, connecting with his eyes, reminding Members they have voted twice and they should not do that. He is perhaps one of the friendliest clerks and assistant that we have in this House. He helps Members regardless of party, and has made friends on both sides of the aisle.

One of my joys in this House is coming in and seeing his face, speaking with him, exchanging a few words and just knowing he is going to be there for me and all of us. I am sorry to see him leave. He is one of those persons we would like to have stay forever; but after 33 years he deserves to retire. I wish him well.

Mr. MORAN of Virginia. Mr. Speaker, will the gentleman yield?

Mr. TOM DAVIS of Virginia. I yield to the gentleman from Virginia.

Mr. MORAN of Virginia. Mr. Speaker, as the gentleman from Virginia (Mr. TOM DAVIS) has mentioned all of the specifics of Terry Morris’ life, I would just add that he is a constituent of mine. I am proud that this is the case. But in so many ways, he is a constituent of this entire United States Congress. This is the man who has been most of his life, 33 years. Imagine, he has been up there for 33 years, 16 years as Assistant Tally Clerk, and the last 17 as the Chief Tally Clerk.

As our colleague just stated, we take it for granted, every time we pass in and seeing his face, speaking and friendly personality and for the fact that he has carried out his responsibilities with dignity, with respect for the institution, and with good faith towards all of the Members of this body.

Terry has served an office in this House for 33 years. He has seen history made. He has worked on many difficult and complex issues with fairness and impartiality. His service has spanned the careers of five Democratic Speakers and two Republican Speakers of this House. I speak not only on my own behalf but on behalf of his many friends in this institution when I commend him for his work and for his effort.

All of us here offer our best wishes and gratitude to him for his service and to his wife, Barbara. We wish them great happiness and the best of all things as they embark on a new chapter in their lives. All of us say to Terry Morris, not only thank you, but well done. We are grateful for what you have done for us.

Mr. TOM DAVIS of Virginia. Mr. Speaker, I yield to the gentleman from Wisconsin (Mr. KIND).

Mr. KIND. I thank my friend for yielding. As someone who hails from our neck of the woods and whose family is still sprinkled in many of our congressional districts, it is with special pride that we are here to honor you and to thank you for your many years of service to our House. Terry, I was just 5 years old when you started your career here. Not to date you, but you have lived through eight administrations and seven separate Speakers of the House of Representatives. So I think it is safe to say that you are a great repository of a lot of the institutional memory that exists in this place. Besides you and Charlie, I think you two are the only two who probably recall the Members whose names we are honoring on courthouses throughout this country virtually every week out here. But I also want to thank you for what you mean for our government.
There is a lot of cynicism in regards to our political system today, and a lot of times that is because the only thing people back home see is the partisan clashes and the heated debates that we have. I feel it is part of our obligation to go back to people and not see what we get to see how well our government functions and the fact that we have thousands of employees, in the Federal agencies, in our offices, in this House who wake up every morning with the soulful task of trying to improve this great country of ours. You do it with honor, you do it with integrity, and you do it with a lot of style and a lot of class. That is why I, after my third term, am even more hopeful and optimistic that government of ours, because of people like you.

I just have one request before you do leave, and that is to make sure that you download all the information that is in your brain and make sure it is all written so that we do not have to re-create the wheel. I will never forget the story you told me that after one of the late tally votes, which is seldom held around here anymore, someone asked you where the written procedure for the tally votes was, and you looked them with a blank expression and said, “There is no written procedure. It’s right here.” Everyone was shocked and horrified that you were going to go home and actually write out, with the knowledge on how to do this type of work. So you sat down before you went home and actually wrote out what the procedure is like.

Again, we thank you for your great service. You have given me. We wish you and Barbara and the two boys all the best in your retirement. Thank you very much.

Mr. TOM DAVIS of Virginia. Mr. Speaker, I yield to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Terry, your service has been recalled and set before us. All of us appreciate your service, that is clear. I think you are emblematic of the fine service that is given by those of you who do not get to speak on this floor, but who work anonymously but so effectively on behalf of the American public. Terry, I wanted to add my thanks and the thanks of all the Members of this side of the aisle, along with Tom on behalf of all the Members on that side of the aisle, because you work not in a partisan sense but you work for this institution to ensure that the people’s House functions as the people would like it. As Tom Davis said, we will miss you. You have served your country well. God bless you.

CONFERENCE REPORT ON H.R. 333, BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2002

Mr. GEKAS. Mr. Speaker, I call up the conference report to accompany the conference report called up by the gentleman from Wisconsin (Mr. SIMPSON). Pursuant to clause 8, subsection C of rule XXII, the conference report is considered read.

POINT OF ORDER

Mr. BLUNT. Mr. Speaker, I make a point of order under clause 9 of rule XXII that the conference report includes matter outside the scope of the differences between the two Houses that were committed to the conference committee for resolution. I specifically cite section 331 of the conference report which is the joint explanatory statement of the managers as having no counterpart in either the House bill or the Senate amendment. The SPEAKER pro tempore. Does any other Member wish to be heard on the point of order?

Mr. FRANK. Mr. Speaker, I gather that this point of order is being lodged by the leadership of the House against the very bill that the leadership of the House was trying to persuade Members to vote for a couple of hours ago. So my concern is, how did a bill that was perfectly in order at about 8 o’clock fall out of order?

And I am concerned that we have a situation in which the leadership of this House apparently consciously brought forward a bill that they knew to be violative of the rules of the House, sought to pass it, and when not enough arms could be twisted, they now have become late converts to the rules.

PARLAMENTARY INQUIRY

Mr. FRANK. So, Mr. Speaker, I do have a parliamentary inquiry. I am sorry the gentlemen do not want to hear this flip-flop, but I did not bring it up to have a parliamentary inquiry. Mr. Speaker, which I believe is regular order. You might want to explain to a few of them over there. I understand on that side knowledge and commitment to the rules is a sometime thing, but a parliamentary inquiry is in order.

Is this bill against which the point of order has been lodged exactly the same bill that the leadership was trying to get people to vote for a few hours ago?

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman has not raised a parliamentary inquiry.

Mr. FRANK. The parliamentary inquiry is, is this the same piece of legislation on which we voted a couple of hours ago? I think a parliamentary inquiry is relevant when we ask about what is in fact before the House. I have not had a chance to read it. Is this the same bill that the House was voting on a few hours ago?

The SPEAKER pro tempore. The conference report called up by the gentleman from Pennsylvania (Mr. GEKAS) that is the object of the pending point of order is the object of House Resolution 606, which the House rejected. The gentleman from Pennsylvania (Mr. GEKAS) may make a motion after the Chair rules. He has not made that and it is not pending before the House now.

Mr. FRANK. Pardon me. Mr. Speaker, but the gentleman from Missouri (Mr. BLUNT) has made a point of order against something. I guess that is the question. The parliamentary inquiry is against what it is that the gentleman from Missouri has lodged a point of order? You said does anyone want to be heard on the point of order. He made a point of order. Against what point of order did he make a point of order, then?

The SPEAKER pro tempore. The point of order is against the conference report against which no points of order has been waived.

Mr. FRANK. So the point of order is against the very conference report that this leadership which is now making the point of order tried to pass. I have
CONGRESSIONAL RECORD—HOUSE

November 14, 2002

Sec. 205. GAO study and report on reaffirmation agreements.
Sec. 204. Preservation of claims and defenses.
Sec. 203. Discouraging abuse of reaffirmation agreements.
Sec. 201. Promotion of alternative dispute resolution processes.

CONCURRING IN SENATE AMENDMENT, WITH AN AMENDMENT, TO H.R. 333, BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2001

Mr. GEKAS. Mr. Speaker, I offer a motion.

The SPEAKER pro tempore. Does any other Member wish to be heard on the point of order?

If not, for the reasons stated by the gentleman from Missouri (Mr. BLUNT) the point of order is sustained and the conference report is vitiated.

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

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Bankruptcy Abuse Prevention and Consumer Protection Act of 2002”.

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

Sec. 1. Short title; references; table of contents.

TITLE I—NEEDS-BASED BANKRUPTCY

Sec. 101. Conversion.
Sec. 102. Dismissal or conversion.
Sec. 103. Sense of Congress and study.
Sec. 104. Notice of alternatives.
Sec. 105. Debtor in possession financial management training test program.
Sec. 106. Credit counseling.
Sec. 107. Schedules of reasonable and necessary expenses.

Sec. 109. Priorities for claims for domestic support obligations.
Sec. 110. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
Sec. 111. Exceptions to automatic stay in domestic support obligation cases.
Sec. 112. Nondischargeability of certain debts for alimony, maintenance, and support.
Sec. 113. Continued liability of property.
Sec. 114. Protection of domestic support claims against preferential transfers.
Sec. 115. Disposable income defined.
Sec. 116. Collection of child support.
Sec. 117. Nondischargeability of certain educational benefits and loans.

Subtitle C—Other Consumer Protections

Sec. 211. Definition of domestic support obligation.
Sec. 212. Adequate protection for investors.
Sec. 213. Credit counseling.
Sec. 214. Amendments to disallow abusive bankruptcy filings.
Sec. 215. Sense of Congress.
Sec. 216. Additional amendments to title 11, United States Code.
Sec. 217. Protection of retirement savings in bankruptcy.
Sec. 218. Protections on the education savings in bankruptcy.
Sec. 219. Definitions.
Sec. 220. Restrictions on debt relief agencies.
Sec. 221. Disclosures.
Sec. 222. Requirements for debt relief agencies.
Sec. 223. GAO study.
Sec. 224. Protection of personally identifiable information.
Sec. 225. Consumer privacy ombudsman.
Sec. 226. Prohibition on disclosure of name of minor children.

TITLE II—DISCOURAGING BANKRUPTCY ABUSE

Sec. 301. Reinforcement of the fresh start.
Sec. 302. Discouraging bad faith repeat filings.
Sec. 303. Curbing abusive filings.
Sec. 304. Debtor retention of personal property security.
Sec. 305. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.
Sec. 306. Giving secured creditors fair treatment in chapter 13.
Sec. 307. Domiciliary requirements for exemptions.
Sec. 308. Reduction of homestead exemptions.
Sec. 309. Protecting secured creditors in chapter 13.
Sec. 310. Limitation on luxury goods.
Sec. 311. Automatic stay.
Sec. 312. Extension of period between bankruptcy discharges.
Sec. 313. Definition of household goods and antiques.
Sec. 314. Debt incurred to pay nondischargeable debt.
Sec. 315. Giving creditors fair notice in chapters 7 and 13 cases.
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Sec. 1011. Definition of family farmer.
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Sec. 1014. Definition of family farmer.
Sec. 1015. Elimination of requirement that family farmer and spouse re-
cuss the 50 percent of income from farming operation in year prior to bankruptcy.
parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent and who is under 19 years of age (unless the parent or guardian has left the child under the care of the other parent or guardian prior to the filing date).

(II) 25 percent of the debtor’s nonpriority unsecured claims, or $6,000, whichever is greater; or

(i) the court finds that—

(i) the position of the party that filed the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

(ii) the party who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C); and the motion was made solely for the purpose of evading paragraph (4)(C).

(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a particular case, the court shall consider—

(i) the term ‘small business’ means an unincorporated business or a corporation, association, or organization that—

(ii) has fewer than 25 full-time employees as determined on the date on which the motion is filed; and

(iii) is engaged in commercial or business activity; and

(iv) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

(A) a parent corporation; and

(B) any other subsidiary corporation of the parent corporation;

(4) Only the judge, United States trustee, or bankruptcy administrator may file a motion under paragraph (3), if the current monthly income of the debtor exceeds 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(B) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(5) No judge, United States trustee, bankruptcy administrator, or other party in interest may file a motion under paragraph (4) if the current monthly income of the debtor and the debtor’s spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(6) The motion shall not be considered for purposes of subparagraph (A) if—

(i) the debtor is in a household of 1 person, the median family income of the applicable State for 1 earner;

(ii) the debtor is in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(7) A motion under paragraph (5) shall not be considered for purposes of subparagraph (A) if—

(i) the debtor is in a household of 1 person, the median family income of the applicable State for 1 earner;

(ii) the debtor is in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(8) A motion under paragraph (4) shall not be considered for purposes of subparagraph (A) if—

(i) the debtor files a statement under penalty of perjury—

(A) disclosing the aggregate, or best estimate of the aggregate, amount of any cash
or money payments received from the debtor's or spouse attributed to the debtor's current monthly income.'"

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (10) the following:

'(10A) 'current monthly income'—

'(A) means the average monthly income from all sources for the most recent 6 months ending on the date of the filing of the petition.

'(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act, payments by a governmental unit to a dependent of the debtor (including a minor child), payments by a governmental unit to the debtor for the maintenance or support of the debtor's spouse or the debtor's child, payments from a governmental unit to the debtor for the purpose of making payments on behalf of a dependent of the debtor (other than child support payments, foster care payments, or payments for the care of a dependent), charitable contributions on behalf of the debtor (including any charitable contributions made by a governmental unit to the debtor), payments for the benefit of a dependent of the debtor made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child less amounts reasonably necessary to be expended—

'(A) for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation; and

'(B) for purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor (other than child support payments, foster care payments, or payments for the care of a dependent) minus expenses for dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child less amounts reasonably necessary to be expended—

'(A) for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation that first becomes payable after the date the petition is filed and for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3)) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

'(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

'(3) Amounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, multiplied by 12, greater than—

'(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for a family of the same number of fewer individuals.

(d) Notices.—Section 342 of title 11, United States Code, is amended by adding at the end the following:

'(7) The table of sections for chapter 7 of title 11, United States Code, is amended by striking the item relating to section 707 and inserting the following:

'(707. Dismissal of a case or conversion to a case under chapter 11 or 13.'
The Director of the Executive Office for United States Trustees (in this section referred to as ‘the Director’), shall consult with a wide range of individuals who are experts in the field of consumer education programs, including credit counseling agencies, directors of nonprofit budget and credit counseling agencies, and financial educators, and shall select 6 judicial districts of the United States in which to test the effectiveness of financial management training programs carried out by approved nonprofit budget and credit counseling agencies in such districts.

SEC. 104. NOTICE OF ALTERNATIVES.

(b) The Director shall select 6 judicial districts of the United States Code, that are consistent with the findings of the Director under paragraph (1).

(b) The Director of the Executive Office for United States Trustees (in this section referred to as ‘the Director’), shall select 6 judicial districts of the United States in which to test the effectiveness of financial management training programs carried out by approved nonprofit budget and credit counseling agencies described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted that individual in performing a related budget analysis.

(g) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

(h) (1) In addition to the requirements under subsection (b), the requirements of paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that there are adequate to service the additional individuals who would be required to complete such instructional course by reason of the requirements of this section.

(i) Each United States trustee or bankruptcy administrator who makes a determination described in paragraph (1) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.

(j) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

(k) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

(l) (1) In addition to the requirements under subsection (a), a debtor who is an individual may not be a debtor under this title unless that individual has, during the 180-day period preceding the date of filing of the petition of that individual, received a nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted that individual in performing a related budget analysis.

(m) In addition to the requirements under paragraph (1), the requirements of paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved instructional courses are not adequate to service the additional individuals who would be required to complete such instructional course by reason of the requirements of this section.

(n) Each United States trustee or bankruptcy administrator who makes a determination described in paragraph (1) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.

(o) CHAPTER 13 DISCHARGE.—Section 1328 of title 11, United States Code, is amended by adding at the end the following:

(p) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

(q) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

(r) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

(s) (1) In addition to the requirements under subsection (a), a debtor who is an individual may not be a debtor under this title unless that individual has, during the 180-day period preceding the date of filing of the petition of that individual, received a nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted that individual in performing a related budget analysis.

(t) In addition to the requirements under paragraph (1), the requirements of paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved instructional courses are not adequate to service the additional individuals who would be required to complete such instructional course by reason of the requirements of this section.

(u) Each United States trustee or bankruptcy administrator who makes a determination described in paragraph (1) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.

(v) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

(w) In addition to the requirements under subsection (a), a debtor who is an individual may not be a debtor under this title unless that individual has, during the 180-day period preceding the date of filing of the petition of that individual, received a nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted that individual in performing a related budget analysis.

(x) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

(y) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

(z) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.
II. Credit counseling agencies: financial management instructional courses

(a) The clerk shall maintain a publicly available list of—

(1) credit counseling agencies that provide 1 or more programs described in section 109(h) currently approved by the United States trustee or the bankruptcy administrator; as applicable; and

(2) instructional courses concerning personal financial management currently approved by the United States trustee or the bankruptcy administrator for the district, as applicable.

(b) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency or instructional course concerning personal financial management as follows:

(1) The United States trustee or bankruptcy administrator shall have thoroughly reviewed the qualifications of the credit counseling agency or of the provider of the instructional course under the standards set forth in this section, and the programs or instructional courses which will be offered by such agency or provider, and may require an agency or instructional course which has sought approval to provide information with respect to such review.

(2) The United States trustee or bankruptcy administrator shall have determined that the credit counseling agency or instructional course fully satisfies the applicable standards set forth in this section.

(3) An agency or instructional course is initially approved, such approval shall be for a probationary period not to exceed 6 months. An agency or instructional course is approved if it does not appear on the approved list for the district under subsection (a) immediately prior to approval.

(4) At the conclusion of the probationary period under paragraph (3), the United States trustee or bankruptcy administrator may only approve for an additional 1-year period, and for successive 1-year periods thereafter, any agency or instructional course which has demonstrated during the probationary or subsequent period that such agency or instructional course—

(A) has met the standards set forth under this section during such period; and

(B) can satisfy such standards in the future.

(5) Not later than 30 days after any final decision under paragraph (4), that occurs either after the expiration of the initial probationary period, or after any 2-year period thereafter, an interested person may seek judicial review of such decision in the appropriate district court of the United States.

(c) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency that—

(1) is a nonprofit budget and credit counseling agency, as applicable; and

(2) provides—

(A) at a minimum, all counseling services referred to in subsection (b) of section 111; and

(B) full disclosures to clients, including funding sources, counselor qualifications, possible impact on credit reports, and any costs of such program that will be paid by the debtor and how such costs will be paid.

(d) The United States trustee or bankruptcy administrator shall have determined that a credit counseling agency or an instructional course is not longer approved, in which case the clerk shall remove it from the list maintained under subsection (a).

(e) No credit counseling agency may provide a credit reporting agency information concerning whether a client has received or sought instruction concerning personal financial management from the credit counseling agency.

(f) A credit counseling agency that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of—

(A) any actual damages sustained by the debtor as a result of the violation; and

(B) any court cost and reasonable attorneys’ fees (as determined by the court) incurred in an action to recover those damages.

(3) CLERICAL AMENDMENT. The table of sections for chapter 1 of title 11, United States Code, is amended by adding at the end the following:

111. Credit counseling agencies; financial management instructional courses.

(b) LIMITATION. Section 362 of title 11, United States Code, is amended by adding at the end the following:

(c) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.

IV. SCHEDULES OF REASONABLE AND NECESSARY EXPENSES.

For purposes of section 707(b) of title 11, United States Code, as amended by this Act, the Director of the Executive Office for United States Trustees shall, not later than 180 days after the date of enactment of this Act, issue schedules of reasonable and necessary administrative expenses of administering a chapter 13 plan for each judicial district of the United States.

TITLES II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLUTION

(a) REDUCTION OF CLAIM.—Section 502 of title 11, United States Code, is amended by adding at the end the following:

"(1) the court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on an unsecured consumer debt by not more than 20 percent of the claim, if—" (A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency described in section 111 acting on behalf of the debtor; (B) the offer of the debtor under subparagraph (A); and (C) was at least 60 days before the filing of the petition; and
‘‘(ii) provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and ‘‘(C) no part of the debt under the alternative repayment plan schedule is nondischargeable.

‘‘(2) The debtor shall have the burden of proving, by clear and convincing evidence, that—

‘‘(A) the creditor unreasonably refused to consider the debtor’s proposal; and

‘‘(B) the proposed alternative repayment schedule was made prior to expiration of the 60-day period specified in paragraph 1(B).

(b) LIMITATION ON AVOIDABILITY.—Section 547 of title 11, United States Code, is amended by adding at the end the following:

‘‘(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment plan between the debtor and any creditor of the debtor created by an approved credit counseling agency.’’.  

SEC. 202. EFFECT OF DISCHARGE.

Section 524 of title 11, United States Code, is amended by adding at the end the following:

‘‘(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title, unless the order confirming the plan is revoked, or the plan is discharged, shall constitute a violation of an injunction under subsection (a)(2) if the act of the creditor to collect and failure to credit payment required by the plan caused material injury to the debtor.

‘‘(j) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is secured claim.

‘‘(1) such creditor retains a security interest in real property that is the principal residence of the debtor; or

‘‘(2) such act is in the ordinary course of business between the creditor and the debtor; and

‘‘(3) such act is limited to seeking or obtaining proceeds associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.’’.  

SEC. 203. DISCOURAGING ABUSE OF REAFFIRMATION AGREEMENTS

(a) IN GENERAL.—Section 524 of title 11, United States Code, as amended section 202, is amended

(1) in subsection (c), by striking paragraph (2) and inserting the following:

‘‘(2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement; ‘‘; and

(2) by adding at the end the following:

‘‘(k) The disclosures required under subsection (c) consist of a statement described in paragraph (3), completed as required in that paragraph, together with the agreement, statement, declaration, motion and order described, respectively, in paragraphs (4) through (8), and shall be the only disclosures required in connection with the reaffirmation.

(2) Disclosures made under paragraph (1) shall be made clearly and conspicuously and in writing. The terms ‘‘Amount Reaffirmed’’ and ‘‘Annual Percentage Rate’’ shall be disclosed clearly and conspicuously and not in a manner which is likely to mislead the debtor, and the terms ‘‘Summary of Reaffirmation Agreement’’ and ‘‘Summary of Reaffirmation Agreement’’ may be equally conspicuous. Disclosures may be made in a different order and may use terminology different from that set forth in paragraphs (2) through (8), except that the terms ‘‘Amount Reaffirmed’’ and ‘‘Annual Percentage Rate’’ must be used.

(3) The disclosure statement required under this paragraph shall consist of the following:

‘‘(A) The statement: ‘‘Part A: Before agreeing to reaffirm a debt, review these important disclosures.’’

‘‘(B) Under the heading ‘‘Summary of Reaffirmation Agreement’’, the statement: ‘‘This Summary is made pursuant to the requirements of the Bankruptcy Code.’’

‘‘(C) The ‘‘Amount Reaffirmed’, using that term, which shall be—

‘‘(i) the total amount which the debtor agrees to reaffirm, and

‘‘(ii) the total of all other fees or costs accrued as of the date of the disclosure statement.

‘‘(D) In conjunction with the disclosure of the ‘‘Amount Reaffirmed’’, the statements—

‘‘(i) ‘‘The amount of debt you have agreed to reaffirm,’’ and

‘‘(ii) your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.’’

‘‘(E) The ‘‘Annual Percentage Rate’’, using that term, which shall be disclosed as—

‘‘(i) if, at the time the petition is filed, the debt is an extension of credit under an open end credit plan ‘‘cred t’’ and ‘‘open end credit plan’’ are defined in section 103 of the Truth in Lending Act, then—

‘‘(I) the annual percentage rate determined under paragraphs (5) and (6) of section 127(c) of the Truth in Lending Act, as applicable, as disclosed to the debtor in the most recent periodic statement prior to the agreement to reaffirm the debt, if such periodic statement has been given to the debtor during the prior 6 months, the annual percentage rate as it would have been disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

‘‘(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or to the extent this simple interest rate is not readily available or not applicable, then

‘‘(III) if the entity making the disclosure elects, to disclose the annual percentage rate under subsection (I) and the simple interest rate under subsection (II) and the simple interest rate which has not been waived in whole or in part or determined to be void by a final order of the court at the time of the disclosure, by disclosing the annual percentage rate or lien in goods or property is asserted over some or all of the obligations the debtor is reaffirming and listing the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money security interest then listing by items or types and the original amount of the loan.

‘‘(H) At the election of the creditor, a statement of the repayment schedule using 1 or a combination of the following—

‘‘(i) by making the statement: ‘‘Your first payment in the amount of $____ is due on _______________ and the future payment amount may be different. Consult your reaffirmation or credit agreement, as applicable, for the amount of the first payment and the due date of that payment in the places provided; ‘‘(ii) by making the statement: ‘‘Your payment schedule will be: ‘‘; and describing the repayment schedule with the number, amount and due dates or period of payments scheduled to repay the obligations reaffirmed to the extent then known by the disclosing party; or

‘‘(ii) by describing the debtor’s repayment obligations with reasonable specificity to the extent then known by the disclosing party.’’

‘‘(i) The following statement: ‘‘Note: When this disclosure refers to what a creditor “may” do, it does not use the word “may” to give the creditor specific permission. The word “may” is used to tell you what might occur if the law permits the creditor to take the action. If you have any questions about a reaffirmation or what the law requires, talk to the attorney who helped you negotiate this agreement. If you have an attorney helping you, the judge will explain the effect of your reaffirmation when the reaffirmation hearing is held. ‘‘

‘‘(2) The following additional statements:

‘‘Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.’’

‘‘1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B or you may use a separate agreement you and your creditor agree on.

‘‘2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

‘‘3. If you were represented by an attorney during the negotiation of the reaffirmation agreement, the attorney must have signed the certification in Part C.

‘‘4. If you were not represented by an attorney during the negotiation of the reaffirmation agreement, you must have completed and signed Part E.”'
Part B: Reaffirmation Agreement. I/we agree to reaffirm the obligations arising under the credit agreement described below. 

1. I believe this agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement above, and I understand that if the presumption is not rebutted to the satisfaction of the court, the court may disapprove the agreement. No agreement shall be disapproved without notice and a hearing to the debtor and creditor and such hearing shall be concluded before the entry of the debtor’s discharge.

2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.

3. The motion, which may be used if approval of the agreement by the court is required in order for it to be effective and shall be signed and dated by the moving party, shall consist of the following:

(a) Attorney’s Name and Bar Number

(b) Affirmation of Agreement

(c) Debtor(s) Name

(d) Credit Agreement

(e) Security Description

(f) Date

(g) Co-borrower, if any

(h) Credit Limit

(i) Amount

(j) Interest Rate

(k) Monthly Payments

(l) Total Payments

(m) Total Interest

(n) Total Cost

(o) Estimated Equity

(p) Total Equity

(q) Total Collateral

(r) Total Liens

(s) Total Liabilities

(t) Total Reaffirmation Agreement

(u) Total Security

(v) Total Collateral

(w) Total Liabilities

(x) Total Security

(y) Total Collateral

(z) Total Liabilities

(1) I believe this agreement and am satisfied that the agreement is in my best interest.

2. The debtor is represented by an attorney and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Bankruptcy Code. The attorney shall provide the debtor with a complete and signed reaffirmation agreement.

3. The court order, which may be used to approve a reaffirmation agreement, shall consist of the following:

(a) A creditor may accept payments from a debtor before and after the filing of a reaffirmation agreement with the debtor.

(b) The court order, which may be used to approve a reaffirmation agreement, shall consist of the following:

1. I believe this agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement above, and I understand that if the presumption is not rebutted to the satisfaction of the court, the court may disapprove the agreement. No agreement shall be disapproved without notice and a hearing to the debtor and creditor and such hearing shall be concluded before the entry of the debtor’s discharge.

2. The debtor is represented by an attorney and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Bankruptcy Code. The attorney shall provide the debtor with a complete and signed reaffirmation agreement.

3. The motion, which may be used if approval of the agreement by the court is required in order for it to be effective and shall be signed and dated by the moving party, shall consist of the following:

(a) Attorney’s Name and Bar Number

(b) Affirmation of Agreement

(c) Debtor(s) Name

(d) Credit Agreement

(e) Security Description

(f) Date

(g) Co-borrower, if any

(h) Credit Limit

(i) Amount

(j) Interest Rate

(k) Monthly Payments

(l) Total Payments

(m) Total Interest

(n) Total Cost

(o) Estimated Equity

(p) Total Equity

(q) Total Collateral

(r) Total Liens

(s) Total Liabilities

(t) Total Reaffirmation Agreement

(u) Total Security

(v) Total Collateral

(w) Total Liabilities

(x) Total Security

(y) Total Collateral

(z) Total Liabilities

(1) I believe this agreement and am satisfied that the agreement is in my best interest.
SEC. 210. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

Section 101 of title 11, United States Code, is amended—
(1) by striking paragraph (12); and
(2) in section 1222(a), in the matter preceding subparagraph (C), by inserting “private judgment or out-of-court settlement agreement, and” before “financial portion of a court order.”

SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGATION FOR BANKRUPTCY COURT.

Section 101 of title 11, United States Code, is amended—
(1) by redesignating subsection (o) as subsection (p); and
(2) in subsection (p), as so redesignated, by adding at the end the following:

“‘domestic support obligation, for purposes of this title, that is—

(A) owed or recoverable by—

(i) a spouse, former spouse, or child of the debtor or such child’s parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such child of the debtor or such child’s parent, without regard to whether such debt is expressly so designated; and

(C) established or subject to establishment before or after entry of an order for relief under this title, by reason of applicable provisions of—

(1) a separation agreement, divorce decree, or property settlement agreement;

(2) an order of a court of record; or

(3) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the debtor or, if applicable, the debtor’s legal guardian or responsible relative, or parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt.”

SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.

(a) Section 507(a)(1) of title 11, United States Code, is amended—

(1) by redesignating paragraph (12) as paragraph (13); and

(2) by inserting “domestic support obligation” after “claim that is entitled to priority under section 507(a)(1)(B)” after the words “a claim that.”

(b) Section 1129(a)(9) of title 11, United States Code, is amended—

(1) in paragraph (9), by striking “‘and’ and

(2) in paragraph (10), by striking “domestic support obligation” after “claim that is entitled to priority under section 507(a)(1)(B)” and inserting “domestic support obligation” before “is due on or before such debts.”

(c) If a trustee is appointed or elected under section 702, 703, 705, 1104, 1202, or 1302, the administrative expenses of the trustee shall be paid from the estate in accordance with section 503(b) of title 11, United States Code, to the extent that the trustee administers assets that are otherwise available for the payment of such administrative expenses.

SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.

(a) Title 11, United States Code, is amended—

(1) in section 1129(a), by adding at the end the following:

“(14) If the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute that first become payable after the date on which the petition is filed.”

(b) In section 1208(c)—

(1) in paragraph (8), by striking “or” at the end;

(2) in paragraph (9), by striking the period at the end and inserting “and”;

(3) in paragraph (10), by striking the period at the end and inserting “; and”;

(4) in paragraph (11), by striking the period at the end and inserting “; and”;

(5) in paragraph (12), by striking “and” at the end;

(6) in paragraph (13), by striking the period at the end and inserting “and”;

(c) In section 1222(a)—

(1) in paragraph (2), by striking “and” at the end;

(2) in paragraph (3), by striking the period at the end and inserting “; and”;

(3) in paragraph (4), by striking the period at the end and inserting “; and”;

(d) In section 1222(b)—

(1) in paragraph (5), by striking “and” at the end;

(2) in paragraph (6), by striking the period at the end and inserting “; and”;

(3) in paragraph (7), by striking the period at the end and inserting “; and”;

(4) in paragraph (8), by striking the period at the end and inserting “; and”;

(5) in paragraph (9), by striking the period at the end and inserting “; and”;

(6) in paragraph (10), by striking the period at the end and inserting “; and”;

(7) in paragraph (11), by striking the period at the end and inserting “; and”;

(8) in paragraph (12), by striking “and” at the end;

(9) in paragraph (13), by striking the period at the end and inserting “; and”;

(e) In section 1225(a)—

(1) in paragraph (3), by striking the period at the end and inserting “; and”;

(2) in paragraph (4), by striking the period at the end and inserting “; and”;

(3) in paragraph (5), by striking the period at the end and inserting “; and”;

(4) in paragraph (6), by striking the period at the end and inserting “; and”;

(5) in paragraph (7), by striking the period at the end and inserting “; and”;

(f) In section 1226(a)—

(1) in the matter preceding paragraph (1), by inserting “and in the case of a debtor who is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute that first become payable after the date on which the petition is filed.”; and

(2) in paragraph (2), by striking the period at the end and inserting “; and”.

(g) If the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute that first become payable after the date on which the petition is filed, the trustee shall apply to make payments under the plan for the payment of such amounts in full for all payments of all amounts owed to the extent that the debtor has disposable income available to pay such interest after making payment for full payment of all allowed claims.”
amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid" after "completion by the debtor of all payments under the plan";

(7) in paragraph (10), by inserting after the words "or property of the debtor for payment of a domestic support obligation under a judicial or administrative order" the words "(C) with respect to the withholding of income from wages or property of the debtor for payment of a domestic support obligation under a judicial or administrative order;"

(8) in section 1322(a)—

(a) in paragraph (2), by striking "and" at the end;

(b) in paragraph (3), by striking the period at the end and inserting "; and";

(c) by adding at the end the following:

"(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed;"

(9) in section 1322(b)—

(a) in paragraph (9), by striking "or" and inserting "; or";

(b) by redesignating paragraph (10) as paragraph (11); and

(c) inserting after paragraph (9) the following:

"(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are non-accruing after the date of the filing of the case of a debtor who is required by a judicial or administrative order to pay such interest after making provision for full payment of all allowed claims; and"

(10) in section 1323(a), as amended by section 102, by inserting after paragraph (7) the following:

"(8) the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid and will be applied to make payments under the plan;"

SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

Section 523 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (5) and inserting the following:

"(5) for a domestic support obligation;" and

(B) by striking paragraph (18);

(2) in subsection (c), by striking "(6), or (15)" each place it appears and inserting "(6) and";

(3) in paragraph (15), as added by Public Law 103–394 (108 Stat. 4133)—

(A) by inserting "to a spouse, former spouse, or child of the debtor and before" before "not of the kind";

(B) by inserting "or" after "court of record;" and

(C) by striking "unless— and all that follows through the end of the paragraph and inserting a semicolon.

SEC. 216. CONTINUED LIABILITY OF PROPERTY.

Section 522 of title 11, United States Code, is amended—

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

"(1) a debt of a kind specified in paragraph (1) or (5) of section 529(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such section);"

(2) in subsection (f)(1)(A), by striking the dash and all that follows through the end of the subparagraph and inserting "of a kind that is specified in section 529(a)(5); or";

and

(3) in subsection (g)(2), by striking "subsection (f)(2); and inserting "subsection (f)(1)(B)."

SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.

Section 547(c)(7) of title 11, United States Code, is amended to read as follows:

"(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;"

SEC. 218. DISPOSABLE INCOME DEFINED.

Section 1225(b)(2)(A) of title 11, United States Code, is amended by inserting "or for a domestic support obligation that first becomes payable after the date on which the petition is filed" after "dependent of the debtor."
“(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;

“(B) provide written notice to such State child support enforcement agency of such claim; and

“(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

“(C) at such time as the debtor is granted a discharge under section 1141, provide written notice to such holder of such claim and to such State child support enforcement agency of—

“(i) the granting of the discharge;

“(ii) the last recent known address of the debtor;

“(iii) the last recent known name and address of the debtor’s employer; and

“(iv) the name of each creditor that holds a claim that—

“(I) is not discharged under paragraph (2), (3), or (14A) of section 523(a); or

“(II) was reaffirmed by the debtor under section 524(c).

“(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of such State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

“(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making that disclosure.”.

“(d) DUTIES OF TRUSTEE UNDER CHAPTER 13.—Section 1302 of title 11, United States Code, is amended—

“(1) in subsection (b)—

“(A) in paragraph (4), by striking “and” at the end;

“(B) in paragraph (5), by striking the period and inserting “; and”;

“(C) by adding at the end the following:

“(d)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

“(A) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

“(ii) include in the notice provided under clause (i) the address, telephone number of such State child support enforcement agency; and

“(C) at such time as the debtor is granted a discharge under section 1328, provide written notice to such holder and to such State child support enforcement agency of—

“(i) the granting of the discharge;

“(ii) the last recent known address of the debtor;

“(iii) the last recent known name and address of the debtor’s employer; and

“(iv) the name of each creditor that holds a claim that—

“(I) is not discharged under paragraph (2), (3), or (14A) of section 523(a); or

“(II) was reaffirmed by the debtor under section 524(c).

“(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

“(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making that disclosure.”.

“SEC. 220. NONDISCHARGEABILITY OF CERTAIN EDUCATIONAL BENEFITS AND LOANS.

“Section 523(a) of title 11, United States Code, is amended by striking paragraph (8) and inserting the following:

“(8) unless excepting such debt from discharge under this title would impose an undue hardship on the debtor and the debtor’s dependents, for—

“(A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

“(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

“(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;

“Subtitle C—Other Consumer Protections

“SEC. 221. AMENDMENTS TO DISCOURAGE ABU-

“SIVE BANKRUPTCY FILINGS.

“Section 110(b) of title 11, United States Code, is amended—

“(1) in subsection (a)(1), by striking “or an employee of an attorney” and inserting “for the debtor or an employee of such attorney under the direct supervision of such attorney”;

“(2) in subsection (b)—

“(A) in paragraph (1), by adding at the end the following: “If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the preparer shall be required to—

“(A) sign the document for filing; and

“(B) print on the document the name and address of that officer, principal, responsible person or partner;”;

“(B) by striking paragraph (2) and inserting the following:

“(2)(A) Before preparing any document for filing or accepting any fees from a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice to debtors concerning bankruptcy petition preparers, which shall be on an official form issued by the Judicial Conference of the United States.

“(B) The notice under subparagraph (A)—

“(I) shall inform the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice;

“(II) may contain a description of examples of legal advice that a bankruptcy petition preparer is not authorized to give, in addition to any advice that the preparer may not give by reason of subsection (e)(2); and

“(iii) shall—

“(I) be signed by the debtor and, under penalty of perjury, by the bankruptcy petition preparer; and

“(II) be filed with any document for filing;”;

“(3) in subsection (c)—

“(A) in paragraph (1) by striking “(2) for purposes” and inserting “(2)(A) Subject to subparagraph (B), for purposes”;

“(B) by striking paragraph (3) and—

“(4) in subsection (d)—

“(A) by striking “(d)(1)” and inserting “(d)”;

“(B) by striking paragraph (2); and

“(C) in subsection (e)—

“(A) by striking paragraph (2); and

“(B) by adding at the end the following: “If a bankruptcy petition preparer is not an individual, the identifying number of the bankruptcy petition preparer shall be the Social Security account number of the officer, principal, responsible person, or partner of the preparer.”;

“(B) by striking paragraph (3) and—

“(4) in subsection (d)—

“(A) by striking “(2)(A)” and inserting “(d)”;

“(B) by striking paragraph (2); and

“(C) in subsection (e)—

“(A) by striking paragraph (2); and

“(B) by adding at the end the following: “If a bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B), the legal advice referred to in subparagraph (A) includes advising the debtor—

“(1) whether—

“(A) to file a petition under this title; or

“(B) commencing a case under chapter 7, 11, 12, or 13 is appropriate;
“(ii) whether the debtor’s debts will be eliminated or discharged in a case under this title; 

(iii) whether the debtor will be able to retain property of the debtor or its estate after commencing a case under this title; 

(iv) concerning— 

(I) the tax consequences of a case brought under this title; or 

(II) the dischargeability of tax claims; 

(v) whether the debtor may or should prepay the debtor’s debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt; 

(vi) concerning how to characterize the nature of the debtor’s interests in property or the debtor’s debts; or 

(vii) concerning bankruptcy procedures and rights.”; 

(6) in subsection (f)— 

(A) by striking “(g)(1)” and inserting “(f)”; and 

(B) by striking paragraph (2); 

(7) in subsection (g)— 

(A) by striking “(e)(1)” and inserting “(g)”; and 

(B) by striking paragraph (2); 

(8) in subsection (h)— 

(A) by redesignating paragraphs (1) through (4) as paragraphs (2) through (5), respectively; 

(B) inserting before paragraph (2), as so redesignated, the following: 

“(1) The Supreme Court may promulgate rules containing provisions of title 28, or the Judicial Conference of the United States may prescribe guidelines, for setting a maximum allowable fee chargeable by a bankruptcy petition preparer. A bankruptcy petition preparer shall notify the debtor of any such allowable fee chargeable by a bankruptcy petition preparer. The debtor, the trustee, or the United States trustee, or the bank- ruptcy administrator, and after the court holds a hearing with respect to that violation or act, the court shall order the bankruptcy petition preparer to pay fees to the debtor— 

(10) in subsection (j)— 

(A) in paragraph (2)— 

(i) in subparagraph (A)(i)(B), by striking “a violation of which subjects a person to criminal penalty”; 

(ii) in subparagraph (B)— 

(I) by striking “or has not paid a penalty” and inserting “or criminal penalty”; and 

(II) by inserting “or failed to disgorge all fees ordered by the court” after “a penalty imposed under this section.”; 

(B) by redesignating paragraph (3) as paragraph (4); and 

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

“(3) The court, as part of its contempt power, may enjoin a bankruptcy petition preparer that has failed to comply with a previous order issued under this section. The injunction under this paragraph may be issued on the motion of the court, the trustee, the United States trustee, or the bankruptcy administrator. 

(11) by adding at the end the following: 

“(k) A bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than $500 for each such failure.”; 

(2) The court shall triple the amount of a fine assessed under paragraph (1) in any case in which the court finds that a bankruptcy petition preparer— 

(A) advised the debtor to exclude assets or income that should have been included on applicable schedules; 

(B) advised the debtor to use a false Social Security account number; 

(C) failed to inform the debtor that the action was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.”. 

SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY. 

(a) In General. Section 522(b) of title 11, United States Code, is amended— 

(1) in subsection (b)— 

(A) in paragraph (2)— 

(i) by striking “(A)” after “bankruptcy petition preparer” and inserting “and (B)” after “bankruptcy petition preparer”; 

(ii) by inserting “and” at the end; 

(2) in subparagraph (B), by striking the period at the end and inserting “; and”; 

(iii) by adding at the end the following: 

“(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 547, or 501(a) of the Internal Revenue Code of 1966.;” 

(3) by striking “(2)(A)” any property and inserting: 

“(3) Property listed in this paragraph is— 

(A) any property; 

(B) by striking paragraph (1) and inserting: 

“(2) Property listed in this paragraph is property that is specifically not taxed under section 408 of the Internal Revenue Code of 1966, and that determination is in effect as of the date of the commencement of the case under section 301, 302, or 303 of this title, those funds shall be presumed to be exempt from the estate.”; 

(4) if the retirement funds in a retirement fund that has not received a favorable determination under section 408 of the Internal Revenue Code of 1966 and the debtor is not materially responsible for that failure. 

(C) A direct transfer of retirement funds from 3 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 547, or 501(a) of the Internal Revenue Code of 1966, under section 401(a)(31) of the Internal Revenue Code of 1966, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of that direct transfer. 

(D) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1969 or that is described in subsection (d) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of that distribution. 

(ii) A distribution described in this clause is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1966;” 

(iii) whether the debtor has or demonstrates that— 

(i) prior determination to the contrary has been made by a court or the Internal Revenue Service; and 

(ii) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1966 and the debtor is not materially responsible for that failure. 

(E) In paragraph (4), as so redesignated, by striking “(C)” and inserting “(D)(i)” and inserting “the United States trustee, the bankruptcy administrator, or the court, on the initiative of the court”; 

(9) in subsection (j)(1), by striking the matter preceding subparagraph (A) and inserting the following: 

“(j)(1) If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on the motion of the debtor, trustee, United States trustee, bankruptcy administrator, and after the court holds a hearing with respect to that violation or act, the court shall order the bankruptcy petition preparer to pay fees to the debtor— 

(10) Tenth, allowed claims for death or personal injuries resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.”. 

SEC. 225. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED STATES CODE. 

Section 522(b)(11) of title 11, United States Code, is amended by inserting after paragraph (9) the following: 

“A distribution described in this clause is an amount that— 

(i) has been distributed from a fund or account that is exempt from taxation under
section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

‘‘(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of that amount.’’; and

(ii) by striking ‘‘or’’ at the end; and

(iii) by adding at the end the following:

‘‘(12) Retirement funds to the extent that those funds are a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986; and

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ‘‘or’’ at the end; and

(2) in paragraph (18), by striking the period and inserting a semicolon; and

(3) by inserting after paragraph (18) the following:

‘‘(19) under subsection (a), of withholding of income from a debtor’s wages and collection of amounts otherwise due to the debtor’s agreement or election under section 3402(c)(1) of the Employee Retirement Income Security Act of 1974 or under section 402(a)(2) of the Code.’’; and

(c) EXCEPTIONS TO DISCHARGE.—Section 522(a) of title 11, United States Code, as amended by section 222(b)(1) of the Internal Revenue Code of 1986, is amended by adding at the end the following:

‘‘(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer, to the extent that the amounts withdrew and collected are used solely for payment of amounts withheld, under the debtor’s agreement or election under section 3402(c)(1) of the Employee Retirement Income Security Act of 1974 or under section 402(a)(2) of the Code;’’.

SEC. 225. PROTECTION OF EDUCATION SAVINGS ACCOUNTS.

(a) EXCLUSIONS.—Section 521 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (4), by striking ‘‘or’’ at the end;

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following:

‘‘(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of filing of the petition, but—

(A) only if the designated beneficiary of such account was a son, daughter, stepson, stepdaughter, grandchild, or step-grandchild of the debtor for the taxable year for which funds were placed in such account; and

(B) only to the extent that such funds—

(i) are not pledged or promised to any entity in connection with any extension of credit; and

(ii) are not excess contributions (as described in section 4975(e) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000; and

(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code);’’.

(b) ADJUSTMENT OF DOLLAR AMOUNTS.—Paragraphs (1) and (2) of section 104(b) of title 11, United States Code, are amended by inserting ‘‘522(d)’’ after ‘‘522(d)’’.

SEC. 226. DEFINITIONS.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

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

‘‘(3) ‘assisted person’ means any person whose debts consist primarily of consumer debts (as defined in section 541(20)), the value of whose nonexempt property is less than $150,000;’’;

(2) by inserting after paragraph (4) the following:

‘‘(4A) ‘bankruptcy assistance’ means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors’ meeting or appearing in a proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title;’’; and

(3) by inserting after paragraph (12) the following:

‘‘(12A) ‘debt relief agency’ means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

(A) any person that is an officer, director, employee, or agent of a person who provides such assistance or of such preparer;

(B) a nonprofit organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; and

(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution, Federal credit union, or State credit union;’’.

(b) CONFORMING AMENDMENT.—Section 105(b) of title 11, United States Code, is amended by inserting ‘‘101(9), after paragraph (8), after paragraphs 8, 10, and 11, respectively’’ in its place.

SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

‘‘S 526. Restrictions on debt relief agencies

(1) A debt relief agency shall not—

(A) perform any activity that causes such agency informed an assisted person or prospective assisted person it would provide in
connection with a case or proceeding under this title;

(2) make any statement, or counsel or advise any assisted person or prospective assisted person to make any statement in a document filed in a case or proceeding under this title, that is untrue and misleading, or that upon the exercise of reasonable care, should have known to be untrue and misleading; or

(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, in writing or by oral communication or by any other form of communication, the material requirements of this title, that such party has reason to believe that any person has, will have, or may have, any disability or need for, or reason to believe that any person has, will have, or may have, any disability or need for, any of the services provided under any law of any State except to the extent that such law is inconsistent with those services, and then only to the extent of the inconsistency;

(i) the services that such agency will provide to the assisted person;

(ii) the benefits and risks that may result if such person becomes a debtor in a case under this title;

(iv) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title;

(b) Any waiver by any assisted person of any protection or right provided under this subsection shall not be enforceable against the debtor, or any Federal or State court or any other person, but may be enforced against a debt relief agency.

(c)(1) Any contract for bankruptcy assistance services between a debt relief agency and an assisted person that does not comply with the material requirements of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

(d) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such person or agency has received, for actual damages, and for reasonable attorneys’ fees and costs if such agency is found, after notice and a hearing, to have—

(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person;

(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title in a case under another chapter of this title because of such agency’s intentional or negligent failure to file any required document included in section 522 or 524, the court may void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

(e) A debt relief agency providing bankruptcy assistance to an assisted person shall provide—

(1) the written notice required under section 342(b)(1) of this title; and

(2) to the extent not covered in the written notice described in paragraph (1), and not later than 3 business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons that—

(A) all information that the assisted person is required to provide a petition and thereafter during a case under this title is required to be complete, accurate, and truthful;

(B) all assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 of this title must be stated in those documents where requested after reasonable inquiry to establish such value;

(C) current monthly income, the amounts specified in sections 707(b)(2), and, in a case under chapter 13, disposable income (determined in accordance with section 707(b)(2)), are required to be stated after reasonable inquiry; and

(D) information that an assisted person provides during their case may be audited by the United States trustee or the debtors’ committee and may be required by section 707(b)(2), as applicable, to be provided after reasonable inquiry.

(f) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subparagraphs (A) or (B), to an assisted person, a clear and conspicuous written notice that—

(1) how to value assets at replacement value, determine current monthly income, the amounts specified in section 707(b)(2), and, in a case under chapter 13, disposable income (determined in accordance with section 707(b)(2)), are required to be stated after reasonable inquiry; and

(2) impose an appropriate civil penalty against such person.

(4) No provision of this section, section 527, or section 528 shall—

(i) annul, alter, affect, or exempt any person subject to bankruptcy proceedings from complying with any law of any State except to the extent that such law is inconsistent with those services, and then only to the extent of the inconsistency;

(ii) be deemed to limit or curtail the authority or ability—

(A) of a State or subdivision or instrumentality thereof, to determine and enforce qualifications for the practice of law under the laws of that State; or

(B) of a Federal court to determine and enforce the qualifications for the practice of law before that court.

(b) CONFORMING AMENDMENT. The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 525, the following:

526. Restrictions on debt relief agencies.

SEC. 525. DISCLOSURES.

(a) DISCLOSURES. Subchapter II of chapter 5 of title 11, United States Code, as amended by section 227, is amended by adding at the end the following:

527. Disclosures.

(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide—

(1) the written notice required under section 342(b)(1) of this title; and

(2) to the extent not covered in the written notice described in paragraph (1), and not later than 3 business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons that—

(A) all information that the assisted person is required to provide a petition and thereafter during a case under this title is required to be complete, accurate, and truthful;

(B) all assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 of this title must be stated in those documents where requested after reasonable inquiry to establish such value;

(C) current monthly income, the amounts specified in sections 707(b)(2), and, in a case under chapter 13, disposable income (determined in accordance with section 707(b)(2)), are required to be stated after reasonable inquiry; and

(D) information that an assisted person provides during their case may be audited by the United States trustee or the debtors’ committee and may be required by section 707(b)(2), as applicable, to be provided after reasonable inquiry.

(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subparagraphs (A) or (B), to an assisted person, a clear and conspicuous written notice that—

(1) how to value assets at replacement value, determine current monthly income, the amounts specified in section 707(b)(2), and, in a case under chapter 13, disposable income (determined in accordance with section 707(b)(2)), are required to be stated after reasonable inquiry; and

(2) impose an appropriate civil penalty against such person.

(4) No provision of this section, section 527, or section 528 shall—

(i) annul, alter, affect, or exempt any person subject to bankruptcy proceedings from complying with any law of any State except to the extent that such law is inconsistent with those services, and then only to the extent of the inconsistency;

(ii) be deemed to limit or curtail the authority or ability—

(A) of a State or subdivision or instrumentality thereof, to determine and enforce qualifications for the practice of law under the laws of that State; or

(B) of a Federal court to determine and enforce the qualifications for the practice of law before that court.

(b) CONFORMING AMENDMENT. The table of sections for chapter 5 of title 11, United States Code, as amended by section 227, is amended by adding at the end the following:

526. Restrictions on debt relief agencies.
and, in a chapter 13 case, how to determine disposable income in accordance with section 707(b)(2) and related calculations;
(2) how to complete the list of creditors, including how to determine what amount is owed and what address for the creditor should be shown; and
(3) how to determine what property is exempt in bankruptcy, the value of exempt property at replacement value as defined in section 506 of this title;

(b) a debt relief agency shall maintain a copy of the notices required under subsection (a) of this section for 2 years after the date on which the notice is given the assisted person; and

(c) A debt relief agency shall

(1) not later than 5 business days after the first occurrence of any bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general public media, seminars or similar mailings, telephonic or electronic messages, or other similar statements), and

(2) provide the assisted person with a copy of the fully executed and completed contract;

(3) clearly and conspicuously disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general public media, seminars or similar mailings, telephonic or electronic messages, or otherwise) that the services or benefits are subject to bankruptcy relief under this title; and

(4) clearly and conspicuously use the following statement in such advertisement: ‘We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code,’ or a substantially similar statement.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by section 227, is amended by inserting after the item relating to section 526, the following: ‘‘§528. Requirements for debt relief agencies.’’

SEC. 230. GAO STUDY.
(a) STUDY.—Not later than 270 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study of the feasibility, effectiveness, and necessity of requiring trustees appointed under title 11, United States Code, or the bankruptcy courts, to provide to the Office of Child Support Enforcement promptly after the commencement of title 11, United States Code, as amended by section 227, or the bankruptcy courts, to provide to the Office of Child Support Enforcement promptly after the commencement of title 11, United States Code, as amended by section 227, or the bankruptcy courts, to provide to the Office of Child Support Enforcement promptly after the commencement of title 11, United States Code, as amended by section 227, the names and social security numbers of such debtors for the purposes of allowing such Office of Child Support Enforcement to determine the results of the study required by subsection (a).

(b) REPORT.—Not later than 300 days after the date of enactment of this Act, the Comptroller General shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report containing the results of the study required by subsection (a).

SEC. 231. PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION.
(a) LIMITATION.—Section 363(b)(1) of title 11, United States Code, is amended by striking the period at the end and inserting the following:

‘‘except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information obtained by the ombudsman under this title, the debtor may sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease.

(b) CLERICAL AMENDMENT.

(1) the first name (or initial) and last name of such individual, whether given at birth or by adoption, or a lawful change of name;

(2) a telephone number dedicated to contacting such individual at such physical or electronic address;

(3) an electronic address (including an e-mail address) of such individual;

(iv) a telephone number dedicated to contacting such individual at such physical or electronic address;

(5) any mailing address (including a post office box); and

(6) a physical or electronic address of a financial institution or agency.

(b) A consumer privacy ombudsman shall

(1) the debtor

(2) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease.

(c) A consumer privacy ombudsman shall not disclose any personally identifiable information obtained by the ombudsman under this title.

(d) The consumer privacy ombudsman may appear and be heard at such hearing and shall provide to the court information to assist the court in its consideration of the facts, circumstances, and conditions of the proposed sale or lease of personally identifiable information under section 363(b)(1)(B) of this title. Such information may include presentation of—

(1) the debtor’s privacy policy;

(2) the potential losses or gains of privacy to consumers if such sale or such lease is approved by the court; and

(3) the potential costs or benefits to consumers if such sale or such lease is approved by the court;

(4) the potential alternatives that would mitigate potential privacy losses or potential costs to consumers.

(e) A consumer privacy ombudsman shall not disclose any personally identifiable information obtained by the ombudsman under this title.

(f) The consumer privacy ombudsman may appear and be heard at such hearing and shall provide to the court information to assist the court in its consideration of the facts, circumstances, and conditions of the proposed sale or lease of personally identifiable information under section 363(b)(1)(B) of this title. Such information may include presentation of—

(i) the debtor’s privacy policy;

(ii) the potential losses or gains of privacy to consumers if such sale or such lease is approved by the court; and

(iii) the potential costs or benefits to consumers if such sale or such lease is approved by the court;

(iv) the potential alternatives that would mitigate potential privacy losses or potential costs to consumers.

(g) A consumer privacy ombudsman shall not disclose any personally identifiable information obtained by the ombudsman under this title.

(h) The consumer privacy ombudsman may appear and be heard at such hearing and shall provide to the court information to assist the court in its consideration of the facts, circumstances, and conditions of the proposed sale or lease of personally identifiable information under section 363(b)(1)(B) of this title. Such information may include presentation of—

(i) the debtor’s privacy policy;

(ii) the potential losses or gains of privacy to consumers if such sale or such lease is approved by the court; and

(iii) the potential costs or benefits to consumers if such sale or such lease is approved by the court;

(iv) the potential alternatives that would mitigate potential privacy losses or potential costs to consumers.

(i) A consumer privacy ombudsman shall not disclose any personally identifiable information obtained by the ombudsman under this title.

(j) The consumer privacy ombudsman may appear and be heard at such hearing and shall provide to the court information to assist the court in its consideration of the facts, circumstances, and conditions of the proposed sale or lease of personally identifiable information under section 363(b)(1)(B) of this title. Such information may include presentation of—

(i) the debtor’s privacy policy;

(ii) the potential losses or gains of privacy to consumers if such sale or such lease is approved by the court; and

(iii) the potential costs or benefits to consumers if such sale or such lease is approved by the court;

(iv) the potential alternatives that would mitigate potential privacy losses or potential costs to consumers.

(k) A consumer privacy ombudsman shall not disclose any personally identifiable information obtained by the ombudsman under this title.

SEC. 232. CONSUMER PRIVACY OMBUDSMAN.
(a) CONSUMER PRIVACY OMBUDSMAN.—Title 11, United States Code, as amended by section 227, is amended by inserting after section 331 the following:

‘‘§332. Consumer privacy ombudsman.

‘‘(a) If a hearing is required under section 363(b)(1)(B) of this title, the court shall order the United States trustee to conduct, not later than 5 days before the commencement of the hearing, a disinterested person (other than the United States trustee) to serve as the consumer privacy ombudsman in such case and shall require that notice of such hearing be timely given to such ombudsman.

‘‘(b) The consumer privacy ombudsman may appear and be heard at such hearing and shall provide to the court information to assist the court in its consideration of the facts, circumstances, and conditions of the proposed sale or lease of personally identifiable information under section 363(b)(1)(B) of this title. Such information may include presentation of—

(1) the debtor’s privacy policy;

(2) the potential losses or gains of privacy to consumers if such sale or such lease is approved by the court;

(3) the potential costs or benefits to consumers if such sale or such lease is approved by the court;

(4) the potential alternatives that would mitigate potential privacy losses or potential costs to consumers.

(c) A consumer privacy ombudsman shall not disclose any personally identifiable information obtained by the ombudsman under this title.

SEC. 233. PROHIBITION ON DISCLOSURE OF THE NAME OF MINOR CHILDREN.
(a) PROHIBITION.—Title 11, United States Code, as amended by section 106, is amended by inserting after section 111 the following:

‘‘§112. Prohibition on disclosure of name of minor children.

‘‘The debtor may be required to provide information regarding a minor child involved in matters under this title but may not be required to disclose in the public records in the case the name of such minor child. The debtor may be required to disclose the name of such minor child in a nonpublic record that is maintained by the court and made available by the court for examination by the United States trustee, the trustee, and the debtor (if any) or the bankruptcy court as provided by section 586(c) of title 28, in the case. The court, the United States trustee, the trustee, and such auditor shall not disclose the name of such minor child maintained in such nonpublic record.’’

(b) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, as amended by section 106, is amended by inserting after the item relating to section 111 the following:
“112. Prohibition on disclosure of name of minor children.”.

(c) CONFORMING AMENDMENT.—Section 107(a) of title 11, United States Code, is amended by inserting “and subject to section 112 of this title” after “section”.

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

SEC. 301. REINFORCEMENT OF THE FRESH START.

Section 522(a)(17) of title 11, United States Code, is amended—

(1) by striking “by a court” and inserting “on a party by any court”;

(2) by striking “section 191(b)” or “(f)” and inserting “subsection (b) or (f)(2) of section 191”, and

(3) by inserting “the same non-Federal law” after “title 28” each place it appears.

SEC. 302. DISCOURAGING BAD FAITH REPEAT FILINGS.

Section 362(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking “and” at the end;

(2) in paragraph (2), by striking the period at the end and inserting a semicolon;

(3) by adding at the end the following:

“(B) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(C) for purposes of subparagraph (B), a case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case filed under a chapter other than chapter 7 after dismissal under section 362(b),—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the later case is filed in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively not filed in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) if it is to all creditors if—

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor’s attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any filed plan confirmed under the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

(d) in a single or joint case is filed by or against a debtor who is an individual under this title, or 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case filed under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(B) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect.

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the later case is filed in good faith as to the creditors to be stayed; and

(C) a stay imposed under subparagraph (B) shall be effective on the date of entry of the order allowing the stay to go into effect, and

(D) for purposes of subparagraph (B), a case is presumptively not filed in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors if—

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor’s attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any filed plan confirmed under the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

(A) if the debtor is ineligible under section 109(g) to be a debtor in a bankruptcy case; or

(B) if the bankruptcy case was filed in violation of a bankruptcy court order in a prior bankruptcy case prohibiting the debtor from being a debtor in another bankruptcy case;”.

SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.

Title 11, United States Code, is amended—

(1) in section 522(a), as so designated by section 106—

(A) in paragraph (4), by striking “, and” at the end and inserting “.”; and

(B) in paragraph (5), by striking the period at the end and inserting “.”; and

(2) by adding at the end the following:

“(C) by adding at the end the following:

“(i) a court, except that a debtor in a subsequent case may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing; and

“(ii) under subsection (a), of any act to enforce any lien against or security interest in real property following the entry of an order under section 362(d)(4) as to that property in any prior bankruptcy case for a period of 2 years after entry of such an order, except that the debtor, in a subsequent case, may enforce the order based upon changed circumstances or for other good cause shown, after notice and a hearing;”.

SEC. 305. CURBING ABUSIVE FILINGS.

(a) In General.—Section 362(d) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking “or” and inserting “and”;

(2) in paragraph (3), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(d) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real estate, if the court finds that the creditor has engaged in bad faith or for purposes of (II) based upon changed circumstances or for other good cause shown, after notice and a hearing;”.

(b) Automatic Stay.—Section 362(b) of title 11, United States Code, as amended by section 224, is amended by inserting after paragraph (16),

“(20) under subsection (a), of any act to enforce any lien against or security interest in real property following the entry of an order under section 362(d)(4) as to that property in any prior bankruptcy case for a period of 2 years after entry of such an order, except that the debtor, in a subsequent case, may enforce the order based upon changed circumstances or for other good cause shown, after notice and a hearing;”.

SEC. 306. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.
Section 305. Relief from the Automatic Stay When the Debtor Does Not Comply with Intended Surrender of Consumer Debt Collateral.

Title 11, United States Code, is amended—

(1) in section 362, as amended by section 106—

(A) in subsection (c), by striking “(e), and (f)” and inserting “(e), (f), and (h)”; and

(B) by redesignating subsection (h) as subsection (i) and inserting after subsection (j) as added by section 106; and

(C) by inserting after subsection (g) the following:

“(h)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor secur- ing in whole or in part a claim, or subject to an unexpired lease, and such personal prop- erty is of consequence to the estate if the debtor fails within the applicable time set by section 521(a)(2) of this title—

(A) to file timely any statement of inten- tion required under section 521(b); or

(B) to take timely the action specified in that statement of intention, as it may be amended before expiration of the period for taking action, unless the statement of intention specifies reaffirmation and the creditor refuses to reaffirm on the original contract terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such property is of con- secuential value or benefit to the estate, and orders appropriate adequate protection of the creditor’s interest, and orders the debtor to deliver any collateral in the debtor’s pos- session to the trustee. If the court does not so determine, the stay provided by sub- section (a) shall terminate upon the conclu- sion of the proceeding on the motion.”; and

(2) in section 362, as amended by sections 106 and 252—

(A) in subsection (a)(2) by striking “consumer”; and

(B) in subsection (a)(3)(B)—

(i) by striking “forty-five days after the filing of a notice of intent under this sec- tion” and inserting “30 days after the first date set for the meeting of creditors under section 341(a) of this title”; and

(ii) by striking “forty-five day” and insert- ing “30-day”;

(C) in subsection (a)(2)(C) by inserting “; except as provided in section 362(h) of this title” before the semicolon; and

(D) by adding at the end the following:

“(d) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h) of this title, with respect to prop- erty that is a residential tenancy in a multi-family housing complex, the leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549 of this title, nothing in this title shall prevent or limit the oper- ation of a provision in the underlying lease or agreement under which the debtor has title to, or possession of, the property, providing that the debtor is not in default under such lease or agreement by reason of the occurrence, pend- ency, or existence of a proceeding under this title; and

Nothing in this subsection shall be deemed to justify placing the debtor in default under such lease or agreement for such an occurrence.

‘‘(2) by adding at the end the following:

“(o) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in—

(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(2) a personal item that is of consequence to the debtor’s use as a consumer; or

(3) a burial plot for the debtor or a de- pendent of the debtor;

shall be reduced to the extent that such property is of consequen- tial value attributable to any portion of any property that the debtor disposed of in the 180-day period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor to which the debtor could not exempt, or that portion of the debt that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.”.

Section 308. Protecting Secured Creditors in Chapter 13 Cases.

(a) Staying Action Extensions From Chapter 13.—Section 348 of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking “and” at the end;

(2) in subparagraph (B)—

(A) by striking “in the converted case, with allowed secured claims” and inserting “only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed se- cured claims in cases under chapters 11 and 12”;

(B) by striking the period and inserting “; and”;

(3) by adding at the end the following:

“(C) With respect to cases converted from chapter 13—

(i) the claim of any creditor holding security as of the date of the petition shall con- tinue to be secured by the security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determina- tion of the amount of an allowed se- cured claim made for the purposes of the case under chapter 13; and

(ii) unless a prepetition default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.”;

(b) Giving Debtors the Ability To Keep Leased Personal Property by Assump- tion.—Section 365 of title 11, United States Code, is amended, by adding at the end the following:

“(p)(1) If a lease of personal property is re- jected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically termi- nated.

“(2)(A) If the debtor in a case under chap- ter 7 is an individual, the debtor may notify

“‘If the effect of the domiciliary requirement under subparagraph (A) is to render the debt- or ineligible for any exemption, the debtor may elect to exempt property that is specified

by subsection (d) as being the personal property of the debtor, or the personal property of the debtor or a dependent of the debtor uses as a residence, or a personal item that is of consequence to the consumer’s use, or a burial plot for the debtor or a dependent of the debtor; and

“(B) in subsection (a)(3)(B), by deleting the period and inserting “; and”;

“‘(2) by adding at the end the following:

“(o) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in—

(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(2) a personal item that is of consequence to the debtor’s use as a consumer; or

(3) a burial plot for the debtor or a de- pendent of the debtor;
the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the trustee that it is willing to have the lease assumed and that the debtor may condition such assumption on cure of any outstanding default on terms set by the court.

"(B) Not later than 30 days after notice is provided under subparagraph (A), the debtor or the lessor may notify the trustee in writing, or by subsequent action, that the lessor desires to assume the lease. Upon being so notified, the lessee or creditor may condition such assumption on the payment, including the amount and date of payment, of any unpaid claim allowed under section 503(b).

"(C) The stay under section 362 and the injunction provided in clause (ii) of section 103 of the Truth in Lending Act; and

"(D) A judgment or order for relief, reducing the payments under this subsection pending confirmation of a plan, to the extent of the stay under section 362 and any stay under section 363, is automatically terminated with respect to the property subject to the lease.

"(E) The stay under section 362 and the injunction provided in clause (ii) of section 103 of the Truth in Lending Act; and

"(F) A judgment or order for relief, reducing the payments under this subsection pending confirmation of a plan, to the extent of the stay under section 362 and any stay under section 363, is automatically terminated with respect to the property subject to the lease.

"(G) The stay under section 362 and the injunction provided in clause (ii) of section 103 of the Truth in Lending Act; and

"(H) A judgment or order for relief, reducing the payments under this subsection pending confirmation of a plan, to the extent of the stay under section 362 and any stay under section 363, is automatically terminated with respect to the property subject to the lease.

"(I) The terms 'consumer', 'credit', and 'open end credit plan' have the same meanings as in section 103 of the Truth in Lending Act; and

"(J) The debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment whose possession is sought by the lessor, subsection (b)(2) shall not apply, unless ordered to apply by the court under paragraph (3).

"(K) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the lessor, the court shall hold a hearing within 10 days of such service and determine if the certification filed by the lessor under paragraph (1) or (2) is true.

"(L) The court upholds the objection of the lessor filed under subparagraph (A) or (B) the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment whose possession is sought by the lessor, subsection (b)(2) shall not apply, unless ordered to apply by the court under paragraph (3).

"(M) If a debtor, in accordance with paragraph (5), indicates on the petition that a judgment of possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—

"(N) A judgment of possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

"(O) The clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court’s order upholding the lessor’s objection.

"(P) If, not later than 30 days after notice is provided under section 122(b) or (2) the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment whose possession is sought by the lessor, subsection (b)(2) shall not apply, unless ordered to apply by the court under paragraph (3).
SEC. 315. GIVING CREDITORS FAIR NOTICE IN CHAPTERS 7 AND 13 CASES.

(a) NOTICE.—Section 362(c) of title 11, United States Code, as amended by section 102, is amended—

(1) in subsection (c)—

(A) by striking "(1)" after "(c)";

(B) by striking "or" before the failure of such notice to contain such information shall not invalidate the legal effect of such notice;" and

(C) by adding at the end the following:

"(2)(A) If, within the 90 days before the commencement of a voluntary case, a creditor supplies the debtor in at least 2 communications with the creditor's account number and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent to the debtor or to such creditor shall be sent to such address and shall include such account number; and

(B) if a creditor would be in violation of applicable nonbankruptcy law by sending any such communication within such 90-day period and if such creditor supplies the debtor in the last 2 communications with the creditor's account number and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent to the debtor or to such creditor shall be sent to such address and shall include such account number;"

(b) In any notice in such case required to be provided to such creditor under this title and establishing reasonable procedures so that such notices receivable by the debtor or the court later than 5 days after the court and the debtor receive such creditor's notice of address, shall be provided to such address.

"(1) An entity may file with any bankruptcy court a notice of address to be used by all the bankruptcy courts or by particular bankruptcy courts, as so specified by such entity at the time such notice is filed, to provide notice to such entity in all cases under chapters 7 and 13 pending in the courts with respect to which such notice is filed, in which such entity is specified in a notice filed and served in accordance with subsection (e).

(2) In any case filed under chapter 7 or 13, any notice required to be provided by a court with respect to which a notice is filed under paragraph (1) to such creditor later than 30 days after the filing of such notice under paragraph (1) shall be provided to such address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e)."

(c) A notice filed under paragraph (1) may be withdrawn by such entity.

"(y)(1) Notice provided to a creditor by the court or the debtor other than in accordance with this section (except subsection (a)(14)) shall not be effective notice until such notice is brought to the attention of such creditor. If such creditor designates a person or an organizational subdivision of such creditor to be responsible for receiving notices under this title and establishes reasonable procedures so that such notices receivable by such creditor are to be delivered to such person or such subdivision, then a notice provided to such creditor other than in accordance with this section (excluding this subsection) shall not be considered to have been received by such creditor if such notice is not delivered to the person or such subdivision.

(d) A monetary penalty may not be imposed on a creditor for a violation of a stay in effect under section 362(a) of this title.
(including a monetary penalty imposed under section 362(c) of this title) or for failure to comply with section 524 or 546 unless the conduct is the basis of such violation or such scheme occurs after such creditor receives notice effective under section 342 of this title.

(b) In a case under chapter 7, 11, or 13, the court shall dismiss the case unless the debtor demonstrates that failure to comply with any request to provide such information or document described in paragraph (1) is an individual shall file with the court—

1. A statement, under penalty of perjury, of the income and expenditures of the debtor during the tax year of the debtor most recently concluded before such statement is filed under this paragraph, that shows how income, expenditures, and monthly income are calculated.

2. A statement referred to in subsection (f)(4) shall disclose—

(A) the amount and sources of the income of the debtor;  

(B) the identity of any person responsible for the support of any dependent of the debtor; 

(C) the identity of any person who contributed, and the amount contributed, to the household in which the debtor resides. 

2. The tax returns, amendments, and statement of current income and expenditures described in subsections (e)(2)(A) and (f) shall be available to the United States trustee (or the bankruptcy administrator, if any), the trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (h).

(b)(1) Not later than 180 days after the date of the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the Director of the Administrative Office of the United States Courts shall provide—

1. The best interests of the creditors and the estate would be served by administration of the case.

SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.

Section 1324 of title 11, United States Code, is amended—

(1) by striking “After” and inserting the following:

(“A) Except as provided in subsection (b) and after”;

(2) by adding at the end the following:

(b) The hearing on confirmation of the plan shall be held not earlier than 20 days after the date of the meeting of creditors under section 341(a), unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an earlier date and there is no objection to such earlier date.”.

SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

Title 11, United States Code, is amended—

(1) by adding section 1324(d) as follows:

(d)(1) If the current monthly income of the debtor and the debtor’s spouse combined, when multiplied by 12, is not less than—

(A) the case of a household of 1 person, the median family income of the applicable State for 1 earner;
“(B) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

“(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals plus $252 per month for each individual in excess of 4, the plan may not provide for payments over a period that is longer than 5 years.

“(2) If the current monthly income of the debtor and the debtor’s spouse combined, when multiplied by 12, is less than—

“(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 person last;

“(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

“(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals plus $252 per month for each individual in excess of 4, the plan may not provide for payments over a period that is longer than 5 years.

“(2) For purposes of this subsection, the ‘applicable commitment period’—

“(A) subject to subparagraph (B), shall be—

“(i) 5 years; or

“(ii) not less than 5 years, if the current monthly income of the debtor and the debtor’s spouse combined, when multiplied by 12, is not less than—

“(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 person;

“(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

“(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals plus $252 per month for each individual in excess of 4; and

“(B) may be less than 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period; and

“(4) alter the amount of the distribution to be made to a creditor whose claim is allowed under section 1322(b)(2)(B) of this title; and

“(B) that 60-day period is extended—

“(i) by agreement of all parties in interest; or

“(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.”;

SECTION 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.

(a) PROPERTY OF THE ESTATE.—

(1) IN GENERAL.—Subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

“§1115. Property of the estate

“(a) In a case concerning a debtor who is an individual, property of the estate includes, in addition to the property specified in section 541—

“(1) all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and

“(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first.

“(b) Except as provided in section 1104 or a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

“1115. Property of the estate.”

(c) CONTENTS OF PLAN.—Section 1123(a) of title 11, United States Code, is amended—

(1) in paragraph (6), by striking “and” at the end; and

(2) in paragraph (7), by striking the period and inserting “; and”;

and

(3) by adding at the end the following:

“(8) In a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of the earnings from services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan;

“(9) CONFIRMATION OF PLAN.—

(1) REQUIREMENTS RELATING TO VALUE OF PROPERTY.—Section 1129(a) of title 11, United States Code, as amended by section 213, is amended—

(1) in paragraph (5), by inserting—

“(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

“(ii) modification of the plan under section 1127 of this title is not practicable; and

“(B) the value of the property to be distributed under the plan on account of such claim is not less than the amount of the distribution to the creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

“(1) Sections 1121 through 1128 of this title and the requirements of section 1129 of this title shall apply to any modification under subsection (a).

“(2) The plan, as modified, shall become the plan only after there has been disclosure under section 1125 as the court may direct, notice and a hearing, and such modification is approved.”;

SECTION 322. LIMITATIONS ON DOMESTIC EXEMPTIONS.

(a) EXEMPTIONS.—Section 522 of title 11, United States Code, as amended by sections 244 and 308, is amended by adding at the end the following:

“(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548 of this title, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the filing of the petition which exceeds in the aggregate $125,000 in value in—

(2) REQUIREMENT RELATING TO INTERESTS IN PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11, United States Code, is amended by inserting before the period at the end the following: “except that in a case in which the debtor is an individual, the debtor may re-
“(A) real or personal property that the debtor or a dependent of the debtor uses as a residence; 

“(B) a cooperative that owns property that the debtor or a dependent of the debtor claims as a homestead. 

“(2)(A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of that farmer. 

“(B) A family farmer is any farmer whose family holds certain property interest in the farmer’s previous and current residences located in the same State. 

“(q)(1) A result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate $125,000 if— 

“(i) the court determines, after notice and a hearing, that the family farmer has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse; 

“(ii) the court determines, after notice and a hearing, that the family farmer owes a debt arising from— 

“(I) any violation of the Federal securities laws (as defined in section 3a(k) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws; 

“(II) an act of fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933; 

“(iii) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years; 

“(2) A paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor. 

“(b) ADJUSTMENT OF DOLLAR AMOUNTS— 

“Paragraphs (1) and (2) of section 104(b) of title 11, United States Code, as amended by section 224, are amended by inserting ‘$522(p),’ after ‘$522(n),’ before (1).” 

“SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUIONS AND OTHER PROPERTY FROM THE EXEMPTION. 

Section 541(b) of title 11, United States Code, as amended by section 225, is amended by adding at the end the following: 

“(7)(A) withheld by an employer from the wages of employees for payment as contributions to— 

“(I) an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under title I of the Internal Revenue Code of 1986, a deferred compensation plan under section 457 of the Internal Revenue Code of 1986, or a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986, if the debtor or a dependent of the debtor claims as a residence; 

“(II) a health insurance plan regulated by State law whether or not subject to such title; or 

“(III) any health insurance plan subject to title I of the Employer Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under title I of the Internal Revenue Code of 1986, a deferred compensation plan under section 457 of the Internal Revenue Code of 1986, or a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986, if the debtor or a dependent of the debtor claims as a residence; 

“(B) received by the employer from employees for payment as contributions to— 

“(i) an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986, a deferred compensation plan under section 457 of the Internal Revenue Code of 1986, or a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986, if the debtor or a dependent of the debtor claims as a residence; 

“(ii) a health insurance plan regulated by State law whether or not subject to such title; or 

“(C) the fund established under section 1931 of that title”. 

“SEC. 326. SHARING OF COMPENSATION. 

Section 506(a) of title 11, United States Code, is amended by adding at the end the following: 

“(c) This section shall not apply with respect to sharing, or agreeing to share, compensation with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral programs and with rules of professional responsibility applicable to attorney acceptance of referrals.”. 

“SEC. 327. FAIR VALUATION OF COLLATERAL. 

Section 506(a) of title 11, United States Code, is amended by— 

“(1) inserting ‘(‘) after ‘(a);’ and 

“(2) by adding at the end the following: 

“(B) the debtor or a dependent of the debtor claims as a residence; 

“(C) received by the employer from employees for payment as contributions to— 

“(I) an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986, a deferred compensation plan under section 457 of the Internal Revenue Code of 1986, or a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986, if the debtor or a dependent of the debtor claims as a residence; 

“(II) a health insurance plan regulated by State law whether or not subject to such title; or 

“(D) to the beginning of such 1215-day period) into 

“(E) the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.”. 

“SEC. 328. DEFAULTS BASED ON NONMONETARY OBLIGATIONS. 

(a) EXECUTORY CONTRACTS AND UNEXPRIRED LEASES— 

Section 365 of title 11, United States Code, is amended by— 

“(1) in subsection (b)— 

“(A) in paragraph (1)(A), by striking the semicolon at the end; 

“(B) in paragraph (2)(D), by striking the end and inserting a period; and 

“(2) in subsection (c)— 

“(A) in paragraph (2), by inserting ‘or’ at the end; 

“(B) in paragraph (3), by striking ‘; and’ at the end and inserting a period; and 

“(C) by striking paragraph (4); 

“(3) in subsection (d)— 

“(A) by striking paragraphs (5) through (9); and 

“(B) by redesignating paragraph (10) as paragraph (5) and 

“(4) in subsection (f)(1) by inserting ‘; except that’ and all that follows through the end of the paragraph and inserting a period.”. 

“SEC. 329. DISQUALIFICATION OF CO-COUNSEL. 

Section 1124 of title 11, United States Code, is amended— 

“(1) in subparagraph (A), by inserting ‘or of a chapter 7 case’ at the end and such default shall be compensated in accordance with the provisions of this paragraph;” and 

“(2) in paragraph (1), by striking ‘penalty rate or penalty provision’ and inserting ‘penalty rate or penalty provision’.”. 

“(3) in paragraph (2), by striking ‘; and’ at the end and inserting a period; and 

“(B) by inserting ‘or’ at the end; 

“(C) by inserting paragraph (4); and 

“(D) by striking paragraph (5).”.
Section 503(b)(1)(A) of title 11, United States Code, is amended by adding at the end the following:

"(1) in subsection (a) by striking "As" and inserting "Subject to subsection (d), as";

(2) in subsection (b) by striking "At" and inserting "Subject to subsection (d), at"; and

(3) by adding at the end following:

"(i) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge finds that there is no reasonable cause to believe that—

"(1) section 522(q)(1) may be applicable to the debtor; and

"(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

"(d) CHAPTER 13.—Section 1328 of title 11, United States Code, as amended by section 106, is amended—

(1) in subsection (a) by striking "As" and inserting "Subject to subsection (d), as";

(2) in subsection (b) by striking "At" and inserting "Subject to subsection (d), at"; and

(3) by adding at the end following:

"(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge finds that there is no reasonable cause to believe that—

"(1) section 522(q)(1) may be applicable to the debtor; and

"(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

"(i) the date that is 120 days after the date of the order for relief; or

"(ii) the date of the entry of an order confirming a plan.

"(b) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days (the motion of the trustee or lessor for cause.

"(c) If the court grants an extension under clause (i), the court may grant a subsequent extension under such clause (i) if the court is satisfied that there is cause for the extension.

"(d) Exception.—Section 365(b)(1) of title 11, United States Code, is amended by striking "the first place it appears" and inserting "subject to subsections (b) and "

The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge finds that there is no reasonable cause to believe that—

"(1) section 522(q)(1) may be applicable to the debtor; and

"(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

"(d) CHAPTER 13.—Section 1328 of title 11, United States Code, as amended by section 106, is amended—

(1) in subsection (a) by striking "As" and inserting "Subject to subsection (d), as";

(2) in subsection (b) by striking "At" and inserting "Subject to subsection (d), at"; and

(3) by adding at the end following:

"(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge finds that there is no reasonable cause to believe that—

"(1) section 522(q)(1) may be applicable to the debtor; and

"(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

"(d) CHAPTER 13.—Section 1328 of title 11, United States Code, as amended by section 106, is amended—

(1) in subsection (a) by striking "As" and inserting "Subject to subsection (d), as";

(2) in subsection (b) by striking "At" and inserting "Subject to subsection (d), at"; and

(3) by adding at the end following:

"(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge finds that there is no reasonable cause to believe that—

"(1) section 522(q)(1) may be applicable to the debtor; and

"(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

"(d) CHAPTER 13.—Section 1328 of title 11, United States Code, as amended by section 106, is amended—

(1) in subsection (a) by striking "As" and inserting "Subject to subsection (d), as";

(2) in subsection (b) by striking "At" and inserting "Subject to subsection (d), at"; and

(3) by adding at the end following:

"(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge finds that there is no reasonable cause to believe that—

"(1) section 522(q)(1) may be applicable to the debtor; and

"(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

"(d) CHAPTER 13.—Section 1328 of title 11, United States Code, as amended by section 106, is amended—

(1) in subsection (a) by striking "As" and inserting "Subject to subsection (d), as";

(2) in subsection (b) by striking "At" and inserting "Subject to subsection (d), at"; and

(3) by adding at the end following:

"(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge finds that there is no reasonable cause to believe that—

"(1) section 522(q)(1) may be applicable to the debtor; and

"(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

"(d) CHAPTER 13.—Section 1328 of title 11, United States Code, as amended by section 106, is amended—

(1) in subsection (a) by striking "As" and inserting "Subject to subsection (d), as";

(2) in subsection (b) by striking "At" and inserting "Subject to subsection (d), at"; and

(3) by adding at the end following:

"(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge finds that there is no reasonable cause to believe that—

"(1) section 522(q)(1) may be applicable to the debtor; and

"(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

"(d) CHAPTER 13.—Section 1328 of title 11, United States Code, as amended by section 106, is amended—

(1) in subsection (a) by striking "As" and inserting "Subject to subsection (d), as";

(2) in subsection (b) by striking "At" and inserting "Subject to subsection (d), at"; and

(3) by adding at the end following:

"(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge finds that there is no reasonable cause to believe that—

"(1) section 522(q)(1) may be applicable to the debtor; and

"(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

"(d) CHAPTER 13.—Section 1328 of title 11, United States Code, as amended by section 106, is amended—

(1) in subsection (a) by striking "As" and inserting "Subject to subsection (d), as";

(2) in subsection (b) by striking "At" and inserting "Subject to subsection (d), at"; and

(3) by adding at the end following:

"(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge finds that there is no reasonable cause to believe that—

"(1) section 522(q)(1) may be applicable to the debtor; and

"(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

"(d) CHAPTER 13.—Section 1328 of title 11, United States Code, as amended by section 106, is amended—

(1) in subsection (a) by striking "As" and inserting "Subject to subsection (d), as";

(2) in subsection (b) by striking "At" and inserting "Subject to subsection (d), at"; and

(3) by adding at the end following:

"(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge finds that there is no reasonable cause to believe that—

"(1) section 522(q)(1) may be applicable to the debtor; and

"(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

"(d) CHAPTER 13.—Section 1328 of title 11, United States Code, as amended by section 106, is amended—

(1) in subsection (a) by striking "As" and inserting "Subject to subsection (d), as";

(2) in subsection (b) by striking "At" and inserting "Subject to subsection (d), at"; and

(3) by adding at the end following:
“(2) The prohibition under paragraph (1) shall be applied in a manner consistent with any State statute applicable to such lien that is similar to section 7-209 of the Uniform Commercial Code, as in effect on the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, or any successor to such section 7-209.”.

SEC. 407. AMENDMENTS TO SECTION 330(a) OF TITLE 11, UNITED STATES CODE.

Section 330(a) of title 11, United States Code, is amended by adding at the end the following:

“(1) by striking paragraph (2) and inserting

‘‘(2) the district court or the bankruptcy court may waive the filing fee in a case under chapter 11 for an individual if the debtor demonstrates that the debtor is unable to pay the fee prescribed by subsection (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.’’.

“(2) The district court or the bankruptcy court may waive the filing fee in a case under chapter 11 for an individual if the debtor demonstrates that the debtor is unable to pay the fee prescribed by subsection (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

“(2) by adding at the end the following:

‘‘(c)(1)(A) For purposes of this subsection, the term ‘assurance of payment’ means—

(i) a cash deposit;

(ii) a letter of credit;

(iii) a certificate of deposit;

(iv) a surety bond;

(v) a prepayment of utility consumption; or

(vi) another form of security that is mutually agreed upon between the utility and the debtor.”

“(B) For purposes of this subsection an administrative expense priority shall not constitute an assurance of payment.”

“(C) Subject to paragraphs (2) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a)(2) may alter, refuse, or discontinue utility service, in accordance with the 30-day period beginning on the date of filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.”

“(3)(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment prescribed by paragraph (2).

“(B) In making a determination under this paragraph whether an assurance of payment is necessary, the court may consider—

‘‘(i) the absence of security before the date of filing of the petition;’’

‘‘(ii) the payment by the debtor of charges for utility service in a timely manner before the date of filing of the petition; or

‘‘(iii) the availability of an administrative expense priority.”

“(D) Notwithstanding any other provision of law, with respect to a case subject to this subsection, a utility may recover or set off against a security deposit provided to the utility by the debtor before the date of filing of the petition notice or order of the court.”

SEC. 418. BANKRUPTCY FEES.

Section 1930 of title 28, United States Code, is amended—

“(1) in subsection (a), by striking “Notwithstanding section 1913 of this title, the” and inserting “The”;

“(2) by adding at the end the following:

‘‘(f) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the applicable official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the term ‘income’ means the income required by subsection (a), any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 11.

‘‘(2) The district court or the bankruptcy court may waive for such debtors other fees prescribed under subsections (b) and (c).’’

‘‘(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.”

SEC. 419. MORE COMPREHENSIVE INFORMATION REQUIRED IN CLOSING ASSETS OF THE ESTATE.

“(a) IN GENERAL.—

“(1) DISCLOSURE.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall by rule, after taking into consideration the views of the Director of the Executive Office for United States Trustees,
shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms directing debtors under chapter 11 of title 11, United States Code, to disclose information determined under the Subpara-

graph (2) by filing and serving periodic financial and other reports designed to provide such information.

(b) PURPOSE.—The purpose of the rules and reporting requirements prescribed in this section is to assist parties in interest taking steps to ensure that the debtor’s interest in any entity referred to in subsection (a)(2) is used for the payment of allowed claims against debtor.


SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.

Section 1125 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by inserting before the semicolon "(including any affiliate of such person that is a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental there-

fore) that has aggregate contingent, liquidated, unspecified, and unliquidated secured or unsecured claims against the debtor in an amount not more than $2,000,000 (excluding debts owed to 1 or more affiliates or insiders that are owed to 1 or more affiliates or insiders);"

(b) CONFORMING AMENDMENT.—Section 1122(a)(4) of title 11, United States Code, is amended by inserting "debtor" after "small business".

(c) ADJUSTMENT OF DOLLAR AMOUNTS.—Sec-

tion 101(b)(1) of title 11, United States Code, as amended by section 226, is amended by in-

serting "$101(51D)", after "$101(3)", each place it appears.

SEC. 432. DEFINITIONS.

SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.

Within a reasonable period of time after the date of enactment of this Act, the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption standard form disclosure statements and plans of reorganiza-

tion for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between—

(1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and

(2) economic and simplicity for small business.

SEC. 434. UNIFORM NATIONAL REPORTING REQUIREMENTS.

(a) REPORTING REQUIRED.—(1) In any case under chapter 11 of title 11, United States Code, as amended by section 321, is amended by inserting at the end the following:

(b) CONFORMING AMENDMENT.

SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.

(a) PROPOSAL OF RULES AND FORMS.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to file periodic financial and other reports containing information, including information referred to in subsection (a) that the debtor's interest in any entity referred to in subsection (a)(2) is used for the payment of allowed claims against debtor.

(b) PURPOSE.—The rules and forms pro-

posed under subsection (a) shall be designed to achieve a practical balance among—

(1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information;

(2) the small business debtor's interest that required reports be easy and inexpensive to complete; and

(3) the interest of all parties that the required reports help the small business debtor to understand the small business debtor's fi-

nancial condition and plan the small busi-

ness debtor's future.

SEC. 436. DUTIES IN SMALL BUSINESS CASES.

(a) DUTIES IN CHAPTER 11 CASES.—Sub-

sections of chapter 11 of title 11, United States Code, as amended by section 321, is amended by adding at the end the following:

(b) E FFECTIVE DATE.

SEC. 437. SMALL BUSINESS CASES.

This Act shall be applied to any case in which a fact is alleged to have occurred after the date of enactment of this Act, the Judicial Conference of the United States Advisory Committee on Bankruptcy Rules of the United States Code, the Judicial Conference of the United States, and the American Bankruptcy Institute to achieve a practical balance among—

(1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information;

(2) the small business debtor's interest that required reports be easy and inexpensive to complete; and

(3) the interest of all parties that the required reports help the small business debtor to understand the small business debtor's fi-

nancial condition and plan the small busi-

ness debtor's future.
SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.

Section 1121 of title 11, United States Code, is amended by striking subsection (e) and inserting the following:

"(a) In a case under chapter 11 or 12, the debtor may file a plan at any time after the filing of a petition for relief, unless that period is—

(1) extended as provided by this subsection, after notice and a hearing; or

(2) the plan, and any necessary disclosure statement, shall be filed not later than 300 days after the date of the order for relief; and

(3) the time periods specified in paragraphs (1) and (2) may be extended by the court for good cause shown.

The table of sections for chapter 11 of title 11, United States Code, as amended by section 321, is amended by inserting the following after section 1121:

"1116. Duties of trustee or debtor in possession in small business cases."

SEC. 438. PLAN CONFIRMATION DEADLINE.

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

"(b) In any case under chapter 11 or 12, the case shall not be confirmed after 180 days after the date of the order for relief, unless that period is—

(1) extended as provided by this subsection, after notice and a hearing; and

(2) the plan, and any necessary disclosure statement, shall be filed not later than 300 days after the date of the order for relief; and

(3) the time periods specified in paragraphs (1) and (2) may be extended by the court for good cause shown.

The table of sections for chapter 11 of title 11, United States Code, as amended by sections 106, 305, and 311, is amended—

(1) in subsection (a), by striking "1129(e)" and inserting "1129(a)(3)"; and

(2) in subsection (b), by striking "1129(g)" and inserting "1129(k)".

SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.

Section 366(a) of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting "or credit report" after "and "credit report";

(2) in paragraph (2), by striking "credit report" and inserting "credit application"; and

(3) in paragraph (3), by striking "credit report" and inserting "credit application".

SEC. 440. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, as amended by sections 106, 305, and 311, is amended—

(1) in subsection (a), by inserting "or credit report" after "and "credit report";

(2) in subsection (b), by striking "credit report" and inserting "credit application"; and

(3) in subsection (c), by inserting "or credit report" after "and "credit report"; and

(4) in subsection (d), by inserting "or credit report" after "and "credit report".

The table of sections for chapter 11 of title 11, United States Code, as amended by section 361, is amended—

(1) in subsection (a), by striking "362(f)" and inserting "362(g)"; and

(2) in subsection (b), by striking "362(g)" and inserting "362(h)".

SEC. 441. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE.

(a) EXPANDED GROUNDS FOR DISMISUAL OR CONVERSION.—Section 1122 of title 11, United States Code, is amended by striking subsection (b) and inserting the following:

"(b)(1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the request for dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 of this title or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes—

(I) the relief provided in paragraph (1) shall not be granted absent unusual circumstances specifically identified by the court that establish that such relief is not in the best interests of creditors and the estate, if the debtor or another party in interest objects and establishes that—

(a) there is a reasonable likelihood that a plan will be confirmed within the time-frames established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

(b) the grounds for granting such relief include an act or omission of the debtor other than under paragraph (4)(A)—

(i) that will be cured within a reasonable period of time fixed by the court;

(ii) that the court will find that the hearing on a motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.

(2) For purposes of this section, the term 'cause' includes—

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(B) gross mismanagement of the estate; and

(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

(D) unauthorized use of cash collateral substantially harmful there was an involuntary conversion of this title or by any rule applicable to a case under this chapter;

(G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor; and

(H) failure timely to pay information or attend meetings reasonably requested by the United States trustee or the bankruptcy administrator;

(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the order for relief;

(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

(K) failure to pay any fees or charges required under chapter 123 of title 28; and

(L) violation of an order of confirmation under section 1144;

(M) inability to effectuate substantial consummation of a confirmed plan;

(N) material default by the debtor with respect to a confirmed plan;

(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

(P) failure of the debtor to pay any domestic support obligation that first becomes
payable after the date on which the petition is filed.

“(5) The court shall commence the hearing on a motion under this subsection not later than 10 days after the filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a nondismissal period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.

(b) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE.—Section 110(a)(3) of title 11, United States Code, is amended—

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

(2) in paragraph (2), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(3) if there is a liquidation, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6)

SEC. 446. DUTIES WITH RESPECT TO A DEBTOR WHO IS A PLAN ADMINISTRATOR OF AN EMPLOYEE BENEFIT PLAN.

(a) IN GENERAL.—Section 522(a)(1) of title 11, United States Code, is amended, by section 106, is amended—

(1) in paragraph (4), by striking “and” at the end;

(2) in paragraph (5), by striking the period at the end and inserting “; and”;

(3) by adding at the end the following:

“(b) DUTIES OF TRUSTEE.—Section 706(a)(1) of title 11, United States Code, as amended by sections 102 and 219, is amended—

(1) in paragraph (9), by striking “and” at the end;

(2) in paragraph (10), by striking the period at the end; and

(3) by adding at the end the following:

“(6) unless a trustee is serving in the case, if at the time of filing the debtor served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974 of an employee benefit plan, continue to perform the obligations required of the administrator and:

(b) CONFORMING AMENDMENT.—Section 1106(a)(3) of title 11, United States Code, is amended to read as follows:

“(1) perform the duties of the trustee, as specified in paragraphs (2), (5), (7), (8), (9), (10), and (11) of section 704.

SEC. 447. APPOINTMENT OF COMMITTEE OF REQUISITE EMPLOYEES.

(a) IN GENERAL.—Section 362(d)(3) of title 11, United States Code, is amended—

(1) by inserting “or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later” after “90-day period”;

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

“(B) by striking “appoint” and inserting “order the appointment of”

and

“(C) the aggregate amount of debt discharged in cases filed during the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

(3) by adding at the end the following:

“(D) the average period of time between the filing of the petition and the closing of the case for cases closed during the reporting period—

(E) for cases closed during the reporting period—

(i) the number of cases in which a reaffirmation was filed; and

(ii) the total number of reaffirmations filed;

(II) of those cases in which a reaffirmation was filed, the number of cases in which the debtor was not represented by an attorney; and

(III) of those cases in which a reaffirmation was filed, the number of cases in which the reaffirmation was approved by the court;

(4) by adding at the end the following:

“(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

(i) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim;

(II) of those cases in which a final order was entered determining the value of property securing a claim; and

(III) the number of cases in which a final order was entered determining the value of property securing a claim; and

(4) by striking the last sentence and inserting the following:

“(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief for such cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.

Section 901(a) of title 11, United States Code, is amended—

(1) by inserting “555, 556,” after “555;”;

(2) by inserting “559, 560, 561, 562” after “557.”

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TITLE VI—BANKRUPTCY DATA

SEC. 601. IMPROVED BANKRUPTCY STATISTICS.

(a) IN GENERAL.—Chapter 6 of title 28, United States Code, is amended by adding at the end the following:

“§ 159. Bankruptcy statistics

“(a) The clerk of the district court, or the chief administrative officer of the bankruptcy administration, as determined by the court, is authorized to issue a certificate pursuant to section 156(b) of this title, shall collect statistics regarding debtors who are individuals with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a standardized format prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the ‘Director’).

(b) The Director shall—

(i) compile the statistics referred to in subsection (a); and

(ii) make the statistics available to the public; and

(iii) not later than June 1, 2005, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the data.

(2) The compilation required under subsection (b) shall be—

(i) itemized, by chapter, with respect to title 11;

(ii) be presented in the aggregate and for each district; and

(iii) include information concerning—

“(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by those debtors;

(B) the current monthly income, average income, and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 521 and 1322 of title 11;

(C) the aggregate amount of debt discharged in cases filed during the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

(D) the average period of time between the filing of the petition and the closing of the case for cases closed during the reporting period—

(E) for cases closed during the reporting period—

(i) the number of cases in which a reaffirmation was filed; and

(ii) the total number of reaffirmations filed;

(II) of those cases in which a reaffirmation was filed, the number of cases in which the debtor was not represented by an attorney; and

(III) of those cases in which a reaffirmation was filed, the number of cases in which the reaffirmation was approved by the court;

(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

(i) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

(II) of those cases in which a final order was entered determining the value of property securing a claim; and

(III) the number of cases in which a final order was entered determining the value of property securing a claim; and

(III) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refilled after dismissal, and the number of cases in which the plan was completed, and such other data as the Director determines to be necessary to measure the success of such cases; and

(G) the percentage of chapter 11 cases in which the plan was confirmed; and

(H) the percentage of chapter 7 cases in which the debtor’s prior bankruptcy filing was dismissed.

(b) The Director shall—

(1) collect the data required by subsection (a) in accordance with the format prescribed by the Director;

(2) ensure that—

(A) the data collected under this section is collected in a standardized format prescribed by the Director;

(B) in the case of a voluntary bankruptcy case, the data is collected from the petition to the close of the case; and

(C) the data is collected from the commencement of the case to the close of the case; and

(D) the data is collected beginning with cases commenced on or after October 1, 2002; and

(3) make the reports required by subsection (a) available to the public; and

(4) make the reports required by subsection (a) available to the public.

(c) The Director shall make available to the public—

(1) the data required by subsection (a); and

(2) any information concerning—

(A) the number of cases commenced in each chapter of title 11; and

(B) the median income, average income, and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 521 and 1322 of title 11; and

(c) The Director shall—

(1) collect the data required by subsection (a) in accordance with the format prescribed by the Director;

(2) ensure that—

(A) the data collected under this section is collected in a standardized format prescribed by the Director;

(B) in the case of a voluntary bankruptcy case, the data is collected from the petition to the close of the case; and

(C) the data is collected from the commencement of the case to the close of the case; and

(D) the data is collected beginning with cases commenced on or after October 1, 2002; and

(3) make the reports required by subsection (a) available to the public; and

(4) make the reports required by subsection (a) available to the public.

(c) The Director shall—

(1) collect the data required by subsection (a) in accordance with the format prescribed by the Director;

(2) ensure that—

(A) the data collected under this section is collected in a standardized format prescribed by the Director;

(B) in the case of a voluntary bankruptcy case, the data is collected from the petition to the close of the case; and

(C) the data is collected from the commencement of the case to the close of the case; and

(D) the data is collected beginning with cases commenced on or after October 1, 2002; and

(3) make the reports required by subsection (a) available to the public; and

(4) make the reports required by subsection (a) available to the public.
The number of cases in which the debtor filed another case during the 6-year period preceding the filing; and
(2) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and
(3) the number of cases in which sanctions were imposed under the Federal Rules of Bankruptcy Procedure were imposed against debtor's attorney or damages awarded under such Rule.

(c) Effectual Date.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 402. UNIFORM RULES FOR THE COLLECTION OF BANKRUPTCY DATA.

(a) Amendment.—Chapter 39 of title 28, United States Code, is amended by adding at the end the following:

§989b. Bankruptcy data

(a) Rules.—The Attorney General shall, with the assistance of the Chief District Judge of the district in which the bankruptcy court is located, and the Clerk of the Court for the district, in consultation with the United States trustee, in accordance with procedures established under section 305 of title 28, United States Code, and, if applicable, section 111 of such title, establish uniform forms for creditors to perform audits in cases designated by the Attorney General in the discretion of the Attorney General for use by trustees under chapters 7, 12, and 13 of title 11; and
(b) Clerical Amendment.—The table of sections for chapter 39 of title 28, United States Code, is amended by adding at the end the following:

989b. Bankruptcy data.

SEC. 603. AUDIT PROCEDURES.

(a) In General.—

(1) Establishment of Procedures.—The Attorney General (in judicial districts served by United States trustees) and the Judicial Conference of the United States (in judicial districts served by special trustees) shall establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, United States Code, and, if applicable, section 111 of such title, in cases filed under chapter 7 or 13 of such title in which the debtor is an individual. Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants, provided that the Attorney General and the Judicial Conference, as appropriate, may develop alternative auditing standards for such audits.

(2) Procedures.—Those procedures required by paragraph (1) shall include—

(A) a method of selecting appropriate qualified persons to contract to perform those audits;

(B) a method of randomly selecting cases for audit without regard to the size of the estate in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, by date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan;

(C) a periodic report—The uniform forms for periodic reports required under subsection (a) for use by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include—

(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor or on behalf of the debtor, and, if applicable, a confirmation and Consumer Protection Act of 2002.

(2) length of time the case has been pending;

(3) number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed;

(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

(5) compliance with title 11, whether or not tax returns or tax payments since the date of the order for relief have been timely filed and made;

(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, for the professional fees incurred on or on behalf of the debtor, between those two dates that would have been incurred absent a bankruptcy case and those not);

(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.

(b) Clerical Amendment.—The table of sections for chapter 39 of title 28, United States Code, is amended by adding at the end the following:

989b. Bankruptcy data.

SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.

It is the sense of Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy
clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11, United States Code), should be released in a usable electronic form to the public, subject to appropriate safeguards and protections for the privacy of individuals.

TITLE VII—BANKRUPTCY TAX PROVISIONS

SEC. 701. TREATMENT OF CERTAIN LIENS.

(a) Treatment of Certain Liens.—Section 724 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting “(other than to the extent that there is a properly perfected, unavoidable tax lien arising in connection with the tax on real or personal property of the estate”) after “under this title”;

(2) in subsection (b)(2), by inserting “(except such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 5 of title 11, United States Code, or real or personal property of the estate)” after “under this title”;

(3) by adding at the end the following:

“(e) Before substituting a tax lien on real or personal property of the estate, the trustee shall—

(1) exhaust the unencumbered assets of the estate; and

(2) in a manner consistent with section 506(c), recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or approving that property.

(f) Notwithstanding the exclusion of ad valorem tax liens under this section and subsection (a), the following may be paid from property of the estate which secures a tax lien, or the proceeds of such property:

(1) Claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(4).

(2) Claims for contributions to an employee benefit plan entitled to priority under section 507(a)(5).

(3) Claims for contributions to an employee benefit plan entitled to priority under section 507(a)(4).

(4) Claims for contributions to an employee benefit plan entitled to priority under section 507(a)(8).

(b) Determination of Tax Liability.—Section 506(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking “or” and inserting “and”;

(2) in subparagraph (B), by striking the period at the end and inserting “; and”;

(3) by adding at the end the following:

“(C) the amount or legality of any amount arising in connection with an ad valorem tax lien on real or personal property of the estate, if the applicable period for contesting or redeeming that amount under any law (other than a bankruptcy law) has expired.”.

SEC. 702. TREATMENT OF FUEL TAX CLAIMS.

Section 507(a)(8) of title 11, United States Code, is amended by adding at the end the following:

“(D) a claim arising from the liability of a debtor for fuel taxes assessed consistent with the requirements of section 31075 of title 49 may be filed by the base jurisdiction designated pursuant to the International Fuel Tax Agreement as defined in section 31071 of title 49 and, if so filed, shall be allowed as a single claim.”.

SEC. 703. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.

Section 506(b) of title 11, United States Code, is amended—

(1) in the first sentence, by inserting “at the address and in the manner designated in paragraph (1)” after “determination of such tax”;

(2) by striking “(1) upon payment” and inserting “(A) upon payment”;

(3) by striking “(A) such governmental unit and inserting “(i) such governmental unit”;

(4) by striking “(B) such governmental unit and inserting “(ii) such governmental unit”;

(5) by striking “(2) upon payment” and inserting “(B) upon payment”;

(6) by striking “(3) upon payment” and inserting “(C) upon payment”;

(7) by striking “(b)” and inserting “(2)”;

and

(8) by inserting before paragraph (2), as so designated, the following:

“(b)(1)(A) The clerk shall maintain a list—

(i) maintained by the appropriate taxing authority of the jurisdiction in which the tax claim arose, that such governmental unit referred to in subparagraph (A) does not designate an address and provide that address and shall under that subparagraph, any request made under this subsection may be served at the address for the filing of a tax return or proceeding with the appropriate taxing authority of that governmental unit.”.

SEC. 704. RATE OF INTEREST ON TAX CLAIMS.

(a) In General.—Subchapter I of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

“§ 511. Rate of interest on tax claims.

“(a) If any provision of this title requires the payment of interest on a tax claim or on deferred cash payments, in the same manner and over the same period, as prescribed in subsection (b) of section 222(b).”.

(b) clerical Amendment.

The table of sections of chapter 3 of title 11, United States Code, is amended by striking “(b) in subparagraph (C), by striking “deferred cash payments,” and all that follows through the end of the subparagraph, and inserting “regular installment payments in cash—

“(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)) and

(ii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(3) by adding at the end the following:

“(C) with respect to a secured claim which would otherwise meet the description of an unsecured nonpriority claim against collections was in effect in a prior case under this title during that 240-day period, plus 90 days.”.

SEC. 705. PRIORITY OF TAX CLAIMS.

Section 507(a)(8) of title 11, United States Code, is amended by adding “as determined in this section” after “prior to the administrative or judicial filing of a request” in the first sentence.

SEC. 706. PRIORITY PROPERTY TAXES INCURRED.

Section 507(a)(8)(B) of title 11, United States Code, is amended—

(1) by striking “assessed and” and inserting “assessed and determined in subsection (b) of section 523(a)”; and

(2) by striking “(A) and (B)” and inserting “(A), (B), and (C)”.
SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.

Section 549(2) of title 11, United States Code, is amended by inserting before the semicolon at the end the following:—

(2) a period not exceeding 30 days after the date on which the debtor commences distribution under this subsection; or—

SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.

(a) PAYMENT OF TAXES REQUIRED.—Section 506(c) of title 11, United States Code, is amended—

(1) before the due date of the tax, an order of the court makes a finding of probable insolvency of the estate to pay in full the administrative expenses allowed under section 507(a) of title 11 that have the same priority in distribution under section 503(b) of title 11 that are paid in full under section 507(a)(1) of title 11; or

The term "tax" means a return that satisfies the requirements of applicable nonbankruptcy law, including applicable filing requirements.

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 506(c)(1)(B)(ii) of title 11, United States Code, is amended by inserting "or (B) in the matter preceding clause (i), by inserting "or equivalent report or notice," after "a return,"—

"(A) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or—

(C) In a case pending under chapter 7 of title 11, United States Code, as amended by section 706, as amended by inserting "the estate," after "misrepresentation,"—

SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.

(a) FilEING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—

(1) before the due date of the tax, the court may order a payment of the tax except for property taxes secured by a lien against property that is abandoned under section 554 of title 11; or—

(b) PAYMENT OF TAXES AND FEES AS REQUIRED.—

(1) the date on which the trustee commences distribution under this subsection; or—

(2) at the time of filing the petition;—

(1) by inserting "(a)" before "Any"; and—

(2) by inserting "(B)" before the following:—

(1) by inserting "or" after "filed"; and—

(C) for purposes of this section, the term "return" includes a return prepared pursuant to subsection (a) or (b) of section 6022 of the Internal Revenue Code of 1986, or a similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6026(b) of the Internal Revenue Code of 1986, or a similar State or local law.

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by inserting after the date on which the trustee of a bankruptcy estate under section 554 of title 11; or—

(2) before the date on which the tax was incurred by the debtor, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.

(2) by inserting "or (B) in the matter preceding clause (i), by inserting "or equivalent report or notice," after "a return,"—

"(A) a period of not more than 30 days for returns described in paragraph (1); and—

"(B) a period not to extend after the applicable filing period for a return described in paragraph (2).—

a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6026(b) of the Internal Revenue Code of 1986, or a similar State or local law.

Section 726(a)(1) of title 11, United States Code, is amended by inserting before the semicolon at the end the following:—

(1) before the date on which the tax was incurred by the debtor, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.

(2) by inserting "or (B) in the matter preceding clause (i), by inserting "or equivalent report or notice," after "a return,"—

"(A) the due date of the tax; and—

"(B) before the date on which the tax was incurred by the debtor, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.

(1) the date on which the tax was incurred by the debtor, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.

(2) at the date on which the tax was incurred by the debtor, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.
SEC. 718. SETOFF OF TAX REFUNDS.
Section 362(b) of title 11, United States Code, as amended by sections 224, 303, 311, and 401, is amended by inserting after paragraph (2) the following:

"(28) [Additional provisions]

"(29) [Additional provisions]

"(30) [Additional provisions]

"SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREATMENT OF STATE AND LOCAL TAXES.

(a) IN GENERAL.—

(1) SPECIAL PROVISIONS.—Section 361 of title 11, United States Code, is amended as follows:

"(1) [Amendments to existing provisions]

"(2) [Amendments to existing provisions]

"(3) [Amendments to existing provisions]

"(4) [Amendments to existing provisions]

"(5) [Amendments to existing provisions]

"(6) [Amendments to existing provisions]

"(7) [Amendments to existing provisions]

"(8) [Amendments to existing provisions]

"(9) [Amendments to existing provisions]

"(10) [Amendments to existing provisions]

"(11) [Amendments to existing provisions]

"(12) [Amendments to existing provisions]

"(13) [Amendments to existing provisions]

"(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to transfers and setoffs taking place on or after the date of the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
1519. Relief that may be granted upon filing petition for recognition.

1520. Effects of recognition of a foreign main proceeding.

1521. Relief that may be granted upon recognition.

1522. Protection of creditors and other interested persons.

1523. Actions to avoid acts detrimental to creditors.

1524. Intervention by a foreign representative.

SUBCHAPTER IV—COORDINATION BETWEEN FOREIGN COURTS AND FOREIGN REPRESENTATIVES

1525. Cooperation and direct communication between the court and foreign courts or foreign representatives.

1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.

1527. Forms of cooperation.

SUBCHAPTER V—CONCURRENT PROCEEDINGS

1528. Coordination of a case under this title after recognition of a foreign main proceeding.

1529. Coordination of a case under this title and a foreign proceeding.

1530. Coordination of more than 1 foreign proceeding.

1531. Presumption of insolvency based on recognition of a foreign main proceeding.

1532. Rule of payment in concurrent proceedings.

§ 1501. Purpose and scope of application

(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

(1) cooperation between—

(A) courts of the United States, United States trustees, trustees, examiners, debtors, and creditors in possession; and

(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

(2) greater legal certainty for trade and investment;

(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

(4) protection and maximization of the value of the debtor’s assets; and

(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

(b) This chapter applies where—

(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

(2) assistance is sought in a foreign country in connection with a case under this title;

(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or

(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

(c) This chapter does not apply to—

(1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b); and

(2) an individual, or to an individual and such individual’s estate, who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

(3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970, as added by section 211(a) of chapter III of title 7 of this title, or a commodity brokerage subject to subchapter IV of chapter 7 of this title.

1502. Definitions

For the purposes of this chapter, the terms—

(1) ‘debtor’ means an entity that is the subject of a foreign proceeding;

(2) ‘establishment’ means any place of operations where the debtor carries out a nontransitory economic activity;

(3) ‘foreign court’ means a judicial or other authority competent to control or supervise a foreign proceeding;

(4) ‘foreign proceeding’ means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

(5) ‘foreign nonmain proceeding’ means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

(6) ‘foreign representative’ means a foreign representative in a court in the United States other than the court which received a petition for recognition of a foreign main proceeding under section 1515, and subject to any limitations that the court may impose consistent with the policy of this chapter;

(7) ‘foreign representative’ means a foreign representative in a court in the United States other than the court which received a petition for recognition of a foreign main proceeding under section 1515.

1503. International obligations of the United States

To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with one or more other countries, the requirements of the treaty or agreement prevail.

1504. Commencement of ancillary case

A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

1505. Authorization to act in a foreign country

A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an entity authorized to act under section 306 of this title.

1506. Public policy exception

Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

1507. Additional assistance

(a) Subject to the specific limitations stated elsewhere in this chapter the court, if recognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States.

(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

(1) just treatment of all holders of claims against or interests in the debtor’s property;

(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

(3) prevention of preferential or fraudulent dispositions of property of the debtor;

(4) distribution of proceeds of the debtor’s property substantially in accordance with the order prescribed by this title; and

(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

1508. Interpretation

In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

1509. Right of direct access

(a) A foreign representative may apply directly to a court in the United States for appropriate relief in that court;

(b) If the court grants recognition under section 1515, and subject to any limitations that the court may impose consistent with the policy of this chapter—

(1) the court has the capacity to sue and be sued in a court in the United States;

(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and

(3) a court in the United States shall grant comity or cooperation to the foreign representative.

(c) A request for comity or cooperation by a foreign representative in a court in the United States other than the court which received a petition for recognition of a foreign main proceeding under a certified copy of an order granting recognition under section 1517.

1510. Limited jurisdiction

Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

1511. Commencement of case under section 301 or 303

(a) Upon recognition, a foreign representative may commence
“(1) any involuntary case under section 303; or
“(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

“(b) The petition commencing a case under subsection (a) must be accompanied by a certified copy of an order granting recognition. The copy of the order granting recognition has been filed must be advised of the foreign representative’s intent to commence a case under subsection (a) prior to such commencement.

§ 1512. Participation of a foreign representative in a case under this title

“Upon recognition of a foreign proceeding, the foreign representative in the recognized proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

§ 1513. Access of foreign creditors to a case under this title

“(a) Foreign creditors have the same rights regarding the case as a party in interest if a condition of such participation is that the debtor shall provide such additional time to creditors as is necessary to preserve a claim against the debtor.

“(b)(1) Subsection (a) does not change or codify present law to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

“(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the collectability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

“(B) The rank and priority as to foreign tax claims or other foreign public law claims shall be governed by any applicable tax treaty of the United States, under the conditions and criteria therein.

§ 1514. Notification to foreign creditors concerning a case under this title

“(a) Whenever in a case under this title notice is to be given to creditors generally or to any category of creditors and such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses or other nonpublic information that will enable the court to identify them, the court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

“(b) An order establishing such a class or category is to be given to foreign creditors, the notification shall—

“(1) indicate the time period for filing proofs of claim and specify the place for their filing;

“(2) indicate whether secured creditors need to file their proofs of claim; and

“(3) contain any other information required to be included in such a notification to creditors under this title and the orders of the court.

“(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

§ 1515. Application for recognition

“(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

“(b) A petition for recognition shall be accompanied by—

“(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; and

“(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

“(d) in the event of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

“(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

“(d) The documents referred to in paragraphs (1) and (2) of subsection (b) shall be translated into English. The court may require a translation into English of additional documents.

§ 1516. Presumptions concerning recognition

“(a) If the decision or certificate referred to in subsection (b) is issued in a case in which the foreign proceeding is a foreign proceeding and that the person or body is a foreign representative, the court is entitled to so presume.

“(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been authenticated.

“(c) In the absence of evidence to the contrary, the debtor’s registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor’s main interests.

§ 1517. Order granting recognition

“(a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—

“(1) the foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502; and

“(2) the foreign representative applying for recognition is a person or body; and

“(3) the petition meets the requirements of section 1515.

“(b) The foreign proceeding shall be recognized—

“(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

“(2) as a foreign nonmain proceeding if the debtor has an establishment within the foreign country where the proceeding is pending.

“(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Unless ordering a foreign proceeding constitutes recognition under this chapter,

“(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the order granting recognition. The case under this chapter may be reopened in the manner prescribed under section 350.

§ 1518. Subsequent information

“From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative’s appointment; and

(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

§ 1519. Relief that may be granted upon filing petition for recognition

“(a) From the time of filing a petition for recognition until the entry of an order granting recognition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

“(1) staying execution against the debtor’s assets; and

“(2) entrusting the administration or realization of all or part of the debtor’s assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to diminution or otherwise in jeopardy; and

“(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a). If, unless otherwise provided under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

“(b) There is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

“(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

(3) unless the standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

The exercise of rights not subject to the stay arising under sections 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

§ 1520. Effects of recognition of a foreign main proceeding

“(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

“(1) sections 361 and 362 apply with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States;

“(2) sections 363, 549, and 552 of this title apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

“(5) unless the court orders otherwise, the foreign representative may operate the debtor’s business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363, 549, and 552 of this title.

“(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States;

“(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

“(c) Subsection (a) does not affect the right of a foreign representative or an entity to which a petition for commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

§ 1521. Relief that may be granted upon recognition

“(a) Upon recognition of a foreign proceeding, whether main or nonmain, where
necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—
(1) staying the commencement or continuation of an individual action or proceeding under this title concerning certain assets of the debtor and fraudulently transferred or concealed assets of the debtor, rights, obligations or liabilities to the extent the court finds that such assets are not subject to the jurisdiction of the court under sections 510(a) of this title, and 1334(e) of title 28, or to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

*§ 1529. Coordination of a case under this title with a foreign proceeding*

(1) If a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:
(1) If the case in the United States is taking place at the time of recognition of the foreign proceeding is filed—
(A) any relief granted under section 1519 or 1521 must be consistent with the relief granted in the case in the United States; and
(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 1520 does not apply.
(2) If a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—
any relief granted under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and
(3) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1529(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.
(3) In granting, extending, or modifying relief granted to a representative of a foreign proceeding, the court must be satisfied that the relief relates to assets that, under the laws of the United States, should be administered in the foreign main proceeding, or that the relief is necessary to effectuate the purpose of facilitating coordination of the foreign proceeding with the foreign main proceeding.

*§ 1527. Forms of cooperation*
(1) Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—
(1) appointment of a person or body, including an examiner, to act at the direction of the court;
(2) communication of information by any means considered appropriate by the court;
(3) coordination of the administration and supervision of the debtor’s assets and affairs; and
(4) approval or implementation of agreements concerning the coordination of proceedings; and
(5) coordination of concurrent proceedings regarding the same debtor.

*§ 1528. Commencement of a case under this title after recognition of a foreign main proceeding*
(1) After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets that are within the jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 510(a) of this title, and 1334(e) of title 28, or to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

*§ 1531. Presumption of insolvency based on recognition of a foreign main proceeding*
(1) In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a case under another chapter of this title, conclusive evidence that the debtor is generally not paying its debts as such debts become due.
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SEC. 902. OTHER AMENDMENTS TO TITLES 11 AND 28, UNITED STATES CODE.

(a) APPLICABILITY OF CHAP. 11—Title 11, United States Code, is amended by

(1) in subsection (a), by inserting before the period the following: ‘‘, and this chapter, sections 397, 392(d), 556 through 557, and 559 through 562 apply in a case under chapter 15’’; and

(2) by adding at the end the following:

‘‘(k) Chapter 15 applies only in a case under such chapter, except that—

(1) sections 1555, 1513, and 1514 apply in all cases under this title; and

(2) section 1509 applies whether or not a case under this title is pending.’’. (b) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

‘‘(23) ‘foreign proceeding’ means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets or affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation; (24) ‘foreign representative’ means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or liquidation of the debtor’s assets or affairs or to act as a representative of the foreign proceeding;’’. (c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.— (1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking ‘‘and’’ at the end; and

(B) in subparagraph (O), by striking the period at the end and inserting ‘‘; and’’; and

(C) by adding at the end the following:

‘‘(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.’’. (2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1738(c) of title 28, United States Code, is amended by striking ‘‘Nothing in this section’’ and inserting ‘‘Except with respect to a case under chapter 15 of title 11, nothing in’’.

(d) TRUSTEE.—Section 303(a)(3) of title 28, United States Code, is amended by striking ‘‘or 13’’ and inserting ‘‘, or 15’’. (e) VENUE OF CASES ANCIILLARY TO FOREIGN PROCEEDINGS.—Section 1410 of title 28, United States Code, is amended, to read as follows:

SEC. 1410. Venue of cases ancillary to foreign proceedings

‘‘A case under chapter 15 of title 11 may be commenced in the district court of the United States for the district—

(1) in which the debtor has its principal place of business or principal assets in the United States; and

(2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court; or

(3) in a case other than those specified in paragraphs (1) and (2), if the court determined that recognition of the foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, or long as other creditors of the same class is proportionately less than the payment the creditor has already received.’’. (f) OTHER SECTIONS OF TITLE 11.—Title 11 of the United States Code is amended—

(1) in section 109(b), by striking paragraph (3) and inserting the following:

‘‘(3)(A) a foreign insurance company, enga-
ge in such business in the United States; or

(B) a foreign bank, savings bank, coopera-
tive bank, savings and loan association, building and loan association, or credit union that has a branch or agency (as de-

ined in section 1(b) of the International Banking Act of 1978 in the United States);’’;

(2) in section 303, by striking subsection (b);

(3) by striking section 304;

(4) in the table of sections for chapter 3 by striking section 304;

(5) in section 306 by striking ‘‘, 304’’ each place it appears;

(6) in section 306(a) by striking paragraph (2) and inserting the following:

‘‘(2)(A) a petition under section 1515 of this title for recognition of a foreign proceeding has been granted; and

(B) the petition of chapter 15 of this title would be best served by such dismissal or suspension.’’; and

(7) in section 508—

(A) by striking subsection (a); and

(B) in subsection (b), by striking ‘‘(b)’’.

TITLE IX—FINANCIAL CONTRACT PROVISIONS

SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY BANKRUPTCYS OR RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS.

(a) DEFINITION OF QUALIFIED FINANCIAL CONTRACT.—Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

(1) by striking ‘‘subsection—’’ and inserting ‘‘subsection, the following definitions shall apply:’’; and

(2) in clause (i), by inserting ‘‘, resolution, or order’’ after ‘‘announced by the Corporation determines by regulation’’.

(b) DEFINITION OF SECURITIES CONTRACT.—Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended to read as follows:

‘‘(11) SECURITIES CONTRACT.—The term ‘securities contract’ means—

(I) a contract that provides for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or an interest in a mortgage loan, a group or index of securities, certificates of deposit, mortgage loans or interests therein, or any financial agreement or transaction referred to in this clause; and

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause; or

(VII) any combination of the agreements or transactions referred to in this clause.

(VIII) any option to enter into any agreement or transaction referred to in this clause.

(V) means any margin loan; (VI) means any other agreement or trans-
action that is similar to any financial agreement or transaction referred to in this clause; (VII) means any combination of the agreements or transactions referred to in this clause; (VIII) means any option to enter into any agreement or transaction referred to in this clause.

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supple-
ments to any such master agreement, with-
out regard to whether the master agreement provides for an agreement or transaction that is not a security contract under this clause, except that the master agreement shall be considered treated as a contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in sub-
clauses (I), (III), (IV), (V), (VI), (VII), or (VIII); and

(X) means any security or agreement or ar-
angement or other credit enhancement re-
lated to any agreement or transaction referred to in this clause, including any guar-
antee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(c) DEFINITION OF COMMODITY CONTRACT.—

Section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended to read as follows:

‘‘(III) COMMODITY CONTRACT.—The term ‘commodity contract’ means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures com-
mision merchant, a foreign future;

(III) with respect to a foreign commodity trans-
action merchant, a leverage transaction;

(IV) with respect to a clearing organiza-
tion, a contract for the purchase or sale of a commodity on any contract market or board of trade that is cleared by such clearing organization, or commodity option contract traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity option contract that is subject to the rules of, a commodity option contract traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause; or

(VII) any combination of the agreements or transactions referred to in this clause.

(VIII) any option to enter into any agree-
ment or transaction referred to in this clause.

(I) means a contract for the purchase, sale, or loan of a security, a security or reimbursement obligation in con-

xeriah, a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) any other agreement or transaction that is similar to any agreement or trans-
action referred to in this clause; or

(VII) any combination of the agreements or transactions referred to in this clause.

(VIII) any option to enter into any agree-
ment or transaction referred to in this clause.

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supple-
ments to any such master agreement, with-
out regard to whether the master agreement provides for an agreement or transaction that is not a security contract under this clause, except that the master agreement shall be con-
sidered to be a commodity contract under
than 1 year after such transfers or on de-

posits, mortgage loans, or interests as de-

an eligible banker United States against the transfer of funds

gations of, or that are fully guaranteed by, securities or securities that are direct obli-

acceptances, qualified foreign government

ment)

The term ‘qualified foreign government security’ means a security that is a direct obligation

or financial indices or measures of economic

The term ‘swap agreement’ means

following:

(e) DEFINITION OF REPURCHASE AGREEMENT.

—Section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:

(v) REPURCHASE AGREEMENT.—The term ‘repurchase agreement’ (which definition also applies to a reverse repurchase agree-

(IV) any option to enter into any agreement or transaction referred to in sub-

clause (I) or (III);

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to such master agreement, without regard to whether the master agreement contains an agreement or trans-

action that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agree-

ment under this clause only with respect to each agreement or transaction under the master agreement referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrange-

ment or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such sub-

clause;

Such term is applicable for purposes of this subsection only and shall not be construed or applied as to challenge or affect the characteriza-
tion, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the In-

vestment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Com-

modity Exchange Act, the Gramm-Leach-


DEFINITION OF FORWARD CONTRACT.—Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as follows:

(viii) TRANSFER.—The term ‘transfer’ means every mode, direct or indirect, abso-
lute or conditional, voluntary or involun-
tary, of disposing of or parting with property or with an interest in property, including re-
tention of title as a security interest and foreclosure of the depository institution’s equity of redemption.”.

(b) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—Section 11(e)(8)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(B)) is amended—

(1) in subparagraph (A), by striking “(10)” and in-

serting “(9) and (10)”; and

(2) in clause (i), by striking “to cause the ter-
minal or liquidation” and inserting “such person has to cause the termination, liquidation, or acceleration”; and

(C) by striking clause (ii) and inserting the following:

(ii) any right under any security agree-

ment or arrangement or other credit en-
hancement related to one or more qualified financial contracts described in clause (i);”;

(i) AVOIDANCE OF TRANSFERS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section 5322 of the Revised Statutes of the United States or any other Fed-

eral statute, law relating to the avoidance of preferential or fraudulent transfers, before “the Corporation’;”.

(II) any agreement or transaction referred to in clause (I); and

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agree-

ment or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in sub-

clause (I), (II), (III), or (IV), together with all supplements to such master agreement, without regard to whether the master agree-

ment contains an agreement or trans-

action that is not a swap agreement under this clause, except that the master agree-

ment shall be considered to be a swap agree-

ment under this clause only with respect to each agreement or transaction under the master agree-

ment referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrange-

ment or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obli-

cation in connection with any agreement or transaction referred to in any such sub-

clause;

For purposes of this clause, the term ‘qualified foreign government security’ means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a country for Economic Cooperation and Development (as determined by regulation or order adopt-

ed by the appropriate Federal banking au-

thority);}

(f) DEFINITION OF SWAP AGREEMENT.—The term ‘swap agreement’ means

(II) any agreement or transaction referred to in subclauses (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such sub-

clause;

(III) any option to enter into any agree-

ment or transaction referred to in sub-

clause (I) or (II); or

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to such master agreement, without regard to whether the master agree-

ment provides for an agreement or trans-

action that is not a forward contract under this clause, that the master agree-

ment shall be considered to be a forward con-

tract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in sub-

clause (I), (II), or (III); or

(V) any security agreement or arrange-

ment or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such sub-

clause;

(III) any option to enter into any agree-

ment or transaction referred to in sub-

clause (I) or (II); or

(Clause 1)

(2) in subparagraph (B), by striking “or transactions referred to in clause (I);”.

(3) in clause (i), by inserting “and a credit agreement” after “to cause the termination or liquidation’’; and

(4) by striking “of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(B)) is amended—

(1) in subparagraph (A), by striking “(10)” and in-

serting “(9) and (10)”; and

(2) in clause (i), by striking “to cause the ter-
minal or liquidation” and inserting “such person has to cause the termination, liquidation, or acceleration”; and

(C) by striking clause (ii) and inserting the following:

(ii) any right under any security agree-

ment or arrangement or other credit en-
hancement related to one or more qualified financial contracts described in clause (i);”;

(i) AVOIDANCE OF TRANSFERS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section 5322 of the Revised Statutes of the United States or any other Fed-

eral statute, law relating to the avoidance of preferential or fraudulent transfers, before “the Corporation’;”.

this clause only with respect to each agree-

ment or transaction under the master agree-

ment that is referred to in sub-

clause (I) or (III); or

(IV) any option to enter into any agree-

ment or transaction referred to in sub-

clause (I) or (III); and

(V) means a master agreement that pro-

vides for an agreement or transaction re-

ferred to in subclause (I), (II), (III), or (IV), together with all supplements to such master agreement, without regard to wheth-

er the master agreement provides for an agreement or transaction that is not a repur-

chase agreement under this clause, except that the master agreement shall be consid-

ered to be a repurchase agreement under this subclause only with respect to each agree-

ment or transaction under the master agree-

ment that is referred to in subclause (I), (III), or (IV); and

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(II) any combination of agreements or trans-

actions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in sub-

clause (I) or (III); and

(V) means a master agreement that pro-

vides for an agreement or transaction re-

ferred to in subclause (I), (II), (III), or (IV), together with all supplements to such master agreement, without regard to wheth-

er the master agreement provides for an agreement or transaction that is not a repur-

chase agreement under this clause, except that the master agreement shall be consid-

ered to be a repurchase agreement under this subclause only with respect to each agree-

ment or transaction under the master agree-

ment that is referred to in subclause (I), (III), or (IV); and

(III) any option to enter into any agree-

ment or transaction referred to in sub-

clause (I) or (II); or

(II) any agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to such master agreement, without regard to whether the master agree-

ment provides for an agreement or trans-

action that is not a forward contract under this clause, that the master agree-

ment shall be considered to be a forward con-

tract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in sub-

clause (I), (II), (III), or (IV); or

(V) any security agreement or arrange-

ment or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such sub-

clause;

(III) any option to enter into any agree-

ment or transaction referred to in sub-

clause (I) or (II); or

(II) any agreement or transaction referred to in subclauses (I), (II), or (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such sub-

clause;
SEC. 902. AUTHORITY OF THE CORPORATION WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.

(a) In Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended—

(1) in subparagraph (B), by striking “other than paragraph (12) of this subsection, subsection (d)(9)” and inserting “other than subsections (d)(9) and (e)(10)”;

(2) by adding at the end the following new subparagraph:

“(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or powers of the Corporation or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with subsection (e)(1) of this section.

(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

“(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (B), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insures

depository institution in default.

“(ii) USE DEFINED.—For purposes of this subparagraph, the term ‘walkaway clause’ means a provision in a qualified financial contract that, after the acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part because of such party’s status as a nondefaulting party.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting “or the exercise of rights or powers” after “the appointment of”.

SEC. 903. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.

(a) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO INSURED INSTITUTIONS.—Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as follows:

“(9) Transfer of qualified financial contracts.

“(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

“(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding, any qualified financial contract referred to in clause (i) of paragraph (8), any claim described in clauses (I) and (II) of paragraph (9)(A), any claim described in clause (I) of paragraph (9)(B), or any other claim described in clause (II) of paragraph (9)(B); and

“(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person) to such foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution to exercise any right that such person has to terminate, liquidate, or net such contract under subsection (e)(9) of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed).

“(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In making such transfers the Corporation as receiver or conservator, respectively, shall not be required to accept the transfer as a member by virtue of the transfer.

“(C) DEFINITIONS.—For purposes of this paragraph, the term ‘qualified financial institution’ means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution, and the term ‘clearing organization’ has the same meaning as in subsection (e)(10) of the Federal Deposit Insurance Corporation Improvement Act of 1991.”

(b) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is amended in the material immediately following clause (ii) by striking “the conservator” and all that follows through and inserting the following:

“the conservator or receiver shall notify any person who is a party to such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a conservatorship, or the business day following such transfer in the case of a receivership.”

(c) RIGHTS AGAINST RECEIVER AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is amended—

(1) by redesigning paragraphs (B) through (D) as subparagraphs (D) through (F), respectively;

(2) by inserting after paragraph (F) the following new subparagraph:

“(G) CERTAIN RIGHTS NOT ENFORCEABLE.—

“(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 458(b)(2) of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed).”

SEC. 904. AMENDMENTS RELATING TO DISAPPEARANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.

Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively;

(2) by inserting after paragraph (16) the following new paragraph:

“(17) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable to purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under other statutes or rules, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of
2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.

Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4221(e)(8)(D)(vii)) is amended to read as follows:

"(vii) TREATMENT OF MASTER AGREEMENT AS ONE CONTRACT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement described in any preceding clauses of this subparagraph; together with any supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.


(a) Definitions.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)(ii), by inserting before the semicolon "circuit breaker"; and

(B) in subparagraph (B), by inserting before the period a comma; and

(2) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively.

(b) Enforceability of Clearing Organization Netting Contracts.—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) General Rule.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act or any order authorized under section 9(b)(2) of the Securities Investor Protection Act) of 1970, the covered contractual payment obligations and the covered contractual payment entitlements between any financial institution shall be netted in accordance with the clearing organization's agreements or arrangements or other credit enhancement related to one or more netting contracts between any financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code);"; and

(2) by adding at the end the following new subsection:

"(f) Enforceability of Security Agreements.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code); and

SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.

(a) In General.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act) as such or as conservator or receiver', a 'receiver', or a 'conservator' shall refer to the receiver or conservator appointed by the Comptroller of the Currency, or a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank;

(2) any reference to the 'Corporation' (other than in section 11(e)(8)(D) of such Act) as such or as conservator or receiver', a 'receiver', or a 'conservator' shall refer to the receiver or conservator appointed by the Comptroller of the Currency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act;

(b) Liability.—The liability of a receiver or conservator of an uninsured national bank, uninsured Federal branch or agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act.
regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.

(d) DEFINITIONS.—For purposes of this section, the definition of ‘financial participant’ (as defined in section 101, United States Code, is amended—

(i) in section 101—

(A) in paragraph (25)—

(i) by striking ‘means a contract’ and inserting ‘means’; and

(ii) by striking ‘or any other similar agreement;’ and inserting ‘or any other similar agreement;’; and

(iii) by adding at the end the following:

‘(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);’

(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);’

(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraphs (B) and (C); and

(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), or (C), including any guarantee or reimbursement obligation by or to a financial participant in connection with any agreement or transaction referred to in any such subparagraph; but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

(B) does not include a repurchase obligation under this paragraph;’

(D) in paragraph (48), by inserting ‘, or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission.’ after ‘1934;’ and

(E) by amending paragraph (53B) to read as follows:

‘(53B) ‘swap agreement’—

(A) means—

(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is—

(I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, reverse rate cap, cross-currency rate swap, and basis swap;

(II) a spot, same day–tomorrow, tomorrow–next, forward, or other foreign exchange option or currency swap agreement;

(III) a currency swap, option, future, or forward agreement;

(IV) an equity index or equity swap, option, future, or forward agreement;

(V) a debt index or debt swap, option, future, or forward agreement;

(VI) a total return, credit spread or credit swap option, future, or forward agreement;

(VII) a commodity index or a commodity swap option, future, or forward agreement; or

(VIII) a weather swap, weather derivative, or weather option;

(ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that—

(I) is of a type that has been, presently, or in the future becomes, the subject of regulatory action by a national securities exchange relating to forward or futures markets (including terms and conditions incorporated by reference therein); and

(II) is a forward, swap, future, or option on commodity or weather instruments, commodity, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with any economic or financial risk or value, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(iii) any combination of agreements or transactions referred to in this subparagraph;

(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

(vi) any security agreement or arrangement, or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

(B) is applicable for purposes of this title only, and shall not be construed or applied so as to duplicate or otherwise impair the registration, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm–Leach–Billey Act, and the Legal Certainty for Bank Products Act of 2000;’

(2) in section 741(7), by striking paragraph (7) and inserting the following:

‘(7) ‘securities contract’—

‘(A) means—

(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, a margin loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

(ii) any option entered into on a national securities exchange relating to foreign currency or foreign currency derivatives;

(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

(iv) a margin loan;

(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph; or

(vi) any agreement or transactions referred to in this subparagraph;’

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(3) by adding at the end the following new subparagraph: “(E) a master netting agreement participant that receives a transfer in connection with a merger or an agreement for any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract, the transferor to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value;”

(g) TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.—Section 556 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows: “§ 556. Contractual right to liquidate, terminate, or accelerate a securities contract;”

(2) in the first sentence, by striking “liquidating” and inserting “liquidation, termination, or acceleration”; and

(h) TERMINATION OR ACCELERATION OF COMMODITY CONTRACTS.—Section 556 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows: “§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract;”

(2) in the first sentence, by striking “liquidating” and inserting “liquidation, termination, or acceleration”; and

(i) in the second sentence, by striking “As used” and all that follows through “right,” and inserting “As used in this section, the term ‘contractual right’ includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,”; and

(k) L IQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT ACTS.—

(1) in GENERAL.—Title 11, United States Code, is amended by inserting after section 560 the following:

§ 561. Contractual right to terminate, liquidate, or accelerate a swap agreement under a master netting agreement and across contracts; proceedings under chapter 15

(a) Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more (or the termination, liquidation, or acceleration of one or more)—

(1) securities contracts, as defined in section 741(7);

(2) commodity contracts, as defined in section 761(4);

(3) forward contracts;

(4) repurchase agreements;

(5) swap agreements; or

(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

(b)(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under sections 365(e), 365(f), or 365(g) for each individual contract covered by the master netting agreement in issue.

(2) If a debtor is a commodity broker subject to the jurisdiction of the Commodity Futures Trading Commission, any provisions of this title or by order of a court or administrative agency in any proceeding under this title.
contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant, under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.

(m) STOCKBROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 752 the following:

"§753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agency, swap participant, repo participant, master netting agreement participant, and master netting agreement participants

"Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, financial participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.

(n) RUPP—Title 55 of title 11, United States Code, is amended—

(1) in subsection (a)(2)(B)(i), by inserting before the period the following: "for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561;"

(2) in subsection (a)(3)(C), by inserting before the period the following: "(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561 of this title);" and

(3) in subsection (b)(1), by striking "362(b)(14);" and inserting "362(b)(14)," and inserting "362(b)(17), 362(b)(27), 555, 556, 559, 560, 561;"

(o) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 752(b)(6) by striking "financial institutions," each place such term appears and inserting "financial institution, financial participant,"

(2) in section 548(e), by inserting "financial participant," after "repo participant;"

(3) in section 548(d)(2)(B), by inserting "financial participant," after "financial institution;"

(4) in section 548(d)(2)(B), by inserting "financial participant," after "financial institution;"

(5) in section 548(d)(2)(C), by inserting "or financial participant" after "repo participant;"

(6) in section 548(d)(2)(D), by inserting "or financial participant" after "swap participant;"

(7) in section 555—

(A) by inserting "financial participant," after "financial institution;" and

(B) by striking the second sentence and inserting the following: "As used in this section, the term ‘contractual right’ includes a right or obligation under a contract, or by law, or by business practice;"

(8) in section 556, by inserting "financial participant," after "commodity broker;"

(9) in section 559, by inserting "or financial participant" after "repo participant" each place such term appears; and

(10) in section 560, by inserting "or financial participant" after "repo participant" each place such term appears.

(p) CONFORMING AMENDMENTS.—Title 11, United States Code, is amended—

(1) in the table of sections for chapter 5—

(A) by amending the items relating to sections 555 and 556 to read as follows:

"§555. Contractual right to liquidate, terminate, or accelerate a securities contract.

"§556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract.
"

and

(B) by amending the items relating to sections 559 and 560 to read as follows:

"§559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.

"§560. Contractual right to liquidate, terminate, or accelerate a swap agreement."

and

(2) in the table of sections for chapter 7—

(A) by inserting after the item relating to section 766 the following:

"§766. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agency, swap participants, repo participants, and master netting agreement participants.

"§767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agency, swap participants, repo participants, and master netting agreement participants.
"

and

(B) by inserting after the item relating to section 766 the following:

"§768. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agency, swap participants, repo participants, and master netting agreement participants.

"§769. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agency, swap participants, repo participants, and master netting agreement participants.
"

SEC. 908. RECORDKEEPING REQUIREMENTS.

Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new sub-paragraph:

"(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to section 32)."

SEC. 909. EFFECTS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(e)(2)) is amended to read as follows:

"(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any debtor referred to in section 11(a)(2), including an agreement to provide collateral in the event of a surety bond; and

(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

"(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

"(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D), shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral, or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.
"

SEC. 953. DAMAGE MEASURE.

(a) IN GENERAL.—Title 11, United States Code, is amended—

(1) by inserting after section 561, as added by section 907, the following:

"§562. Timing of damage measurement in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements.

"(a) If the trustee rejects a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract (as defined in section 761), repurchase agreement, or master netting agreement pursuant to section 365(a), or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant or the trustee objects to the timing of the measurement of damages—

"(1) the date of such rejection; or

"(2) the date or dates of such liquidation, termination, or acceleration;

"(b) If there are not any commercially reasonable determinants of value as of any date referred to in paragraph (1) or (2) of subsection (a), damages shall be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value.

"(c) For the purposes of subsection (b), if damages are not measured as of the date or dates of rejection, liquidation, termination, or acceleration, and the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant or the trustee objects to the timing of the measurement of damages—

"(1) the trustee, in the case of an objection by a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant; or

"(2) the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant, in the case of an objection by the trustee, has the burden of proving that there were no commercially reasonable determinants of value as of such date or dates; and

"(2) in the table of sections for chapter 5, by inserting after the item relating to section 561 (as added by section 907) the following new item:

"§562. Timing of damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements.
"

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by inserting "(1)" after "(g);" and

(2) by adding at the end the following:

"(2) A claim for damages calculated in accordance with this section shall be allowed under subsection (a), (b), (c), or (d) as if
such claim had arisen before the date of the filing of the petition."

SEC. 911. SIPC STAY.

Section 9(b)(2) of the Securities Investor Protection Act (15 U.S.C. 78ggg(b)) is amended by adding at the end the following new subparagraph:

"(f) Exception from stay.--(1) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by SIPC from the court shall be a stay of any contractual rights of a creditor to liquidate, termi- nate, or accelerate a securities contract, commodity contract, forward contract, repu- rchase agreement, swap agreement, or master netting agreement, as those terms are defined in sections 701, 741, and 761 of title 11, United States Code, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

(ii) Notwithstanding clause (i), such application may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

(iii) Notwithstanding clause (i), such application may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

(iv) Notwithstanding clause (i), such application may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

(b) Modification of Plan.--Section 1225(b)(1) of title 11, United States Code, is amended by adding at the end the following:

"(A) by striking "$1,500,000" and inserting "$3,237,000"; and

(b) by striking "$80" and inserting "$50"; and

(c) Effective Date: Application of Amendments.--This section and the amend- ments made by this section shall take effect on the date of the enactment of this Act and shall not apply with respect to cases commen- ced under title 11 of the United States Code before such date.

SEC. 1004. DEFINITION OF FAMILY FARMER.

Section 101(18) (A) of title 11, United States Code, is amended—

(1) in subparagraphs (A) and (B) by striking "$1,500,000" and inserting "$3,237,000"; and

(2) by striking the period "277), is hereby -

SEC. 1006. PROHIBITION OF RETROACTIVE APPLI- CATION OF DISPOSABLE INCOME.--Section 1225(b)(1) of title 11, United States Code, is amended by inserting after paragraph (19) the following:

"(20) a corporation or partnership

SEC. 1007. FAMILY FISHERMEN.

(a) Definitions.--Section 101 of title 11, United States Code, is amended by inserting after paragraph (7) the following:

"(18A) 'family fisherman' means

"(B) by striking the period "277), is hereby -

SEC. 1008. FAMILY FISHERMEN.

(a) Definition.--A corporation or partnership

"(B) a corporation or partnership

(b) Confirmation of Plan.--Section 1225(b)(1) of title 11, United States Code, is amended by inserting "or" in its place.

(c) Chapter 12.--Chapter 12 of title 11, United States Code, is amended--

SEC. 1009. DEBT LIMIT INCREASE.

SEC. 1009. DEBT LIMIT INCREASE.

SEC. 1010. TEMPORARY REENACTMENT OF CHAP- TER 12.

(a) Reenactment.--Chapter 12 of title 11, United States Code, as reenacted by section 149 of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1997 (Public Law 105–277), is hereby reenacted, and as here reenacted is amended by this Act.

SEC. 1012. DEBT LIMIT INCREASE.

(a) Contents of Plan.—Section 1221(a)(2) of title 11, United States Code, as amended by section 226, is amended by inserting "101(18)," after "101(13)," each place it appears.

(a) Contents of Plan.—Section 1221(a)(2) of title 11, United States Code, as amended by section 226, is amended by inserting "101(18)," after "101(13)," each place it appears.

(b) Reenactment of Chapter 12.—Chapter 12 of title 11, United States Code, as reenacted by section 149 of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1997 (Public Law 105–277), is hereby reenacted, and as here reenacted is amended by this Act.

(b) Confirmation of Plan.—Section 1225(b)(1) of title 11, United States Code, is amended by inserting at the end the following:

"(1) to increase the amount of any pay- ment due before the plan as modified be- comes the plan; or

"(2) by anyone except the debtor, based on an increase in the debtor's disposable income, to increase the amount of payments to unsecured creditors required for a particular month so that the aggregate of such pay- ments exceeds the debtor's disposable income for such month; or

"(3) in the last year of the plan by any- one except the debtor, to reduce payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed.

(c) Family Fishermen.—(a) Definitions.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (7) the following:

"(18A) 'commercial fishing operation means--

"(B) a corporation or partnership

(b) by striking the period "277), is hereby -

(d) Clerical Amendment.--In the table of chapters for title 11, United States Code, the item relating to chapter 12, amended by this Act, is amended to read as follows:
"12. Adjustments of Debts of a Family Farmer or Family Fisherman with
Regular Annual Income

(e) Applicability.—Nothing in this section shall affect, or amend the Fishery

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

SEC. 1101. DEFINITIONS.

(a) HEALTH CARE BUSINESS DEFINED.—Section
101 of title 11, United States Code, as amended by section 306, is amended—

(1) by redesigning paragraph (27A) as paragraph (27B); and

(2) by inserting after paragraph (27B) the follow-

ing:

"(27A) 'health care business'—

"(A) means any public or private entity
(without regard to whether that entity is
organized for profit or not for profit) that is
primarily engaged in offering to the general
public facilities and services for—

"(i) the diagnosis or treatment of injury,
deformity, or disease; and

"(ii) surgical, drug treatment, psychiatric,
or obstetric care; and

"(B) includes—

"(i) any—

"(I) general or specialized hospital;

"(II) ancillary ambulatory, emergency, or
surgical treatment facility;

"(III) hospice;

"(IV) home health agency; and

"(V) other health care institution that is
similar to an entity referred to in subclause
(I), (II), (III), or (IV); and

"(ii) any long-term care facility, including any—

"(I) skilled nursing facility;

"(II) intermediate care facility;

"(III) intermediate infirm care facility;

"(IV) home for the aged;

"(V) domiciliary care facility; and

"(VI) health care institution that is re-
lated to a facility referred to in subclause
(I), (II), (III), (IV), or (V), if that institution
is primarily engaged in offering room, board,
launder, or personal assistance with activi-
ties of daily living;"

(b) PATIENT AND PATIENT RECORDS DE-
FINED.—Section 101 of title 11, United States
Code, is amended by adding after para-
graph (40) the following:

"(40A) 'patient' means any person who
obtains services from a health care business;

"(40B) 'patient records' means any written
document relating to a patient or a record
retrieved from a magnetic, optical, or other
electronic medium;"

(c) RULE OF CONSTRUCTION.—The amend-
ments made by subsection (a) of this section
shall not affect the interpretation of section
109(b) of title 11, United States Code.

SEC. 1102. DISPOSAL OF PATIENT RECORDS.

(a) In general.—Chapter III of chapter 3 of
title 11, United States Code, is amended by adding at the end the follow-

ing:

"§ 351. Disposal of patient records

"(a) If a health care business com-
mences a case under chapter 7, 9, or 11, and the trustee
does not have a sufficient amount of funds to
pay for the storage of patient records in the
manner required under applicable Federal or
State law, the following requirements shall
apply:

"(1) The trustee shall—

"(A) promptly publish notice, in 1 or more
appropriate newspapers, that if patient
records are not claimed by the patient or an
insurance provider (if applicable law permits
the insurance provider to make that claim)
by certified mail, at the end of such 365-day
period a written request to each appropriate
Federal agency to request permission from
that agency to destroy those records with
that agency, except that no Federal
agency is required to accept patient records
under this paragraph.

"(B) If, following the 365-day period
described in paragraph (a) of this section,
promptly attempt to notify directly each pa-
tient that is the subject of the patient
records by mailing to the most recent known
address of that patient, or a family member
or contact person for that patient, an exami-
nation of those records by the trustee shall

"§ 351. Disposal of patient records

"(a) OMBUDSMAN TO ACT AS PATIENT ADVOCATE.

(1) APPOINTMENT OF OMBUDSMAN.—Title 11,
United States Code, as amended by section 322, is amended by inserting after section 322 the follow-

ing:

"§ 322. Appointment of patient ombuds-
man

"(a)(1) If the debtor is a health care business
that provides long-term care, then the
United States trustee may appoint the State
Long-Term Care Ombudsman appointed
under the Older Americans Act of 1965 for
the State in which the case is pending to
serve as the ombudsman required by para-
graph (1).

"(C) If the United States trustee does not
appoint a State Long-Term Care Ombudsman
under subparagraph (B), the court shall no-
tify the United States trustee of the ombuds-
man appointed under the Older Americans Act
of 1965 for the State in which the case is pend-
ing, of the name and address of the person
who accepted such appointment.

COSTS OF CLOSING A HEALTH CARE
BUSINESS AND OTHER ADMINISTRA-
TIVE EXPENSES.

Section 502(b) of title 11, United States
Code, as amended by section 445, is amended by adding at the end the following:

"§ 503. Costs of closing a health care
business

"(a)(1) monitor the quality of patient care
provided to patients of the debtor, to the ex-
tent necessary under the circumstances, in-
cluding interviewing patients and physi-
icians.

"(2) not later than 60 days after the date of
appointment, and not less frequently than at
60-day intervals thereafter, report to the
court, at a hearing or in writing, regarding
the quality of patient care provided to pa-
tients of the debtor;

"(3) if such ombudsman determines that
the quality of patient care provided to pa-
tients of the debtor is declining significantly
or is otherwise being materially com-
promised, file with the court a motion or a
written report, with the parties in
interest immediately upon making such
determination.

(2) An ombudsman appointed under sub-
paragraph (a) shall maintain any informa-
tion obtained by such ombudsman under this
section that relates to patients (including in-
formation relating to patient records) as
confidential information. Such ombudsman
may not review confidential patient records
unless the court approves such review in ad-

vice and imposes restrictions on such omb-
udsman to protect the confidentiality of

such records.

(2) An ombudsman appointed under sub-
paragraph (a) shall maintain any informa-
tion obtained by such ombudsman under this
section that relates to patients (including in-
formation relating to patient records) as
confidential information. Such ombudsman
may not review confidential patient records
unless the court approves such review in ad-
vice and imposes restrictions on such omb-
udsman to protect the confidentiality of

such records.

(2) An ombudsman appointed under sub-
paragraph (a) shall maintain any informa-
tion obtained by such ombudsman under this
section that relates to patients (including in-
formation relating to patient records) as
confidential information. Such ombudsman
may not review confidential patient records
unless the court approves such review in ad-
vice and imposes restrictions on such omb-
udsman to protect the confidentiality of

such records.
SEC. 1206. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS. Section 323(a) of title 11, United States Code, as amended by section 466, is amended by inserting “on a fixed or percentage fee basis,” after “salary basis,”.

SEC. 1207. EFFECT OF CONVERSION. Section 348(f)(2) of title 11, United States Code, is amended by inserting “the estate” after “property” the first place it appears.

SEC. 1208. ALLOWANCE OF ADMINISTRATIVE EXPENSES. Section 366(a) of title 11, United States Code, is amended by inserting “—or” in any program operated under part B, D, or E of title 5, United States Code, is amended by inserting “subparagraph (B) the retention of title as a security in interest; or” after “(a) the following:

SEC. 1209. EXCEPTIONS TO DISCHARGE. Section 523 of title 11, United States Code, as amended by sections 215 and 314, is amended—

(1) by transferring paragraph (15), as added by section 394(e) of Public Law 103-394 (108 Stat. 4133), so as to insert such paragraph after subsection (a)(14A);

(2) in subsection (a)(9), by striking “motor vehicle” and inserting “motor vehicle, vessel, or aircraft;”

(3) in subsection (e), by striking “a insured” and inserting “an insurance policy with

SEC. 1210. EFFECT OF DISCHARGE. Section 524(a)(3) of title 11, United States Code, is amended by striking “section 523” and all that follows through “or that” and inserting “section 521, 1228(a)(1), or 1328(a)(1), or that”.

SEC. 1211. PROTECTION AGAINST DISCRIMINATION IN TREATMENT. Section 525 of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting “student” before “grant” the second place it appears; and

(2) in paragraph (2), by striking “the program operated under part B, D, or E of” and inserting “any program operated under”.

SEC. 1212. PROPERTY OF THE ESTATE. Section 541(b)(6)(B) of title 11, United States Code, is amended by inserting “569 or” before “562”.

SEC. 1213. PREFERENCES. (a) IN GENERAL.—Section 547 of title 11, United States Code, as amended by section 201, is amended—

(1) in subsection (b), by striking “subsections” and inserting “subsections” and “(c)”;

(2) by adding at the end following:

“(1) if the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not a family farm, who is not a family farmer for the benefit of a creditor that is not a moneyed, business, commercial corporation or trust; and

(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.”

(b) CONFIRMATION OF PLAN FOR REORGANIZATION.—Section 1129(a) of title 11, United States Code, as amended by sections 213, 321, and 331, is amended by adding at the end the following:

“(17) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, commercial corporation or trust; and

(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.”

(2) C ONFORMING AMENDMENT. Section 1334(d) of title 28, United States Code, is amended—

(1) by striking “made under this subsection” and inserting “made under subsection (c)”;

(2) by striking “This subsection” and inserting “Subsection (c) of this subsection”.

SEC. 1220. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE. Section 510(a) of title 18, United States Code, as amended—

(1) in the first undesignated paragraph—

(A) by inserting “the term” before “bankruptcy”;

(B) by striking the period at the end and inserting “; and”;

(2) in the second undesignated paragraph—

(A) by inserting “the term” before “discharge”;

(B) by striking “this title” and inserting “title II”.

SEC. 1221. TRANSFERS MADE BY NONPROFIT CHARITABLE ORGANIZATIONS. (a) SALE OR TRANSFER OF PROPERTY OF ESTATE.—Section 363(d) of title 11, United States Code, is amended by striking “only” and all that follows through the end of the subsection and inserting “only”—

“(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, commercial corporation or trust; and

(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.”

(b) CONFIRMATION OF PLAN FOR REORGANIZATION.—Section 1129(a) of title 11, United States Code, as amended by sections 213, 321, and 331, is amended by adding at the end the following:

“(17) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, commercial corporation or trust; and

(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.”

(2) C ONFORMING AMENDMENT. Section 1334(d) of title 28, United States Code, is amended—

(1) by striking “made under this subsection” and inserting “made under subsection (c)”;

(2) by striking “This subsection” and inserting “Subsection (c) of this subsection”.

SEC. 1222. PROPERTY OF THE ESTATE. Section 541(b)(6)(B) of title 11, United States Code, is amended by inserting “569 or” before “562”.

SEC. 1214. POSTPETITION TRANSACTIONS. Section 549 of title 11, United States Code, is amended—

(1) by inserting “an interest in” after “transfer of” each place it appears;

(2) by striking “such property” and inserting “such real property”; and

(3) by striking “the interest” and inserting “such interest”.

SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE. Section 726(b) of title 11, United States Code, is amended by striking “1005,”.

SEC. 1216. GENERAL PROVISIONS. Section 1161 of title 11, United States Code, is amended by inserting “1123(d),” after “1123(b),”.

SEC. 1217. ABANDONMENT OF RAILROAD LINE. Section 1173(e)(1) of title 11, United States Code, is amended by striking “section 11347” and inserting “section 11326(a)”.

SEC. 1218. CONTENTS OF PLAN. Section 1127(c)(1) of title 11, United States Code, is amended by striking “section 11347” and inserting “section 11326(a)”.

SEC. 1219. BANKRUPTCY CASES AND PROCEEDINGS. Section 1334(d) of title 28, United States Code, is amended—

(1) by striking “made under this subsection” and inserting “made under subsection (c)”;

(2) by striking “This subsection” and inserting “Subsection (c) of this subsection”.

SEC. 1220. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE. Section 510(a) of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by inserting “the term” before “bankruptcy”;

(B) by striking the period at the end and inserting “; and”;

(2) in the second undesignated paragraph—

(A) by inserting “the term” before “discharge”;

(B) by striking “this title” and inserting “title II”.

SEC. 1221. TRANSFERS MADE BY NONPROFIT CHARITABLE ORGANIZATIONS. (a) SALE OR TRANSFER OF PROPERTY OF ESTATE.—Section 363(d) of title 11, United States Code, is amended by striking “only” and all that follows through the end of the subsection and inserting “only”—

“(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, commercial corporation or trust; and

(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.”

(b) CONFIRMATION OF PLAN FOR REORGANIZATION.—Section 1129(a) of title 11, United States Code, as amended by sections 213, 321, and 331, is amended by adding at the end the following:

“(17) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, commercial corporation or trust; and

(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.”

(2) C ONFORMING AMENDMENT. Section 1334(d) of title 28, United States Code, is amended—

(1) by striking “made under this subsection” and inserting “made under subsection (c)”;

(2) by striking “This subsection” and inserting “Subsection (c) of this subsection”.

SEC. 1222. PROPERTY OF THE ESTATE. Section 541(b)(6)(B) of title 11, United States Code, is amended by inserting “569 or” before “562”.

SEC. 1214. POSTPETITION TRANSACTIONS. Section 549 of title 11, United States Code, is amended—

(1) by inserting “an interest in” after “transfer of” each place it appears;

(2) by striking “such property” and inserting “such real property”; and

(3) by striking “the interest” and inserting “such interest”.

SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE. Section 726(b) of title 11, United States Code, is amended by striking “1005,”.

SEC. 1216. GENERAL PROVISIONS. Section 1161 of title 11, United States Code, is amended by inserting “1123(d),” after “1123(b),”.
(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to re¬main open for proceedings, issues or contro¬versies to any other court or to require the approval of any other court for the transfer of property.

SEC. 1221. PROTECTION OF VALID PURCHASE MONEY SECURITY INTERESTS.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking “20” and inserting “30”.

SEC. 1222. COMPENSATING TRUSTEES.

Section 3236 of title 11, United States Code, is amended—
(1) in subsection (b)—
(A) in paragraph (1), by striking “and”; and
(B) in paragraph (2), by striking the period at the end and inserting “; and”; and
(C) by adding at the end the following:
“(3) if a chapter 7 trustee has been allowed compensation due to the conversion or dis¬misal of the debtor’s prior case pursuant to section 707(b), and some portion of that com¬pensation remains unpaid in a case con¬verted to this chapter or in the case dis¬missed under section 707(b) and referred under this section to a chapter 7 trustee, the amount of any such unpaid compensation, which shall be paid monthly—

(A) by prorating such amount over the re¬maining duration of the plan; and

(B) if the payments are monthly payments not to exceed the greater of—

(i) $25; or

(ii) the amount payable to unsecured non¬priority creditors as provided by the plan, multiplied by 5 percent, and the result di¬vided by the number of months in the plan.”; and

(2) by adding at the end the following:
“(d) Notwithstanding any other provision of this title—

(1) compensation referred to in subsection (b)(3) may be collected by the trustee under that paragraph, even if such amount has been discharged in a prior pro¬ceeding under this title; and

(2) such compensation is payable in a case under this chapter only to the extent per¬mitted by subsection (b)(3).”.

SEC. 1223. AMENDMENT TO SECTION 362 OF TITLE 11, UNITED STATES CODE.

Section 362(b)(18) of title 11, United States Code, is amended to read as follows:
“(18) under subsection (a) of the creation or perfection of a security interest in personal property through a security agreement, a statutory lien for an ad va¬lorem property tax, or a special tax or spe¬cial assessment on real property whether or not ad valorum, imposed by a governmental unit, the proceeds of which come due after the filing of the petition.”;

SEC. 1224. JUDICIAL EDUCATION.

The Director of the Federal Judicial Cen¬ter, in consultation with the Director of the Executive Office for United States Trustees, shall develop materials and conduct such training as may be useful to courts in imple¬menting this Act and the amendments made by this Act, including the requirements re¬lated to the means test and reaffirmations under section 707(b) of title 11, United States Code, as amended by this Act.

SEC. 1226. RECLAMATION.

(a) RIGHTS AND POWERS OF THE TRUSTEE.—Section 546(c) of title 11, United States Code, is amended to read as follows:
“(c)(1) Except as provided in subsection (d) of this section and subsection (e) of section 507, and subject to the prior rights of holders of security interests in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 548 are subject to the right of a seller of goods to reclaim such goods if the debtor re¬ceived such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller de¬mands in writing reclamation of such goods—

“(A) not later than 45 days after the date of receipt of such goods by the debtor; or

“(B) not later than 20 days after the date of commencement of the case, if the 45-day pe¬riod expires after the commencement of the case.

“(2) If a seller of goods fails to provide no¬tice in the manner described in paragraph (1), the seller still may assert the rights con¬tained in section 546(c)(1).

(b) ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, as amended by sections 445 and 1103, is amended by adding at the end:
“(9) the value of any goods received by the debtor within 20 days before the date of com¬mencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s busi¬ness.”.

SEC. 1227. PROVIDING REQUESTED TAX DOCU¬MENTS TO THE COURT.

(a) CHAPTER 7 CASES.—The court shall not grant a discharge in the case of an individual seeking bankruptcy under chapter 7 of title 11, United States Code, unless requested tax documents have been provided to the court.

(b) CHAPTER 11 AND CHAPTER 13 CASES.—The court shall not confirm a plan of reorganiza¬tion in the case of an individual under chapter 11 or 13 of title 11, United States Code, unless requested tax documents have been filed with the court.

(c) DOCUMENT RETENTION.—The court shall destroy documents submitted in support of a bankruptcy claim not sooner than 3 years after the last payment is made on a bank¬ruptcy case filed by an individual under chapter 7, 11, or 13 of title 11, United States Code. In the event of a pending audit or en¬forcement action, the court may extend the time for destruction of such requested tax documents.

SEC. 1228. ENCOURAGING CREDITWORTHINESS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) certain lenders may sometimes offer credit to consumers indiscriminately, with¬out taking steps to ensure that consumers are capable of repaying the resulting debt, and in a manner which may encourage cer¬tain consumers to accumulate additional debt; and

(2) resulting consumer debt may increas¬ingly be a major contributing factor to con¬sumer insolvency.

(b) STUDY REQUIRED.—The Board of Gov¬ernors of the Federal Reserve System (hereafter in this section referred to as the “Board”) shall conduct a study of

(1) consumer credit industry practices of soliciting and extending credit—

(A) indiscriminately;

(B) with insufficient steps to ensure that consumers are capable of repaying the re¬sulting debt; and

(C) in a manner that encourages consumers to accumulate additional debt; and

(2) the effects of such practices on con¬sumer debt and insolvency.

(c) REPORT AND REGULATIONS.—Not later than 12 months after the date of enactment of this Act, the Board—

(1) shall make public a report on its find¬ings with respect to the indiscriminate solic¬itation and extension of credit by the credit industry;

(2) may issue regulations that would re¬quire additional disclosures to consumers; and

(3) may take any other actions, consistent with its existing statutory authority, that

the Board finds necessary to ensure respon¬sible industrywide practices and to prevent result¬ing consumer debt and insolvency.

SEC. 1229. PROPERTY NO LONGER SUBJECT TO REDEMPTION.

Section 541(b) of title 11, United States Code, as amended by sections 225 and 323, is amended by adding at the end the following:
“(g) Subject to subsection (b), any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where—

(A) the collateral is property in the possession of the pledgee or transferee;

(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and sec¬tion 108(b) of this title; or”.

SEC. 1230. TRUSTEES.

(a) SUSPENSION AND TERMINATION OF PANEL TRUSTEES AND STANDING TRUSTEES.—Section 586(d) of title 28, United States Code, is amended—

(1) by inserting “(1)” after “(8)”;

(2) by adding at the end the following:

“(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11, United States Code, may obtain judicial review of the final agen¬cy decision by commencing an action in the district court of the United States for the district for which the district court of the United States for the district in which the trustee is ap¬pointed under subsection (a)(1), or in the district court of the United States for the district in which the trustee is ap¬pointed under subsection (b). The trustee shall be deemed to have exhausted all available administrative remedies, which the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all available administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies. The Attorney General shall prescribe proce¬dures to implement this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies.

(b) EXPENSES OF STANDING TRUSTEES.—Section 586(e) of title 28, United States Code, is amended by adding at the end the following:
“(3) After first exhausting all available ad¬ministrative remedies, an individual ap¬pointed under subsection (b) may obtain judicial review of the final agency decision by denying a claim of actual, necessary expenses under this subsection by commencing an action in the district court of the United States for the district where the trustee resides. The deci¬sion of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.

(4) The Attorney General shall prescribe procedures to implement this subsection.”.

SEC. 1231. BANKRUPTCY FORMS.

(a) PROVISION OF FORMS.—Section 360 of title 11, United States Code, is amended by adding at the end the following:
“(b) After the date of enactment of this subsection, the Board shall prescribe procedures to implement this subsection.”.
(A) A reference in such subdivision to a district court shall be deemed to include a reference to a bankruptcy court and a bankruptcy appellate panel, as appropriate;
(B) a reference in such subdivision to the parties requesting permission to appeal to be served with the petition shall be deemed to include a reference to the parties to the judgment, order, or decree from which the appeal is taken.

(4) FILING OF PETITION WITH ATTACHMENT.—
(A) A petition requesting permission to appeal, that is based on a certification made under subparagraph (A) or (B) of section 158(d)(2) shall—

(1) be filed with the circuit clerk not later than 10 days after the majority is entered on the docket of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken; and
(B) have attached a copy of such certification.

(5) REFERENCES IN RULE 5.—For purposes of rule 5 of the Federal Rules of Appellate Procedure—
(A) a reference in such rule to a district court shall be deemed to include a reference to a bankruptcy court and to a bankruptcy appellate panel,
(B) a reference in such rule to a district clerk shall be deemed to include a reference to a bankruptcy clerk and to a bankruptcy appellate panel, and
(C) the parties may supplement the certification described in paragraph (A) with a statement of the basis for the certification.

(6) A provision to which reference is made in sections 202(a)(1), (b), or (c) of title 28, United States Code, shall be deemed to include a reference to a chapter 13 or 11 bankruptcy court, or to a bankruptcy appellate panel.

(b) PROCEDURAL RULES.—
(1) TEMPORARY APPLICATION.—A provision of this section shall apply to appeals under section 158(d)(2) of title 28, United States Code, as amended, if the circuit clerk shall be deemed to include a reference to a bankruptcy court, or to a bankruptcy appellate panel.

(2) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall apply with respect to cases commenced under title 11 of the United States Code before, on, and after such date.

SEC. 1233. INVOLUNTARY CASES.

(a) AMENDMENT.—Section 303 of title 11, United States Code, is amended—
(1) in subsection (b)(1), by—
(A) inserting “as to liability or amount” after “bona fide dispute”; and
(B) striking “if such claims” and inserting “if such noncontingent, undisputed claims”;
and
(2) in subsection (b)(1), by inserting “as to liability or amount” before the semicolon at the end.

(b) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall apply with respect to cases commenced under title 11 of the United States Code before, on, and after such date.

SEC. 1234. FEDERAL ELECTION LAW FINES AND PENALTIES AS NONDISCHARGEABLE DEBT.

Section 523(a) of title 11, United States Code, as amended by section 314, is amended by inserting after paragraph (14A) the following—

(14B) incurred to pay fines or penalties imposed under Federal election law.

TITLE XIII—CONSUMER CREDIT DISCLOSURE

SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

(a) MINIMUM PAYMENT DISCLOSURES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following—

(11)(A) In the case of an open end credit plan that requires a minimum monthly payment of more than 4 percent of the balance on which finance charges are accruing, the following statement, located on the front of the statement of account, shall be clearly and conspicuously: ‘‘Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical minimum monthly payment on a balance of $1,000 at an interest rate of 17 percent would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this number: . . . ’’ (the blank space to be filled in by the creditor).

(b) In the case of an open end credit plan that requires a minimum monthly payment of more than 4 percent of the balance on which finance charges are accruing, the following statement, located on the front of the statement of account, shall be clearly and conspicuously: ‘‘Minimum Payment Warning: Making only the required minimum monthly payment will increase the interest you pay and the time it takes to repay your balance. Making a typical 5 percent minimum monthly payment on a balance of $500 at an interest rate of 17 percent would take 30 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this number: . . . ’’ (the blank space to be filled in by the creditor).

(c) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Federal Trade Commission, the following statement, in a prominent location on the front of the statement of account, shall be clearly and conspicuously: ‘‘Minimum Payment Warning: Making only the required minimum monthly payment will increase the interest you pay and the time it takes to repay your balance. Making a typical 5 percent minimum monthly payment on a balance of $500 at an interest rate of 17 percent would take 30 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Federal Trade Commission at this toll-free number: . . . ’’ (the blank space to be filled in by the creditor).

(d) Notwithstanding subparagraphs (A), (B), or (C), in complying with any such subparagraph, a creditor may use an example based on an interest rate that is greater than 17 percent. Any creditor that is subject to such subparagraph and that provides a statement required to be provided to the consumer under subparagraph (A) in lieu of the disclosure required under subparagraph (B) shall, at least every 15 months, periodically recalculate, as necessary, the interest rate and repayment period under subparagraphs (A), (B), and (C).
for information described in subparagraph (A), (B), or (C) from an obligor through the toll-free telephone number disclosed under subparagraph (A), (B), or (C), as applicable, shall include the required minimum payment amount; and

(II) Not later than 6 months prior to the expiration of the 24-month period referenced in subparagraph (A) or (B), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the program described in subsection (a).

(G) The Federal Trade Commission shall establish and maintain a toll-free number for the purpose of providing, at no cost to consumers, the information required to be disclosed under subparagraph (A).

(H) The Board shall—

(i) establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum payment under open end credit plans;

(ii) establish in the table an approximate number of months that it will take to repay an outstanding balance that is greater than the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet.

(I) The Board shall establish and maintain for a period not to exceed 24 months following the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 a toll-free telephone number that provides information concerning the responsibility of debtors who are depository institutions, and which advertisement is disseminated in paper form to the public or through the Internet.

(J) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay the customer's outstanding balance is not subject to the requirements of subparagraph (A) or (B).

(K) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay an outstanding balance shall include the following statement on each billing statement:

‘Making only the minimum payment will increase the interest you pay and the time it takes to repay the full amount of your debt. Call this toll-free number:’ (the blank space to be filled in by the creditor).

(L) The disclosure requirements of this subsection shall be subordinated to an indexing mechanism established by the Board.

(M) The Board shall, in consultation with the Federal Deposit Insurance Corporation, the Federal Reserve System, and the Federal Trade Commission, conduct a study to determine the types of information available to potential borrowers from consumer credit lending institutions regarding factors that may influence their decisions on credit, repayment requirements, and the consequences of default.

(N) Credit for consideration—In conducting a study under paragraph (M), the Board shall include a clear and conspicuous statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(2) Credit advertisements.—Section 128 of the Truth in Lending Act (15 U.S.C. 1667(b)(1)) is amended—

(A) by striking ‘‘If any’’ and inserting the following:

’’(1) IN GENERAL.—If any’’; and

(B) by adding at the end the following:

’’(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, shall include a clear and conspicuous statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.’’.

(3) Non-open end credit extensions.—Section 128 of the Truth in Lending Act (15 U.S.C. 1667(b)) is amended—

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

’’(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.’’; and

(B) in subsection (b), by adding at the end the following:

’’(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by paragraph (a) shall be made to the consumer at the time of application for such extension of credit.’’.

(C) Creditor advising.—Section 144 of the Truth in Lending Act (15 U.S.C. 1664) is amended by adding at the end the following:

’’(e) Each advertisement to which this section applies that refers to a credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to broadcast over radio or television, shall include a clear and conspicuous statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.’’.

(D) Regulatory implementation.—

SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY A DWELLING.

(a) OPEN END CREDIT EXTENSIONS.—Section 127A(a)(13) of the Truth in Lending Act (15 U.S.C. 167a(a)(13)) is amended—

(1) by striking ‘‘consultation of tax advis—

er.—A statement that the’’ and inserting the following: ‘‘tax deductibility.—A statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.’’.

(2) Credit advertisements.—Section 128 of the Truth in Lending Act (15 U.S.C. 1667(b)) is amended—

(A) by striking ‘‘If any’’ and inserting the following:

’’(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, shall include a clear and conspicuous statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.’’.

(3) Non-open end credit extensions.—Section 128 of the Truth in Lending Act (15 U.S.C. 1667(b)) is amended—

(A) by striking ‘‘If any’’ and inserting the following:

’’(1) IN GENERAL.—If any’’; and

(B) by adding at the end the following:

’’(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, shall include a clear and conspicuous statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.’’.

(C) Regulatory implementation.—

SEC. 1303. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY A DWELLING.

(a) OPEN END CREDIT EXTENSIONS.—Section 127A(a)(13) of the Truth in Lending Act (15 U.S.C. 167a(a)(13)) is amended—

(1) by striking ‘‘consultation of tax advis—

er.—A statement that the’’ and inserting the following: ‘‘tax deductibility.—A statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.’’.

(2) Credit advertisements.—Section 128 of the Truth in Lending Act (15 U.S.C. 1667(b)) is amended—

(A) by striking ‘‘If any’’ and inserting the following:

’’(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, shall include a clear and conspicuous statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.’’.

(3) Non-open end credit extensions.—Section 128 of the Truth in Lending Act (15 U.S.C. 1667(b)) is amended—

(A) by striking ‘‘If any’’ and inserting the following:

’’(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, shall include a clear and conspicuous statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.’’.

(C) Regulatory implementation.—

SEC. 1304. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY A DWELLING.

(a) OPEN END CREDIT EXTENSIONS.—Section 127A(a)(13) of the Truth in Lending Act (15 U.S.C. 167a(a)(13)) is amended—

(1) by striking ‘‘consultation of tax advis—

er.—A statement that the’’ and inserting the following: ‘‘tax deductibility.—A statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.’’.

(2) Credit advertisements.—Section 128 of the Truth in Lending Act (15 U.S.C. 1667(b)) is amended—

(A) by striking ‘‘If any’’ and inserting the following:

’’(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, shall include a clear and conspicuous statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.’’.

(C) Regulatory implementation.—
(1) In general.—The Board shall promulgate regulations implementing the amendments made by this section.

(2) Effective date.—Regulations issued under paragraph (1) shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1303. DISCLOSURES RELATED TO ‘‘TEMPORARY RATES’’.

(a) Introductory Rate Disclosures.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

‘‘(6) ADDITIONAL NOTICE CONCERNING ‘‘INTRODUCTORY RATES’’—

(A) In general.—Except as provided in subparagraph (A) of paragraph (3) of section 122(c) (15 U.S.C. 1637(c)), any application or solicitation to open a credit card account and any promotional materials accompanying such application or solicitation for which a disclosure is required under section 122(b) of the Truth in Lending Act that offers a temporary annual percentage rate applicable to such account, which term shall appear clearly and conspicuously on the face of the application or solicitation, shall—

(i) use the term ‘‘introductory’’ in immediate proximity to any listing of the temporary annual percentage rate applicable to that offer, if that offer offers a temporary annual percentage rate that will apply after the temporary introductory period will end and the rate that will apply after the temporary introductory period may be applicable to any listing of a temporary annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation; and

(ii) if the annual percentage rate that will apply after the temporary introductory period will be a fixed rate, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing of the temporary annual percentage rate in the tabular format described in section 122(c)), the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period;

and

(iii) if the annual percentage rate that will apply after the end of the temporary introductory period will vary in accordance with an index, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing of the temporary annual percentage rate in the tabular format described in section 122(c)), the time period in which the introductory period will end and the annual percentage rate that will apply after that, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation to open a credit card account, as follows:

(B) Exception.—Clauses (i) and (iii) of subparagraph (A) do not apply with respect to any listing of a temporary annual percentage rate in the tabular format prescribed by section 122(c), the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation to open a credit card account, as follows:

(C) Conditions for introductory rate disclosures.—An application or solicitation to open a credit card account for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate or, if that rate of interest is revocable under any circumstance or upon any event, clearly and conspicuously disclose, in a prominent manner on or with such application or solicitation—

(i) a general description of the circumstances that may result in the revocation of the temporary annual percentage rate; and

(ii) if the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate.

(D) Definitions.—In this paragraph—

(i) the term ‘‘the annual percentage rate’’ means the annual percentage rate that will apply after the temporary introductory period; and

(ii) the term ‘‘the annual percentage rate of interest’’ and ‘‘temporary annual percentage rate’’ mean any rate of interest applicable to a credit card account for an introductory period of less than 1 year, if that rate is less than an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation; and

(E) Relation to other disclosure requirements.—Nothing in this paragraph may be construed to supersede subsection (a) of section 122, or any disclosure required by paragraph (1) or any other provision of this subsection.

(b) Regulatory implementation.—

(1) In general.—The Board shall promulgate regulations implementing the requirements of section 127(c)(6) of the Truth in Lending Act, as added by this section.

(2) Effective date.—Section 127(c)(6) of the Truth in Lending Act, as added by this section, and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1304. Internet-Based Credit Card Solicitations.

(a) Internet-Based Solicitations.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

‘‘(6) Internet-based solicitation.—

(A) In general.—The Board shall promulgate regulations implementing the requirements of section 127(c)(6) of the Truth in Lending Act, as added by this section.

(2) Effective date.—Section 127(c)(6) of the Truth in Lending Act, as added by this section, and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1305. Disclosures Related to Late Payment Charges.

(a) Disclosures Related to Late Payment Deadlines and Penalties.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

‘‘(12) If a late payment fee is to be imposed due to the failure of the obligor to make payment on or before a required payment due date, the following shall be stated clearly and conspicuously on the billing statement:

(A) The date on which that payment is due or, if different, the earliest date on which a late payment fee may be charged.

(B) The amount of the late payment fee to be imposed if payment is made after such date.’’

(b) Regulatory implementation.—

(1) In general.—The Board shall promulgate regulations implementing the requirements of section 127(b)(12) of the Truth in Lending Act, as added by this section.

(2) Effective date.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1306. Prohibitions for Failure to Incur Finance Charges.

(a) Prohibition on Certain Actions for Failure To Incur Finance Charges.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

‘‘(b) Prohibition on Certain Actions for Failure To Incur Finance Charges.—A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.’’

(b) Regulatory implementation.—

(1) In general.—The Board shall promulgate regulations implementing the requirements of section 127(b)(6) of the Truth in Lending Act, as added by this section.

(2) Effective date.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1307. Dual Use Debit Card.

(a) Report.—The Board may conduct a study of, and present to Congress a report on, its analysis of, consumer protections under existing law to limit the liability of consumers for unauthorized use of a debit card or similar access device. Such report, if submitted, shall include recommendations for legislative initiatives, if any, of the Board, based on its findings.

(b) Considerations.—In preparing a report under subsection (a), the Board may include—

(1) the extent to which section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693g), as in effect at the time of the report, and the implementing regulations promulgated by the Board to carry out that section provide adequate unauthorized use liability protections for consumers;

(2) the extent to which any voluntary industry rules have enhanced or may enhance...
the level of protection afforded consumers in connection with such unauthorized use liability; and
(3) whether amendments to the Electronic Fund Transfer Act (15 U.S.C. 1601 et seq.), or revisions to regulations promulgated by the Board to carry out that Act, are necessary to further address adequate protection for consumers concerning unauthorized use liability.

SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.

(a) STUDY.—
(1) IN GENERAL.—The Board shall conduct a study to report findings that the extension of credit described in paragraph (2) has on the rate of bankruptcy cases filed under title 11, United States Code.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Board shall submit to the Senate and the House of Representatives a report summarizing the results of the study conducted under subsection (a).

SEC. 1309. CLARIFICATION OF CLEAR AND CONSPICUOUS.

(a) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Board shall promulgate regulations to provide guidance regarding the meaning of the terms "clear" and "conspicuous", as used in subparagraphs (A), (B), and (C) of section 127(b)(1)(A) and clauses (ii) and (iii) of section 1306(a)(1)(A) of the Truth in Lending Act.

(b) EXAMPLES.—Regulations promulgated under subsection (a) shall include examples of clear and conspicuous model disclosures for the purpose of disclosures required by the provisions of the Truth in Lending Act referred to in subsection (a).

(c) STANDARDS.—In promulgating regulations under this section, the Board shall ensure that the disclosures described in subsection (a) are reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

SEC. 1401. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—
(1) IN GENERAL.—Except as otherwise provided in this Act and paragraph (2), the amendments made by this Act shall not apply with respect to cases commenced under title 11, United States Code, before the effective date of this Act.

(2) CERTAIN LIMITATIONS APPLICABLE TO DEBTORS. The amendments made by sections 308, 322, and 330 shall apply with respect to cases commenced under title 11, United States Code, before the effective date of this Act.

The SPEAKER pro tempore. The gentleman from Pennsylvania (Mr. GEKAS) will be recognized for 30 minutes in support of the motion, and the gentleman from New York (Mr. NADLER) will be recognized for 30 minutes.

Mr. GEKAS. Mr. Speaker, I yield myself such time as I may consume. The upshot of all this parliamentary movement that we have witnessed just now is to bring back to the Chamber the conference report on the bankruptcy reform and the odious language that caused such a bitter debate earlier in the day which in effect would remove the abortion language altogether. In addition, it would remove the language that would call for new judges to be appointed in various jurisdictions, not because of the substance of that portion of the provisions but because this would eliminate the possibility of a point of order being lodged on the budgetary portion of the bill. So in effect we have a clean conference report without the judges and without the abortion clinic language vested in it.

Mr. Speaker, I reserve the balance of my time.

PARLIAMENTARY INQUIRIES

Mr. NADLER. Mr. Speaker, I have a parliamentary inquiry before I start my 30 minutes.

The SPEAKER pro tempore. The gentleman may inquire.

Mr. NADLER. Mr. Speaker, we have just been handed a 472-page bill labeled H.R. 5754, a new brand new bill what is now before the House that none of us have had a chance to read?

The SPEAKER pro tempore. That is the text incorporated by reference in the pending motion.

Mr. NADLER. The motion is to consider this bill?

The SPEAKER pro tempore. The text is incorporated by reference in the motion.

Mr. NADLER. My next parliamentary inquiry is, is this brand new 472-page bill that no one has had a chance to read, including me, that we just saw for the first time about 5 minutes ago identical to anything we have ever seen before, or is this a brand new bill that we are going to debate sight unseen?

The SPEAKER pro tempore. That is not a parliamentary inquiry.

Mr. NADLER. Is this a new bill or is this a copy of something else?

The SPEAKER pro tempore. The bill was introduced today.

Mr. NADLER. But my question is, is this the same as something else that we have seen before or is it new, since we have not had a chance to read it?

The SPEAKER pro tempore. That is not a parliamentary inquiry. That is a matter for debate.

Mr. NADLER. Then I will ask the gentlemen, somebody over there, to yield and answer that question.

Mr. FRANK. Parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore. The gentleman may inquire.

Mr. FRANK. The gentleman referred to this as a conference report. Conference reports are handled under one set of procedures. Is this in fact still a conference report, and will it be treated in the other body that way, or is it a brand new bill, to be treated as a brand new bill?

The SPEAKER pro tempore. This motin contains a proposed amendment to the Senate amendment. It is not a conference report.

Mr. FRANK. So it is not a conference report? Then let's treat it as if we were to pass it, it does not have the status of a conference report when it goes to the other body?

The SPEAKER pro tempore. That is correct.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we are told, and we have to take it on faith, that this 472-page amendment, although it says H.R. 5754, it is a new bill, is the same as the conference report minus the Schumer amendment, minus the judgeships, but otherwise it is supposedly identical. We have to take on faith that this brand new 472-page bill that we have never seen before is in fact the same as the conference report text minus the two differences we have been told about. We have to take it on faith because we have not been given any opportunity at all to read the bill.

Not being satisfied with the humiliation of having one of their top priority bills defeated by their own Members earlier today, the Republican leadership now insults our intelligence by wasting our time at one o'clock in the morning with a bill they know the Senate will not even glance at. The conference report whose rule was defeated earlier today and which was just ruled out of order a few minutes ago was the result of months of painstaking negotiations with the other body. Now we are going to undo the results of all of that negotiation in minutes and produce a brand new bill that we know the Senate will not even glance at. Mr. Speaker, even everyone, even the banks who have paid for this legislation with cold hard cash, know that this midnight stunt cannot result in a live bill. I find it hard to believe that even the Members putting on this little show can believe that it is intended even vaguely seriously.

I do not really matter how Members vote on this bill tonight, because the bill is not going anywhere, although I am sure details will be hastily inserted into a press release that has already been drafted.

I am not going to get into the merits of the bill. We debated the merits of the bill this afternoon, although I will note that the 28 new bankruptcy judges and the 15 temporary judgeships that will otherwise expire that were contained in the conference report have been removed.
Now, with the great increase in bankruptcy filings that supposedly motivated the bill in the first place, everyone concedes that we need those judicial positions in order to process all the bankruptcy proceedings, especially with all the new requirements that will be imposed by this bill, which will necessitate a lot of new judicial time, according to everyone.

I find it interesting that with all the wailing and gnashing of teeth about the terrible impact on justice of the Senate failure to confirm the President’s judicial nominees, we are suddenly eliminating 28 judges and many existing judges who will now be permitted to expire for no apparent reason. Why are the Republicans suddenly eliminating all these, everyone admits, needed judicial positions? Now, I understand the political necessity of paying obeisance and bowing down deeply to the religious right by eliminating the Schumer amendment, but why are these judicial positions that are, everyone concedes, essential?

It is no wonder that the voters are cynical about Congress, when the leadership here, the Republican leadership, insists on putting on circuses purely to enter into these judicial positions that are, everyone concedes, essential?

Mr. GEKAS. Mr. Speaker, will the gentleman yield?

Mr. CASTLE. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. We are not certain of that. Let me assure the gentleman that indeed this deletion of the judges does not in any way sway us away from our commitment to have these judges appointed and to assume their positions as bankruptcy judges. This is, just as we outlined, necessary in order to get the main body of the bill on bankruptcy reform to the vote for the Members. So we are not sure the gentleman that the commitment to the judges is intact and that will be a part of a final solution to this problem.

Mr. CASTLE. Mr. Speaker, reclaiming my time, the gentleman from Missouri (Mr. BLUNT) is here now. If I could inquire of the gentleman as part of this inquiry his representations concerning these new judges and what would happen to them in the future, if this legislation were to pass tonight and then were to pass the Senate tomorrow.

Mr. BLUNT. Mr. Speaker, will the gentleman yield?

Mr. CASTLE. I yield to the gentleman from Missouri.

Mr. BLUNT. The gentleman makes a good point. Because of the passage of the legislation, I think we would need to add the judges as the legislation did that came back from the conference committee that was a wise addition, and the gentleman certainly has my commitment, and I believe the commitment of the majority of our colleagues, would be my thought, that we would follow up with the sections of this bill that relate to judges, assuming that the bill is passed in the other body.

Mr. CASTLE. Well, reclaiming my time, my sense is that this bill will not pass in the other body, and perhaps in this sense it could not pass, and I think it should have passed today. As it is, I am getting some acknowledgment over there on that side.

But I think it is extraordinarily important. I cannot stress how important it is. If this legislation caused our courts to function continuously in the bosom, if not the pocket, of large financial interests, was so great that they had to come up with, and let me use the technical parliamentary term, the cockamamie scheme I have ever seen on the floor of a legitimate democratic legislature.

You bring a bill to the floor, it is losing, and you do everything you can to
get people to vote for it. And when you cannot get them to vote for it, you then decide that what you try to get them to vote for violates the rules of the House. So you bring back your own bill, which violated the rules of the House, and say to people, well, you know these rules, maybe they are more important than we thought.

So you then make a point of order against your own bill to change it, knock out a very important provision about judges, the gentleman from Delaware asked a legitimate question, he gets a little bit of mumbo-jumbo because of this, he says, and he sits down with a little grumble, and now you want to vote to send this bill to the Senate. People should understand this, will go as a conference report, but as a stand-alone bill.

It will pass in the other body if someone gets unanimous consent to pass it.

Now, I think frankly there are a lot of things more likely to get unanimous consent than this. No one thinks that this bill will even be taken up in the Senate, let alone in what puzzle me. Yes, I understand that people in the financial industry to whom many of you are attached emotionally, politically, and in any other way, they are distressed that you voted no, and they want you to vote yes, so you can vote both ways on the same bill in the same evening. Not that bad.

But here is the problem. When the bill had a chance to pass, you voted to kill it. Now, when it is dead, you vote to pass it. And I got to say this, I have to ask you this question because I am interested in your techniques. For this you can persuade, and let me say in tribute, if you can persuade these sophisticated public financial people to give you credit for something this phony, then you are selling too cheap. Why do you not get a platinum credit card with negative interest rates? I mean, if you persuade, and let me say in tribute, if you can persuade these sophisticated public financial people to give you credit for something this phony, then you are selling too cheap. Why do you not get a platinum credit card with negative interest rates? I mean, if you can persuade, and let me say in tribute, if you can persuade these sophisticated public financial people to give you credit for something this phony, then you are selling too cheap. Why do you not get a platinum credit card with negative interest rates? I mean, if you can persuade, and let me say in tribute, if you can persuade these sophisticated public financial people to give you credit for something this phony, then you are selling too cheap.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. Speaker, politics is a nice business, and we are all in it. But this is so cynical, so an interruption of the legislative process that you ought to be embarrassed about it.

Mr. GEKAS. Mr. Speaker, I reserve the balance of my time.

Mr. NADLER. Mr. Speaker, the total absurdity of the situation having been well explained by the gentleman from Massachusetts, I yield back the balance of our time.

Mr. GEKAS. Mr. Speaker, I yield 30 seconds to the gentleman from California (Mr. THOMAS).

Mr. THOMAS. Mr. Speaker, I thank the gentleman for yielding me this time.

I too was moved by the gentleman from Massachusetts and I observed how much his side of the aisle thought he made cogent points, and as we move to the vote I am going to see how many people support the position with their vote.

Mr. GEKAS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the motion.

The previous question was ordered.

PARLIAMENTARY INQUIRY

Mr. NADLER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman will state it.

Mr. NADLER. Mr. Speaker, before I yielded back the balance of my time, the gentleman from Pennsylvania had yielded back the balance of his time, had he not?

The SPEAKER pro tempore. No. The gentleman reserved the balance of his time.

PARLIAMENTARY INQUIRY

Ms. JACKSON-LEE of Texas. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Ms. JACKSON-LEE of Texas. The inquiry is to inquire as to what the Members are voting on. Are they not voting on a bill that we just saw with no judges to rule on the law?

The SPEAKER pro tempore. The gentleman is not stating a parliamentary inquiry.

Ms. JACKSON-LEE of Texas. The parliamentary inquiry is, Mr. Speaker, is this bill without any judicial support in terms of the judges provision? Is that not in the bill?

The SPEAKER pro tempore. That is not a parliamentary inquiry.

The question is on the motion offered by the gentleman from Pennsylvania (Mr. GEKAS).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. FRANK. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 244, noes 116, not voting 72, as follows:

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Mrs. CAPPS and Messrs. PRICE of North Carolina, LAMPSON and SHERMAN changed their vote from “no” to “aye.”

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. GRUCCI. Mr. Speaker, I apologize for my absence on November 13 and 14, 2002. Should I have been present, I would have voted in the following manner on these specific rollcall votes:


MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed with an amendment in which the concurrence of the House is requested, bills of the House of the following titles:

H. R. 3629. An act to provide tax incentives for economic recovery and assistance to displaced workers.

H. R. 5469. An act to amend title 17, United States Code, with respect to the statutory license for webcasting, and for other purposes.

The message also announced that the Senate has passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H. R. 4664. An act to authorize appropriations for fiscal years 2003, 2004, and 2005 for the National Science Foundation, and for other purposes.

The message also announced that the Senate has passed bills and a joint resolution of the following titles in which the concurrence of the House is requested:

S. 1742. An act to prevent the crime of identity theft, mitigate the harm to individuals victimized by identity theft, and for other purposes.

S. 2712. An act to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries.

S. J. Res. 53. Joint resolution relative to the convening of the first session of the One Hundred Eighth Congress.

LAYING ON TABLE SUNDRY HOUSE RESOLUTIONS

Mr. DREIER. Mr. Speaker, I ask unanimous consent that the following resolutions be laid on the table: H. Res. 586, H. Res. 387, H. Res. 601, H. Res. 603, and H. Res. 608.

The SPEAKER pro tempore (Mr. SIMPSON). Is there objection to the request of the gentleman from California?

There was no objection.

Tribute to the Honorable George Gekas, Member of Congress

(Mr. DELAY asked and was given permission to address the House for 1 minute.)

Mr. DELAY. Mr. Speaker, I take this time to honor the man who just finished the bill on bankruptcy reform, the gentleman from Pennsylvania (Mr. GEKAS) who has served in this body for 20 years, has worked on the bankruptcy reform bill for over 10 years, probably the whole 20 years that he has been in Congress, just stood up here and took all the abuse that could be hurled at him and showed what kind of man he was and passed that bill and sent it over to the Senate where we hope that it will receive the consideration that it deserves.

This is a man that has worked so hard, has been so collegial with the other Members of this body, who lost his last election. Tonight he is closing down the Congress with a bill that he has worked on his entire career and it is sort of indicative of who we are and what we are here. He is a man that is so humble that he would not even stick around on the floor tonight. He went and left the floor after passing his bill because he knows that many other Members had worked on the bill. He is a humble man, a man of great musical talent, a man that has served on the Committee on the Judiciary, went through all the things that the Committee on the Judiciary works on and not the least of which was the impeachment, a very difficult time for this House, was a stalwart, and the kind of legislation that out of that committee, was a subcommittee chairman for the last 8 years and honored this House by his presence and honored this House by his service, a very distinguished service that we greatly appreciate. We honor tonight GEORGE GEKAS who closes the 107th Congress by passing a bill that he has worked on for so long.

Mr. TOM DAVIS of Virginia. Mr. Speaker, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Virginia.

Mr. TOM DAVIS of Virginia. Let me join my friend from Texas in also honoring GEORGE GEKAS and his 20 years of service to this body. I think the crowning achievement of this evening was an overwhelming vote for this bankruptcy bill. The objectionable parts of this bill were not inserted that he put in there as part of the political sausage-making that goes on between the House and the Senate; but the overwhelming 244–116 vote I think speaks well for the kind of bill that he worked with his colleagues across party lines to put together.

A graduate of Dickinson from Harrisburg, Pennsylvania, he was very under-spoken, not just soft-spoken, but understated, was someone who was not always out there getting the credit, issuing press releases, but he was here. He had one of the best attendance records in the House, often driving between Harrisburg and Washington, D.C., between sessions, getting back to his district as often as possible. He was an impeachment manager as the majority whip noted and had a distinguished career in the Committee on the Judiciary where he was involved in the intricacies of many bills, that came out of there. His 20 years of service here I think are a reflection of the dedication that he put into public service which preceded his election to Congress. He will be missed from this body. I will miss him. Again, I congratulate him for this crowning achievement, the passage of this bankruptcy bill tonight.

Mr. YOUNG of Alaska. Mr. Speaker, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. Mr. Speaker, I thank the gentleman for yielding. I can only say, Members may not know that GEORGE is a person that can speak three different languages. He served in the military with honor as an officer. He has probably the greatest knowledge of anybody I have ever met. To have GEORGE GEKAS as a dear friend, as
he was and is, something I will always cherish. We are two opposites. I am the barbarian and he is the intellectual. But we worked together. I watched him on this floor especially during the impeachment time, the dignity he brought and the knowledge that he had, the legal background that he used; I have the greatest respect for his abilities. I cherished his friendship and tonight was a crowning night for him. We did lose him, but we really have no loss because he will always be in our hearts.

Mr. DELAY. I appreciate the gentleman’s comments.

Mr. NUSSLE. Mr. Speaker, would the gentleman yield?

Mr. DELAY. I yield to the gentleman from Iowa.

Mr. NUSSLE. Mr. Speaker, I would also like to add my voice to the many who praise GEORGE GEKAS tonight on his retirement. He is one of the ones who have encouraged those of us who have tried to reform the budget process. Every year he introduces the bill on the automatic continuing resolution which might have come in handy maybe this year. Who knows? At almost 2 o’clock in the morning, maybe we would have been done a lot sooner. But obviously with controversy but always with a good heart and a cheerful heart. He also demonstrated to me that we also have a personal side to all of us. We are legislators, we are chairmen, we get to be a personal side to all of us. We are legislators, we get to be heart and a cheerful heart. He also demonstrated to me that we also have a personal side to all of us. We are legislators, we are chairmen, we get to be.

Mr. Speaker, I want to join in the tribute to our colleague, Mr. GEKAS, tonight from Pennsylvania. The gentleman from Pennsylvania has made a great contribution to the House. It has been my privilege to not just be his friend but to work very closely with him. He is one of the finest gentlemen I have ever met. I do not just mean this in the context of this process, but he is one of the finest gentlemen I have ever met. The gentleman from Texas raising this point at this moment as he has had this fantastic success at the end of his legislative career.

Mr. BOEHLERT. Mr. Speaker, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Speaker, I want to thank the gentleman for initiating this tribute. It is well deserved, for a guy that I have had the pleasure of knowing for 20 years. We came together in 1982 in the freshman class. We never thought we had a chance to get to know this distinguished and very fine gentleman very well. He is a versatile guy in so many respects. He is a many-dimensional guy and one who has devoted a generation to service in the House and to service of the people of Pennsylvania. He will be missed. I think it is so fitting that he came in here as a winner in 1982 and he leaves here as a winner tonight with his signature legislation.

Mr. DELAY. Mr. Speaker, I appreciate the gentleman’s remarks. I yield to the gentleman from Michigan (Mr. EHRLERS).

Mr. EHRLERS. Mr. Speaker, I thank the gentleman for yielding. I am a relative newcomer here, but I have always enjoyed Congressman GEKAS in the many discussions we have had. He is very proud of his Greek heritage, loves to share the Greek delicacies that we all enjoy and is also a superb piano player. But beyond that he is an outstanding Congressman, and at one time I had a bill before his subcommittee. He treated me with fairness, with honor, and went above and beyond the call of duty of a chairman in helping me get my legislation through, and I still remember that as a newcomer to have someone with that maturity and that experience be willing to help me in my efforts before his subcommittee. He is a great gentleman. We are going to miss him here, but at least he goes out with a crowning achievement and we can all be proud of that.

Mr. DELAY. Mr. Speaker, I appreciate the gentleman from Michigan (Mr. EHRLERS). I think the gentleman from California (Mr. DREIER) would like me to yield.

Mr. DREIER. Mr. Speaker, I thank my friend for yielding. And, Mr. Speaker, I want to join in this tribute to our friend GEORGE GEKAS, a gentleman who comes from Iowa (Mr. NUSSLE) just mentioned. When I think of GEORGE GEKAS, like to take a moment to mention another of our colleagues who is retiring, my very good friend from California, STEVE HORN. When I think of GEORGE GEKAS, I think of GEORGE GEKAS, like to take a moment to mention another of our colleagues who is retiring, my very good friend from California, STEVE HORN. When I think of GEORGE GEKAS, I think of STEVE HORN, another well-educated work horse. STEVE HORN is a man who came to this institution with an amazing background, having been a college president, and he is someone who, because of his tremendous institutional memory having worked as an aide to former Senator Tom Kuchel of California, he brought an understanding of the work of the other body and an expertise which will be sorely missed.

As I think back and I see my friend from Virginia (Mr. TOM DAVIS) here, I am reminded of the work that we did on the issue of YZYK. I recall that our colleague Mr. HORN began very early having a wide range of hearings on the governmental challenge of dealing with the turn of the century and the YZYK issue. And I want to say that he and his wonderful wife Nini have worked night and day representing a very difficult and challenging area in southern California but at the same time understanding the responsibilities that they have had in this institution. So I would just like to say, Mr. Speaker, that he will be sorely missed and I certainly wish him well in his retirement. And I thank my friend for yielding.

Mr. TOM DAVIS of Virginia. Mr. Speaker, will the gentleman yield?

Mr. DELAY. Mr. Speaker, I yield to the gentleman from Virginia.

Mr. TOM DAVIS of Virginia. Mr. Speaker, I appreciate the gentleman from California (Mr. DREIER) bringing up STEVE HORN. I have known STEVE HORN I think longer than anyone in this body because I was a Senate page from 1963 to 1967 and STEVE HORN worked there as a legislative aide to Senator Tom Kuchel. When he left Senator Kuchel’s office, his replacement was a young man named Leon Panetta. So history works in strange ways, but I kept up with STEVE through the years, followed his career in the presidential administration he went into, leaving Tom Kuchel, and then into his career. Of course STEVE had degrees from Harvard and Stanford, was a university president, well regarded in the Long Beach community.

Mr. LEWIS of California. Mr. Speaker, I appreciate the majority whip yielding. George Gekas is a friend of all of ours. The gentleman from Pennsylvania has made a great contribution to the House. It has been my privilege to not just be his friend but to work very closely with him. He is one of the finest gentlemen I have ever worked through this process over a long period of time.

Mr. Speaker, I would also, when I think about GEORGE GEKAS, like to take a moment to mention another of our colleagues who is retiring, my very good friend from California, STEVE HORN. When I think of GEORGE GEKAS, I think of STEVE HORN, another well-educated work horse. STEVE HORN is a man who came to this institution with an amazing background, having been a college president, and he is someone who, because of his tremendous institutional memory having worked as an aide to former Senator Tom Kuchel of California, he brought an understanding of the work of the other body and an expertise which will be sorely missed.

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Mr. TOM DAVIS of Virginia. Mr. Speaker, will the gentleman yield?

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Mr. TOM DAVIS of Virginia. Mr. Speaker, I appreciate the gentleman from California (Mr. DREIER) bringing up STEVE HORN. I have known STEVE HORN I think longer than anyone in this body because I was a Senate page from 1963 to 1967 and STEVE HORN worked there as a legislative aide to Senator Tom Kuchel. When he left Senator Kuchel’s office, his replacement was a young man named Leon Panetta. So history works in strange ways, but I kept up with STEVE through the years, followed his career in the presidential administration he went into, leaving Tom Kuchel, and then into his career. Of course STEVE had degrees from Harvard and Stanford, was a university president, well regarded in the Long Beach community.
When he was elected to Congress in 1992, it was a huge upset. This was a district that had been drawn to elect a Democrat, and Steve won it and held it every time, the only Republican most years to be elected in that area because of gerrymandering.

He was a very detail-oriented Member. He took copious notes on every hearing, what Members were saying. I hope some day he will publish that and share that with the world. He was active. He was involved in legislation. He took copious notes on every hearing, what Members were saying. I think today on some of the unanimous consent legislation going through, some of that will bear the imprint of Mr. Horn, as did a lot of legislation that passed through his body from his work on the Committee on Government Reform and Oversight when he was a very active subcommittee chairman for years.

Mr. DREIER. Mr. Speaker, would the gentleman yield briefly for one comment?

Mr. DELAY. I yield to the gentleman from California (Mr. DREIER).

Mr. DREIER. Mr. Speaker, I would like to say that my friend is absolutely right reminding us of the fact that Steve Horn took copious notes in a wide range of meetings, and I want to say that even when I was having conversations with my friend Mr. Horn he was taking notes, and I would like very much to go on record saying that I hope he never publishes those particular notes that he has taken in a number of conversations we had.

Mr. TOM DAVIS of Virginia. Mr. Speaker, I would agree with the gentleman. But anyway Steve is going to be missed. He is leaving on his own volition. We are all going to say there are three ways to leave public office and two of them are not very pleasant. Steve has opted for the third role, but I hope he will remain active in government and somewhere find a place for him perhaps in the administration because he has a lot to give and a great education and great experience.

SENSE OF HOUSE THAT NATIONAL PARK SERVICE SHOULD FORM COMMITTEE FOR ESTABLISHING GUIDELINES FOR NATIONAL DESIGN COMPETITION

Mr. HANSEN. Mr. Speaker, I ask unanimous consent that the Committee on Resources be discharged from further consideration of the joint resolution (H.J. Res. 117) approving the location of the commemorative work in the District of Columbia honoring former President John Adams, and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The Clerk read the resolution, as follows:

H. Res. 591

Whereas President Thomas Jefferson received the approval of Congress on 6 February 1803, to fund an expedition into the Far West with the Mississippi River and such tributaries as might lead to the Pacific Ocean on the most direct and practicable water route for purposes of commerce, in addition to which, the expedition was to gather scientific and geographical information, and to encourage peace among any Indian Nations encountered; Whereas Meriwether Lewis, Captain of the First Regiment of Infantry, and former Secretary to President Jefferson, was appointed to lead the expedition, and he selected, with the approval of the President, William Clark to serve equally as a Captain in a leadership role; Whereas the Expedition returned to St. Louis, Missouri, on September 23, 1806, after a 28-month journey covering 8,000 miles during which it traversed 11 future States: Illinois, Missouri, Kansas, Nebraska, Iowa, North Dakota, South Dakota, Montana, Idaho, Washington, and Oregon; and Whereas the expedition was one of the most remarkable scientific and military exploratory expeditions in all American history: Now, therefore, be it Resolved, That the House of Representatives directs the National Park Service to form a committee for the purpose of establishing guidelines to launch a national design competition for the following project: In as much as Congress desires to memorialize the Lewis and Clark Expedition and because the City of St. Louis was the departing and returning points of the Expedition as depicted by its Gateway to the West Arch, therefore the City of St. Louis should display a proper recognition of these great men in the form of a heroic sculpture portraying the Expedition to be built in the Luther Ely Smith Park in a memorial to former President John Adams should be located in Area I: Now, therefore, be it Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION I. APPROVAL OF COMMEMORATIVE WORK.

(a) APPROVAL. Congress approves the location for the commemorative work to honor former President John Adams and his legacy, as authorized by Public Law 107–62 (115 Stat. 411), within Area I as described in section 8008 of title 40, United States Code, subject to the limitation in subsection (b).

(b) LIMITATION. The commemorative work approved in subsection (a) shall not be located within the Reserve.

SEC. 2. DEFINITION OF RESERVE. In this section the term “Reserve” means the area of The National Mall extending from the United States Capitol to the Lincoln Memorial, and from the White House to the Jefferson Memorial, as depicted on the map entitled “Commemorative Areas Washington, DC and Environs,” in number 869/86501A and dated May 1, 2002.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

BAINBRIDGE ISLAND JAPANESE-AMERICAN MEMORIAL STUDY ACT OF 2002

Mr. HANSEN. Mr. Speaker, I ask unanimous consent for the immediate consideration in the House of the bill (H.R. 3747) to direct the Secretary of the Interior to conduct a study of the site commonly known as Eagledale Ferry Dock at Taylor Avenue in the State of Washington for potential inclusion in the National Park System.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The Clerk read the bill, as follows:

H.R. 3747

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION I. SHORT TITLE; FINDINGS.

(a) Short Title. This Act may be cited as the “Bainbridge Island Japanese-American Memorial Study Act of 2002”.

(b) Findings. The Congress finds the following:

(1) During World War II on February 19, 1942, President Franklin Delano Roosevelt signed Executive Order 9066, setting in motion the forced exile of more than 110,000 Japanese Americans.

(2) In Washington State, 12,892 men, women and children of Japanese ancestry experienced three years of incarceration, an incarceration violating the most basic freedoms of American citizens.
H8880
CONGRESSIONAL RECORD—HOUSE
November 14, 2002

(3) On March 30, 1942, 227 Bainbridge Island residents were the first Japanese Americans in United States history to be forcibly removed from their homes by the U.S. Army and sent to internment camps. They boarded the ferry Kehlaken from the former Eagledale Ferry Dock, located at the end of Taylor Avenue, in the city of Bainbridge Island.

(4) The city of Bainbridge Island has adopted a resolution stating that this site should be a National Memorial, and similar resolutions have been introduced in the Washington State Legislature.

(5) Both the Minidoka National Monument and Manzanar National Historic Site can clearly demonstrate a part of our Nation’s history when constitutional rights were ignored. These camps by design were placed in very remote places and are not easily accessible. Bainbridge Island is a short ferry ride from Seattle and the site would be within easy reach of many more people.

(6) This is a unique opportunity to create a site that will honor those who suffered, cherish the friends and community who stood beside them and welcomed them home, and inspire all to stand firm in the event our nation again faces similar fears.

(7) The site should be recognized by the National Park Service based on its high degree of national significance, association with significant events and features of our Nation’s history when constitutional rights were ignored. These events associated with it, located in the town of Bainbridge Island, Kitsap County, Washington.

SECTION 1. SHORT TITLE. This Act may be cited as the “Caribbean National Forest Wilderness Act of 2002.”

SECTION 2. WILDERNESS DESIGNATION, CARIIBBEAN NATIONAL FOREST, PUERTO RICO. (a) EL TORO WILDERNESS.—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.), the approximately 10,000 acres of land in the Caribbean National Forest/Luquillo Experimental Forest in the Commonwealth of Puerto Rico that were proposed for wilderness classification in the revised land and resource management plan for the Caribbean National Forest/Luquillo Experimental Forest, approved April 17, 1997, are hereby designated as wilderness and, therefore, as a component of the National Wilderness Preservation System. The designated lands shall be known as the El Toro Wilderness.

(b) WILDERNESS BOUNDARIES.—The El Toro Wilderness shall consist of those lands that were proposed for wilderness classification in the management plan referred to in subsection (a), except that the Secretary of Agriculture shall locate the boundaries of the El Toro Wilderness so that existing municipal water intakes will not be within the wilderness boundaries and the boundaries shall be located at least 600 feet west of Highway PR 191 from Kilometer 12.0.

(c) MAP AND DESCRIPTION.—(1) PREPARATION AND SUBMISSION.—As soon as practicable after the date of the enactment of this Act, the Secretary of Agriculture shall prepare a map and boundary description of the El Toro Wilderness and submit the map and boundary description to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The map and boundary description shall be on file and available for public inspection in the office of the Chief of the Forest Service.

(2) TREATMENT.—The map and boundary description prepared under paragraph (1) shall have the same force and effect as if included in this Act. The Secretary may correct clerical and typographical errors in the map and description.

(d) ADMINISTRATION.—Subject to valid existing rights, the Secretary of Agriculture shall administer the El Toro Wilderness in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act. With respect to the El Toro Wilderness, any reference in the Wilderness Act to the effective date of the Act shall be construed to be a reference to the date of the enactment of this Act.

(e) SPECIAL MANAGEMENT CONSIDERATIONS.—Designation of the El Toro Wilderness and the applicability of the Wilderness Act to the wilderness area, shall not be construed to prevent any of the following activities, subject to such conditions as the Secretary of Agriculture considers desirable, within the boundaries of the wilderness area: (1) Construction and maintenance of trails, roads, and population monitoring platforms for threatened and endangered species.

(3) Construction and maintenance of trails to such facilities as necessary for research purposes and for the recovery of threatened and endangered species.

COMMITTEE AMENDMENT

The SPEAKER pro tempore. The Clerk will report the committee amendment.

Mr. HANSEN. Mr. Speaker, I ask unanimous consent that the committee amendment be considered as read and printed in the Record.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The text of the committee amendment is as follows:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE. This Act may be cited as the “Caribbean National Forest Wilderness Act of 2002.”

SECTION 2. WILDERNESS DESIGNATION, CARIIBBEAN NATIONAL FOREST, PUERTO RICO. (a) EL TORO WILDERNESS.—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.), the approximately 10,000 acres of land in the Caribbean National Forest/Luquillo Experimental Forest in the Commonwealth of Puerto Rico that were proposed for wilderness classification in the revised land and resource management plan for the Caribbean National Forest/Luquillo Experimental Forest, approved April 17, 1997, are hereby designated as wilderness and, therefore, as a component of the National Wilderness Preservation System. The designated lands shall be known as the El Toro Wilderness.

(b) WILDERNESS BOUNDARIES.—The El Toro Wilderness shall consist of those lands that were proposed for wilderness classification in the management plan referred to in subsection (a), except that the Secretary of Agriculture shall locate the boundaries of the El Toro Wilderness so that existing municipal water intakes will not be within the wilderness boundaries and the boundaries shall be located at least 600 feet west of Highway PR 191 from Kilometer 12.0.

(c) MAP AND DESCRIPTION.—(1) PREPARATION AND SUBMISSION.—As soon as practicable after the date of the enactment of this Act, the Secretary of Agriculture shall prepare a map and boundary description of the El Toro Wilderness and submit the map and boundary description to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The map and boundary description shall be on file and available for public inspection in the office of the Chief of the Forest Service.

(2) TREATMENT.—The map and boundary description prepared under paragraph (1) shall have the same force and effect as if included in this Act. The Secretary may correct clerical and typographical errors in the map and description.

(d) ADMINISTRATION.—Subject to valid existing rights, the Secretary of Agriculture shall administer the El Toro Wilderness in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act. With respect to the El Toro Wilderness, any reference in the Wilderness Act to the effective date of the Act shall be construed to be a reference to the date of the enactment of this Act.

(e) SPECIAL MANAGEMENT CONSIDERATIONS.—Designation of the El Toro Wilderness and the applicability of the Wilderness Act to the wilderness area, shall not be construed to prevent any of the following activities, subject to such conditions as the Secretary of Agriculture considers desirable, within the boundaries of the wilderness area:

(1) Installation and maintenance of hydrologic, meteorological, climatological, or atmospheric data collection and transmission facilities, or any combination of such facilities, when the Secretary determines that such facilities are essential to the scientific research purposes of the Luquillo Experimental Forest.

(2) Construction and maintenance of nesting structures, observation blinds, and population monitoring platforms for threatened and endangered species.
Act to the wilderness area, shall not be con-
structed to prevent any of the following activi-
ties, subject to such conditions as the Sec-
retary of Agriculture considers desirable, within
the area of the wilderness: (1) installation and main-
tenance of hydro-

logistic, meteorological, climatological, or at-
mospheric data collection and transmission facili-
ties, or any combination of such facil-
ties, when the Secretary determines that—

(A) such facilities are essential to the sci-
cific research purposes of the Luquillo Ex-
perimental Forest; and

(B) the scale and scope of the facility de-
velopment are not detrimental to the wilder-
ness characteristics of the wilderness area.

(2) Construction and maintenance of nest-
ing structures, observation blinds, and popu-
lation monitoring platforms for threatened and
endangered species.

(3) Construction and maintenance of trails to
such facilities as necessary for research pur-
poses and for the recovery of threatened and
endangered species.

The committee amendment was
agreed to.

The bill was ordered to be engrossed and
read a third time, was read the third time, and
passed, and a motion to reconsider was laid on the

HYDROGRAPHIC SERVICES IMPROVEMENT ACT AMENDMENTS
OF 2002

Mr. HANSEN. Mr. Speaker, I ask unanimous
consent for the immediate consideration of the bill (H.R. 4883)
to reauthorize the Hydrographic Services Improvement Act of 1998, and for other
purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there

objection?

There was no objection.

The Clerk read the bill, as follows:

H.R. 4883

Be it enacted by the Senate and House of Rep-
resentatives of the United States of America in
Congress assembled, That—

SECTION 1. SHORT TITLE.

This title may be cited as the "Hydrographic Services Improvement Act Amend-
ments of 2002".

SEC. 2. APPROPRIATIONS.

Section 302 of the Hydrographic Services Improvement Act of 1998 (33 U.S.C. 892a) is
amended—

(1) in paragraph (3) by inserting "geospatial or geomagnetic" after "geodetic"; and

(2) in paragraph (4) by inserting "geospatial or geomagnetic," after "geodetic,".

SEC. 3. FUNCTIONS OF ADMINISTRATOR.

(a) HYDROGRAPHIC MONITORING SYSTEMS.—

Section 303(b)(4) of the Hydrographic Services Improvement Act of 1998 (33 U.S.C. 892a(b)(4)) is amended to read as follows:

"(4) shall design, install, maintain, and op-

erate real-time hydrographic monitoring systems to enhance navigation safety and ef-


iciency; ".

(b) CONSERVATION AND MANAGEMENT OF COASTAL AND OCEAN RESOURCES.—

Section 303 of such Act (33 U.S.C. 892a) is further amended by adding at the end the following:

"(c) CONSERVATION AND MANAGEMENT OF COASTAL AND OCEAN RESOURCES.—Where ap-

propriate and to the extent that it does not detract from the promotion of safe and effi-
cient navigation, the Secretary may use hy-

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services activities performed by the National Ocean Service, including—
(A) the transfer and retraining of personnel to become contracting officer technical representatives;
(B) education in the use of the procedures described in section 303(b)(3) of the Hydrographic Services Improvement Act of 1998, as amended by this Act;
(C) the utilization of training, education, and acquisition and contract management capabilities of other Federal agencies that are expert and experienced in contracting for such services.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

Section 306 of such Act (33 U.S.C. 892d) is amended to read as follows:

"SEC. 306. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Administrator the following:

"(1) To carry out nautical mapping and charting functions under sections 303 and 304 of this Act, except for conducting hydrographic surveys—

"(A) $50,000,000 for fiscal year 2003;

"(B) $55,000,000 for fiscal year 2004;

"(C) $60,000,000 for fiscal year 2005;

"(D) $65,000,000 for fiscal year 2006; and

"(E) $70,000,000 for fiscal year 2007.

"(2) To contract for hydrographic surveys under section 303(b)(3), including the leasing or time chartering of vessels—

"(A) $10,000,000 for fiscal year 2003;

"(B) $12,500,000 for fiscal year 2004;

"(C) $15,000,000 for fiscal year 2005;

"(D) $17,500,000 for fiscal year 2006; and

"(E) $20,000,000 for fiscal year 2007.

"(3) To carry out geodetic functions under this title—

"(A) $27,500,000 for fiscal year 2003;

"(B) $30,000,000 for fiscal year 2004;

"(C) $32,500,000 for fiscal year 2005;

"(D) $35,000,000 for fiscal year 2006; and

"(E) $35,000,000 for fiscal year 2007.

"(4) To carry out tide and current measurement functions under this title—

"(A) $25,000,000 for fiscal year 2003;

"(B) $27,500,000 for fiscal year 2004;

"(C) $30,000,000 for fiscal year 2005;

"(D) $32,500,000 for fiscal year 2006; and

"(E) $35,000,000 for fiscal year 2007.

"(5) To carry out activities authorized under this title that enhance homeland security, including electronic navigation charts, hydrographic surveys, real time tide and current measurements, and geodetic functions, in addition to other amounts authorized by this section, $50,000,000.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. HANSEN

Mr. HANSEN. Mr. Speaker, I offer an amendment in the nature of a substitute in lieu of the committee amendment.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. HANSEN:

Strike all after the enacting clause and insert the following:

SECTION I. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Table of contents.

TITLE I—NOAA HYDROGRAPHIC SERVICES IMPROVEMENT

Sec. 101. Short title; references.
Sec. 102. Definitions.
Sec. 103. Functions of Administrator.
Sec. 104. Quality assurance program.
Sec. 105. Hydrographic Services Review Panel.
Sec. 106. Authorization of appropriations.

TITLE II—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMISSIONED OFFICER CORPS

Sec. 201. Short title.

TITLE A—GENERAL PROVISIONS

Sec. 211. Commissioned officer corps.
Sec. 212. Definitions.
Sec. 213. Authorized number on the active list.
Sec. 214. Strength and distribution in grade.
Sec. 215. Authorized number for fiscal years 2003 through 2005.

TITLE B—APPOINTMENT AND PROMOTION OF OFFICERS

Sec. 221. Original appointments.
Sec. 222. Personal boards.
Sec. 223. Promotion of ensigns to grade of lieutenant (junior grade).
Sec. 224. Promotion by selection to permanent grades above lieutenant (junior grade).
Sec. 225. Length of service for promotion purposes.
Sec. 226. Appointments and promotions to permanent grades.
Sec. 227. General qualification of officers for promotion to higher permanent grade.
Sec. 228. Positions of importance and responsibility.
Sec. 229. Temporary appointments and promotions generally.
Sec. 230. Temporary appointment or advancement of commissioned officers in time of war or national emergency.
Sec. 231. Pay and allowances; date of acceptance of promotion.
Sec. 232. Service credit as deck officer or junior engineer for promotion purposes.
Sec. 233. Suspension during war or emergency.

TITLE C—SEPARATION AND RETIREMENT OF OFFICERS

Sec. 241. involuntary retirement or separation.
Sec. 242. Separation pay.
Sec. 243. Mandatory retirement for age.
Sec. 244. Retirement for length of service.
Sec. 245. Computation of retired pay.
Sec. 246. Retired grade and retired pay.
Sec. 247. Retired rank and pay held pursuant to other laws unaffected.
Sec. 248. Contact if credit for active duty; deferment of retirement.
Sec. 249. Recall to active duty.

TITLE D—SERVICE OF OFFICERS WITH THE MILITARY DEPARTMENTS

Sec. 251. Cooperation with and transfer to military departments.
Sec. 252. Relative rank of officers when serving with Army, Navy, or Air Force.
Sec. 253. Rules and regulations when cooperating with military departments.

TITLE E—RIGHTS AND BENEFITS

Sec. 262. Eligibility for veterans benefits and other rights, privileges, immunities, and benefits under other laws.
Sec. 263. Medical and dental care.
Sec. 264. Commissary privileges.
Sec. 265. Authority to use appropriated funds for transportation and reimbursement of certain items.
Sec. 266. Presentation of United States flag.

TITLE F—REPEALS AND CONFORMING AMENDMENTS

Sec. 271. Repeals.
Sec. 272. Conforming amendments.

TITLE III—VARIOUS FISHERIES CONSERVATION REAUTHORIZATIONS

Sec. 301. Short title.
Sec. 303. Reauthorization and amendment of the Anadromous Fish Conservation Act.
Sec. 306. Extension of deadline.

TITLE IV—MISCELLANEOUS

Sec. 401. Chesapeake Bay Office.
Sec. 402. Conveyance of NOAA laboratory in Tiburon, California.
Sec. 403. Emergency assistance for subsistence whale hunters.
SEC. 105. HYDROGRAPHIC SERVICES REVIEW PANEL.

Section 305 (33 U.S.C. 892a) is amended to read as follows:

"SEC. 305. HYDROGRAPHIC SERVICES REVIEW PANEL.

"(a) ESTABLISHMENT.—No later than 1 year after the date of enactment of this Act and such other appropriate Act, the Secretary shall establish the Hydrographic Services Review Panel.

"(b) DUTIES.—The panel shall

"(1) IN GENERAL.—The panel shall advise the Administrator on matters related to the responsibilities and authorities set forth in section 303 of this Act and such other appropriate Act, and the provisions of this section, to the extent applicable, to the extent applicable, for the Hydrographic Services Review Panel. The panel may exercise such powers as are reasonably necessary in order to carry out its duties under subsection (b)."

"SEC. 306. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Administrator the following:

"(1) To contract for hydrographic surveys—

"(A) $50,000,000 for fiscal year 2003;
"(B) $55,000,000 for fiscal year 2004;
"(C) $60,000,000 for fiscal year 2005;
"(D) $65,000,000 for fiscal year 2006; and
"(E) $70,000,000 for fiscal year 2007.

"(2) To contract for hydrographic surveys under section 308(b)(1), including the leasing or time chartering of vessels—

"(A) $40,000,000 for fiscal year 2003;
"(B) $42,500,000 for fiscal year 2004;
"(C) $45,000,000 for fiscal year 2005;
"(D) $47,500,000 for fiscal year 2006; and
"(E) $50,000,000 for fiscal year 2007.

"(3) To operate hydrographic survey vessels owned by the United States and operated by the Administrator—

"(A) $14,000,000 for fiscal year 2003;
"(B) $18,000,000 for fiscal year 2004; and
"(C) $21,000,000 for fiscal years 2005 through 2007.

"(4) To carry out geodetic functions under this title—

"(A) $25,500,000 for fiscal year 2003;
"(B) $30,000,000 for fiscal year 2004;
"(C) $32,500,000 for fiscal year 2005;
"(D) $35,000,000 for fiscal year 2006; and
"(E) $35,500,000 for fiscal year 2007.

"(5) To carry out tide and current measurement functions—

"(A) $25,000,000 for fiscal year 2003;
"(B) $27,500,000 for fiscal year 2004;
"(C) $30,000,000 for fiscal year 2005;
"(D) $32,500,000 for fiscal year 2006; and
"(E) $35,000,000 for fiscal year 2007.

"(6) To carry out activities authorized under this title that enhance homeland security, including electronic navigation charts, hydrographic surveys, real time tide and current measurements, and geodetic functions, in addition to other amounts authorized by this section, $20,000,000.

"SEC. 201. SHORT TITLE.

"This title may be cited as the ‘‘National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002’’."

"Subtitle A—General Provisions

"SEC. 211. COMMISSIONED OFFICER CORPS.

"There shall be in the National Oceanic and Atmospheric Administration a commissioned officer corps.

"SEC. 212. DEFINITIONS.

"(a) APPLICABILITY OF DEFINITIONS IN TITLE 10, UNITED STATES CODE.—Except as provided in subsections provided in section 101 of title 10, United States Code, apply to the provisions of this title.

"(b) ADDITIONAL DEFINITIONS.—In this title:

"(1) ACTIVE DUTY.—The term ‘‘active duty’’ means full-time duty in the active service of a uniformed service.

"(2) GRADE.—The term ‘‘grade’’ means a step or degree, in a graduated scale of office or rank, that is designated and established as a grade by law or regulation.

"(3) OFFICER.—The term ‘‘officer’’ means an officer of the commissioned corps.

"(4) FLAG OFFICER.—The term ‘‘flag officer’’ means an officer serving in or having the grade of, vice admiral, rear admiral, or rear admiral (lower half).

"(5) SECRETARY.—The term ‘‘Secretary’’ means the Secretary of Commerce.

"(6) ADMINISTRATION.—The term ‘‘Administration’’ means the National Oceanic and Atmospheric Administration.

"SEC. 213. AUTHORIZED NUMBER ON THE ACTIVE LIST.

"(a) ANNUAL STRENGTH ON ACTIVE LIST.—The annual strength of the commissioned corps in officers on the lineal list of active duty officers of the corps shall be prescribed by law.

"(b) LINEAL LIST.—The Secretary shall maintain a list, known as the ‘‘lineal list’’, of officers on active duty. Officers shall be carried on the lineal list by grade and, within grade, by seniority in grade.

"SEC. 214. STRENGTH AND DISTRIBUTION IN GRADE.

"(a) RELATIVE RANK; PROPORTION.—Of the total authorized number of officers on the lineal list of the commissioned corps, there are authorized numbers in permanent grade, in relative rank with officers of the Navy, in proportions as follows:

"(1) 8 in the grade of captain.
"(2) 14 in the grade of commander.
"(3) 19 in the grade of lieutenant commander.
"(4) 23 in the grade of lieutenant.
"(5) 18 in the grade of lieutenant (junior grade).
"(6) 18 in the grade of ensign.

"(b) COMPUTATION OF NUMBER IN GRADE.—

"(1) IN GENERAL.—Subject to paragraph (2), whenever a final fraction occurs in computing the authorized number of officers in a grade, the nearest whole number shall be taken, and if the fraction is one-half the next higher whole number shall be taken.

"(2) COMPOSITION OF TOTAL NUM- BER.—The total number of officers on the lineal list authorized by law may not be increased as the result of the computations prescribed in this section and, whenever necessary the number of officers in the lowest grade shall be reduced accordingly.

"TITLE II—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMISSIONED OFFICER CORPS

"SEC. 201. SHORT TITLE.

"This title may be cited as the ‘‘National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002’’.

"Subtitle A—General Provisions

"SEC. 211. COMMISSIONED OFFICER CORPS.

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"(a) APPLICABILITY OF DEFINITIONS IN TITLE 10, UNITED STATES CODE.—Except as provided in subsections provided in section 101 of title 10, United States Code, apply to the provisions of this title.

"(b) ADDITIONAL DEFINITIONS.—In this title:

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"(3) OFFICER.—The term ‘‘officer’’ means an officer of the commissioned corps.

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"(b) LINEAL LIST.—The Secretary shall maintain a list, known as the ‘‘lineal list’’, of officers on active duty. Officers shall be carried on the lineal list by grade and, within grade, by seniority in grade.

"SEC. 214. STRENGTH AND DISTRIBUTION IN GRADE.

"(a) RELATIVE RANK; PROPORTION.—Of the total authorized number of officers on the lineal list of the commissioned corps, there are authorized numbers in permanent grade, in relative rank with officers of the Navy, in proportions as follows:

"(1) 8 in the grade of captain.
"(2) 14 in the grade of commander.
"(3) 19 in the grade of lieutenant commander.
"(4) 23 in the grade of lieutenant.
"(5) 18 in the grade of lieutenant (junior grade).
"(6) 18 in the grade of ensign.

"(b) COMPUTATION OF NUMBER IN GRADE.—

"(1) IN GENERAL.—Subject to paragraph (2), whenever a final fraction occurs in computing the authorized number of officers in a grade, the nearest whole number shall be taken, and if the fraction is one-half the next higher whole number shall be taken.

"(2) COMPOSITION OF TOTAL NUM- BER.—The total number of officers on the lineal list authorized by law may not be increased as the result of the computations prescribed in this section and, whenever necessary the number of officers in the lowest grade shall be reduced accordingly.

"TITLE II—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMISSIONED OFFICER CORPS

"SEC. 201. SHORT TITLE.

"This title may be cited as the ‘‘National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002’’.

"Subtitle A—General Provisions

"SEC. 211. COMMISSIONED OFFICER CORPS.

"There shall be in the National Oceanic and Atmospheric Administration a commissioned officer corps.

"SEC. 212. DEFINITIONS.

"(a) APPLICABILITY OF DEFINITIONS IN TITLE 10, UNITED STATES CODE.—Except as provided in subsections provided in section 101 of title 10, United States Code, apply to the provisions of this title.
Subtitle B—Appointment and Promotion of Officers

SEC. 221. ORIGINAL APPOINTMENTS.

(a) IN GENERAL.—Original appointments may be made in the grades of ensign, lieutenant (junior grade), and lieutenant.

(b) GRADES.—Original appointments may be made in the grades of ensign, lieutenant (junior grade), and lieutenant.

(c) QUALIFICATIONS.—Under regulations prescribed by the Secretary, such an appointment may be given only to a person who—

(A) meets the qualifications requirements specified in paragraphs (1) through (4) of section 532a of title 10, United States Code; and

(B) has such other special qualifications as the Secretary may prescribe by regulation.

(d) EXCEPTIONS.—A person may be given such an appointment only after passage of a mental and physical examination given in accordance with regulations prescribed by the Secretary.

(e) REVOCA TION OF COMMISSION OF OFFICERS FOUND NOT QUALIFIED.—The President may revoke the commission of any officer appointed under this section as responsible for oversight of aviation operations.

(f) SELECTION AND RECOMMENDATION BY A BOARD CONVENED UNDER THIS SECTION.—The Secretary shall convene a personnel board. A personnel board shall determine; and

(g) SELECTION AND RECOMMENDATION FOR APPPOINTMENT TO PERMANENT GRADES ABOVE LIEUTENANT (JUNIOR GRADE).—Promotion to fill vacancies in each permanent grade above lieutenant (junior grade) shall be made by selection from the next lower grade upon recommendation of the personnel board.

SEC. 224. LENGTH OF SERVICE FOR PROMOTION PURPOSES.

(a) GENERAL.—Each officer shall be assumed to have, for promotion purposes, at least the same length of service as any other officer below that officer on the lineal list.

(b) EXCEPTION.—Notwithstanding subsection (a), an officer who has lost numbers shall be assumed to have, for promotion purposes, no greater service than the officer next above such officer in such officer’s new position on the lineal list.

SEC. 225. APPOINTMENTS AND PROMOTIONS TO PERMANENT GRADES.

Appointments in and promotions to all permanent grades shall be made by the President, by and with the advice and consent of the Senate.

(c) SERVICE CREDIT UPON ORIGINAL APPOINTMENT IN GRADE ABOVE ENSIGN.—

(1) IN GENERAL.—For the purposes of basic pay, a person appointed under this section in the grade of lieutenant (junior grade) shall be credited with the amount of service in lieu of the grade of ensign, as having, on the date of that appointment, three years of service, and a person appointed under this section in the grade of lieutenant shall be credited with that person’s age, education, and experience, in accordance with regulations prescribed by the Secretary.

(d) SERVICE CREDIT UPON ORIGINAL APPOINTMENT IN GRADE ABOVE ENSIGN.—

(1) IN GENERAL.—For the purposes of basic pay, a person appointed under this section in the grade of ensign shall be credited as having, on the date of that appointment, one year of service.

(2) HIGHER CREDIT UNDER OTHER LAW.—If a person appointed under this section is entitled to credit for the purpose of basic pay under any other provision of law that would exceed the amount of credit authorized by paragraph (1), that person shall be credited with that amount of service in lieu of the credit authorized by paragraph (1).

SEC. 222. PERSONNEL BOARDS.

(a) CONVENING.—The Secretary may convene a personnel board for the purpose of making recommendations to the President for the joint appointment, promotion, separation, continuation, and retirement of officers as prescribed in this title and Title 10, United States Code.

(b) DUTIES.—Personnel boards shall—

(1) designate positions in the lineal list in the permanent grade of commander or above;

(2) make selections and recommendations to the President for the joint appointment, promotion, separation, continuation, and retirement of officers as prescribed in this title and Title 10, United States Code; and

(3) make further recommendations as are acceptable.

SEC. 223. PROMOTION OF ENSIGNS TO GRADE OF COMMANDER.

(a) IN GENERAL.—An officer in the permanent grade of ensign shall be promoted to and appointed in the grade of lieutenant (junior grade) upon completion of four years of service. The authorized number of officers in the grade of lieutenant (junior grade) shall be temporarily increased as necessary to authorize such appointment.

(b) SEPARATION OF ENSIGNS NOT FULLY QUALIFIED.—If an officer in the permanent grade of ensign has not fully qualified, the officer’s commission shall be revoked and the officer shall be separated from the commissioned service.

SEC. 224. PROMOTION TO PERMANENT GRADES ABOVE LIEUTENANT (JUNIOR GRADE).

Promotion to fill vacancies in each permanent grade above lieutenant (junior grade) shall be made by selection from the next lower grade upon recommendation of the personnel board.

SEC. 225. LENGTH OF SERVICE FOR PROMOTION PURPOSES.

(a) GENERAL.—Each officer shall be assumed to have, for promotion purposes, at least the same length of service as any other officer below that officer on the lineal list.

(b) EXCEPTION.—Notwithstanding subsection (a), an officer who has lost numbers shall be assumed to have, for promotion purposes, no greater service than the officer next above such officer in such officer’s new position on the lineal list.

SEC. 226. APPOINTMENTS AND PROMOTIONS TO PERMANENT GRADES.

Appointments in and promotions to all permanent grades shall be made by the President, by and with the advice and consent of the Senate.

SEC. 227. GENERAL QUALIFICATION OF OFFICERS FOR PROMOTION TO HIGHER PERMANENT GRADES.

No officer may be promoted to a higher permanent grade on the active list until the officer has passed a satisfactory mental and physical examination in accordance with regulations prescribed by the Secretary.

SEC. 228. POSITIONS OF IMPORTANCE AND RESPONSIBILITY.

(a) DESIGNATED POSITIONS.—The Secretary may designate positions in the Administration as being positions of importance and responsibility for which it is appropriate that officers of the Administration, if serving in those positions, serve in the grade of vice admiral, rear admiral, or rear admiral (lower half), as designated by the Secretary for each position.

(b) ASSIGNMENT OF OFFICERS TO DESIGNATED POSITIONS.—The Secretary may assign officers to positions designated under subsection (a).

(c) DIRECTOR OF NOAA CORPS AND OFFICE OF MARINE AND AVIATION OPERATIONS.—The Secretary shall designate one position under this section for oversight of the vessel and aircraft fleets and for the administration of the commissioned officer corps. That position shall be filled by an officer on the lineal list serving in or above the grade of rear admiral (lower half). For the specific purpose of administering the commissioned officer corps, that position shall carry the title of Director of the Office of Marine and Aviation Operations.

(d) GRADE.—

(1) TEMPORARY APPOINTMENT TO GRADE DESIGNATED FOR POSITION.—An officer assigned to a position under this section while so serving has the grade designated for that position by the President, by and with the advice and consent of the Senate.

(2) REVERSION TO PERMANENT GRADE.—An officer assigned to a position under this section shall be reappointed, upon termination of the officer’s assignment to the position for which that appointment was made, shall, unless appointed or assigned to another position for which a higher grade is designated, revert to the grade and number the officer would have occupied but for serving in a grade above that of captain. In such a case, the officer shall be an extra number in that grade.

(e) NUMBER OF OFFICERS APPOINTED.—(1) LIMIT.—The number of officers serving on active duty at any one time in the grade of rear admiral (lower half) or above may not exceed four.

(2) LIMITATION.—The number of officers serving on active duty under appointments under this section may not exceed—

(A) one in the grade of vice admiral;

(B) two in the grade of rear admiral; and

(C) two in the grade of rear admiral (lower half).

SEC. 229. PAY AND ALLOWANCES; DATE OF ACCEPTANCE OF PROMOTION.

(a) ACCEPTANCE AND DATE OF PROMOTION.—An officer of the commissioned corps who is promoted to a higher grade—
SEC. 244. RETIREMENT FOR LENGTH OF SERVICE.

An officer who has completed 20 years of service, of which at least 10 years was service as a commissioned officer, may at any time thereafter, in the discretion of the President, be placed on the retired list.

SEC. 245. COMPUTATION OF RETIRED PAY.

(a) OFFICERS FIRST BECOMING MEMBERS ON OR AFTER SEPTEMBER 8, 1980.

(i) In general.—The retired pay computed under section 1405 of title 10, United States Code, shall be based on such highest grade as the officer served; and

(ii) Treatment of full and fractional years of service.—In computing the number of years of service of an officer for the purposes of this section, if not a multiple of $1, the number of a uniformed service on or after September 8, 1980, shall receive retired pay at the rate determined by multiplying—

- (A) each full month of service that is in addition to the number of years of service of such officer in that military department, by 1⁄12 of a year; and

- (B) 2⁄3 percent of the number of years of service of such officer that may be credited as if the officer's service were service as a member of the Armed Forces.

(b) OFFICERS FIRST BECOMING MEMBERS BEFORE SEPTEMBER 8, 1980.

(i) In general.—The retired pay base determined under section 1405(g) of title 10, United States Code, shall be based on such highest grade as the officer served; and

(ii) Treatment of full and fractional years of service.—In computing the number of years of service of an officer for the purposes of this section, if not a multiple of $1, the number of a uniformed service before September 8, 1980, shall receive retired pay at the rate determined by dividing—

- (A) the retired pay base determined under section 1405(g) of title 10, United States Code, by 2; and

- (B) each full month of service that is in addition to the number of years of service of such officer in that military department, by 1⁄12 of a year; and

- (C) (1) the number of years of service of such officer that may be credited as the case may be, insofar as the same may be determined by the Secretary.

(c) TREATMENT OF FULL AND FRACTIONAL PARTS OF MONTHS IN COMPUTING YEARS OF SERVICE.

In general.—In computing the number of years of service of an officer for the purposes of subsection (a), the number of a uniformed service from an earlier date.

(d) EFFECTIVE DATE OF RETIREMENTS AND SEPARATIONS.

Each officer on the retired list who first became a member of a uniformed service on or after September 8, 1980, shall receive retired pay at the rate determined by multiplying—

- (A) each full month of service that is in addition to the number of years of service of such officer in that military department, by 1⁄12 of a year; and

- (B) 2⁄3 percent of the number of years of service of such officer that may be credited as if the officer's service were service as a member of the Armed Forces.

(e) TRANSFERS AUTHORIZED.

(i) In general.—The President may, whenever in the judgment of the President a sufficient national emergency exists, transfer to the service and jurisdiction of a military department such vessels, equipment, stations, and officers of the Administration to a military department such as if such provisions apply to commissioned officers of the Administration.

(f) LIMITATION ON TRANSFER OF OFFICERS.

In computing the number of years of service of such officer in that military department, by dividing—

- (A) each full month of service that is in addition to the number of years of service of such officer in that military department, by 1⁄12 of a year; and

- (B) (1) the number of years of service of such officer that may be credited as the case may be, insofar as the same may be determined by the Secretary.

(g) TRANSFERS AUTHORIZED.

(i) In general.—The President may, whenever in the judgment of the President a sufficient national emergency exists, transfer to the service and jurisdiction of a military department such vessels, equipment, stations, and officers of the Administration to a military department such as if such provisions apply to commissioned officers of the Administration.

(h) LIMITATION ON TRANSFER OF OFFICERS.

In computing the number of years of service of such officer in that military department, by dividing—

- (A) each full month of service that is in addition to the number of years of service of such officer in that military department, by 1⁄12 of a year; and

- (B) (1) the number of years of service of such officer that may be credited as the case may be, insofar as the same may be determined by the Secretary.
SEC. 255. RULES AND REGULATIONS WHEN CO-OPERATING WITH MILITARY DEPARTMENTS.

(a) JOINT REGULATIONS.—The Secretary of Defense and the Secretary of Commerce shall jointly prescribe regulations—

(1) governing the duties to be performed by the Administration in time of war; and

(2) providing for the cooperation of the Administration with the military departments in time of peace in preparation for its duties in time of war.

(b) APPROVAL.—Regulations under subsection (a) shall not be effective unless approved by each of those Secretaries.

(c) COMMUNICATIONS.—Regulations under subsection (a) may provide procedures for making reports and communications between a military department and the Administration.

Subtitle E—Rights and Benefits

SEC. 261. APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 10, UNITED STATES CODE.

(a) PROVISIONS MADE APPLICABLE TO THE CORPS.—The rules of law that apply to the Armed Forces under the following provisions of title 10, United States Code, as those provisions are in effect from time to time, apply also to the commissioned officer corps of the Administration:

(1) Chapter 73, relating to annuities based on retired or retainer pay.

(2) The Soldiers’ and Sailors’ Civil Relief Act of 1940 (50 App. U.S.C. 501 et seq.).

(3) Section 210 of the Social Security Act (42 U.S.C. 410), as in effect before September 1, 1950.

(b) EXERCISE OF AUTHORITY.—In the administration of the laws and regulations referred to in subsection (a), with respect to the Administration, the authority vested in the Secretary of Defense and the Secretaries of the respective departments shall be exercised by the Secretary of Commerce.

SEC. 262. MEDICAL AND DENTAL CARE.

The Secretary may provide medical and dental care, in private facilities, for personnel of the Administration entitled to that care by law or regulation.

SEC. 264. COMMISSARY PRIVILEGES.

(a) EXTENSION OF PRIVILEGE.—Commissioned officers, ships’ officers, and members of crews of vessels of the Administration shall be permitted to purchase commissary and quartermaster supplies as far as available from the Armed Forces at the prices charged officers and enlisted members of the Armed Forces.

(b) SALES OF RATIONS, STORES, UNIFORMS, AND RELATED EQUIPMENT.—The Secretary may purchase ration supplies for messes, stores, uniforms, accouterments, and related equipment for sale at ship and shore stations of the Administration to members of the uniformed services and to personnel assigned to such ships or shore stations. Sales shall be in accordance with regulations prescribed by the Secretary, and proceeds therefrom shall, as far as is practicable, fully reimburse the appropriations charged without regard to fiscal year.

(c) SURVIVING SPOUSES’ RIGHTS.—Rights extended to members of the uniformed services in section 316 of the Uniform Code (10 U.S.C. 1106) are extended to surviving spouses and to such others as are designated by the Secretary concerned.

SEC. 265. AUTHORITY TO USE APPROPRIATED FUNDS FOR TRANSPORTATION AND REIMBURSEMENT OF CERTAIN ITEMS.

(a) TRANSPORTATION OF EFFECTS OF DECEASED OFFICERS.—In the case of an officer who dies on active duty, the Secretary may provide, from appropriations made available to the Administration, transportation (including boarding, unloading, packing, crating, and uncrating) of personal and household effects of that officer to the official residence of record or to that position designated by the Secretary. However, upon application by the dependents of such an officer, such transportation may be provided to such other location as may be determined by the Secretary.

(b) REIMBURSEMENT FOR SUPPLIES FURNISHED BY OFFICERS TO DISTRESSED AND SHIPWRECKED PERSONS.—Under regulations prescribed by the Secretary, and on such conditions as the Secretary may prescribe, any supplies furnished to distressed and shipwrecked persons by officers of the Administration shall be reimbursed to such officer for food, clothing, medicines, and other supplies furnished, and provender purchased by the officer for the temporary relief of distressed persons in remote localities; or

(2) to shipwrecked persons who are temporarily provided for by the officer.

SEC. 266. PRESENTATION OF UNITED STATES IMMUNITIES, AND BENEFITS UNDER CERTAIN PROVISIONS OF LAW.

(a) IN GENERAL.—Active service of officers of the Administration shall be deemed to be active military service for the purposes of any rights, privileges, immunities, and benefits under the following:

(1) Laws administered by the Secretary of Veterans Affairs.

(2) The Soldiers’ and Sailors’ Civil Relief Act of 1940 (50 App. U.S.C. 501 et seq.).

(3) Section 210 of the Social Security Act (42 U.S.C. 410), as in effect before September 1, 1950.

(b) EXERCISE OF AUTHORITY.—In the administration of the laws and regulations referred to in subsection (a), with respect to the Administration, the authority vested in the Secretary of Defense and the Secretaries of the respective departments shall be exercised by the Secretary of Commerce.

SEC. 281. RIGHTS AND BENEFITS

Subtitle F—Repeals and Conforming Amendments

SEC. 271. REPEALS.

The following provisions of law are repealed:


(3) Public Law 81-621 (33 U.S.C. 857-1 et seq.).

(4) Section 16 of the Act of May 22, 1917 (33 U.S.C. 854, 855, 856, 867, and 858).


(7) Section 636(a)(17) of the Foreign Assistance Act of 1961 (22 U.S.C. 2316(a)(17)).

SEC. 272. CONFORMING AMENDMENTS.

(a) TITLE 10, UNITED STATES CODE.—Section 1498 of title 10, United States Code, is amended by striking “section 16 of the Coast and Geodetic Survey Commissioned Officers’ Act of 1948 (33 U.S.C. 853)” and inserting “section 305 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002”.

(b) PUBLIC LAW 104-106.—Section 566(c) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106, 110 Stat. 38) (33 U.S.C. 557) is amended by striking “the Coast and Geodetic Survey Commissioned Officers’ Act of 1948” and inserting “the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002”.

TITLE III—VARIOUS FISHERIES CONSERVATION REAUTHORIZATIONS

SEC. 301. SHORT TITLE.

This title may be cited as the “Fisheries Conservation Act of 2007.”


(a) REAUTHORIZATION.—Section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 1107) is amended—

(1) by amending subsection (a) to read as follows:

“(a) GENERAL APPROPRIATIONS.—There are appropriated to be authorized to be appropriated to the Department of Commerce for apportionment to carry out the purposes of this title—

(1) $5,400,000 for each of fiscal years 2003 and 2004; and

(2) $5,500,000 for each of fiscal years 2005 and 2006; and

(2) in subsection (c) by striking "$700,000 for fiscal year 1997, and $750,000 for each of the
the fiscal years 1998, 1999, and 2000; and inserting "$850,000 for each of fiscal years 2003 and 2004, and $900,000 for each of fiscal years 2005 and 2006.

(b) Amendments of the Interjurisdictional Fisheries Act of 1986.—Section 302 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4101) is amended by striking “and,” after the semicolon at the end of paragraph (1), striking the period at the end of paragraph (2) and inserting “; and”, and adding at the end the following:

“(3) to provide technical assistance to the Administrator, other Federal departments and agencies, and to State and local government agencies in:

(A) assessing the processes that shape the Anadromous Fish system and affect its living resources;

(B) identifying technical and management alternatives for the restoration and protection of living resources and the habitats they depend upon; and

(C) monitoring the implementation and effectiveness of management plans;

(2) develop and implement a strategy for the National Oceanic and Atmospheric Administration to integrate the science, research, monitoring, data collection, regulatory, and management responsibilities of the Secretary of Commerce in such a manner as to achieve the cooperative, intergovernmental Chesapeake Bay Program to meet the commitments of the Chesapeake Bay Agreement;

(3) coordinate the programs and activities of the various organizations within the National Oceanic and Atmospheric Administration, the Chesapeake Bay Regional Grant Programs, and the Chesapeake Bay units of the National Estuarine Research Reserve System, including:

(A) programs and activities in—

(i) coastal and estuarine research, monitoring, and assessment;

(ii) fisheries research and stock assessments;

(iii) data management;

(iv) remote sensing;

(v) coastal management;

(vi) habitat conservation and restoration; and

(vii) atmospheric deposition; and

(B) programs and activities of the Cooperative and Marine Ecosystems Program of the National Ocean Service with respect to—

(i) nonindigenous species; and

(ii) estuarine and marine species pathology;

(iii) human pathogens in estuarine and marine environments;

(iv) ecosystem health;

(4) coordinate the activities of the National Oceanic and Atmospheric Administration, the Environmental Protection Agency and other Federal, State, and local agencies;

(5) establish an effective mechanism which shall ensure that projects have undergone appropriate peer review and provide other appropriate means to determine that projects have acceptable scientific and technical merit for the purpose of achieving maximum utilization of available funds and resources to benefit the Chesapeake Bay area;

(6) remain cognizant of ongoing research, monitoring, and management projects and assist in the dissemination of the results and findings of those projects; and

(7) submit a biennial report to the Congress and the Secretary of Commerce with respect to the activities of the Office and on the progress made in protecting and restoring the living resources and habitat of the Chesapeake Bay, which report shall include an action plan consisting of—

(A) a list of recommended research, monitoring, and data collection activities necessary to continue implementation of the strategy described in paragraph (2); and

(B) proposals for—

(i) continuing any new National Oceanic and Atmospheric Administration activities in the Chesapeake Bay; and

(ii) integrating those activities with the activities of the partners in the Chesapeake Bay Program to meet the commitments of the Chesapeake 2000 agreement and subsequent agreements.

(c) Chesapeake Bay Fishery and Habitat Restoration Small Watershed Grants Program.—

(1) In General.—The Director of the Chesapeake Bay Office of the National Oceanic and Atmospheric Administration (in this section referred to as the ‘‘Director’’), in cooperation with the Cooperative, intergovernmental Chesapeake Bay Program, shall carry out a community-based fishery and habitat restoration small watershed grants and technical assistance program in the Chesapeake Bay watershed.

(2) Projects.—

(A) Support.—The Director shall make grants under this subsection to pay the Federal share of the cost of projects that are carried out by entities eligible under paragraph (3) for the restoration of fisheries and habitats in the Chesapeake Bay watershed.

(B) Federal Share.—The Federal share under subparagraph (A) shall not exceed 75 percent.

(3) Types of Projects.—Projects for which grants may be made under this subsection include—

(i) the improvement of fish passageways;

(ii) the creation of natural or artificial reefs or substrata for habitats;

(iii) the restoration of wetland or sea grass;

(iv) the production of oysters for restoration projects; and

(v) the prevention, identification, and control of nonindigenous, invasive species.

(4) Eligible Entities.—The following entities are eligible to receive grants under this subsection:

(A) The government of a political subdivision of a State in the Chesapeake Bay watershed, and the government of the District of Columbia.

(B) An organization in the Chesapeake Bay watershed (such as an educational institution or a community organization) that is described in section 501(c) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of that Code; and

(C) that will administer such grants in coordination with a government referred to in subparagraph (A).
"(d) Chesapeake Executive Council.—For purposes of this section, 'Chesapeake Executive Council' means the representatives from the Commonwealth of Virginia, the State of Maryland, the Commonwealth of Pennsylvania, the Environmental Protection Agency, the District of Columbia, and the Chesapeake Bay Commission, who are signatories to the Chesapeake Bay Agreement, and any future signatories to that Agreement.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There shall be appropriated to the Department of Commerce for the Chesapeake Bay Office $6,000,000 for each of fiscal years 2002 through 2006.

"(f) CONFORMING AMENDMENT.—Section 2 of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1469) is amended by striking subsection (e).

"(g) MULTIPLE SPECIES MANAGEMENT STRATEGY.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the Chesapeake Bay Office of the National Oceanic and Atmospheric Administration shall begin a 5-year study, in cooperation with the Board and appropriate Federal agencies—

(A) to determine and expand the understanding of the role and response of living resources in the Chesapeake Bay ecosystem; and

(B) to develop a multiple species management strategy for the Chesapeake Bay.

(2) REQUIRED ELEMENTS OF STUDY.—In order to improve the understanding necessary for the development of the strategy under paragraph (1), the study shall—

(A) determine the current status and trends of fish and shellfish that live in the Chesapeake Bay and its tributaries and are selected for study;

(B) evaluate and assess interactions among the fish and shellfish referred to in subparagraph (A), and other living resources, with particular attention to the impact of changes within and among trophic levels; and

(C) recommend management actions to optimize the return of a healthy and balanced ecosystem for the Chesapeake Bay.

SEC. 402. CONVEYANCE OF NOAA LABORATORY IN TIBURON, CALIFORNIA.

(a) IN GENERAL.—Except as provided in subsection (c), the property conveyed by the United States under this section shall revert to the United States on the date on which the Board uses any of the property conveyed under subsection (a) for any purpose other than the purposes described in subsections (b) and (e).

(b) CONVERSEMENT TO UNITED STATES.—Any property that reverts to the United States under this subsection shall be conveyed by the United States to the Secretary, if the action to seek an equivalent alternative was in response to a request for an equivalent alternative made by the Secretary in the Board's report submitted in accordance with the conditions of conveyance described in subsection (c), whether known or unknown at the time of the conveyance or later discovered; and

(c) CONDITIONS.—As conditions of any conveyance under subsection (a), the Secretary shall require the following:

(1) the property conveyed shall be administered by the Romberg Tiburon Center for Environmental Studies at San Francisco State University and used only for the following purposes:

(A) To enhance estuarine scientific research and estuary restoration activities within San Francisco Bay;

(B) To administer and coordinate management activities that affect the Estuarine Research Reserve.

(2) The Board shall—

(A) title the property as is;

(B) assume full responsibility for all facility maintenance and repair, security, fire prevention, utilities, signs, and grounds maintenance;

(C) allow the Secretary to have all necessary ingress and egress over the property of the Board to access Department of Commerce building and related facilities, equipment, improvements, modifications, and alterations; and

(D) not erect or allow to be erected any structure or structures or obstruction of whatever kind that will interfere with the access to or operation of property retained for the United States under subsection (c)(1), unless prior written consent has been provided by the Secretary; or

(3) ANNUAL CERTIFICATION.—The Secretary shall require that the property conveyed under subsection (a) that is not directly accountable to the Board, or, or maintenance of the Secretary's facilities, equipment, fixtures, improvements, modifications, or alterations;

(d) EQUIVALENT ALTERNATIVE.—

(1) IN GENERAL.—At any time, either the Secretary or the Board may request of each other property for any purpose other than the purposes described in subsection (b)(1).

(2) CONDITIONS.—To convey property for any purpose other than the purposes described in subsection (b)(1), a property exchange under this subsection (a) comprising Building 86, identified as Parcel C on Exhibit A of the license referred to in subsection (a), including all facilities, equipment, fixtures, improvements, modifications, or alterations made by the Secretary; or

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) The property conveyed shall be conveyed by the United States under this subsection at the sole cost of the United States, all hazardous or toxic substance contamination on the property received under subsection (a) that is not directly accountable to the Board, or, or maintenance of the Secretary's facilities, equipment, fixtures, improvements, modifications, or alterations;

(f) REVERSIONARY INTEREST.—

(1) IN GENERAL.—All right, title, and interest in and to all property and interests conveyed by the United States under this section shall revert to the United States on the date on which the Board uses any of the property for any purpose other than the purposes described in subsection (b)(1).

(2) ADMINISTRATION OF CONVEYED PROPERTY.—Any property that reverts to the United States under this subsection shall be administered by the Administrator of General Services.

(3) ANNUAL CERTIFICATION.—One year after the date of a conveyance made pursuant to subsection (a), and annually thereafter, the Board shall certify to the Administrator of General Services or his or her designee that the property and its designees are in compliance with the conditions of conveyance under subsections (b)(1), and (e).

(g) DEFINITIONS.—In this section:

(1) BOARD.—The term "Board" means the Board of Trustees of the California State University.

(2) CENTER.—The term "Center" means the Romberg Tiburon Center for Environmental Studies at San Francisco State University.
(3) SECRETARY.—The term "Secretary" means the Secretary of Commerce. 

SEC. 403. EMERGENCY ASSISTANCE FOR SUBSISTENCE WHALE HUNTERS. 

Notwithstanding any provision of law, the use of a vessel to tow a whale taken in a traditional subsistence whale hunt permitted by Federal law and conducted in waters off the coast of Alaska is authorized, if such towing is performed upon a request for emergency assistance made by a subsistence whale hunting organization formally recognized by an agency of the United States Government, or made by a member of such an organization, to prevent the loss of a whale.

Mr. HANSEN. (during the reading). Mr. Speaker, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The amendment in the nature of a substitute was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

☐ 0230

ADJUSTING BOUNDARIES OF SALT RIVER BAY NATIONAL HISTORICAL PARK AND ECOLOGICAL PRESERVE

Mr. HANSEN. Mr. Speaker, I ask unanimous consent that the Committee on Resources be discharged from further consideration of the bill (H.R. 5097) to adjust the boundaries of the Salt River Bay National Historical Park and Ecological Preserve located in St. Croix, Virgin Islands, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

MOUNT RAINIER NATIONAL PARK BOUNDARY ADJUSTMENT ACT OF 2002

Mr. HANSEN. Mr. Speaker, I ask unanimous consent that the Committee on Resources be discharged from further consideration of the bill (H.R. 5512) to provide for an adjustment of the boundaries of Mount Rainier National Park, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

(A) the boundary of Mount Rainier National Park shall be modified to include the lands referred to in subsection (a), in accordance with applicable laws and regulations, as follows:

(1) TRANSFER.—There is transferred to the Secretary of the Interior administrative jurisdiction over National Forest lands depicted on the map referred to in subsection (a)(1).

(2) INCLUSION IN PARK.—Upon the effectiveness of this subsection, the boundary of Mount Rainier National Park shall be modified to include the lands referred to in paragraph (1).

(b) ADMINISTRATION OF ACQUIRED LANDS.—The Secretary of the Interior shall administer lands acquired under this section as part of Mount Rainier National Park.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. HANSEN

Mr. HANSEN. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. HANSEN: Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE. 

This Act may be cited as the "Mount Rainier National Park Boundary Adjustment Act of 2002".

SEC. 2. EXPANSION OF MOUNT RAINIER NATIONAL PARK.

(a) IN GENERAL.—

(1) ACQUISITION AUTHORIZED.—The Secretary of the Interior may acquire, with the consent of the owners, by donation, purchase with donated or appropriated funds, or exchange, privately owned land depicted on the map entitled "Mount Rainier National Park FY2004 LWCF Project", numbered 105/92,002, and dated October 2002. The privately owned land so depicted may be acquired from such willing owners by donation, purchase with donated or appropriated funds, or exchange.

(2) LIMITATION.—The total acreage of the land acquired under this subsection and the land transferred to the administrative jurisdiction of the Secretary of the Interior under subsection (b) shall not exceed 1,000 acres.

(b) TRANSFER OF NATIONAL FOREST LANDS.—

(1) TRANSFER.—There is transferred to the Secretary of the Interior administrative jurisdiction over National Forest lands described in subsection (a)(1).

(2) INCLUSION IN PARK.—Upon the effectiveness of this subsection, the boundary of Mount Rainier National Park shall be modified to include the lands referred to in paragraph (1).

(c) ADMINISTRATIVE SITE.—In addition to lands acquired under subsection (a), in order to provide public information for the visitor accessing public lands along the Carbon and Mowich Corridors, the Secretary of the Interior may acquire land in the vicinity of Wilkeson, Washington, not to exceed .5 acre, by purchase, donation, or exchange, and from willing sellers only.

(d) ADMINISTRATION OF ACQUIRED LANDS.—The Secretary of the Interior shall administer lands acquired under this section as part of Mount Rainier National Park and in accordance with applicable laws and regulations.

(e) AVAILABILITY OF MAP.—The map referred to in subsection (a)(1) shall be on file in the appropriate offices of the National Park Service.
(1) TRANSFER.—There is transferred to the Secretary of the Interior administrative jurisdiction over National Forest lands depicted on the map referred to in subsection (a)(1).

(2) INCLUSION IN PARK.—Upon the effective date of this subsection, the boundary of Mount Rainier National Park shall be modified to include the lands referred to in paragraph (1).

(c) ADMINISTRATIVE SITE.—In addition to lands acquired under subsection (a), in order to provide public information for visitors accessing public lands along the Carbon and Mowich Corridors, the Secretary of the Interior may acquire land in the vicinity of Wilkeson, Washington, not to exceed .5 acre, by purchase, donation, or exchange, and from willing owners only.

(d) ADMINISTRATION OF ACQUIRED LANDS.—The Secretary of the Interior shall administer lands acquired under this section as part of Mount Rainier National Park and in accordance with applicable laws and regulations.

(e) AVAILABILITY OF MAP.—The map referred to in subsection (a)(1) shall be on file in the appropriate offices of the National Park Service.

Mr. HANSEN (during the reading). Mr. Speaker, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the Record.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The amendment in the nature of a substitute was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

YAVAPAII RANCH LAND EXCHANGE REFINEMENT ACT OF 2002

Mr. HANSEN. Mr. Speaker, I ask unanimous consent that the Committee on Resources be discharged from further consideration of the bill (H.R. 5513) to authorize and direct the exchange of certain land in the State of Arizona between the Secretary of Agriculture and Yavapai Ranch Limited Partnership, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The Clerk read the bill, as follows:

H.R. 5513

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 “Yavapai Ranch Land Exchange Refinement Act of 2002”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) certain parcels of private land in the approximately 170 square miles of land commonly known as the “Yavapai Ranch” and located in Yavapai County, Arizona, are intermingled with National Forest System land owned by the United States and administered by the Secretary of Agriculture as part of Prescott National Forest;

(2) the private land is owned by the Yavapai Ranch Limited Partnership and the Northern Yavapai, L.L.C. in an intermingled checkerboard pattern, with the United States holding limited tracts of land in each of the Yavapai Ranch Limited Partnership and the Northern Yavapai, L.L.C., owning alternate square mile sections of land or fractions of square mile sections; and

(3) such tracts, except areas within the checkerboard area (including the land located in or near the Pine Creek watershed, Juniper Mesa Wilderness Area, Haystack Peak, and the Tonto National Forest, Peak No. 5) is located in environmentally sensitive areas that possess outstanding attributes and values for public management, use, and enjoyment, including opportunities for—

(2) outdoor recreation;

(b) preservation of stands of old growth forest;

(c) important and largely unfragmented habitat for antelope, deer, elk, mountain lion, wild turkey, and other wildlife species; (D) watershed protection and enhancement;

(e) scientific research;

(f) rangeland;

(g) ecological and archaeological resources; and

(h) scenic vistas;

(i) the checkerboard ownership pattern of land within the Yavapai Ranch detracts from sound and efficient management of the intermingled National Forest System land;

(ii) if the private land is in checkerboard area, it is subdivided and developed, the intermingled National Forest System land will become highly fragmented and lose much of the value of the land for wildlife habitat and future public access, use, and enjoyment;

(iii) acquisition of the United States of certain parcels of land that have been offered by Yavapai Ranch Limited Partnership and the Northern Yavapai, L.L.C. for addition to Prescott National Forest will serve important public objectives, including—

1. creating a large area of National Forest System land to preserve—

(i) permanent public access, use, and enjoyment of the land; and

(ii) efficient management of the land;

(C) minimizing cash outlays by the United States to achieve the objectives described in subparagraphs (A) and (B);

(D) significantly reducing administrative costs to the United States through—

(i) consolidation of Federal land holdings for more efficient land management and planning;

(ii) elimination of approximately 350 miles of boundary between private land and the Federal parcels;

(iii) reduced right-of-way, special use, and other permit processing and issuance for roads and other facilities on National Forest System land;

(iv) other administrative cost savings;

(E) significantly protecting the watershed and stream flow of the Verde River in Arizona by reducing the land available for future development within that watershed by approximately 22,500 acres; and

(F) conserving the waters of the Verde River through the recording of declarations restricting the use of water on Federal land located near the communities of Camp Verde, Cottonwood and Clarkdale to be exchanged to the United States to Yavapai Ranch Limited Partnership or the Northern Yavapai, L.L.C.;

(G) Yavapai Ranch Limited Partnership and the Northern Yavapai, L.L.C. have a management plan that includes certain water use restrictions, water source limitations, and water conservation measures on the future development of the land described in section 4(a)(2)(E).

(3) Management Plan.—The term “Management Plan” means the land and resource management plan for Prescott National Forest.

(7) Secretary.—The term “Secretary” means the Secretary of Agriculture.


(9) YRLP.—

(A) IN GENERAL.—The term “YRLP” means—

(i) the Yavapai Ranch Limited Partnership, an Arizona Limited Partnership; and

(ii) the Northern Yavapai, L.L.C., an Arizona Limited Liability Company.

(B) INCLOSIONS.—Except as otherwise expressly provided in this Act, the term “YRLP” includes successors-in-interest, assigns, transferees, and affiliates of YRLP.

SEC. 4. LAND EXCHANGE.

(a) CONVEYANCE OF FEDERAL LAND BY THE UNITED STATES.—(1) IN GENERAL.—On receipt of an offer from YRLP to convey the non-Federal land to YRLP by deed acceptable to YRLP, the Secretary shall convey to YRLP by deed acceptable to YRLP all right, title, and interest of the United States in and to the land described in paragraph (1), subject to easements, rights-of-way, utility lines, and any other valid encumbrances on the Federal land in existence on the date of enactment of this Act and such other reservations as may be mutually agreed to by the Secretary and YRLP.

(2) DESCRIPTION OF FEDERAL LAND.—The Federal land referred to in paragraph (1) shall consist of the following:

(A) land comprising approximately 15,300 acres located in Yavapai County, Arizona, as generally depicted on the map entitled “Yavapai Ranch-Ranch Area Federal Lands”, dated April 2002.

(B) Certain land in the Coconino National Forest, Coconino County, Arizona—

(i) comprising approximately 1,500 acres located in the Cottonwood/Clarkdale Federal Lands, as generally depicted on the map entitled “Flagstaff Federal Lands−Airport Parcel”, dated April 2002; and


(C) Certain land referred to as Williams Airport, Williams golf course, Williams Sewer, Buckskinner Park, Williams Railroad, and Well parcels located in northern Yavapai, L.L.C., or any other person or entity holding or acquiring any interest in Yavapai Ranch.

(D) Certain land comprising approximately 2,200 acres located in Prescott National Forest, Yavapai County, Arizona, as generally depicted on the map entitled “Camp Verde Federal Land—General Crook Parcel”, dated April 2002, and title to which shall be conveyed to Yavapai Ranch Limited Partnership or the Northern Yavapai, L.L.C., but not to any successor-in-interest, assign, transferee or affiliate of Yavapai Ranch Limited Partnership or the Northern Yavapai, L.L.C., or any other person or entity holding or acquiring any interest in Yavapai Ranch.

(E) Certain land comprising approximately 220 acres located in Prescott National Forest, Yavapai County, Arizona, as generally depicted on the map entitled “Cottonwood/Clarkdale Federal Lands”, dated April 2002, and title to which shall be conveyed to Yavapai Ranch Limited Partnership or the Northern Yavapai, L.L.C., but not to any successor-in-interest, assign, transferee or affiliate of Yavapai Ranch Limited Partnership or the Northern Yavapai, L.L.C., or any other person or entity holding or acquiring any interest in Yavapai Ranch.

(F) Certain land comprising approximately 237.5 acres located in Kaibab National Forest, Coconino County, Arizona, as generally depicted on the map entitled “Younglife Lost Canyon”, dated April 2002.


(H) Perpetual, unrestricted, and nonexclusive easements that—

(i) run with and benefit land owned by or conveyed to YRLP across certain land of the United States;

(ii) are for ingress and egress necessary for the purposes described in subclause (I); and

(iii) are 20 feet in width; and

(iv) are located 10 feet on either side of each line depicted on the map entitled “YRLP Acquired Easements for Water Lines”, dated April 2002.

(3) CONDITIONS.—(A) PERMITS OR OTHER LEGAL OCCUPANCIES.—Prior to the conveyance described in paragraph (1), YRLP shall acquire all permits or other legal occupancies of the Federal land by third parties in existence on the date of transfer of the Federal land to YRLP.

(B) CONVEYANCE OF CERTAIN PARCELS.—Before the Secretary conveys the Federal land, the Secretary shall execute and record the Cottonwood/Clarkdale Declaration.

(C) IN GENERAL.—Before YRLP acquires the parcel described in paragraph (2)(D), YRLP shall execute and record the Camp Verde Declaration.

(D) AMENDED DECLARATION.—Following the acquisition of the parcel described in paragraph (2)(D), YRLP shall execute and record with the Yavapai County Recorder an amended declaration in which the legal description of the land referred to in the Camp Verde Declaration is amended to conform to the legal description in paragraph (2)(D).

(E) COTTONWOOD/CLARKDALE.—

(I) IN GENERAL.—Before YRLP acquires the parcel described in paragraph (2)(E), YRLP shall execute and record the Cottonwood Declaration.

(II) AMENDED DECLARATION.—Following the acquisition of the parcel described in paragraph (2)(E), YRLP shall execute and record with the Yavapai County Recorder an amended declaration in which the legal description of the land referred to in the Cottonwood Declaration is amended to conform to the legal description in paragraph (2)(E).

(b) CONVEYANCE OF NON-FEDERAL LAND BY YRLP.—

(1) IN GENERAL.—On receipt of title to the Federal land, YRLP shall simultaneously convey to the United States, by deed acceptable to YRLP, any interest in Yavapai Ranch.

(2) EASEMENTS.

(A) IN GENERAL.—The conveyance of non-Federal land to the United States under paragraph (1) shall be subject to the reservation of—

(i) perpetual and unrestricted easements and water rights that run with and benefit the land retained by YRLP for—

(I) the operation, maintenance, repair, improvements, and replacement of not more than 3 existing wells;

(II) related storage tanks, valves, pumps, and hardware; and

(III) pipelines to points of use; and

(ii) easements for reasonable ingress and egress to accomplish the purposes of the easements described in clause (i).

(B) EXISTING WELLS.—

(i) IN GENERAL.—Each easement for an existing well shall be—

(aa) 1 acres in area; and

(bb) located in the same square mile section of land.

(ii) LIMITATION.—Within a 40-acre easement described in clause (i), the United States and any permitees or licensees of the United States shall be prohibited from undertaking any activity that interferes with the use of the wells by YRLP, without the written consent of YRLP.

(c) CONVEYANCE OF WATER FOR THE UNITED STATES.—The United States shall be entitled to 1/2 of the production of each existing well, not to exceed a total of 3,100,000 gallons of water annually for watering wildlife and stock from all 3 wells.

(d) REASONABLE ACCESS.—Each easement for ingress and egress shall be at least 20 feet in width.

(e) LOCATION.—The locations of the easements and wells shall be the locations generally depicted on the Cottonwood/Clarkdale Federal Lands, as generally depicted on a map entitled “Preserved Easements for Water Lines and Wells”, dated April 2002.

(f) LAND TRANSFER PROBLEMS.—

(i) FEDERAL LAND.—If all or any part of any parcels of Federal land cannot be transferred to YRLP because of hazardous materials, or if the proposed title to a Federal land parcel or parcels or fraction thereof is unacceptable to YRLP because of the existence of unpatented mining claims, or in the event of the presence of threatened or endangered species or their critical resources which cannot be mitigated, or other third party rights under the public land laws, the Federal land or parcels thereof shall be deleted from the exchange and the Secretary and YRLP may mutually agree to exchange other Federal land in lieu of the deleted parcel or parcel thereof in accordance with section 5(c). If the parcel or parcels are deleted from the exchange, the non-Federal land shall be adjusted in accordance with section 5(c) as necessary to achieve equal value.

(ii) NON-FEDERAL LAND.—If 1 or more of the parcels of non-Federal land or a portion of such a parcel cannot be conveyed to the United States because of the existence of hazardous materials or because the proposed title to a parcel or a portion of the parcel is unacceptable to the Secretary—

(A) the parcel or any portion of the parcel shall be excluded from the exchange; and

(B) the Federal land shall be adjusted in accordance with section 5(c) to achieve approximate equal value.

(g) PASS-THROUGH CONVEYANCES.—

(1) IN GENERAL.—On or after the acquisition of the Federal land, YRLP may sublease lands described in paragraph (2)(D) to the cities of Flagstaff, Williams, Camp Verde, Cottonwood, and the summer camps the parcels of Federal land or portions of parcels located in or near the cities or summer camps referred to
in paragraph (1) have not agreed to the terms and conditions of a pass-through or subsequent conveyance of a parcel or portion of a parcel of Federal land before the completion of the exchange, the Secretary, on notice by YRLP, shall delete the parcel or any portion of the parcel from the exchange, provided that any portion so deleted shall be configured as lot 7 of section 7, T. 21 N., R. 8 E., more particularly described as the SW\(\frac{1}{4}\)NE\(\frac{1}{4}\) of section 26, T. 17 N., R. 17 E., comprised of approximately 10.89 acres, located in Prescott National Forest, and more particularly described as the SW\(\frac{1}{4}\)NW\(\frac{1}{4}\) of section 27, T. 22 N., R. 2 E., Gila and Salt River Base and Meridian, Coconino County, Arizona, excluding any portion north of the southern right-of-way of the Burlington Northern and Santa Fe Railway (Seligman Subdivision), comprising approximately 230 acres, located in Prescott National Forest, and more particularly described as the SW\(\frac{1}{4}\)NW\(\frac{1}{4}\) of section 22, T. 21 N., R. 8 E., Gila and Salt River Base and Meridian, Coconino County, Arizona, excluding any portion northeast of the southwestern boundary of the I-17 right-of-way, and more particularly described as the SE\(\frac{1}{4}\)NE\(\frac{1}{4}\) of section 26, the E\(\frac{1}{2}\)E\(\frac{1}{2}\)W\(\frac{1}{2}\)W\(\frac{1}{2}\) of section 26, and lots 5 through 7 of section 36, T. 14 N., R. 4 E., Gila and Salt River Base and Meridian, Yavapai County, Arizona.

(V) A portion of the Camp Verde parcel, comprising approximately 511 acres, located in Prescott National Forest, consisting of the southwestern one-half of the I-17 right-of-way, and more particularly described as the SE\(\frac{1}{4}\)NE\(\frac{1}{4}\) of section 26, the E\(\frac{1}{2}\)W\(\frac{1}{2}\)W\(\frac{1}{2}\) and E\(\frac{1}{2}\)E\(\frac{1}{2}\)NE\(\frac{1}{2}\)NE\(\frac{1}{2}\) of section 26, and lots 5 through 7 of section 36, T. 14 N., R. 4 E., Gila and Salt River Base and Meridian, Yavapai County, Arizona.

(VI) The Wetzel school parcel, comprising approximately 10.89 acres, located in Coconino National Forest, and more particularly described as lot 9 of section 11, T. 21 N., R. 7 E., Gila and Salt River Base and Meridian, Coconino County, Arizona.

(VII) The Mt. Eldon parcel, comprising approximately 17.21 acres, located in Coconino National Forest, and more particularly described as the NE\(\frac{3}{4}\)NE\(\frac{3}{4}\), the NE\(\frac{3}{4}\)SW\(\frac{1}{4}\), the SW\(\frac{1}{4}\)NE\(\frac{3}{4}\), the SW\(\frac{1}{4}\)SW\(\frac{1}{4}\), the SE\(\frac{1}{4}\)NE\(\frac{3}{4}\), the SE\(\frac{1}{4}\)SW\(\frac{1}{4}\), the NW\(\frac{1}{4}\)NE\(\frac{3}{4}\), the NW\(\frac{1}{4}\)SW\(\frac{1}{4}\), and NW\(\frac{1}{2}\)NW\(\frac{1}{2}\) of section 26, T. 14 N., R. 8 E., Gila and Salt River Base and Meridian, Coconino County, Arizona.

(VIII) A portion of the Camp Verde parcel, comprising approximately 14 acres, located in Prescott National Forest, and more particularly described as the NNE\(\frac{1}{4}\)E of lots 1, 5, and 6 of section 26, and the NNE\(\frac{1}{4}\)W of section 26, T. 14 N., R. 8 E., Gila and Salt River Base and Meridian, Coconino County, Arizona.
(IX) A portion of the Camp Verde parcel, comprising approximately 314 acres, located in Prescott National Forest, and more particularly described as the SEN41 and lots 2, 7, 8, and 9, and the SW<sub>1</sub>⁄<sub>4</sub> and lots 2, 7, 8, and 9, and the SW<sub>1</sub>⁄<sub>4</sub> and lots 2, 7, 8, and 9, and the SW<sub>1</sub>⁄<sub>4</sub> and lots 2, 7, 8, and 9, and the SW<sub>1</sub>⁄<sub>4</sub> and lots 2, 7, 8, and 9, and the SW<sub>1</sub>⁄<sub>4</sub> and lots 2, 7, 8, and 9, and the SW<sub>1</sub>⁄<sub>4</sub> and lots 2, 7, 8, and 9, and the SW<sub>1</sub>⁄<sub>4</sub> and lots 2, 7, 8, and 9.

(IV) described in paragraph (1), the Secretary shall be responsible for:\n\(\text{a) the preparation of necessary land surveys and the certification of the land exchanged;}\n\(\text{b) the preparation of necessary legal descriptions of the Federal land and non-Federal land;}\n\(\text{c) the preparation of necessary title insurance and the certification of the land exchanged;}\n\(\text{d) the certification of the costs of:}\n\(\text{1) conducting cultural and historic resource surveys;}\n\(\text{2) conducting surveys of hazardous materials;}\n\(\text{3) escrow;}\n\(\text{4) publication of notice of the proposed exchange.}\n\)

(2) LIMITATION.—\(\text{(A) In general—}\)YRLP shall not pay more than $500,000 of the costs described in paragraph (1).

(3) ADDITIONAL EQUALIZATION OF VALUES.—\(\text{If, after the values are adjusted in accordance with paragraph (1) or (2), the values of the Federal land and non-Federal land are not equal, then the Secretary and YRLP may by mutual agreement adjust the acreage of the Federal land and non-Federal land to equalize the values of that land.}\n
(4) CASH EQUALIZATION.—\(\text{(1) In general—}\)After the values of the non-Federal and Federal land are equalized under the subsection (c), any balance due to the Secretary shall be paid:

(a) through cash equalization payments under section 206(f) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(f));

(b) in accordance with standards established by the Secretary and YRLP; or

(c) accorded to the Secretary in an amount that exceeds $50,000.

(5) ADDITIONS.—If the value of the Federal land or non-Federal land by more than $50,000, the Secretary and YRLP shall by mutual agreement delete additional Federal land from the exchange until the values of Federal land and non-Federal land are equal.

(6) DEPOSIT.—\(\text{Any money received by the United States under this Act shall, without further appropriation, be deposited in a fund established under Public Law 90–171 (16 U.S.C. 480(a)(a) (commonly known as the “Sisk Act”)) for the acquisition of land or interests in land for National Forest System purposes in the State of Arizona.}\n
SEC. 6. MISCELLANEOUS PROVISIONS.

(a) REVOCATION OF ORDINANCES.—Any public orders issued by the Secretary to convey, transfer, or allocate Federal land by appropriation or disposal under the public land laws are revoked to the extent necessary to permit disposal of the Federal land.

(b) WITHDRAWAL OF FEDERAL LAND.—\(\text{The Federal land is withdrawn from all forms of entry and appropriation under the public land laws, including the mining and mineral leasing laws and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.), until the date on which the exchange of Federal land and non-Federal land is completed.}\n
(c) SURVEYS, INVENTORIES, AND CLEARANCES.—Before completing the exchange of Federal land and non-Federal land directed by this Act, the Secretary shall carry out land surveys and preexchange inventories, clearances, and approvals necessary to hazardous materials, threatened and endangered species, cultural and historic resources, and wetlands and floodplains.

(d) MEASURES OF IMPLEMENTING THE EXCHANGE.—\(\text{(1) In general—}\)Except as provided in paragraph (2), the Secretary shall be responsible for:\n\(\text{a) the preparation of necessary land surveys and the certification of the land exchanged;}\n\(\text{b) the preparation of necessary legal descriptions of the Federal land and non-Federal land;}\n\(\text{c) the preparation of necessary title insurance and the certification of the land exchanged;}\n\(\text{d) the certification of the costs of:}\n\(\text{1) conducting cultural and historic resource surveys;}\n\(\text{2) conducting surveys of hazardous materials;}\n\(\text{3) escrow;}\n\(\text{4) publication of notice of the proposed exchange.}\n\)

(2) LIMITATION.—\(\text{(A) In general—}\)YRLP shall not pay more than $500,000 of the costs described in paragraph (1).

(b) ADDITIONAL EQUALIZATION OF VALUES.—\(\text{If, after the values are adjusted in accordance with paragraph (1) or (2), the values of the Federal land and non-Federal land are not equal, then the Secretary and YRLP may by mutual agreement adjust the acreage of the Federal land and non-Federal land to equalize the values of that land.}\n
(c) CASH EQUALIZATION.—\(\text{(1) In general—}\)After the values of the non-Federal and Federal land are equalized under subsection (c), any balance due to the Secretary shall be paid:

(a) through cash equalization payments under section 206(f) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(f));

(b) in accordance with standards established by the Secretary and YRLP; or

(c) accorded to the Secretary in an amount that exceeds $50,000.

(d) LIMITATION.—\(\text{(A) In general—}\)YRLP shall not pay more than $500,000 of the costs described in paragraph (1).

(e) MODIFICATIONS.—\(\text{The descriptions of the land and acreage provided in subsections (III), (IV), and (V) of subparagraph (B)(ii) may be modified to conform with a survey approved by the United States, the Secretary, and YRLP.}\n
(f) TITLES.—\(\text{The Secretary shall retain the property rights in the Federal land and YRLP shall retain the property rights in the non-Federal land in land for National Forest System purposes in the State of Arizona.}\n
(g) ROAD IMPROVEMENT.—\(\text{The Secretary shall improve the roads and trails on the land to provide opportunities for hunting, motorized and nonmotorized recreation, and other uses of the land by the public.}\n
(h) PUBLIC ACCESS ROAD.—\(\text{(1) Construction.—}\)The Secretary shall improve or construct a public access road linking Forest Road 7 (Pine Creek Road) to Forest Road 1 (Turkey Canyon Road) through sections 32, 33, and 30, T. 19 N., R. 6 W., Gila and Salt River Base and Meridian.

(i) EXISTING ROAD.—\(\text{The existing road linking Pine Creek and Gobbler Knob shall:}\n
(I) shall remain open until the date on which the new public access road is completed; and

(II) after the date on which the new public access road is completed, shall be obliterated.

(j) EASEMENTS.—\(\text{(1) In general.—}\)Simultaneously with completion of the land exchange directed by this Act, the Secretary and YRLP shall mutually grant to each other reciprocal easements for ingress, egress, and utilities across, over, and through:

(I) the routes depicted on the map entitled “Road and Trail Easements—Yavapai Ranch Area” dated April 2002; and any other inholdings retained by the United States or YRLP; or

(II) any relocated routes that are mutually agreed to by the Secretary and YRLP.

(k) REQUIREMENTS.—Easements granted under this subparagraph shall be unlimited, perpetual, and nonexclusive in nature, and shall run with and benefit the land of the grantee.

(l) RIGHTS OF GRANTEE.—The rights of the grantee shall extend to:

(I) in the case of YRLP, any successors-in-interest, assigns, and transferees of YRLP; and

(II) in the case of the Secretary, members of the general public, as determined to be appropriate by the Secretary.

(m) TIMBER HARVESTING.—\(\text{(1) In general.—}\)Except as provided in paragraph (B), timber harvesting for commodity production shall be prohibited on the non-Federal land.

(n) EXCEPTIONS.—Timber harvesting may be conducted on the land if the Secretary determines that timber harvesting is necessary to:

(I) to prevent or control fires, insects, and disease through forest thinning or other forest management techniques; or

(II) to protect or enhance grassland habitat, watershed values, or native plants, trees, and wildlife species.

(o) WATER IMPROVEMENTS.—Nothing in this Act prohibits the Secretary from authorizing or constructing new water improvements in accordance with the laws, rules, and regulations generally applicable to the National Forest System.

(p) THE BENEFIT OF DOMESTIC STOCK.—(1) The Secretary may, by mutual agreement, adjust the acreage of Federal land and non-Federal land; and

(2) the Secretary and YRLP may, by mutual agreement, adjust the acreage of Federal land and non-Federal land.
SEC. 101. FINDINGS AND PURPOSES.

(a) PURPOSE.—The purpose of this title is to authorize, direct, and facilitate the exchange of Federal land and non-Federal land between the United States, Yavapai Ranch Limited Partnership, and the Northern Yavapai, L.L.C. for the purposes described in this title.

(b) PURPOSE.—The purpose of this title is to authorize, direct, and facilitate the exchange of Federal land and non-Federal land between the United States, Yavapai Ranch Limited Partnership, and the Northern Yavapai, L.L.C.

(c) ENCROACHMENT LAND IN FLAGSTAFF.—The term ‘‘encroachment land in Flagstaff’’ means the approximately 1,200 acres of land located within the boundaries of Flagstaff, Arizona, that is intended to run with the land and imposes certain water use restrictions, water source limitations, and water conservation measures on the future development of the land described in section 103(a)(2)(D).

(d) DECLARATIONS.—The term ‘‘Declarations’’ collectively means the Camp Verde Declaration, the Cottonwood Declaration, both of which Congress is requiring to be recorded as encumbrances on the Camp Verde Federal land described in section 103(a)(2)(D) and the Cottonwood/Clarkdale Federal land described in section 103(a)(2)(E) in order to conserve water resources in the Verde River Valley, Arizona.

(e) FEDERAL LAND.—The term ‘‘Federal land’’ means the land directed for exchange to YRLP in section 103(a)(2).

(f) MANAGEMENT PLAN.—The term ‘‘Management Plan’’ means the land and resource management plan for Prescott National Forest.

(g) NON-FEDERAL LAND.—The term ‘‘non-Federal land’’ means the approximately 35,000 acres of non-Federal land located within the boundaries of Prescott National Forest and directed for exchange to the United States to achieve the public objectives described in this title.

(h) YRLP.—The term ‘‘YRLP’’ means the Yavapai Ranch Limited Partnership and the Northern Yavapai, L.L.C.

(i) CAMP VERDE DECLARATION.—The term ‘‘Camp Verde Declaration’’ means the Declaration of Covenants, Conditions and Restrictions executed by Yavapai Ranch Limited Partnership and the Northern Yavapai, L.L.C., on or about August 12, 2002, and recorded in the official records of Yavapai County, Arizona, that is intended to run with the land and imposes certain water use restrictions, water source limitations, and water conservation measures on the future development of the land described in section 103(a)(2)(D).

(j) COTTONWOOD DECLARATION.—The term ‘‘Cottonwood Declaration’’ means the Declaration of Covenants, Conditions and Restrictions executed by Yavapai Ranch Limited Partnership and the Northern Yavapai, L.L.C., on or about August 12, 2002, and recorded in the official records of Yavapai County, Arizona, that is intended to run with the land and imposes certain water use restrictions, water source limitations, and water conservation measures on the future development of the land described in section 103(a)(2)(E).

(k) SECRETARY.—The term ‘‘Secretary’’ means the Secretary of Agriculture.
SEC. 102. LAND EXCHANGE.

(a) CONVEYANCE OF FEDERAL LAND BY THE UNITED STATES

(1) IN GENERAL.—On receipt of an offer from YRLP to convey the non-Federal land, the Secretary shall convey to YRLP by deed acceptable to YRLP all right, title, and interest of the parcel from the exchange, provided that any portion so deleted shall be configured in accordance with subsection (c).

(b) CONVEYANCE OF FEDERAL LAND TO YRLP

(i) perpetual and unrestricted easements and water rights that run with and benefit the land retained by YRLP for—

(ii) the operation, maintenance, repair, improvement, and replacement of not more than 3 existing wells;

(iii) perpetual and unrestricted easements and water rights that run with and benefit the land retained by YRLP for—

(iv) pipelines to points of use; and

(v) easements for reasonable ingress and egress to accomplish the purposes described in clause (ii).
(A) the Uniform Appraisal Standards for Federal Land Acquisitions, fifth edition (December 20, 2000); and
(B) the Uniform Standards of Professional Appraisal Practice (Federal land and non-Federal land).

(2) APPROVAL.—In accordance with part 254.9(a)(1) of title 36, Code of Federal Regulations (or any successor regulation), the appraisal shall:

(A) be acceptable to the Secretary and YRLP; and

(B) be performed by a contractor, the clients of which shall be both the Secretary and YRLP.

(3) REQUIREMENTS.—During the appraisal process—

(A) the Secretary and YRLP shall have equal access to the appraiser; and

(B) the Secretary and YRLP shall cooperate with each other and the appraiser to prepare appraisal instructions which shall require the appraiser to—

(i) consider the effect on value of the Federal land or non-Federal land because of the existence of encumbrances on each parcel, including—

(A) permitted uses on Federal land that cannot be reasonably terminated before the appraisal; and

(ii) facilities on Federal land that cannot be reasonably removed before the appraisal.

(ii) determine the value of each parcel of Federal land and non-Federal land (including the value of each individual section of the intermingled Federal and non-Federal land of the Yavapai Ranch) as an assembled and unimproved unit, in accordance with applicable federal appraisal valuation provisions of parts 254.5 and 254.9(b)(1)(V) of title 36, Code of Federal Regulations (or any successor regulation).

(4) DISPUTE RESOLUTION.—A dispute relating to the appraised values of the Federal land or non-Federal land following completion of the appraisal shall be processed in accordance with—

(A) section 206(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)); and

(B) part 254.10 of title 36, Code of Federal Regulations (or any successor regulation).

(5) APPRAISAL PERIOD.—After the final appraised values of the Federal land and non-Federal land have been reviewed and approved by the Secretary or otherwise determined in accordance with the requirements of paragraph (a), the final appraisal values shall be published in accordance with the applicable provisions of parts 254.5 and 254.9(b)(1)(V) of title 36, Code of Federal Regulations (or any successor regulation).

(6) AVAILABILITY.—The appraisals approved by the Secretary shall be made available for public inspection in the Offices of the Supervisors for Prescott, Coconino, and Kaibab National Forests in accordance with Forest Service policy.

(7) ALLOCATION OF CHARGES.—For purposes of the land exchange directed by this title, any charges allocable to the conservation measures and restrictions on water use under the Declarations shall be allocated 50 percent to the Secretary and 50 percent to YRLP.

(8) EQUALIZATION OF VALUES.—

(A) SURPLUS OF NON-FEDERAL LAND.—(1) IN GENERAL.—If, after any adjustments are made to the non-Federal land or Federal land under subsection (c) or (d) of section 103, the final appraised value of the non-Federal land exceeds the final appraised value of the Federal land, such Federal land shall be adjusted in accordance with subparagraph (B) until the values are approximately equal.

(B) ADJUSTMENTS.—Adjustments under subparagraph (A) shall be made in the following order:

(i) beginning at the south boundary of section 31, T. 20 N., R. 5 W., Gila and Salt River Base and Meridian, Arizona, and sections 29, 30, 31, 20 N., R. 6 W., Gila and Salt River Base and Meridian, Yavapai County, Arizona, and adding to the Federal land to be conveyed to YRLP in 1/4 section increments (N-S 64th line) (Phoenix Subdivision), while deleting from the conveyance to the United States non-Federal land in the same incremental portions of sections 19 and 31, T. 20 N., R. 5 W., Gila and Salt River Base and Meridian, Yavapai County, Arizona, to establish a linear and continuous boundary that runs north to south across the sections.

(ii) In accordance with part 254.6 of title 36, Code of Federal Regulations (or any successor regulation), the Secretary or YRLP shall have equal access to the appraiser; and

(BB) the W 1/4 portions of sections 27, 14 N., R. 4 E., Gila and Salt River Base and Meridian, Yavapai County, Arizona; and

(bb) the N 1/4 portions of sections 14, 11 N., R. 4 E., Gila and Salt River Base and Meridian, Yavapai County, Arizona.

(2) LIMITATION.—In accordance with standards established by the Secretary, the NE 1/4 portions of sections 22, 21 N., R. 7 E., Gila and Salt River Base and Meridian, Coconino County, Arizona.

(V) The Mt. Eldon parcel, comprising approximately 14.0 acres, located in Coconino National Forest, and more particularly described as lot 11 of section 11, T. 22 N., R. 7 E., Gila and Salt River Base and Meridian, Coconino County, Arizona.

(VI) the Mt. Eldon parcel, comprising approximately 17.41 acres, located in Coconino National Forest, and more particularly described as the N 1/4, the S 1/4, and the W 1/4 portions of section 8, T. 15 N., R. 3 E., Gila and Salt River Base and Meridian, Yavapai County, Arizona.

(VII) A portion of the Camp Verde parcel, comprising approximately 316 acres, located in Prescott National Forest, and more particularly described as lot 7 of section 7, T. 21 N., R. 8 E., Gila and Salt River Base and Meridian, Coconino County, Arizona.

(VIII) A portion of the Camp Verde parcel, comprising approximately 314 acres, located in Prescott National Forest, and more particularly described as the NE 1/4, the SE 1/4, and the NW 1/4, the SE 1/4, and the NW 1/4 portions of section 27, T. 14 N., R. 4 E., Gila and Salt River Base and Meridian, Yavapai County, Arizona.

(C) MODIFICATIONS.—The descriptions of land and acreage provided in subclauses (III), (IV), and (V) of subparagraph (B)(ii) may be modified to conform with surveys approved by the Bureau of Land Management.

(3) ADDITIONAL EQUALIZATION OF VALUES.—If, after the values are adjusted in accordance with paragraph (1) or (2), the values of the Federal land and non-Federal land are not equal, then the Secretary and YRLP may make additional payments under section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b); or

(R) in accordance with standards established by the Secretary and YRLP.

(2) LIMITATION.—

(A) IN GENERAL.—YRLP shall not be required to make any cash equalization payment to the Secretary in an amount that exceeds $50,000.
Federal land and non-Federal land directed by this title be completed, shall be obliterated.

(C) EASEMENTS.—Simultaneously with completion of the land exchange directed by this title, the Secretary and YRLP shall mutually grant to each other at no charge reciprocal easements for ingress, egress, and utilities across, over, and through—

(I) the routes depicted on the map entitled "Road and Trail Easements—Yavapai Ranch" dated April 1, 2002; and any other inholdings retained by the United States or YRLP; or

(ii) any relocated routes that are mutually agreed to by the Secretary and YRLP.

(ii) REQUIREMENTS.—Easements granted under this subparagraph shall be unlimited, perpetual, and nonexclusive in nature, and shall run with and benefit the land of the grantee.

(iii) RIGHTS OF GRANTEE.—The rights of the grantee shall extend to—

(I) in the case of YRLP, any successors-in-interest, assigns, and transferees of YRLP; and

(ii) in the case of the Secretary, members of the general public, as determined to be appropriate by the Secretary.

(5) TIMBER HARVESTING.—

(A) IN GENERAL.—Except as provided in subparagraph (B), timber logging and associated commodity production shall be permitted on the Federal land.

(B) EXCEPTIONS.—Timber harvesting may be conducted on the land if the Secretary determines that timber harvesting is necessary—

(i) to prevent or control fires, insects, and diseases through forest thinning or other forest management techniques; or

(ii) to protect or enhance grassland habitat, watershed values, or native plants, trees, and wildlife species.

(6) WATER IMPROVEMENTS.—Nothing in this title prohibits the Secretary from authorizing or constructing new water improvements in accordance with the laws, rules, and regulations applicable to water improvements on National Forest System land for—

(A) the benefit of domestic livestock or wildlife management; or

(B) the improvement of forest health or forest restoration.

(d) MAPS.—

(A) IN GENERAL.—The Secretary and YRLP may correct any minor errors in the maps of, legal descriptions of, or encumbrances on the Federal land or non-Federal land.

(B) DISCERNING.—In the event of any discrepancy between a map, acreage, and a legal description, the map shall prevail unless the Secretary and YRLP agree otherwise.

(C) AVAILABILITY.—The Declarations and all maps referred to in this title shall be on file and available for inspection in the Office of the Supervisor, Prescott National Forest, Prescott, Arizona.

(e) EFFECT.—Nothing in this title precludes, prohibits, or otherwise restricts YRLP from subsequently granting, conveying, or otherwise transferring title to the Federal land after its acquisition of the Federal land and recordation of the Declarations and any conforming amendments to the Declarations.

(4) ROADS.—

(A) IMPLEMENTATION AND MAINTENANCE.—The Secretary shall maintain or improve a system of roads and trails on the land to provide opportunities for hunting, motorized and nonmotorized recreation, and other uses of the land by the public.

(B) PUBLIC ACCESS ROAD.—

(I) CONSTRUCTION.—The Secretary shall improve or construct a public access road linking Forest Road 7 (Pine Creek Road) to Forest Road 1 (Turkey Canyon Road) through portions of sections 33, 32, 31, and 30, T. 19 N., R. 6 W., Gila and Salt River Base and Meridian, Coconino County, Arizona, to a single individual or entity, either of which represent the majority of landowners with environmental concerns on such lot.

(ii) TIMING.—It is the intent of Congress that the exchange of Federal land and non-Federal land directed by this title be completed, at the latest, 1 year after the date of enactment of this Act.

(I) CONTRACTORS.—

(I) IN GENERAL.—The Secretary shall acquire the services of contractors to complete the exchange by the date referred to in subsection (e), or if the costs described in subsection (d)(2) exceed the limitation described in subsection (d)(3), the Secretary shall reimburse YRLP for the costs of 1 or more independent third party contractors, subject to the provisions of this section and YRLP, to carry out any activities necessary to complete the exchange by that date.

(ii) CREDITS.—If the Secretary lacks funds necessary to pay the costs of the change by the date referred to in paragraph (1), the Secretary shall credit any amounts paid by YRLP to third party independent contractors against the costs of the change in accordance with section 206(f) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(f)).

(3) PROTECTION OF NATURAL RESOURCES.—The land shall be managed in a manner that maintains the species, character, and natural values of the land, including—

(I) deer, pronghorn antelope, wild turkey, mountain lion, and other resident wildlife and native plant species;

(II) protect or enhance grassland habitat, watershed values, or native plants, trees, and wildlife species.

(4) GRAZING.—Each area located in the Yavapai Ranch grazing allotment as of the date of enactment of this Act shall—

(I) remain open until the date on which the new public access road is completed; and

(II) the date on which the new public access road is completed, shall be obliterated.

(5) MANAGEMENT PLAN.—

(A) IN GENERAL.—Following its acquisition by the United States, the non-Federal land acquired by the United States and adjoining National Forest System land shall be managed in accordance with paragraphs (2) through (6), and the laws, rules, and regulations generally applicable to the National Forest System.

(B) PROTECTION OF NATURAL RESOURCES.—The land shall be managed in a manner that maintains the species, character, and natural values of the land, including—

(I) deer, pronghorn antelope, wild turkey, mountain lion, and other resident wildlife and native plant species;

(II) suitability for livestock grazing; and

(III) aesthetic values.

(6) WATER IMPROVEMENTS.—Nothing in this title prohibits the Secretary from authorizing or constructing new water improvements in accordance with the laws, rules, and regulations applicable to water improvements on National Forest System land for—

(A) the benefit of domestic livestock or wildlife management; or

(B) the improvement of forest health or forest restoration.
The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The amendment in the nature of a substitute was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The amendment in the nature of a substitute be considered as read and printed in the RECORD.

A motion to reconsider was laid on the table.

**AMERICAN WILDLIFE ENHANCEMENT ACT OF 2001**

Mr. HANSEN. Mr. Speaker, I ask unanimous consent that the Committee on Resources be discharged from further consideration of the Senate bill (S. 990) to amend the Chimney- Robertson Wildlife Restoration Act to improve the provisions relating to wildlife conservation and restoration programs, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

Mr. GILCHREST. Mr. Speaker, I yield to the gentleman from California.

Mr. GILCHREST. Mr. Speaker, I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, I would like to join in extending congratulations. We have just talked about two of our colleagues who are retiring. They were not in the Chamber. We actually have our colleagues in the Chamber at this moment at 2:22 in the morning as we retire.

Of course, we have our friend, the gentleman from Texas (Mr. ARMEY), who is always in this Chamber, no matter who is the gentleman, and our friend, Mr. HANSEN; and our friend, the gentleman from Oklahoma (Mr. WATKINS), here as well.

I would like to say to all three of our colleagues who are retiring, but especially those three who are here at now 2:25 in the morning.

Mr. TOM DAVIS of Virginia. Mr. Speaker, will the gentleman yield?

Mr. GILCHREST. Mr. Speaker, I yield to the gentleman from Utah.

Mr. GILCHREST. Mr. Speaker, I yield to the gentleman from Utah.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, I would like to join in extending congratulations. We have just talked about two of our colleagues who are retiring. They were not in the Chamber. We actually have our colleagues in the Chamber at this moment at 2:22 in the morning as we retire.

Of course, we have our friend, the gentleman from Texas (Mr. ARMEY), who is always in this Chamber, no matter who is the gentleman, and our friend, Mr. HANSEN; and our friend, the gentleman from Oklahoma (Mr. WATKINS), here as well.

I would like to say to all three of our colleagues who are retiring how much we have appreciated their extraordinary service to this institution.

I had the privilege of being elected in 1980 with Jim Hansen. He came as a former speaker of the House of Representatives of the State legislature in Utah and did a phenomenal job there, and came in with a class that was actually larger than the one that will be coming in for the 108th Congress. We ended up with a class of, in a bipartisan way, 98 Members over 76 years ago. We had 53 Republicans who came in, and it was the day that Ronald Reagan was elected President of the United States that Jim Hansen and I were elected to the House of Representatives. He provided just extraordinary leadership to us.

I want to say on this issue that he has dealt with on the Committee on Resources dealing with the challenges that especially those of us in the West face, that I have appreciated his great service and his wonderful friendship; and I would like to say he will be missed, along with our friends, the gentleman from Texas (Mr. ARMEY) and, of course, the gentleman from Oklahoma (Mr. WATKINS), who is retiring.

But Jim was a pillar of integrity, picked by the leadership because of that, because of his objectivity in dealing with these kinds of issues, and the gentleman added a great dimension to this body. We will miss you and I hope you stay active, Jim.

Mr. FARR of California. Mr. Speaker, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from California.

Mr. FARR of California. Mr. Speaker, I would like to rise also. I came here as a freshman and was assigned to the Committee on Resources, which I think is probably the most important committee in Congress, because it really deals with the terrain of America, the landscape of America, the things that brings us such respect for this country.
its diversity and its incredible geography and beauty; and I found the gentleman from Utah (Mr. HANSEN) to be an incredibly warm chairman, always listening, being very fair, a real gentleman as a chairman; and I have to say on the other side of the aisle that we were treated always fairly and our views were respected and bills were passed.

I think that we are going to miss him. We are going to miss somebody that represents a State that really knows the beauty of America; and under his leadership we, Congress, rose to help that State put on the Olympics. It would not have happened without his leadership.

So it is a real pleasure to have served with him, and I wish him all the luck in the world. Thank you.

Mr. INSLEE. Mr. Speaker, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from Washington.

Mr. INSLEE. Mr. Speaker, I would just like to report from the Democratic cloakroom that when we saw this spontaneous tribute to the gentleman from Utah (Mr. HANSEN), somebody said, you know, he is a really nice guy, and there was universal shaking of the heads affirmatively. That is the highest praise.

This has been a tremendous opportunity to work with the gentleman, Mr. Chairman, and Utah is a beautiful state and you have made it a little nicer being such a gracious person here.

Mr. GILCHREST. Mr. Speaker, re-claiming my time, I would say to Wes WATKINS, Dick ARMET, Jim HANSEN, thank you from the country’s heart.

Mr. HANSEN. Mr. Speaker, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from Utah.

Mr. HANSEN. Mr. Speaker, I would like to express my appreciation for the kind words of my colleagues and friends. It has been very kind of them to say these things.

Mr. GILCHREST. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection?

There was no objection.

Mr. HANSEN. Mr. Speaker, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from Utah.

Mr. HANSEN. Mr. Speaker, I would like to express my appreciation for the kind words of my colleagues and friends. It has been very kind of them to say these things.

Mr. GILCHREST. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection?

There was no objection.

Mr. HANSEN. Mr. Speaker, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from Utah.

Mr. HANSEN. Mr. Speaker, I would like to express my appreciation for the kind words of my colleagues and friends. It has been very kind of them to say these things.

Mr. GILCHREST. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection?

There was no objection.

Mr. HANSEN. Mr. Speaker, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from Utah.

Mr. HANSEN. Mr. Speaker, I would like to express my appreciation for the kind words of my colleagues and friends. It has been very kind of them to say these things.

Mr. GILCHREST. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection?

There was no objection.

Mr. HANSEN. Mr. Speaker, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from Utah.

Mr. HANSEN. Mr. Speaker, I would like to express my appreciation for the kind words of my colleagues and friends. It has been very kind of them to say these things.
(9) Section 6(c) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669c(c)) is amended by striking "hereinafter referred to as the ‘fund’.

(4) Section 6(c) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669c(c)) is amended by striking "hereinafter referred to as the ‘fund’.

(5) Section 11(b) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669h-2(b)) is amended by striking "wildlife restoration projects" each place it appears and inserting "wildlife-restoration projects.

SEC. 103. WILDLIFE CONSERVATION AND RESTORATION ACCOUNT.—

(a) IN GENERAL.—Section 3 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669b) is amended—

(1) by striking subsection 3. (a)1 An” and inserting the following:

“SEC. 3. FEDERAL AID TO WILDLIFE RESTORATION FUND.

(1) FEDERAL AID TO WILDLIFE RESTORATION FUND.—An”;

(2) in subsection (a), by striking paragraph (2) and inserting the following:

“(2) WILDLIFE CONSERVATION AND RESTORATION ACCOUNT.—

(A) ESTABLISHMENT.—There is established in the fund an account to be known as the ‘Wildlife Conservation and Restoration Account’.

(B) FUNDING.—

(i) IN GENERAL.—There are authorized to be appropriated to the Account for apportionment to States, the District of Columbia, territories, and Indian tribes in accordance with section 6(d).

(1) by striking subsection (a), (b), and (c) and (d), and (e) and (f) of section 4 and substituting the following:

(1) by redesignating sections 12 and 13 (16 U.S.C. 669d-a, 669d-b) as sections 12 and 13 (16 U.S.C. 669d-a, 669d-b) respectively;

(ii) to Indian tribes, a sum equal to not more than 2 1/4 percent of that remaining amount, of which, subject to subparagraph (b),

(iii) to Indian tribes, a sum equal to more than 2 1/4 percent of that remaining amount, of which, subject to subparagraph (b).

(iii) in paragraph (2), by inserting “other than sections 4(d) and 12)” after “this Act”.

(iv) in paragraph (3), by inserting “other than sections 4(d) and 12)” after “this Act”.

(v) in paragraph (4), by inserting “other than sections 4(d) and 12)” after “this Act”.

(vi) in paragraph (5), by inserting “other than sections 4(d) and 12)” after “this Act”.

(vii) in paragraph (6), by inserting “other than sections 4(d) and 12)” after “this Act”.

(viii) in paragraph (7), by inserting “other than sections 4(d) and 12)” after “this Act.”

SEC. 104. APPORTIONMENT OF AMOUNTS IN THE ACCOUNT.—

Section 4 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669c) is amended by striking the second subsection (c) and subsection (d) and inserting the following:

“(d) APPORTIONMENT OF AMOUNTS IN THE ACCOUNT.—

(1) DEDUCTION FOR ADMINISTRATIVE EXPENSES.—For each fiscal year, the Secretary shall apportion from the amount in the Account available for apportionment for the fiscal year:

(i) DEDUCTION FOR ADMINISTRATIVE EXPENSES.—For each fiscal year, the Secretary may deduct, for payment of administrative expenses incurred by the Secretary in carrying out activities funded from the Account, an amount equal to not more than 4 percent of the total amount of the Account available for apportionment for the fiscal year.

(ii) APPORTIONMENT TO DISTRICT OF COLUMBIA, TERRITORIES, AND INDIAN TRIBES.—(A) IN GENERAL.—For each fiscal year, after making the deduction under paragraph (1), the Secretary shall apportion from the amount in the Account available for apportionment remaining available for apportionment—

(i) to each of the District of Columbia and the Commonwealth of Puerto Rico, a sum equal to not more than 4 percent of that remaining amount;

(ii) to each of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, a sum equal to not more than 4 percent of that remaining amount;

(iii) to Indian tribes, a sum equal to not more than 4 percent of that remaining amount, of which, subject to subparagraph (b),

(iv) in paragraph (2), by inserting “other than sections 4(d) and 12)” after “this Act”.

SEC. 105. WILDLIFE CONSERVATION AND RESTORATION PROGRAMS.—

(a) IN GENERAL.—The Pittman-Robertson Wildlife Restoration Act is amended—

(i) by redesignating sections 6 and 13 (16 U.S.C. 669f, 669g) as sections 6 and 13 (16 U.S.C. 669f, 669g) respectively;

(ii) by striking the first sentence of subsection (a), by inserting “other than sections 4(d) and 12)” after “this Act”;
(2) by inserting after section 11 (16 U.S.C. 669h-2) the following:

"SEC. 12. WILDLIFE CONSERVATION AND RESTORATION PROGRAMS.

"(a) Definition of State.—In this section, the term ‘State’ means a State, the District of Columbia, a territory, and an Indian tribe.

"(b) WILDLIFE CONSERVATION AND RESTORATION PROGRAMS.—

"(1) IN GENERAL.—A State, acting through the State fish and game department, may apply to the Secretary for a grant for the development and implementation of the wildlife conservation and restoration program of the State.

"(A) for approval of a wildlife conservation and restoration program; and

"(B) to receive funds from the apportionment to the State under section 4(d) to develop and implement the wildlife conservation and restoration program.

"(2) APPLICATION CONTENTS.—As part of an application under paragraph (1), a State shall provide documentation demonstrating that the wildlife conservation and restoration program of the State includes—

"(A) provisions vesting in the State fish and game department overall responsibility and accountability for the wildlife conservation and restoration program of the State;

"(B) provisions to identify which species in the State are in greatest need of conservation; and

"(C) provisions for the development, implementation, and maintenance, under the wildlife conservation and restoration program of the State, of—

"(i) wildlife conservation projects—

"(I) that expand and support other wildlife programs; and

"(II) that are selected giving appropriate consideration to all species of wildlife in accordance with subsection (c);

"(ii) wildlife-associated recreation projects; and

"(iii) wildlife conservation education projects.

"(3) PUBLIC PARTICIPATION.—A State shall provide an opportunity for public participation in the development and implementation of the wildlife conservation strategy and restoration program of the State and projects carried out under the wildlife conservation and restoration program.

"(4) APPROVAL FOR FUNDING.—If the Secretary finds that the application submitted by a State is responsive to the requirements of paragraph (2), the Secretary shall approve the wildlife conservation and restoration program of the State.

"(5) PAYMENT OF FEDERAL SHARE.—

"(A) IN GENERAL.—Subject to subparagraph (D), after the Secretary approves a wildlife conservation and restoration program of the State, the Secretary may make payments to a State under section 4(d), to be eligible to continue to receive funds from the apportionment to the State under section 4(d), the State shall, as part of the wildlife conservation and restoration program of the State, develop and implement a wildlife conservation strategy that is based on the best available and appropriate scientific information.

"(B) Timing of Payments.—A wildlife conservation strategy shall—

"(i) use such information on the distribution and abundance of species of wildlife as is indicative of the diversity and health of the wildlife of the State, including such information on species with low populations and declining numbers of individuals as the State fish and game department determines to be appropriate;

"(ii) identify the extent and condition of wildlife habitats and community types essential to the species of wildlife of the State identified using information described in subparagraph (A);

"(B)(i) identify the problems that may adversely affect—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(C)(i) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B)(i) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(ii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(ii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,

"(iii) provide for high priority research and surveys to identify factors that may assist in the development and more effective conservation of—

"(A) the species identified using information described in subparagraph (A); and

"(B) Federal, State, and local agencies and organizations, land trusts, or any other nonprofit organization, land trust, or other nonprofit organization,
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(b) CONFORMING AMENDMENT.—Section 8(a) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669g) is amended by striking the last sentence.

SEC. 106. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

(a) Pittman-Robertson Wildlife Restoration Act.—The Pittman-Robertson Wildlife Restoration Act (as amended by section 105(a)(1)) is amended by inserting after section 13 the following:

"SEC. 13A. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

"(a) Coordination with State fish and game department personnel or with personnel of any other agency of a State, the District of Columbia, the Trust Territory, or an Indian tribe under this Act shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.)."

(b) Dingell-Johnson Sport Fish Restoration Act.—The Dingell-Johnson Sport Fish Restoration Act is amended—

(1) by redesignating section 10 (16 U.S.C. 777 note) as section 16; and

(2) by inserting after section 16 (16 U.S.C. 777m) the following:

"SEC. 13A. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

"(a) Coordination with State fish and game department personnel or with personnel of any other State agency under this Act shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.)."

SEC. 107. TECHNICAL AMENDMENTS.

(a) The first section of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669) is amended by striking "That the" and inserting the following:

"SECTION 1. COOPERATION OF SECRETARY OF THE INTERIOR WITH STATES."

The:

(b) Section 5 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669d) is amended by striking "Sec. 5." and inserting the following:

"SEC. 5. CERTIFICATION OF AMOUNTS DEDUCTED OR APPORTIONED.

(c) Section 6 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669e) is amended by striking "Sec. 6." and inserting the following:

"SEC. 6. SUBMISSION AND APPROVAL OF PLANS AND PROJECTS.

(d) Section 7 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669f) is amended by striking "Sec. 7." and inserting the following:

"SEC. 7. PAYMENT OF FUNDS TO STATES.

(e) Section 8 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669g) is amended by striking "Sec. 8." and inserting the following:

"SEC. 8. MAINTENANCE OF PROJECTS; FUNDING OF HUNTER SAFETY PROGRAMS AND PUBLIC TARGET RANGES.

(f) Section 8A of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669g–1) is amended by striking "Sec. 8A." and inserting the following:

"SEC. 8A. APPORTIONMENTS TO TERRITORIES.

(g) Section 13 of the Pittman-Robertson Wildlife Restoration Act (as redesignated by section 106) is amended by striking "Sec. 13." and inserting the following:

"SEC. 13. RULES AND REGULATIONS.

SEC. 108. EFFECTIVE DATE.

This title takes effect on October 1, 2001.

TITLE II—ENDANGERED AND THREATENED SPECIES RECOVERY

SEC. 201. PURPOSE.

The purpose of this title is to promote involvement by non-Federal entities in the recovery of endangered species.

(1) (A) the endangered species of the United States;

(2) the threatened species of the United States; and

(3) the species of the United States that may become endangered species or threatened species if conservation actions are not taken to conserve and protect the species; and

(2) the habitats on which the species depend.

SEC. 202. ENDANGERED AND THREATENED SPECIES RECOVERY ASSISTANCE.

(a) In General.—The Endangered Species Act of 1973 (87 Stat. 902) is amended to read as follows:

"SEC. 13. ENDANGERED AND THREATENED SPECIES RECOVERY ASSISTANCE.

"(a) Definitions.—In this section:

"(1) Conservation entity.—

"(A) the endangered species of the United States;

"(B) the threatened species of the United States;

"(C) the species of the United States that may become endangered species or threatened species if conservation actions are not taken to conserve and protect the species; and

"(2) the habitats on which the species depend.

"(2) Required Terms.—The term ‘species recovery agreement’ means an agreement with respect to the conservation of an endangered species or a threatened species that

"(A) is entered into between the Secretary and a person by—

"(i) the Secretary, or

"(ii) a land trust;

"(B) describes the real property referred to in subsection (c) and

"(3) other terms and conditions as the Secretary determines to be necessary and appropriate.

"(2) Financial Assistance.—The term ‘financial assistance’ means financial aid provided to a person for attaining the species recovery goals.

"(3) Financial Assistance Agreement.—The term ‘financial assistance agreement’ means a financial assistance agreement entered into under subsection (b).

"(4) Other Terms and Conditions.—The term ‘other terms and conditions’ includes any other terms and conditions that the Secretary determines to be necessary and appropriate.

"(5) Financial Assistance Agreement.—The term ‘financial assistance agreement’ means a financial assistance agreement entered into under subsection (b)."
“(G) require the person to notify the Secretary if any term of the species recovery agreement is breached; 

(H) specify the date on which the species recovery agreement takes effect and the period of time during which the species recovery agreement shall remain in effect; 

(I) schedule the disbursement of financial assistance under subsection (D) of this section for a fiscal year, not more than 3 percent may be used to pay administrative expenses incurred in carrying out this section; 

(J) in the case of an agreement— 

(1) if the Secretary determines that the species recovery agreement complies with this subsection, the Secretary shall— 

(A) review the proposed species recovery agreement and determine whether the species recovery agreement— 

(i) complies with this subsection; and 

(ii) will contribute to the recovery of each endangered species, threatened species, or species at risk that is the subject of the proposed recovery agreement; 

(B) propose to the person any additional provisions that are necessary for the species recovery agreement to comply with this subsection; and 

(C) if the Secretary determines that the species recovery agreement complies with this subsection, enter into the species recovery agreement with the person. 

(2) MONITORING OF IMPLEMENTATION OF SPECIES RECOVERY AGREEMENTS.—The Secretary shall— 

(A) periodically monitor the implementation of each species recovery agreement; 

(B) based on the information obtained from the monitoring, annually or otherwise disburse financial assistance under this section to implement the species recovery agreement as the Secretary determines to be appropriate under the species recovery agreement; and 

(C) if the Secretary determines that the person is not making demonstrable progress in accordance with species recovery goals specified under paragraph (2)(C)— 

(i) propose 1 or more modifications to the species recovery agreement that are necessary to accomplish the species recovery goals; or 

(ii) terminate the species recovery agreement. 

(3) LIMITATION WITH RESPECT TO FEDERAL OR STATE LAND.—The Secretary may enter into a species recovery agreement with a person with respect to Federal or State land only if, if the person is any of the United States or the State, respectively, is a party to the species recovery agreement. 

(4) ALLOCATION OF FUNDS.—Of the amounts made available to carry out this section for a fiscal year, 

(1) ½ shall be made available to provide financial assistance for development and implementation of species recovery agreements by small landowners, subject to subparagraphs (A) through (D) of subsection (b)(2); 

(2) ½ shall be made available to provide financial assistance for development and implementation of species recovery agreements on public land, subject to subparagraphs (A) through (D) of subsection (b)(2); and 

(3) ½ shall be made available to provide financial assistance for development and implementation of species recovery agreements on private land, subject to subparagraph (A) through (D) of subsection (b)(2). 

(e) LIMITATION ON ADMINISTRATIVE EXPENSES.—Of the amounts made available to carry out this section for a fiscal year, not more than 3 percent may be used to pay administrative expenses incurred in carrying out this section. 

(b) Allocation of Funds. 

(1) In general.—The Partnerships for Wildlife Act (16 U.S.C. 3741 et seq.) is amended by adding at the end of the section— 

(A) ENDANGERED AND THREATENED SPECIES RECOVERY AGREEMENT.—There is authorized to be appropriated to carry out section 13 $150,000,000 for each of fiscal years 2002 through 2007 to 

(B) Monitoring of Implementation of Species Recovery Agreements. 

(1) ESTABLISHMENT.—The Secretary shall establish, in consultation with appropriate State, regional, and other units of government, the Secretary shall establish a competitive grant program, to be known as the ‘‘Non-Federal Grant Program’’ (referred to in this section as the ‘‘program’’), to make grants to States or groups of States to pay the Federal share determined under subsection (c)(4) of the costs of conservation of non-Federal land or water of regional or national significance. 

(2) RANKING CRITERIA. 

(A) RANKING CRITERIA.—In ranking the applications for grants for projects under the program, the Secretary shall— 

(i) rank projects according to the extent to which a proposed project will protect watersheds and important scenic, cultural, recreational, fish, wildlife, and other ecological resources; and 

(ii) give preference to paragraph (i), give preference to projects— 

(A) that protect the long-term viability of fish, wildlife, or plants; 

(B) that are supported by communities and individuals that are located in the immediate vicinity of the proposed project or that would be directly affected by the proposed project; 

(C) that the State considers to be a State priority. 

(B) Grants to States. 

(1) NOTICE OF DEADLINE FOR APPLICATIONS.—The Secretary shall give reasonable advance notice of the deadline for application and submission of applications for grants under the program by publication of a notice in the Federal Register. 

(2) SUBMISSION OF APPLICATIONS.— 

(A) IN GENERAL.—A State or group of States may submit to the Secretary an application for a grant under the program. 

(B) REQUIRED CONTENTS OF APPLICATIONS.—Each application shall include— 

(i) a detailed description of each proposed project; 

(ii) a detailed analysis of project costs, including costs associated with— 

(I) project planning; 

(II) administration; 

(III) property acquisition; and 

(IV) property management; and 

(iii) a statement describing how the project is of regional or national significance; and 

(iv) a plan for stewardship of any land or water, or interest in land or water, to be acquired under the project. 

(3) SELECTION OF GRANT RECIPIENTS.—Not later than 90 days after the date of receipt of an application, the Secretary shall— 

(A) review the application; and 

(B) notify the State or group of States of the decision of the Secretary on the application; and 

(2) EFFECT OF INSUFFICIENCY OF FUNDS.—If the Secretary determines that there are insufficient funds available to make grants with respect to all applications that meet the requirements of this subsection, the Secretary shall give priority to those projects that best meet the best meet the best of the decision of the Secretary on the application of each project under the program. 

(3) GRANTS TO STATE OF NEW HAMPSHIRE.—Notwithstanding subsection (b) and paragraphs (3) and (5), the Secretary shall make grants under the program to the State of New Hampshire to pay the Federal share determined under paragraph (4) of the costs of acquiring conservation easements with respect to land or water located in northern New Hampshire and sold by International Paper to the Trust for Public Land. 

(4) REPORT.—Not later than 60 days after the end of each fiscal year, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report describing the grants made under this section, including an analysis of how projects were ranked under subsection (b). 

(e) Authorization of Appropriations. 

There are authorized to be appropriated— 

(1) to carry out the program, not more than $50,000,000 for each of fiscal years 2002 through 2006; and 

(2) to carry out subsection (c)(6) $50,000,000 for the period of fiscal years 2002 through 2003. 

(b) CONFORMING AMENDMENT.—Section 7105(c)(2) of the Partnerships for Wildlife Act (16 U.S.C. 374h(g)(2)) is amended by striking “this chapter” and inserting “this section”. 

TITLE IV—CONSERVATION AND RESTORATION OF SHRUBLAND AND GRASSLAND 

SEC. 401. CONSERVATION AND RESTORATION OF SHRUBLAND AND GRASSLAND. 

The Partnerships for Wildlife Act (16 U.S.C. 3741 et seq.) (as amended by section 301(a)) is amended by adding at the end of each fiscal year the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report describing the grants made under this section, including an analysis of how projects were ranked under subsection (b).
species, threatened species, or species at risk.

(2) **CONSERVATION AGREEMENT.**—The term ‘conservation agreement’ means an agreement entered into under subsection (c).

(3) **CONSERVATION ENTITY.**—

(A) **IN GENERAL.**—The term ‘conservation entity’ means a nonprofit entity that engages in activities to conserve or protect fish, wildlife, or plants, or habitats for fish, wildlife, or plants.

(B) **INCLUSIONS.**—The term ‘conservation entity’ includes—

(i) a sportsmen’s organization;

(ii) an environmental organization; and

(iii) a land trust.

(4) **COVERED LAND.**—The term ‘covered land’ means public or private—

(A) natural grassland or shrubland that serves as habitat for endangered species, threatened species, or species at risk, as determined by the Secretary; or

(B) other land that—

(i) is located in an area that has been historically dominated by natural grassland or shrubland; and

(ii) if restored to natural grassland or shrubland, would have the potential to serve as habitat for threatened or endangered species, species at risk, as determined by the Secretary.

(5) **ENDANGERED SPECIES.**—The term ‘endangered species’ has the meaning given the term in section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532).

(6) **PERMIT HOLDER.**—The term ‘permit holder’ means an individual who holds a grazing permit for covered land that is the subject of a conservation agreement.

(7) **PROGRAM.**—The term ‘program’ means the conservation assistance program established under subsection (b).

(8) **SPECIES AT RISK.**—The term ‘species at risk’ means a species that may become an endangered species or threatened species if conservation actions are not taken to conserve and protect the species.

(9) **THREATENED SPECIES.**—The term ‘threatened species’ has the meaning given the term in section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532).

(b) **ESTABLISHMENT OF PROGRAM.**—As soon as practicable after the date of enactment of this section, the Secretary shall establish a conservation assistance program to encourage the conservation and restoration of covered land.

(c) **CONSERVATION AGREEMENTS.**—

(1) **IN GENERAL.**—In carrying out the program, the Secretary shall enter into a conservation agreement with a landowner, permit holder, or conservation entity with respect to covered land under which—

(A) the Secretary shall award a grant to the landowner, permit holder, or conservation entity; and

(B) the landowner, permit holder, or conservation entity shall use the grant to carry out such activities as are necessary to conserve and protect the species,

(2) **PERMITTED ACTIVITIES.**—

(A) **IN GENERAL.**—Subject to subparagraph (B), a conservation agreement may permit on the covered land subject to the conservation agreement—

(i) the operation of a managed grazing system;

(ii) haying or mowing (except during the nesting season for birds);

(iii) fire rehabilitation; and

(iv) the construction of fire breaks and fences.

(B) **LIMITATION.**—An activity described in subparagraph (A) may be permitted only if the activity contributes to maintaining the viability of natural grass and shrub plant communities on the covered land subject to the conservation agreement.

(3) **PAYMENTS UNDER OTHER PROGRAMS.**—

(4) **OTHER PAYMENTS NOT AFFECTED.**—A grant awarded under this section does not affect any other payment the landowner, permit holder, or conservation entity under this section shall be in addition to, and shall not affect, the total amount of payments that the landowner, permit holder, or conservation entity is eligible to receive under—

(A) the conservation reserve program established under chapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.);

(B) the wetlands reserve program established under subchapter C of that chapter (16 U.S.C. 3637 et seq.);

(C) the environmental quality incentives program established under section 307 of the Federal Agriculture Improvement and Reform Act of 1996 (16 U.S.C. 3836a).

(2) **LIMITATION.**—A landowner, permit holder, or conservation entity shall not receive a grant under a conservation agreement in any activity for which the landowner, permit holder, or conservation entity receives a payment under a program referred to in paragraph (1) unless the conservation agreement imposes on the landowner, permit holder, or conservation entity a financial or management obligation in addition to the obligations of the landowner, permit holder, or conservation entity under that program.

(3) **PROHIBITION ON ASSISTANCE FOR REQUIRED ACTIVITIES.**—The Secretary shall not award a grant under this section for any activity that is required under Federal or State law.

(4) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section $50,000,000 for each of fiscal years 2002 through 2006.:

Passed the House of Representatives December 20 (legislative day, December 18), 2001.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. HANSEN

Mr. HANSEN. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Hansen.

(a) In section 307 of the United States Code, strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE. —This Act may be cited as the "American Wildlife Enhancement Act of 2002."

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

Sec. 1. Short title; table of contents.
Sec. 101. Purpose.
Sec. 102. Endangered and threatened species recovery assistance.
Sec. 201. Cooperative Regional Conservation Program.
Sec. 301. Conservation and restoration of shrubland and grassland.
Sec. 401. Revocation of public land order.
Sec. 402. Resurvey and notice of modified boundaries.

TITLE V—NUTRIA ERADICATION OR CONTROL

Sec. 501. Findings and purposes.
Sec. 502. Nutria eradication program.
Sec. 503. Report.

TITLE VI—ACQUISITION OF GARRETT ISLAND, MARYLAND

Sec. 601. Short title.
Sec. 602. Findings.
Sec. 603. Definitions.
Sec. 604. Authority to acquire property for inclusion in the Blackwater National Wildlife Refuge.

TITLE VII—OTTAWA NATIONAL WILDLIFE REFUGE COMPLEX EXPANSION

Sec. 701. Short title.
Sec. 702. Findings.
Sec. 703. Definitions.
Sec. 704. Expansion of boundaries.
Sec. 705. Acquisition and transfer of lands for Refuge Complex.
Sec. 706. Administration of Refuge Complex.
Sec. 707. Study of associated area.
Sec. 708. Authorization of appropriations.

TITLE VIII—BEAR RIVER MIGRATORY BIRD REFUGE CLAIMS SETTLEMENT

Sec. 801. Short title.
Sec. 802. Findings.
Sec. 803. Definitions.
Sec. 804. Required terms of land claims settlement.

TITLE IX—EDUCATION AND ADMINISTRATIVE CENTER AT BEAR RIVER MIGRATORY BIRD REFUGE, UTAH

Sec. 901. Short title.
Sec. 902. Findings.
Sec. 903. Definitions.
Sec. 904. Authorization of construction of education center.
Sec. 905. Matching contributions requirements.

TITLE X—ACOKEEK CREEK NATIONAL WILDLIFE REFUGE

Sec. 1001. Acokeek National Wildlife Refuge Establishment.

TITLE XI—MISCELLANEOUS

Sec. 1101. Amendments to the National Fish and Wildlife Foundation Establishment Act.

TITLE XII—MARINE TURTLE CONSERVATION

Sec. 1201. Short title.
Sec. 1202. Findings and purposes.
Sec. 1203. Definitions.
Sec. 1204. Marine turtle conservation assistance.
Sec. 1205. Marine Turtle Conservation Fund.
Sec. 1206. Advisory group.
Sec. 1207. Authorization of appropriations.

TITLE I—ENDANGERED AND THREATENED SPECIES STEWARDSHIP PROGRAM

Sec. 101. Purpose.

The purpose of this title is to promote involvement by non-Federal entities in the recovery of—

(1)(A) the endangered species of the United States;

(B) the threatened species of the United States; and

(C) the species of the United States that may become endangered species or threatened species if conservation actions are not taken to conserve and protect the species;

(2) the habitats on which the species depend.

Sec. 102. Endangered and threatened species recovery assistance.

(1) A species identified in a Federal List of Endangered and Threatened Species and in a Federal List of Endangered and Threatened Species.
SEC. 13. ENDANGERED AND THREATENED SPECIES RECOVERY ASSISTANCE.

(a) Definitions.—In this section:

(1) Conservation entity.—The term ‘‘conservation entity’’ means a nonprofit entity that engages in activities to conserve or protect fish, wildlife, or plants.

(2) In general.—The term ‘‘conservation area’’ means a wetland and the riparian area where there is waterfowl, wildlife, or plants.

(3) Ecosystems.—The term ‘‘ecosystem’’ means a species that has been identified by the Secretary of the Interior as a species at risk.

(4) Federal assistance.—The term ‘‘Federal assistance’’ means Federal financial assistance provided to a person under subsection (b) for the implementation of the species recovery agreement.

(5) Ecosystems.—The term ‘‘ecosystem’’ means a species that has been identified by the Secretary of the Interior as a species at risk.

(6) Endangered species.—The term ‘‘endangered species’’ means a species that is endangered.

(7) Threatened species.—The term ‘‘threatened species’’ means a species that is threatened.

(8) Recovery plan.—The term ‘‘recovery plan’’ means a recovery plan approved by the Secretary.

(b) Authorization of Appropriations.—There is authorized to be appropriated for fiscal year 2003 $1,000 in income is derived from agricultural activities.

(c) Other Payments Not Affected.—Payments under section 7(b)(4) of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall remain in effect; and

(d) Inclusions.—The term ‘‘recovery plan’’ includes—

(1) a conservation entity’s organization;

(2) a natural environmental organization; and

(3) a land trust.

(2) Farm or Ranch.—The term ‘‘farm or ranch’’ means a farm or ranch area where there occurs an activity with respect to which not less than $1,000 in income is derived from agricultural production within a county year.

(3) Small Landowner.—The term ‘‘small landowner’’ means—

(A) an individual who owns land in a State that—

(i) is used as a farm or ranch; and

(ii) has an acreage of not more than the greater of—

(1) 50 percent of the average acreage of a farm or ranch in the State; or

(2) 160 acres of land; or

(B) an individual who owns land in a State that—

(i) is not used as a farm or ranch; and

(ii) has an acreage of not more than 160 acres.

(4) Species at Risk.—The term ‘‘species at risk’’ means a species that has been identified by the Secretary of the Interior as an endangered or threatened species.

(5) Recovery Agreement.—The term ‘‘recovery agreement’’ means an agreement entered into under section (c).

(6) Species Recovery Agreement.—The term ‘‘species recovery agreement’’ means a recovery agreement entered into under subsection (c).

(7) Recovery Plan.—The term ‘‘recovery plan’’ means a recovery plan approved by the Secretary.

(c) Authorization of Appropriations.—There is authorized to be appropriated for fiscal year 2003 $1,000 in income is derived from agricultural activities.

(1) in effect, based on the schedule for implementation required under subparagraph (B); and

(2) in effect, based on the schedule for implementation required under subparagraph (B).

(3) Limitation with Respect to Federal or State Land.—The Secretary may enter into a species recovery agreement with a person only if the United States or the State, respectively, is a party to the species recovery agreement.

(4) Allocation of Funds.—Of the amounts made available to carry out this section for a fiscal year—

(1) one half shall be made available to provide financial assistance for development and implementation of species recovery agreements by small landowners, subject to paragraphs (A) through (E) of subsection (b); and

(2) one half shall be made available to provide financial assistance for development and implementation of species recovery agreements by any other person, subject to paragraphs (A) through (E) of subsection (b).

(5) Limitation on Administrative Expenses.—Of the amounts made available to carry out this section, not more than 3 percent may be used to pay administrative expenses incurred in carrying out this section.

(b) Authorization of Appropriations.—There is authorized to be appropriated for fiscal year 2003 $1,000 in income is derived from agricultural activities.

(1) in effect, based on the schedule for implementation required under subparagraph (B); and

(2) in effect, based on the schedule for implementation required under subparagraph (B).

(3) Limitation with Respect to Federal or State Land.—The Secretary may enter into a species recovery agreement with a person only if the United States or the State, respectively, is a party to the species recovery agreement.

(4) Allocation of Funds.—Of the amounts made available to carry out this section for a fiscal year—

(1) one half shall be made available to provide financial assistance for development and implementation of species recovery agreements by small landowners, subject to paragraphs (A) through (E) of subsection (b); and

(2) one half shall be made available to provide financial assistance for development and implementation of species recovery agreements by any other person, subject to paragraphs (A) through (E) of subsection (b).
to be appropriated to carry out section 13
$150,000,000 for each of fiscal years 2003
through 2007.

(c) CONFORMING AMENDMENT.—The table of contents of chapter 6 in the Endan-
gerated Species Act of 1973 (16 U.S.C. prec. 1531) is amended by striking the item relating to
section 13 and inserting the following:

“Sec. 13. ENDANGERED SPECIES —
covered land subject to the conserva-
 tion agreement.

TITLE II—COOPERATIVE REGIONAL CONSERVATION PROGRAM

SEC. 201. COOPERATIVE REGIONAL CONSERVATION PROGRAM.

(a) In General.—The Partnerships for Wildlife Act (16 U.S.C. 3741 et seq.) is amend-
ed by adding at the end the following:

“SEC. 7106. COOPERATIVE REGIONAL CONSERVA-
 TION PROGRAM.

“(a) Establishment.—In consultation with
appropriate State, regional, and other units of
government, the Secretary shall establish
a competitive grant program, to be known as
the ‘Cooperative Regional Conservation Pro-
gram’ (referred to in this section as the ‘program’), to make grants to States or
groups of States to pay the Federal share
determined under subsection (c)(4) of the costs
of conservation of non-Federal land or water
of regional or national significance. Any
water rights acquired under the program shall
be done so in compliance with the pro-
cedural and substantive requirements of the
application (including water laws), and all inter-
state compacts and court decrees that may
affect water or water rights.

“(b) Ranking Criteria.—In selecting among
applications for grants for projects under
the program, the Secretary shall—
“(1) rank projects according the extent to
which a proposed project will protect watersheds and
improve scenic, cultural, recre-
ational, fish, wildlife, and other ecological
resources; and

“(2) subject to paragraph (1), give prefer-
tence to proposed projects—
“(A) that seek to protect ecosystems;
“(B) that are developed in collaboration
with other States;

“(C) with respect to which there has been
public participation in the development of
the project proposal;

“(D) that are supported by communities
and individuals that are located in the im-
mediate vicinity of the proposed project or
that would be directly affected by the pro-
goed project;

“(E) that the State considers to be a State
priority;

“(f) GRANTS TO STATES.—
“(1) Funds.—(A) The Secretary shall submit
to the Committee on Environ-
mental Petitions for the period of fiscal years

“(b) CONFORMING AMENDMENT.—Section
7105(g)(2) of the Partnership for Wildlife Act (16 U.S.C. 3747(g)(2)) is amended by striking
the words ‘includes’ and inserting ‘includes’.

TITLE III—CONSERVATION AND RESTORA-
TION OF SHRUBLAND AND GRASSLAND

SEC. 301. CONSERVATION AND RESTORATION OF
SHRUBLAND AND GRASSLAND.

The Partnerships for Wildlife Act (16 U.S.C. 3741 et seq.) (as amended by section
301(a)) is amended by adding at the end the following:

“SEC. 7107. CONSERVATION AND RESTORATION
OF SHRUBLAND AND GRASSLAND.

“(a) Definitions.—In this section:

“(1) CONSERVATION ACTIVITY.—The term
‘conservation activity’ means—
“(A) a project or activity to reduce ero-
sion;
“(B) a prescribed burn;
“(C) the restoration of riparian habitat;
“(D) the control or elimination of invasive
or exotic species;
“(E) the reestablishment of native grasses;

“(2) CONSERVATION AGREEMENT.—The term
‘conservation agreement’ means an agree-
ment entered into under subsection (c).

“(3) CONSERVATION ENTITY.—The term
‘conservation entity’ means a nonprofit entity that
engages in activities to conserve or protect
fish, wildlife, or plants, or habitats for fish,
white, or plants.

“(4) COVERED LAND.—The term ‘covered
land’ means public or private land.

“(A) natural grassland or shrubland that
serves as habitat for endangered species,
threatened species, or species at risk, as
determined by the Secretary;

“(B) other land that—
“(i) is located in an area that has been
historically dominated by natural grassland or
shrubland;

“(ii) if restored to natural grassland or
shrubland, would have the potential to serve
as habitat for endangered species, threatened
species, or species at risk, as determined by
the Secretary.

“(5) ENDANGERED SPECIES.—The term
‘endangered species’ has the meaning given
in section 3 of the Endangered Species

“(6) PERMIT HOLDER.—The term ‘permit
holder’ means an individual who holds a grant
for covered land that is the subject of a conserva-
tion agreement.

“(7) PROGRAM.—The term ‘program’ means
the conservation assistance program estab-
lished under subsection (a).

“(8) SPECIES AT RISK.—The term ‘species at
risk’ means a species that may become an
endangered species or a threatened species if
conservation actions are not taken to con-
servate and protect the species.

“(9) THREATENED SPECIES.—The term
‘threatened species’ has the meaning given
in section 3 of the Endangered Species

“(b) ESTABLISHMENT OF PROGRAM.—As soon
as practicable after the date of enactment of
this section, the Secretary shall establish a
conservation assistance program to encour-
gage the conservation and restoration of cov-
ered land.

“(c) CONSERVATION AGREEMENTS.—
“(1) IN GENERAL.—In carrying out the pro-
gram, the Secretary shall enter into a con-
servation agreement with a landowner,
permit holder, or conservation entity with
respect to covered land under which
“(A) the Secretary shall award a grant to
the landowner, permit holder, or conserva-
tion entity; and

“(B) the landowner, permit holder, or con-
ervation entity shall use the grant to con-
serve or carry out activities on the covered
land that is the subject of the conserva-
tion agreement.

“(2) PERMITTED ACTIVITIES.—
“(A) IN GENERAL.—Subject to paragraph
(b), a conservation agreement may permit
on the covered land subject to the conserva-
tion agreement—

“(i) operation of a managed grazing sys-
tem;

“(ii) haying or mowing (except during the
growing season for birds);

“(iii) fire rehabilitation; and

“(iv) the construction of fire breaks and
fences.

“(B) LIMITATION.—An activity described in
paragraph (A) may be permitted only if the
activity contributes to maintaining the
viability of natural grass and shrub plant
communities on the covered land subject to
the conservation agreement.

“(d) PAYMENTS UNDER OTHER PROGRAMS.—
‘‘(1) OTHER PAYMENTS NOT AFFEected.—A grant awarded to a landowner, permit holder, or conservation entity under this section shall be in addition to, and shall not affect, the total amounts of payments that the landowner, permit holder, or conservation entity is eligible to receive under—

(A) the conservation reserve program established under chapter 4 of title 16 of the United States Code; (B) the wetlands reserve program established under section 367 of the Federal Agriculture Improvement and Reform Act of 1996; (C) the environmental quality incentives program established under chapter 4 of title 12 of the United States Code; (D) the Wildlife Habitat Incentive Program established under section 505 of the Food Security Act of 1985; or

(2) LIMITATION.—A landowner, permit holder, or conservation entity shall not receive a grant under a conservation agreement for any activity for which the landowner, permit holder, or conservation entity received a grant under a program referred to in paragraph (1) unless the conservation agreement imposes on the landowner, permit holder, or conservation entity a financial or management obligation in addition to the obligations of the landowner, permit holder, or conservation entity under that program.

(d) COST SHARING.—The Federal share of the costs of the program may not exceed 75 percent of the total costs of the program.

(2) In-kind contributions.—The non-Federal share of the costs of the program may be provided in the form of in-kind contributions of materials or services.

(e) LIMITATIONS ON ADMINISTRATIVE EXPENSES.—Not more than 5 percent of financial assistance provided by the Secretary under this section may be used for administrative expenses.

(f) AUTHORIZATION OF APPROPRIATIONS.—For financial assistance under this section, there is authorized to be appropriated to the Secretary $4,000,000 for the State of Maryland program and $2,000,000 for the State of Louisiana program for each of fiscal years 2003, 2004, 2005, 2006, and 2007.

SEC. 502. NUTRIA ERADICATION PROGRAM.

(a) GRANT AUTHORITY.—The Secretary of the Interior shall make grants to the Secretary of the Interior to implement measures to eradicate or control nutria and restore marshland damaged by nutria.

(b) GRANTS.—(1) eradicating nutria in Maryland; (2) eradicating or controlling nutria in Louisiana and other States; and (3) restore marshland damaged by nutria.

(c) ACTIVITIES.—In the State of Maryland, the purposes for which the program shall consist of management, research, and public education activities carried out in accordance with the document published by the United States Fish and Wildlife Service entitled ‘‘Eradication Strategies for Nutria in the Chesapeake and Delaware Bay Watersheds’’, dated March 2002.

(d) COST SHARING.—The Federal share of the costs of the program may not exceed 75 percent of the total costs of the program.

(e) ADMINISTRATION.—The purposes for which the Secretary shall award a grant under this section for any activity that is required under Federal or State law.

‘‘(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $50,000,000 for each of fiscal years 2003 through 2007.

TITLe IV—CIBOLA NATIONAL WILDLIFE REFUGE, CALIFORNIA

SEC. 401. REVOCATION OF PUBLIC LAND ORDER WITH RESPECT TO LANDS ERRONEOUSLY INCLUDED IN CIBOLA NATIONAL WILDLIFE REFUGE, CALIFORNIA.

Public Land Order 3442, dated August 21, 1964, is revoked insofar as it applies to the following described lands: San Bernardino Meridian, T11S, R22E, sec. 6, all of lots 1, 16, 19, 20, 23, and 24; SE1⁄4 of SW1⁄4 of NE1⁄4 of sec. 16, T11S, R22E, and SE3⁄4 of SW3⁄4 of sec. 17, all of T11S, R22E, sec. 19, in and adjacent to the city of Banning, San Bernardino County, State of California, aggregating approximately 140.32 acres.

SEC. 402. RESURVEY AND NOTICE OF MODIFIED BOUNDARIES.

The Secretary of the Interior shall, not later than 1 year after the date of the enactment of this Act—

(1) resurvey the boundaries of the Cibola National Wildlife Refuge, as modified by the revocation section 401; and

(2) publish notice of, and post conspicuous signs marking, the boundaries of the refuge determined in such resurvey; and

(3) prepare and publish a map showing the boundaries of the refuge.

TITLe V—NUTRIA ERADICATION OR CONTROL

SEC. 501. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) Wetlands and tidal marshes of the Chesapeake Bay and in Louisiana provide significant economic, ecological, and educational benefits to the Nation.

(2) The South American nutria (Myocastor coypus) is directly contributing to substan- tial marsh loss in Maryland and Louisiana on Federal, State, and private land.

(3) Traditional harvest methods to control or eradicate nutria have failed in Maryland and have not achieved success in the eradica- tion of nutria in Louisiana. Consequently, marsh loss is accelerating.

(4) The nutria eradication and control pilot program authorized by Public Law 105–322 is to develop new and effective methods for eradication of nutria.

(b) PURPOSE.—The purpose of this title is to authorize the Secretary of the Interior to provide financial assistance to the State of Maryland and the State of Louisiana for a program to implement measures to eradicate or control nutria and restore marshland damaged by nutria.

SEC. 502. NUTRIA ERADICATION PROGRAM.

(a) GRANT AUTHORITY.—The Secretary of the Interior shall make grants to the Secretary of the Interior to implement measures to eradicate or control nutria and restore marshland damaged by nutria.

(b) GRANTS.—(1) eradicating nutria in Maryland; (2) eradicating or controlling nutria in Louisiana and other States; and (3) restore marshland damaged by nutria.

(c) ACTIVITIES.—In the State of Maryland, the purposes for which the program shall consist of management, research, and public education activities carried out in accordance with the document published by the United States Fish and Wildlife Service entitled ‘‘Eradication Strategies for Nutria in the Chesapeake and Delaware Bay Water- sheds’’, dated March 2002.

(d) COST SHARING.—The Federal share of the costs of the program may not exceed 75 percent of the total costs of the program.

(e) ADMINISTRATION.—The purposes for which the Secretary shall award a grant under this section for any activity that is required under Federal or State law.

‘‘(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $50,000,000 for each of fiscal years 2003 through 2007.

TITLe VI—ACQUISITION OF GARRETT ISLAND IN MARYLAND

SEC. 601. SHORT TITLE.

This title may be cited as the ‘‘Blackwater National Wildlife Refuge Expansion Act’’.

SEC. 602. FINDINGS.

The Congress finds the following:

(1) Garrett Island, located at the mouth of the Susquehanna River in Cecil County, Maryland, is a microcosm of the geology and biologic history of the region, including hard rock, marl, piedmont, coastal plain, and volcanic formations.

(2) Garrett Island is the only rocky island in the tidal waters of the Chesapeake.

(3) Garrett Island and adjacent waters provide high-quality habitat for bird and fish species.

(4) Garrett Island contains significant ar- cheological sites reflecting human history and prehistory of the region.

SEC. 603. AUTHORITY TO ACQUIRE PROPERTY FOR INCLUSION IN THE BLACKWATER NATIONAL WILDLIFE REFUGE.

(a) ACQUISITION.—The Secretary of the Interior may use otherwise available amounts to acquire the area known as Garrett Island, consisting of approximately 50 acres located at the mouth of the Susquehanna River in Cecil County, Maryland.

(b) ADMINISTRATION.—Lands and interests acquired by the United States under this section shall be managed by the Secretary as the Garrett Island Unit of the Blackwater National Wildlife Refuge and Detroit River purposes for which the Garrett Island Unit is established and shall be managed are the following:

(1) To support the Delmarva Conservation Corridor Demonstration Program.

(2) To conserve, restore, and manage habi- tats as necessary to mitigate for the migra- tory bird populations prevalent in the Atlan- tic Flyway.

(3) To conserve, restore, and manage the significant aquatic resource values associ- ated with submerged land adjacent to the unit and to achieve the habitat objectives of the agreement known as the Chesapeake 2000 Agreement.

(4) To conserve the archaelogical resources on the unit.

(5) To provide public access to the unit in a manner that does not adversely impact natural resource values around the unit.

TITLe VII—OTTAWA NATIONAL WILDLIFE REFUGE COMPLEX EXPANSION

SEC. 701. SHORT TITLE.

This title may be cited as the ‘‘Ottawa National Wildlife Refuge Complex Expansion Act’’.

SEC. 702. FINDINGS.

The Congress finds the following:

(1) The Ottawa National Wildlife Refuge Complex, as part of the Great Lakes ecosystem, the largest freshwater ecosystem on the face of the Earth, is vitally important to the economic and environmental future of the United States.

(2) Over the past three decades, the citizens and governmental institutions of both the United States and Canada have devoted in- creasing attention and resources to the res- toration of the water quality and fisheries of the Great Lakes, including the western basin. This increased awareness has been ac- companied by a gradual shift to a holistic ‘‘ecosystem approach’’ that highlights a growing recognition that shoreline areas— that extend more terrestrial—are an integral part of the western basin and the Great Lakes ecosystem as a whole.

(3) The Great Lakes account for more than 90 percent of the surface freshwater in the nation. The western basin receives approxi- mately 90 percent of its flow from the Detroit River and only approximately 10 per- cent of its tributary inputs.

(4) The western basin of Lake Erie is an important ecosystem that includes a number of distinct islands, channels, rivers, and other features. Support derives from populations of fish, wildlife, and aquatic plants.

(5) The coastal wetlands of Lake Erie sup- port the largest diversity of plant and wild- life in the Great Lakes. They are also a mod- erate climate of Lake Erie and its more southern latitude allow for many species

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that are not found in or along the northern Great Lakes. More than 300 species of plants, including 37 significant species, have been identified in the aquatic and wetland habitats of Lake Erie.

(6) The shallow western basin of Lake Erie, from the Lower Detroit River to Sandusky Bay, is home to the largest concentration of marshland in Lake Erie, including the Maumee Bay wetland complex, the wetland complexes flanking Locust Point, and the wetlands in Sandusky Bay. United States inlands in western Lake Erie have wetlands in their small embayments.

(7) The wetlands in the western basin of Lake Erie are one of the most important waterfowl habitats in the Great Lakes. Waterfowl, wading birds, shore birds, gulls and terns, raptors, and perching birds all use the western basin wetlands for migration, nesting, and feeding. Hundreds of thousands of diving ducks stop to rest in the Lake Erie area on their fall migration from Canada to the east and south. The wetlands of the western basin of Lake Erie provide a major stopover for ducks such as migrating bufflehead, common goldeneye, common merganser, and ruddy duck.

(8) The international importance of Lake Erie is manifested in the United States congressional designation of the Ottawa and Cedar Point National Wildlife Refuges.

(9) Lake Erie has an international reputation for walleye, perch, and bass fishing, recreational boating, birding, photography, and duck hunting. An economic basis, Lake Erie tourism accounts for an estimated $1,500,000,000 in retail sales and more than 50,000 jobs.

(10) Many of the 417,000 boats that are registered in Ohio are used in the western basin of Lake Erie, in part to fish for the estimated 10,000,000 walleye that migrate from other areas of Lake Erie. This nationally renowned walleye fishery drives much of Ohio's $2,000,000,000 sport fishing industry.

(11) Coastal wetlands in the western basin of Lake Erie have been subjected to intense pressure for 150 years. Prior to 1850, the western basin was part of an extensive coastal marshland complex of 1,222,000 hectares that comprised a portion of the Great Black Swamp. By 1915, only 12,497 hectares were remaining in the western basin. Half of that acreage was destroyed between 1972 and 1987. Therefore, today only approximately 5,000 hectares remain. Along the Michigan shoreline, coastal wetlands were destroyed between 1916 and the early 1970s. The development of the city of Monroe, Michigan, has had a particularly significant impact on the coastal wetlands at the mouth of the Raisin River: only approximately 100 hectares remain physically unaltered today in an area where 70 years ago more than 12,000 hectares were covered by swamps.

In addition to the actual loss of coastal wetland acreage along the shores of Lake Erie, the quality of many remaining diked wetlands have been degraded by anthropogenic stressors, especially excessive loadings of sediments and nutrients, contaminants, shoreline modification, exotic species, and the drainage of protective peninsula beach systems, such as the former Bay Point and Woodtick, at the border of Ohio and Michigan near the mouth of the Ottawa River. Another nearly 30,000 hectares over the years, exacerbating erosion along the shorelines and impacting the breeding and spawning grounds.

SEC. 703. DEFINITIONS. For purposes of this title:


(2) The term “complex” means the Secretary of the Interior.


SEC. 704. EXPANSION OF BOUNDARIES. (a) Refuges in the Lakes and Erie (1) Expansion. — The boundaries of the Refuge Complex are expanded to include lands and waters in the State of Ohio from the eastern boundary of Maumee Bay State Park and the eastern boundary of the Darby Unit, including the Bass Island archipelago, as depicted on the map entitled “Ottawa National Wildlife Refuge Complex Expansion and Detroit River International Wildlife Refuge Complex Expansion Act”, dated September 6, 2002.

(b) Boundary Revisions. — The Secretary may make such revisions to the boundaries of the Refuge Complex as may be appropriate to carry out the purposes of the Refuge Complex as defined in paragraph (3) of section 705.

(c) Acquisitions. — The Secretary may acquire by donation, purchase with donated or appropriated funds, or exchange the lands and waters, or interests therein (including conservation easements), within the boundaries of the Refuge Complex as expanded by this title. No such lands, waters, or interests therein may be acquired without the consent of the owner thereof.

SEC. 705. ACQUISITION AND TRANSFER OF LANDS FOR REFUGE COMPLEX. (a) Acquisitions. — The Secretary may acquire by donation, purchase with donated or appropriated funds, or exchange the lands and waters, or interests therein (including conservation easements), within the boundaries of the Refuge Complex as expanded by this title. No such lands, waters, or interests therein may be acquired without the consent of the owner thereof.

(b) Transfers from other agencies. — Any Federal property located within the boundaries of the Refuge Complex, as expanded by this title, that is under the administrative jurisdiction of a department or agency of the United States other than the Department of the Interior may, with the concurrence of the head of the administering department or agency, be transferred without consideration to the administrative jurisdiction of the Secretary for the purposes of this title.

SEC. 706. ADMINISTRATION OF REFUGE COMPLEX. (a) In General. — The Secretary shall administer and manage the Refuge Complex in a manner consistent with this title. The Secretary shall ensure that the Refuge Complex is administered and managed in a manner consistent with the purposes of this title.

(b) Additional purposes. — In addition to the purposes of the Refuge Complex under other laws, regulations, executive orders, and comprehensive conservation plans, the Refuge Complex shall be managed for the following purposes:

(1) To advance the collective goals and priorities established in the “Great Lakes Strategy 2002—A Plan for the New Millennium”, by the United States Policy Committee comprised of various Federal agencies, including the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the United States Geological Survey, the National Park Service, and the Great Lakes Fishery Commission, as well as the State governments and tribal governments in the Great Lakes. This plan is to be implemented in cooperation with the Great Lakes states, tribes, and Canadian jurisdictions, working together to protect and restore the chemical, physical, and biological integrity of the Great Lakes basin ecosystem.

(2) To conserve, enhance, and restore the native aquatic and terrestrial community diversity of the Lake Erie (including associated fish, wildlife, and plant species), both in the United States and in Canada in partnership with nongovernmental and private organizations, as well as private individuals dedicated to habitat enhancement.

(3) To facilitate partnerships among the United States Fish and Wildlife Service, Canadian national and provincial authorities, State and local governments, local communities in the United States and in Canada, nongovernmental and non-Federal entities to promote public awareness of the resources of the western basin of Lake Erie.

(4) To advance the collective goals and priorities established in the “Great Lakes Strategy 2002—A Plan for the New Millennium”. By the United States Policy Committee comprised of various Federal agencies, including the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the United States Geological Survey, the National Park Service, and the Great Lakes Fishery Commission, as well as the State governments and tribal governments in the Great Lakes. This plan is to be implemented in cooperation with the Great Lakes states, tribes, and Canadian jurisdictions, working together to protect and restore the chemical, physical, and biological integrity of the Great Lakes basin ecosystem.

(5) To conserve, enhance, and restore the native aquatic and terrestrial community diversity of the Lake Erie (including associated fish, wildlife, and plant species), both in the United States and in Canada in partnership with nongovernmental and private organizations, as well as private individuals dedicated to habitat enhancement.

(6) To advance the collective goals and priorities established in the “Great Lakes Strategy 2002—A Plan for the New Millennium”. By the United States Policy Committee comprised of various Federal agencies, including the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the United States Geological Survey, the National Park Service, and the Great Lakes Fishery Commission, as well as the State governments and tribal governments in the Great Lakes. This plan is to be implemented in cooperation with the Great Lakes states, tribes, and Canadian jurisdictions, working together to protect and restore the chemical, physical, and biological integrity of the Great Lakes basin ecosystem.

SEC. 707. STUDY OF ASSOCIATED AREA. (a) In General. — The Secretary, acting through the Director of the United States Fish and Wildlife Service, shall conduct a study of the aquatic and terrestrial communities of the 2 dredge spoil disposal sites referred to by the Toledo-
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Lucas County Port Authority as Port Authority Facility Number Three and Grassy Island, located within Toledo Harbor near the mouth of the Maumee River.

(b) Not later than 18 months after the date of the enactment of this Act, the Secretary shall complete such study and submit a report containing the results therefrom to the Committee.

SEC. 708. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of the Interior—

(1) such sums as may be necessary for the acquisition of lands and waters within the Refuge Complex;

(2) such sums as may be necessary for the development, construction, and maintenance of the Refuge Complex;

(3) such sums as may be necessary to carry out the study under section 707.

TITLE VIII—BEAR RIVER MIGRATORY BIRD REFUGE CLAIMS SETTLEMENT

SEC. 801. SHORT TITLE.

This title may be cited as the “Bear River Migratory Bird Refuge Settlement Act of 2002.”

SEC. 802. FINDINGS.

The Congress finds the following:

(1) The Secretary of the Interior and the State of Utah have negotiated a preliminary agreement concerning the ownership of lands within the Bear River Migratory Bird Refuge located in Bear River Bay of the Great Salt Lake, Utah.

(2) The State is entitled to ownership of those sovereign lands constituting the bed of the Great Salt Lake, and, generally, the location of the sovereign lands boundary was set by an official survey of the Great Salt Lake under the Public Land Survey System.

(3) The establishment of the Refuge in 1928 along the shore of the Great Salt Lake, and lack of a meander line survey within the Refuge, has led to uncertainty of ownership of some sovereign lands.

(4) In order to settle the uncertainty concerning the sovereign land boundary caused by the gap in the surveyed Great Salt Lake meander line within the Refuge, the Secretary and the State have agreed to the establishment of a fixed sovereign land boundary along the southern boundary of the Refuge and the State has agreed to release any claim to the lake bed above such boundary line.

(5) The Secretary and the State have expressed their intentions to establish a mutually agreed upon procedure to address the conflicting claims to ownership of the lands and interests in land within the Refuge.

SEC. 803. DEFINITIONS.

In this title:

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

(2) REFUGE.—The term “Refuge” means the Bear River Migratory Bird Refuge located in Bear River Bay of the Great Salt Lake, Utah.

(3) AGREEMENT.—The term “agreement” means the agreement to be signed by the Secretary and the State to establish a mutually agreeable procedure for addressing the conflicting claims to ownership of the lands and interests in land within the Refuge.

(4) STATE.—The term “State” means the State of Utah.

SEC. 804. REQUIRED TERMS OF LAND CLAIMS SETTLEMENT, BEAR RIVER MIGRATORY BIRD REFUGE, UTAH

(a) SPECIFIC REQUISITE IN AGREEMENT.—The Secretary shall not enter into an agreement with the State for the quitclaim or other transfer of lands or interests in lands unless the terms of the agreement include each of the following provisions:

(1) Nothing in the agreement shall be construed to impose upon the State or any of its agencies or any agency of the United States any obligation to convey to the United States any interest in waterfowl and migratory birds including such waterfowl and migratory birds as are subject to the United States Fish and Wildlife Service Federal waterfowl hunting regulations, except upon appropriate terms and for adequate consideration.

(2) Nothing in the agreement shall constitute a release or extinguishment of any claim of the United States to a Federal reserved water right.

(3) The State shall support the United States application to add an enlarged Hyrum Reservoir, or other storage facility, as an alternate place of storage under the Refuge’s existing 1000 cubic feet per second State certified water right for the Hyrum Reservoir shall be contingent upon demonstration by the United States that no injury to water rights shall occur as a result of the addition.

(4) Nothing in the agreement shall affect jurisdiction by the State or the United States Fish and Wildlife Service over wildlife resources management, including fishing, hunting and trapping, within the Refuge.

(5) If the State elects to bring suit against the United States challenging the validity of the deed issued pursuant to the agreement, and if such suit is successful in invalidating such deed, the State will—

(A) pay the United States for the fair market value of all real property improvements, water rights, and other property, such as dikes, water control structures and buildings;

(B) repay any amounts paid by the United States because of ownership of the land by the United States from the date of establishment of the Refuge, such as payments in lieu of taxes; and

(C) repay any amounts paid to the State pursuant to the agreement.

(6) Subject to the availability of funds for this purpose, the Secretary shall agree to pay $15,000,000 within 12 months of the date of delivery by the State of a quitclaim deed that meets all applicable standards of the Department of Justice and covers all lands and interests in lands claimed by the State within the Refuge. Such payment shall be subject to the condition that the State use the payment for the purposes, and in the amounts, specified in subsection (b).

(b) WETLANDS AND WILDLIFE PROTECTION PROGRAMS.—

(1) DEPOSIT.—The State shall deposit $10,000,000 of the amount paid pursuant to paragraph (2) in a restricted account, known as the Wetlands and Habitat Protection Account, to be used as provided in paragraph (2).

(2) AUTHORIZED USES.—The Executive Director of the Utah Department of Natural Resources may withdraw from the Wetlands and Habitat Protection Account, on an annual basis, amounts needed to meet the interest earned on the amount deposited under paragraph (1) for the following purposes:

(A) Wetland or open space protection in and near the Great Salt Lake.

(B) Enhancement and acquisition of wildlife habitat in and near the Great Salt Lake.

(c) RECREATIONAL TRAILS DEVELOPMENT.—The Utah Department of Natural Resources shall use $5,000,000 of the amount paid pursuant to the agreement, as required by subsection (a), as follows:

(1) $2,000,000 for the development, improvement, and expansion of the James V. Hansen Wildlife Trail System.

(2) $1,000,000 for the development, improvement, and expansion of the Ogden-Weber Trail System.

(3) $1,000,000 for the non-motorized trails program managed by the Utah State Division of Parks and Recreation.

SEC. 902. FINDINGS.

The Congress finds the following:

(1) The Bear River marshes have been a historical waterfowl center of excellence and an important inland waterfowl flyway for thousands of years.

(2) The Congress created the Bear River Migratory Bird Refuge, one of the first National Wildlife Refuges, for the purpose of protecting waterfowl habitat and migratory birds, educating the public regarding, and enhancing public appreciation of, waterfowl habitat and migratory birds.

(3) The Bear River Migratory Bird Refuge was virtually destroyed by devastating floods that occurred between 1931 and 1932.

(4) Refuge employees, aided by volunteers, have taken valiant actions to rebuild the Refuge by restoring habitat, increasing its attractiveness to waterfowl and waterfowl botulism, and providing recreational and educational opportunities to the public.

(5) The Bear River Migratory Bird Refuge lacks a functional education and administrative center.

(6) The creation of such a facility would significantly enhance public appreciation of waterfowl and the need to preserve waterfowl habitat.

(7) The Congress has taken significant steps to provide funding for the construction of the education center.

SEC. 903. DEFINITIONS.

For the purpose of this title, the following definitions apply:

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

(2) REFUGE.—The term “Refuge” means the Bear River Migratory Bird Refuge in Box Elder County, Utah.

(3) EDUCATION AND ADMINISTRATIVE CENTER.—The term “Education and Administrative Center” means the facility identified in the Environmental Assessment dated 1991 and entitled “Restoration and Expansion of the Bear River Migratory Bird Refuge.”

SEC. 904. AUTHORIZATION OF CONSTRUCTION OF THE EDUCATION CENTER.

(a) CONSTRUCTION.—The Secretary shall construct the Education and Administrative Center at the Refuge for the purposes of providing for the interpretation of resources of the Refuge for the education and benefit of the public, for the advancement of research, recreation, and health of waterfowl habitat, and for the administration of the Bear River Migratory Bird Refuge.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $11,000,000 to carry out subsection (a).

SEC. 905. MATCHING CONTRIBUTIONS REQUIRED.

(a) DONATION OF FUNDS AND SERVICES.—The Secretary may accept donations of funds and
services from nonprofit organizations, State and local governments, and private citizens for the construction of the Education and Administrative Center.

(b) MATCHING FUNDS.—The Secretary may not requireMatching funds or contributions in kind shall be reimbursed total value of more than $1,500,000 for construction of the Education and Administrative Center.

TITLE X—ACCOKEEK CREEK NATIONAL WILDLIFE REFUGE

SEC. 1001. ACCOKEEK CREEK NATIONAL WILDLIFE REFUGE ESTABLISHMENT.

(a) SHORT TITLE.—This title may be cited as the “Acookek Creek National Wildlife Refuge Establishment Act.”

(b) ESTABLISHMENT.—The Secretary of the Interior (in this section referred to as the “Secretary”) shall establish the Accokeek Creek National Wildlife Refuge. The refuge shall consist of any lands and waters owned or managed by the Secretary and located within the refuge acquisition boundary depicted on a map entitled “Accokeek Creek National Wildlife Refuge, Land Acquisition Boundary...”, dated August 2000.

(c) PURPOSES.—The purposes for which the Refuge is established are the following:

(1) To provide long-term protection of ecological integrity of the peninsula between Accokeek and Potomac Creeks in Stafford County, Virginia, known as the Crown’s Nest, and certain adjacent property that supports numerous species of neotropical migratory birds, waterfowl, and sport and commercial fish, and numerous rare and endangered plant species.

(2) To accommodate public access to, and compatible fish and wildlife dependent recreation in, the Refuge.

(d) ACQUISITION.—

(1) IN GENERAL.—(A) The Secretary may acquire by donation, purchase with donated or appropriated funds, or exchange the lands and waters, or interests therein (including conservation easements), within the boundaries of the Refuge.

(B) No such lands, waters, or interests therein may be acquired without the consent of the owner thereof.

(2) LANDS AcQUIRED FROM OTHER AGENCIES.—The head of any Federal agency having administrative jurisdiction over Federal property located within the boundaries of the Refuge may, within the legal control of the Secretary, transfer such property without consideration to the administrative jurisdiction of the Secretary for inclusion in the Refuge.

(e) ADMINISTRATION.—

(1) IN GENERAL.—The Secretary shall administer all federal owned lands, waters, and interests therein that are within the boundaries of the Refuge in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.) and this section. The Secretary may use such additional statutory authority as may be available for the conservation of fish and wildlife, and the provision of fish and wildlife dependent recreational opportunities, as the Secretary considers appropriate to carry out the provisions described in subsection (c).

(2) PRIORITY USES.—In providing opportunities for compatible fish and wildlife dependent recreation, the Secretary, in accordance with paragraphs (3) and (4) of section 6 of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)), shall ensure that hunting, fishing, wildlife observation, photography and environmental education and interpretation are the priority uses of the Refuge.

TITLE XI—MISCELLANEOUS

SEC. 1101. AMENDMENTS TO THE NATIONAL FISH AND WILDLIFE FOUNDATION ESTABLISHMENT ACT.

(a) REQUIREMENT.—(1) The Congress hereby amends Section 4 of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 776(b)(1)) by adding—

(2) FUNDING CONTRIBUTIONS BY SUBRECIPIENTS.—Section 10(a)(3) of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 776(a)(3)) is amended by adding “or subrecipient” after “made to the Foundation.”

SEC. 1102. MARINE TURTLE CONSERVATION

SEC. 1201. SHORE TITLES.

This title may be cited as the “Marine Turtle Conservation Act of 2002.”

SEC. 1202. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) marine turtle populations have declined to the point that the long-term survival of the loggerhead, green, hawksbill, Kemp’s ridley, olive ridley, and leatherback turtle in the wild is in jeopardy.

(2) 6 of the 7 recognized species of marine turtles are listed as threatened or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.). Fearsome maritime species have been included in Appendix I of CITES;

(3) because marine turtles are long-lived, late-maturing, and highly migratory, marine turtles are particularly vulnerable to the impacts of human exploitation and habitat loss;

(4) illegal international trade seriously threatens wild populations of some marine turtle species, particularly the hawksbill turtle;

(5) the challenges facing marine turtles are immense, and the resources available have not been sufficient to cope with the continued loss of nesting habitats caused by human activities and the consequent diminution of marine turtle populations;

(6) because marine turtles are flagship species for the ecosystems in which marine turtles are found, healthy populations of marine turtles provide benefits to many other species of wildlife, including many other threatened or endangered species;

(7) marine turtles are important components of the ecosystems that they inhabit, and threats to wild populations of marine turtles have important biological insights;

(8) changes in marine turtle populations are most reliably indicated by changes in the numbers of nests and nesting females; and

(9) the reduction, removal, or other effective addressing of the threats to the long-term viability of marine turtles will require the joint commitment and effort of—

(A) countries that have within their boundaries marine turtle nesting habitats; and

(B) persons with expertise in the conservation of marine turtles.

(b) PURPOSE.—The purpose of this title is to assist in the recovery of marine turtles and the nesting habitats of marine turtles in foreign countries by supporting and providing financial resources for projects to conserve the marine turtle and marine turtles that are more than $2,000,000 for construction of the Refuge.

SEC. 1203. DEFINITIONS.

In this title—


(2) CONSERVATION.—The term “conservation” means the use of all methods and procedures necessary to protect the habitats of marine turtles in foreign countries and of marine turtles in those habitats, including—

(A) protection, restoration, acquisition, and management of nesting habitats;

(B) onsite research and monitoring of nesting populations, nesting habitats, annual reproduction, and species population trends;

(C) assistance in the development, implementation, and improvement of national and regional management plans for nesting habitat ranges;

(D) enforcement and implementation of CITES and laws of foreign countries to—

(i) protect and manage nesting populations and nesting habitats; and

(ii) prevent illegal trade of marine turtles;

(E) training of local law enforcement officials in the interdiction and prevention of—

(i) the illegal killing of marine turtles on nesting habitat; and

(ii) illegal trade in marine turtles;

(F) initiatives to reduce conflicts between humans and marine turtles over habitat used by marine turtles for nesting;

(G) community outreach and education; and

(H) strengthening of the ability of local communities to implement nesting population and nesting habitat conservation programs.

(3) FUND.—The term “Fund” means the Marine Turtle Conservation Fund established by section 1205.

(4) MARINE TURTLE.—

(A) IN GENERAL.—The term “marine turtle” means any member of the family Cheloniidae or Dermochelyidae.

(B) INCLUSIONS.—The term “marine turtle” includes—

(i) any part, product, egg, or offspring of a turtle described in subparagraph (A); and

(ii) a carapace of such a turtle.

(5) MULTINATIONAL SPECIES CONSERVATION FUND.—The term “Multinational Species Conservation Fund” means the fund established under the heading “MULTINATIONAL SPECIES CONSERVATION FUND” in title I of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 4246).

(6) SECRETARY.—The term “Secretary” means the Secretary of the Interior.
(a) Establishment.—There is established in the Multinational Species Conservation Fund a separate account to be known as the “Marine Turtle Conservation Fund”, consisting of—

(1) amounts transferred to the Secretary of the Treasury for deposit into the Fund under subsection (e);

(2) amounts appropriated to the Fund under section 1204; and

(3) any interest earned on investment of amounts in the Fund under subsection (c).

(b) Expenditure.—

(1) In general.—Subject to paragraph (2), on request by the Secretary, the Secretary of the Treasury shall transfer from the Fund to the Secretary, without further appropriation, such amounts as the Secretary determines are necessary to carry out section 1204.

(2) Administrative expenses.—Of the amounts in the account available for each fiscal year, the Secretary may expend not more than 3 percent, or up to $80,000, whichever is greater, to pay the administrative expenses necessary to carry out this title.

(c) Investment of Amounts.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current expenses necessary to carry out this title.

(d) Transfers of Amounts.—The Secretary shall transfer to the Secretary of the Treasury for deposit in the Fund:

(1) amounts transferred to the Secretary of the Treasury as a result of the Multinational Species Conservation Act of 1973 to promote involvement by non-Federal entities in the recovery of endangered species, threatened species, and species that may become endangered or threatened species, and for other purposes.

(e) Acceptance and Use of Donations.—The Secretary may accept and use donations to provide assistance under section 1204.

SEC. 1205. MARINE TURTLE CONSERVATION FUND.

(a) Establishment.—There is established in the Multinational Species Conservation Fund a separate account to be known as the “Marine Turtle Conservation Fund”, consisting of—

(1) amounts transferred to the Secretary of the Treasury for deposit into the Fund under subsection (e);

(2) amounts appropriated to the Fund under section 1204; and

(3) any interest earned on investment of amounts in the Fund under subsection (c).

(b) Expenditure.—

(1) In general.—The Secretary shall transfer from the Fund to the Secretary, without further appropriation, such amounts as the Secretary determines are necessary to carry out section 1204.

(2) Administrative expenses.—Of the amounts in the account available for each fiscal year, the Secretary may expend not more than 3 percent, or up to $80,000, whichever is greater, to pay the administrative expenses necessary to carry out this title.

(c) Investment of Amounts.—The Secretary shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current expenses necessary to carry out this title.

(d) Transfers of Amounts.—The Secretary shall transfer to the Secretary of the Treasury for deposit in the Fund:

(1) amounts transferred to the Secretary of the Treasury as a result of the Multinational Species Conservation Act of 1973 to promote involvement by non-Federal entities in the recovery of endangered species, threatened species, and species that may become endangered or threatened species, and for other purposes.

(e) Acceptance and Use of Donations.—The Secretary may accept and use donations to provide assistance under section 1204.

SEC. 1206. ADVISORY GROUP.

(a) In general.—The Secretary shall establish an advisory group consisting of individuals representing public and private organizations actively involved in the conservation of marine turtles.

(b) Public participation.—

(1) Meetings.—The Advisory Group shall:

(A) meet at least once a year; and

(B) provide, at each meeting, an opportunity for interested persons to present oral or written statements concerning items on the agenda.

(2) Notice.—The Secretary shall provide to the public timely notice of each meeting of the advisory group.

(3) Minutes.—Minutes of each meeting of the advisory group shall be kept by the Secretary and shall be made available to the public.

(c) Exemption from Federal Advisory Committee Act.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory group.

SEC. 1207. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Fund $5,000,000 for each of fiscal years 2004 through 2008.

Mr. HANSEN (during the reading). Mr. Speaker, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The amendment in the nature of a substitute was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: “A bill to amend the Endangered Species Act of 1973 to promote involvement by non-Federal entities in the recovery of endangered species, threatened species, and species that may become endangered or threatened species, and for other purposes.”

A motion to reconsider was laid on the table.

POW/MIA MEMORIAL FLAG ACT OF 2002

Mr. HANSEN. Mr. Speaker, I ask unanimous consent that the Committee on Resources be discharged from further consideration of the Senate bill (S. 1226) to require the display of the POW-MIA flag at the World War II memorial, the Korean War Veterans Memorial, and the Vietnam Veterans Memorial, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1226

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 “POW/MIA Memorial Flag Act of 2002”.

SEC. 2. DISPLAY OF POW/MIA FLAG AT WORLD WAR II MEMORIAL, KOREAN WAR MEMORIAL, AND VIETNAM VETERANS MEMORIAL.

(a) Requirement for Display.—Subsection (d)(3) of section 902 of title 36, United States Code, is amended by striking “The Korean War Veterans Memorial and the Vietnam Veterans Memorial” and inserting “The World War II memorial, the Korean War Veterans Memorial, and the Vietnam Veterans Memorial”.

(b) Days for Display.—Subsection (c)(2) of that section is amended by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and
(2) by inserting before subparagraph (B), as so redesignated, the following new subparagraph (A):

"(A) in the case of display at the World War II, Korean War, and Vietnam War Memorials, and Vietnam Veterans Memorial (required by subsection (d)(3) of this section), any day on which the United States flag is displayed.";

(c) DISPLAY ON EXISTING FLAGPOLE.—No element of the United States Government may construe the amendments made by this section to authorize the acquisition of erection of a new or additional flagpole for purposes of the display of the POW/MIA flag.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

CITY OF HAINES, OREGON LAND CONVEYANCE

Mr. HANSEN. Mr. Speaker, I ask unanimous consent that the Committee on Resources be discharged from further consideration of the Senate bill (S. 1907) to direct the Secretary of the Interior to convey certain land to the city of Haines, Oregon, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

"The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?"

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1907

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

SECTION 1. CONVEYANCE TO THE CITY OF HAINES, OREGON.

(a) CONVEYANCE.—As soon as practicable after the date of enactment of this Act, the Secretary of the Interior shall convey, without consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (b) to the city of Haines, Oregon.

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is the parcel of Bureau of Land Management land consisting of approximately 15 acres, as indicated on the map entitled "S. 107: Conveyance to the City of Haines, Oregon" and dated May 9, 2002.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

OLD SPANISH TRAIL RECOGNITION ACT OF 2002

Mr. HANSEN. Mr. Speaker, I ask unanimous consent that the Committee on Resources be discharged from further consideration of the Senate bill (S. 1946) to amend the National Trails System Act to designate the Old Spanish Trail as a National Historic Trail, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

"The SPEAKER pro tempore (Mr. SIMPSON). Is there objection to the request of the gentleman from Utah?"

There was no objection.

The Clerk read the Senate bill, as follows:

INDIAN FINANCING AMENDMENTS ACT OF 2002

S. 2017

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Financing Amendments Act of 2002".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.) was intended to provide Native American borrowers with access to commercial sources of capital that otherwise would not be available through the guarantee or insurance of loans by the Secretary of the Interior;

(2) the Secretary of the Interior has made loan guarantees and insurance available, use of those guarantees and that insurance by lenders to benefit Native American business borrowers has been limited;

(3) 27 years after the date of enactment of the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.), the promotion and development of Native American-owned business remains an essential foundation for growth of economic and social stability of Native Americans;

(4) use by commercial lenders of the available loan insurance and guarantees may be limited by liquidity and other capital market-driven concerns; and

(5) it is in the best interest of the insured and guaranteed loan program of the Department of the Interior—

(A) to encourage the orderly development and expansion of a secondary market for loans guaranteed or insured by the Secretary of the Interior; and

(B) to expand the number of lenders originating loans under the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.).

(b) PURPOSE.—The purpose of this Act is to reform and clarify the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.) in order to—

(1) stimulate the use by lenders of secondary market investors for loans guaranteed or insured under a program administered by the Secretary of the Interior;

(2) preserve the authority of the Secretary to administer the program and regulate lenders; and

(3) clarify that a good faith investor in loans insured or guaranteed by the Secretary will receive appropriate payments.

(c) AMENDMENTS TO INDIAN FINANCING ACT.—

(1) LIMITATION ON LOAN AMOUNTS WITHOUT PRIOR APPROVAL.—Section 204 of the Indian Financing Act of 1974 (25 U.S.C. 1461) is amended in the last sentence by striking "$100,000" and inserting "$500,000.

(b) SALE OR ASSIGNMENT OF LOANS AND UNDERLYING SECURITY.—Section 205 of the Indian Financing Act of 1974 (25 U.S.C. 1465) is amended—

(1) by striking "any loan guaranteed" and inserting the following:

"(a) IN GENERAL.—Any loan guaranteed or insured;" and

(2) by adding at the end the following:

"(b) INITIAL TRANSFERS.—

"(1) IN GENERAL.—The lender of a loan guaranteed or insured under this title may transfer to any individual or legal entity—

(A) all rights and obligations of the lender in the loan or in the uninsured or un-insured portion of the loan; and

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“(B) any security given for the loan.

“(2) ADDITIONAL REQUIREMENTS.—With respect to a transfer described in paragraph (1)—

“(A) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (i); and

“(B) the lender shall give notice of the transfer to the Secretary.

“(3) RESPONSIBILITIES OF TRANSFEREE.—On any transfer under paragraph (1), the transferee shall—

“(A) be deemed to be the lender for the purpose of this title;

“(B) become the secured party of record; and

“(C) be responsible for—

“(i) performing the duties of the lender; and

“(ii) servicing the loan in accordance with the terms of the guarantee by the Secretary of the loan.

“(c) SECONDARY TRANSFERS.—

“(1) IN GENERAL.—Any transferee under subsection (b) of a loan guaranteed or insured under this title may transfer any individual or legal entity.

“(A) all rights and obligations of the transferee or in the unguaranteed or uninsured portion of the loan; and

“(B) any security given for the loan.

“(2) ADDITIONAL REQUIREMENTS.—With respect to a transfer described in paragraph (1)—

“(A) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (i); and

“(B) the transferee shall give notice of the transfer to the Secretary.

“(3) ACKNOWLEDGMENT BY SECRETARY.—On receipt of notice of a transfer under paragraph (2)(B), the Secretary shall issue to the transferee an acknowledgement by the Secretary of—

“(A) the transfer; and

“(B) the interest of the transferee in the guaranteed or insured portion of the loan.

“(d) RESPONSIBILITIES OF LENDER.—Notwithstanding any transfer permitted by this subsection, the lender shall—

“(A) remain obligated on the guarantee agreement or insurance agreement between the lender and the Secretary.

“(B) continue to be responsible for servicing the loan in a manner consistent with that guarantee agreement or insurance agreement.

“(C) remain the secured creditor of record.

“(d) FULL FAITH AND CREDIT.—

“(1) IN GENERAL.—The full faith and credit of the United States is pledged to the payment of all loan guarantees and loan insurance made under this title after the date of enactment of this subsection.

“(2) VALIDITY.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the validity of a guarantee or insurance of a loan under this title shall be unaffected by any obligations of the guarantee or insurance held by a transferee.

“(B) EXCEPTION FOR FRAUD OR MISREPRESENTATION.—Subparagraph (A) shall not apply in a case in which a transferee has actual knowledge of fraud or misrepresentation, or participates in or condones fraud or misrepresentation, in connection with a loan.

“(e) DAMAGES.—Notwithstanding section 3302 of title 31, United States Code, the Secretary may recover from a lender of a loan under this title any damages suffered by the Secretary as a result of a material breach of the obligations of the lender with respect to a guarantee or insurance by the Secretary of the loan.

“(f) FEES.—The Secretary may collect a fee for any loan or guaranteed or insured portion of a loan that is transferred in accordance with this section.

“(g) CENTRAL REGISTRATION OF LOANS.—On promulgation of final regulations under subsection (i), the Secretary shall—

“(1) provide for a central registration of all guaranteed or insured loans transferred under this section; and

“(2) enter into 1 or more contracts with a fiscal transfer agent to facilitate payment and in accordance with this section.

“SECTION 1. TABLE OF CONTENTS.

“The table of contents for this Act is as follows:

TITLE I—INDIAN FINANCING ACT AMENDMENTS

Sec. 101. Short title.
Sec. 102. Findings and purpose.
Sec. 103. Amendments to Indian Financing Act.

TITLE II—YANKTON SIOUX AND Santee SIOUX TRIBES EQUITABLE COMPENSATION

Sec. 201. Short title.
Sec. 203. Definitions.
Sec. 204. Yankton Sioux Tribe Development Trust Fund.
Sec. 205. Santee Sioux Tribe Development Trust Fund.
Sec. 206. Tribal plans.
Sec. 207. Eligibility of tribe for certain programs.
Sec. 208. Statutory construction.
Sec. 209. Authorization of appropriations.

TITLE III—OKLAHOMA NATIVE AMERICAN CULTURAL CENTER AND MUSEUM

Sec. 301. Oklahoma Native American Cultural Center and Museum.

TITLE IV—TRANSMISSION OF POWER FROM INDIANS AND SE IN OKLAHOMA

Sec. 401. Transmission of power from Indian lands in Oklahoma.

TITLE V—PECHANGA TRIBE


TITLE VI—CHEROKEE, CHOCTAW, AND CHICKASAW NATIONS CLAIMS SETTLEMENT ACT

Sec. 601. Short title.
loans guaranteed or insured by the Secretary of the Interior; and
(b) to expand the number of lenders originating loans under the Indian Financing Act of 1974 (25 U.S.C. 1485 et seq.) in order to—
(1) stimulate the use of secondary market investors for loans guaranteed or insured under a program administered by the Secretary of the Interior;
(2) preserve the authority of the Secretary to administer the program and regulate lenders;
(3) clarify that a good faith investor in loans insured or guaranteed by the Secretary will receive appropriate payments;
(4) provide for the appointment by the Secretary to establish and administer a system for the orderly transfer of those loans; and
(5) authorize the Secretary to promulgate regulations to encourage and expand a secondary market program for loans guaranteed or insured by the Secretary; and
(b) allow the pooling of those loans as the secondary market develops.
SEC. 103. AMENDMENTS TO INDIAN FINANCING ACT.
(a) LIMITATION ON LOAN AMOUNTS WITHOUT PRIOR APPROVAL.—Section 203 of the Indian Financing Act of 1974 (25 U.S.C. 1485) is amended in the last sentence by striking "$100,000" and inserting "$250,000".
(b) SALE OR ASSIGNMENT OF LOANS AND UNSECURED DEREGULATORY SECURITY.—Section 204 of the Indian Financing Act of 1974 (25 U.S.C. 1485) is amended—
(1) by striking "any loan guaranteed" and inserting the following:
   "(a) IN GENERAL.—Any loan guaranteed or insured"; and
(2) by adding at the end the following:
   "(b) INITIAL TRANSFERS.—"
   "(1) IN GENERAL.—The lender of a loan guaranteed or insured under this title shall transfer to any individual or legal entity—"; and
   "(2) ADDITIONAL REQUIREMENTS.—With respect to a transfer described in paragraph (1)—"
   "(A) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (1); and"
   "(B) the lender shall give notice of the transfer to the Secretary."
   "(3) RESPONSIBILITIES OF TRANSFEREE.—On any transfer under paragraph (1), the transferee shall—"
   "(A) be deemed to be the lender for the purpose of this title;
   (B) become the secured party of record; and"
   "(C) be responsible for—"
   "(i) performing the duties of the lender; and"
   "(ii) servicing the loan in accordance with the terms of the guarantee by the Secretary of the loan."
   "(c) SECONDARY TRANSFERS.—"
   "(1) IN GENERAL.—Any transferee under subsection (b) of a loan guaranteed or insured under this title may transfer to any individual or legal entity—"
   "(A) all rights and obligations of the lender in the loan or in the unguaranteed or uninsured portion of the loan; and"
   "(B) any security given for the loan.
   "(2) ADDITIONAL REQUIREMENTS.—With respect to a transfer described in paragraph (1)—"
   "(A) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (1); and"
   "(B) the transferee shall give notice of the transfer to the Secretary."
   "(3) RESPONSIBILITIES OF TRANSFEREE.—On receipt of a notice of a transfer under paragraph (1), the Secretary shall issue to the transferee an acknowledgement by the Secretary of—"
   "(A) the transfer; and"
   "(B) the interest of the transferee in the guaranteed or insured portion of the loan.
   "(4) RESPONSIBILITIES OF LENDER.—Notwithstanding any transfer permitted by this subsection, the Secretary shall—"
   "(A) remain obligated on the guarantee agreement or insurance agreement between the lender and the Secretary;"
   "(B) continue to be responsible for servicing the loan in a manner consistent with that guarantee agreement or insurance agreement; and"
   "(C) remain the secured creditor of record.
   "(5) FULL FAITH AND CREDIT.—"
   "(1) IN GENERAL.—The full faith and credit of the United States is pledged to the payment of all loan guarantees and loan insurance made under this title after the date of enactment of this section.
   "(2) VALIDITY.—"
   "(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall not be liable for any guarantee or insurance of a loan under this title shall be incontestable if the obligations of the guarantee or insurance held by a transferee have been acknowledged under subsection (c)(3).
   "(B) EXCEPTION FOR FRAUD OR MISREPRESENTATION.—Subparagraph (A) shall not apply in a case in which a transferee has actual knowledge of fraud or misrepresentation, or participates in or condones fraud or misrepresentation, in connection with a loan.
   "(6) DAMAGES.—Notwithstanding section 3302 of title 31, United States Code, the Secretary may recover from a lender of a loan under this title any damages suffered by the Secretary as a result of a material breach of the obligations of the lender with respect to a guarantee or insurance by the Secretary of the loan.
   "(7) FEES.—The Secretary may collect a fee for any loan guaranteed or insured portion of a loan that is transferred in accordance with this section.
   "(8) CENTRAL REGISTRATION OF LOANS.—On promulgation of final regulations under subsection (b)(1) of this section, the Secretary shall—"
   "(1) provide for a central registration of all guaranteed or insured loans transferred under this section; and"
   "(2) enter into 1 or more contracts with a fiscal transfer agent—"
   "(A) to act as the designee of the Secretary under this section; and"
   "(B) to carry out on behalf of the Secretary the central registration and fiscal transfer agent functions, and issuance of acknowledgements, under this section.
   "(9) POOLING OF LOANS.—"
   "(1) IN GENERAL.—Nothing in this title prohibits the pooling of whole loans or interests in loans transferred under this section.
   "(2) REGULATIONS.—In promulgating regulations under section (1), the Secretary may include such regulations to effect orderly and efficient pooling procedures as the Secretary determines to be necessary.
   "(10) REGULATIONS.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall develop such procedures and promulgate such regulations as are necessary to facilitate, administer, and promulgate such agreements and guarantees with respect to a transfer of the guaranteed or insured portions of loans under this section."

TITLE II—YANKTON SIOUX TRIBE AND SANTEE SIOUX TRIBES EQUITABLE COMPENSATION

SEC. 201. SHORT TITLE.
This Act may be cited as the “Yankton Sioux Tribe and Santee Sioux Tribes Equitable Compensation Act”.

SEC. 202. FINDINGS.
Congress finds that—
(1) by enacting the Act of December 22, 1944, commonly known as the “Flood Control Act of 1944” (38 Stat. 887, chapter 655; 33 U.S.C. 701-1 et seq.), Congress approved the Pick-Sloan Missouri River Basin program (referred to in this section as the “Pick-Sloan program”);
(2) to promote the general economic development of the United States;
(3) to provide for irrigation above Sioux City, Iowa;
(4) to protect urban and rural areas from devastating floods of the Missouri River; and
for other purposes;
(2) the waters impounded for the Fort Randall and Gavins Point projects of the Pick-Sloan program have inundated the fertile, wooded bottom lands along the Missouri River that constituted the most productive agricultural and pastoral land in the homeland of, the members of the Yankton Sioux Tribe and the Santee Sioux Tribe; and
(3) the Fort Randall Dam and Reservoir (including the Gavins Point Dam and Reservoir) overlies the western boundary of the Yankton Sioux Tribe Indian Reservation and the Gavins Point Project (including the Gavins Point Dam and Reservoir) overlies the eastern boundary of the Santee Sioux Tribe; and
(4) although the Fort Randall and Gavins Point projects are major components of the Pick-Sloan program, and contribute to the economy of the United States by generating a substantial amount of hydropower and impounding a substantial quantity of water, the reservations of the Yankton Sioux Tribe and the Santee Sioux Tribe remain undeveloped;
(5) the United States Army Corps of Engineers took the Indian lands used for the Fort Randall and Gavins Point projects by condemnation proceedings;
(6) the Federal Government did not give the Yankton Sioux Tribe and the Santee Sioux Tribe an opportunity to receive just compensation for direct damages from the Pick-Sloan program, even though the Federal Government gave 5 Indian reservations up-stream from the reservations of those Indian tribes such an opportunity;
(7) the Yankton Sioux Tribe and the Santee Sioux Tribe did not receive just compensation for the taking of productive agricultural Indian lands through the condemnation referred to in paragraph (6); and
(8) the Yankton Sioux Tribe and the Santee Sioux Tribe did not receive just compensation for the taking of productive agricultural Indian lands through the condemnation referred to in paragraph (6); and
(9) the settlement agreement that the United States entered into with the Yankton Sioux Tribe and the Santee Sioux Tribe to provide compensation for the taking by condemnation referred to in paragraph (6) did not take into account the increase in property values over the years between the date of taking and the date of settlement; and
(10) in addition to the financial compensation provided under the settlement agreements referred to in paragraph (9)—
(1) the Yankton Sioux Tribe should receive an aggregate amount equal to $23,023,743 for the loss value of 2,851.40 acres of Indian land taken for the Fort Randall Dam and Reservoir of the Pick-Sloan program;
(2) the Santee Sioux Tribe should receive an aggregate amount equal to $4,789,010 for the loss value of 593.10 acres of Indian land taken near the Santee village.

SEC. 203. DEFINITIONS.
In this title:
(1) INDIAN TRIBE.—The term ‘‘Indian tribe’’ has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(2) SANTEE SIOUX TRIBE.—The term ‘‘Santee Sioux Tribe’’ means the Santee Sioux Tribe of Nebraska.

(3) YANKTON SIOUX TRIBE.—The term ‘‘Yankton Sioux Tribe’’ means the Yankton Sioux Tribe of South Dakota.

SEC. 204. YANKTON SIOUX TRIBE DEVELOPMENT TRUST FUND.

(a) Establishment.—There is established in the Treasury of the United States a fund to be known as the ‘‘Yankton Sioux Tribe Development Trust Fund’’ (referred to in this section as the ‘‘Fund’’). The Fund shall consist of any amounts deposited in the Fund under this title.

(b) Funding.—On the first day of the 11th fiscal year that begins after the date of enactment of this Act and each fiscal year thereafter, the Secretary of the Interior shall, from the General Fund of the Treasury, deposit into the Fund established under subsection (a)—

(1) $23,023,743; and

(2) an additional amount that equals the amount of interest that would have accrued on the amount described in paragraph (1) if such amount had been invested in interest-bearing obligations of the United States, or in obligations guaranteed as to both principal and interest by the United States, on the first day of the fiscal year that begins after the date of enactment of this Act and compounded annually thereafter.

(c) Investment of Trust Fund.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in the Secretary of Treasury’s judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States, or in obligations guaranteed as to both principal and interest by the United States, on the first day of the first fiscal year that begins after the date of enactment of this Act and compounded annually thereafter.

(d) Payment of Interest to Tribe.—(1) Withdrawal of Interest.—Beginning on the first day of the 11th fiscal year after the date of enactment of this Act and, on the first day of each fiscal year thereafter, the Secretary of the Treasury shall withdraw the aggregate amount of interest deposited into the Fund for that fiscal year and transfer that amount to the Secretary of the Interior for use in accordance with paragraph (2). Each amount so transferred shall be available without fiscal year limitation.

(2) Payments to Yankton Sioux Tribe.—(A) In General.—The Secretary of the Interior shall use the amounts transferred under paragraph (1) only for the purpose of making payments to the Yankton Sioux Tribe, as such payments are requested by that Indian tribe pursuant to tribal resolution.

(B) Limitation.—Payments may be made by the Secretary of the Interior under subsection (A) only if the Yankton Sioux Tribe has adopted a tribal plan under section 206.

(C) Use of Payments by Yankton Sioux Tribe.—The Yankton Sioux Tribe shall use the payments made under subsection (A) only for carrying out projects and programs under the tribal plan prepared under section 206.

(e) Transfers and Withdrawals.—Except as provided in subsections (c) and (d)(1), the Secretary of the Treasury may not transfer or withdraw any amount deposited under subsection (b).

SEC. 205. SANTEE SIOUX TRIBE DEVELOPMENT TRUST FUND.

(a) Establishment.—There is established in the Treasury of the United States a fund to be known as the ‘‘Santee Sioux Tribe Development Trust Fund’’ (referred to in this section as the ‘‘Fund’’). The Fund shall consist of any amounts deposited in the Fund under this title.

(b) Funding.—On the first day of the 11th fiscal year that begins after the date of enactment of this Act, the Secretary of the Treasury shall, from the General Fund of the Treasury, deposit into the Fund established under subsection (a)—

(1) $4,789,010; and

(2) an additional amount that equals the amount of interest that would have accrued on the amount described in paragraph (1) if such amount had been invested in interest-bearing obligations of the United States, or in obligations guaranteed as to both principal and interest by the United States, on the first day of the first fiscal year that begins after the date of enactment of this Act and compounded annually thereafter.

(c) Investment of Trust Fund.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in the Secretary of Treasury’s judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States, or in obligations guaranteed as to both principal and interest by the United States, on the first day of the first fiscal year that begins after the date of enactment of this Act and compounded annually thereafter.

(d) Payment of Interest to Tribe.—(1) Withdrawal of Interest.—Beginning on the first day of the 11th fiscal year after the date of enactment of this Act and, on the first day of each fiscal year thereafter, the Secretary of the Treasury shall withdraw the aggregate amount of interest deposited into the Fund for that fiscal year and transfer that amount to the Secretary of the Interior for use in accordance with paragraph (2). Each amount so transferred shall be available without fiscal year limitation.

(2) Payments to Santee Sioux Tribe.—(A) In General.—The Secretary of the Interior shall use the amounts transferred under paragraph (1) only for the purpose of making payments to the Santee Sioux Tribe, as such payments are requested by that Indian tribe pursuant to tribal resolution.

(B) Limitation.—Payments may be made by the Secretary of the Interior under subsection (A) only if the Santee Sioux Tribe has adopted a tribal plan under section 206.

(C) Use of Payments by Santee Sioux Tribe.—The Santee Sioux Tribe shall use the payments made under subsection (A) only for carrying out projects and programs under the tribal plan prepared under section 206.

(d) Transfers and Withdrawals.—Except as provided in subsections (c) and (d)(1), the Secretary of the Treasury may not transfer or withdraw any amount deposited under subsection (b).

SEC. 206. TRIBAL PLANS.

(a) In General.—Not later than 24 months after the date of enactment of this Act, the tribal council of each of the Yankton Sioux and Santee Sioux Tribes shall prepare a plan for the use of the payments to the tribe under section 204(d) or 205(d) (referred to in this subsection as a ‘‘tribal plan’’).

(b) Contents of Tribal Plan.—Each tribal plan shall specify in the manner in which the tribe covered under the tribal plan shall expend payments to the tribe under section 204(d) or 205(d) to promote—

(1) economic development;

(2) infrastructure development;

(3) the educational, health, recreational, and social welfare objectives of the tribe and its members;

(4) any combination of the activities described in paragraphs (1), (2), and (3).

(c) Tribal Plan Review and Revision.—(1) In General.—Each tribal council referred to in subsection (a) shall make available for review and comment by the members of the tribe a copy of such plan for the Indian tribe before the tribal plan becomes final, in accordance with procedures established by the tribal council.

(2) No Change.—If each tribal council referred to in subsection (a) may, on an annual basis, revise the tribal plan prepared by that tribal council to update the tribal plan. In revising the tribal plan under this paragraph, the tribal council shall provide the members of the tribe opportunity to review and comment on any proposed revisions to the tribal plan.

(d) Consultation.—In preparing the tribal plan and any revisions to update the plan, each tribal council shall consult with the Secretary of the Interior and the Secretary of Health and Human Services.

SEC. 207. ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS AND SERVICES.

(a) In General.—No payment made to the Yankton Sioux Tribe or the Santee Sioux Tribe pursuant to this title shall result in the reduction or denial of any service or program to which, pursuant to Federal law—

(1) the Yankton Sioux Tribe or Santee Sioux Tribe is otherwise entitled because of the status of the tribe as a federally recognized tribe; or

(2) any individual who is a member of a tribe under paragraph (1) is entitled because of the status of the individual as a member of the tribe.

(b) Exemptions From Taxation.—No payment made pursuant to this title shall be subject to any Federal or State income tax, estate, gift, or other tax.

(c) Eligibility for Reimbursements.—No payment made pursuant to this title shall affect the Yankton Sioux Tribe or the Santee Sioux Tribe under section 204 and the Santee Sioux Tribe Development Trust Fund under section 205.

SEC. 208. STATUTORY CONSTRUCTION.

There are authorized to be appropriated such sums as are necessary to carry out this title, including such sums as may be necessary for the administration of the Yankton Sioux Tribe Development Trust Fund under section 206 and the Santee Sioux Tribe Development Trust Fund under section 205.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title, including such sums as may be necessary for the administration of the Yankton Sioux Tribe Development Trust Fund under section 206 and the Santee Sioux Tribe Development Trust Fund under section 205.

TITLE III—OKLAHOMA NATIVE AMERICAN CULTURAL CENTER AND MUSEUM

SEC. 301. OKLAHOMA NATIVE AMERICAN CULTURAL CENTER AND MUSEUM.

(a) Findings.—Congress makes the following findings:
(1) In order to promote better understanding between Indian and non-Indian citizens of the United States, and in light of the Federal Government’s continuing trust responsibilities to Indian tribes, it is appropriate and proper for the Federal Government to provide grants for the development of a museum designated to display the heritage and culture of Indian tribes.

(2) In recognition of the unique status and history of Indian tribes in the State of Oklahoma, the Federal Government in such history, it is appropriate and proper for the museum referred to in paragraph (1) to be located in the State of Oklahoma.

(b) GRANT.—

(1) IN GENERAL.—The Secretary shall offer to award financial assistance equaling not more than $35,000,000 and technical assistance to the Authority to be used for the development and construction of a Native American Cultural Center and Museum in Oklahoma City, Oklahoma.

(2) AGREEMENT.—To be eligible to receive a grant under paragraph (1), the appropriate official of the Authority shall—

(A) enter into a contract agreement with the Secretary which shall specify the duties of the Authority under this section, including provisions for continual maintenance of the Center by the Authority without the use of Federal funds; and

(B) demonstrate, to the satisfaction of the Secretary, that the Authority has raised, or shall raise, an amount at least equal to the Federal funds available to the Authority under this section, including but not limited to the Treaty at Washington, D.C., executed on April 30, 1866 (7 Stat. 21), and the Treaty at Washington, D.C., executed on August 27, 1883, and having entered into various treaties with the United States of America, including but not limited to the Treaty at Hopewell, executed on November 28, 1875 (7 Stat. 18), and the Treaty at Washington, D.C., executed on July 19, 1866 (14 Stat. 799), has maintained a continuous government-to-government relationship with the United States since the earliest years of the Union.

(3) LIMITATION.—

(A) The Secretary of the Interior renders a final decision on the fee to trust application pending on the date of the enactment of this title concerning the land; and

(B) final decisions have been rendered regarding all appeals relating to that application decision; or

(2) the fee to trust application described in paragraph (1)(A) is withdrawn.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) is land located in Riverside County, California, that is held in fee by the Pechanga Mission Indians of Luseno, as described in document No. 211130 of the Office of the Recorder, Riverside County, California, and recorded on May 15, 2001.

(c) RULE OF CONSTRUCTION.—Nothing in this section designates, or shall be used to construe, any land described in subsection (b) as (or as a part of) land located in Indian reservation, Indian country, Indian land, or reservation lands (as those terms are defined under Federal law) for purposes of State law.

TITLE VI—CHEROKEE, CHOWTAW, AND CHICKASAW NATIONS CLAUSES SETTLEMENT ACT

SEC. 601. SHORT TITLE.

This title may be cited as the “Cherokee, Choctaw, and Chickasaw Nations Claims Settlement Act”.

SEC. 602. FINDINGS.

The Congress finds the following:

(1) The policy of the United States to promote tribal self-determination and economic self-sufficiency and to encourage the resolution of disputes over historical claims through mutually agreed-to settlements between Indian Nations and the United States.

(2) There are pending before the United States Court of Federal Claims certain lawsuits against the United States brought by the Cherokee, Choctaw, and Chickasaw Nations seeking monetary damages for the alleged use and mismanagement of tribal resources located on the Arkansas River in eastern Oklahoma.

(3) The Cherokee Nation, a federally recognized Indian tribe with its present tribal headquarters in Tahlequah, Oklahoma, having adopted its most recent constitution on June 26, 1976, and having entered into various treaties with the United States, including but not limited to the Treaty at Hopewell, executed on November 28, 1875 (7 Stat. 18), and the Treaty at Washington, D.C., executed on July 19, 1866 (14 Stat. 799), has maintained a continuous government-to-government relationship with the United States since the earliest years of the Union.

(4) The Choctaw Nation, a federally recognized Indian tribe with its present tribal headquarters in Durant, Oklahoma, having adopted its most recent constitution on July 9, 1983, and having entered into various treaties with the United States of America, including but not limited to the Treaty at Hopewell, executed on January 3, 1866 (7 Stat. 21), and the Treaty at Washington, D.C., executed on April 28, 1866 (7 Stat. 21), has maintained a continuous government-to-government relationship with the United States since the earliest years of the Union.

(5) The Chickasaw Nation, a federally recognized Indian tribe with its present tribal headquarters in Ada, Oklahoma, having adopted its most recent constitution on August 27, 1883, and having entered into various treaties with the United States of America, including but not limited to the Treaty at Washington, D.C., executed on April 28, 1866 (7 Stat. 21), has maintained a continuous government-to-government relationship with the United States since the earliest years of the Union.

(6) In the first half of the 19th century, the Cherokee, Choctaw, and Chickasaw Nations were forcibly removed from their homelands in the southeastern United States to lands west of the Mississippi in the Indian Territory that were ceded to them by the United States. From the “Three Forks” area near present day Muskogee, Oklahoma, downstream to the point of confluence with the Arkansas River, the Tribes flowed entirely within the territory of the Cherokee Nation. From that point of confluence downstream to the Arkansas territorial line, the Arkansas River flows by between the Cherokee Nation on the left side of the thread of the river and the Choctaw and Chickasaw Nations on the right.

(7) Pursuant to the Act of April 30, 1906 (34 Stat. 337), tribal property not allotted to individuals or otherwise disposed of, including the bed and banks of the Arkansas River, passed to the Indian Tribes to use and benefit of the respective Indian Nations in accordance with their respective Indian Constitutions.

(8) For more than 60 years after Oklahoma statehood, the Bureau of Indian Affairs believed that Oklahoma owned the Riverbed for the use of the respective Indian Nations. In 1970, the United States Court of Federal Claims awarded to the Indian Nations the Arkansas Riverbed resources such as oil, gas, and Drybed Lands suitable for grazing and agriculture.

(9) Third parties with property near the Arkansas River began to occupy the Indian Nations’ Drybed Lands and the owner or operator of the generation facilities for the transmission system, the Administration, having adopted its most recent constitution on February 27, 1984 (36 Fed. Reg. 1983), and the Treaty at Washington, D.C., executed on October 30, 1906 (34 Stat. 137), tribal property not allotted to individuals or otherwise disposed of, including the bed and banks of the Arkansas River, passed to the United States in trust for the use and benefit of the respective Indian Nations in accordance with their respective Indian Constitutions.

(3) LIMIITATION ON CONVEYANCE.

(a) LIMITATION ON CONVEYANCE.—Nothing in this section designates, or shall be used to construe, any land described in subsection (b) as (or as a part of) land located in Indian reservation, Indian country, Indian land, or reservation lands (as those terms are defined under Federal law) for purposes of State law.

(b) DESCRIPTION OF LAND.

The land referred to in subsection (a) is land located in Castle Rock County, South Carolina, that is held in fee by the Cherokee Mission Indians of Luseno, as described in document No. 15317 of the Office of the Recorder, Castle Rock County, South Carolina, and recorded on February 21, 1984.
Much of the Indian Nations’ Drybed Lands have been occupied by a large number of adjacent landowners in Oklahoma. Without Federal legislation, further litigation against such landowners would be likely and any final resolution of disputes would take many years and entail great expense to the United States, the Indian Nations, and the parties and would seriously impair long-term economic planning and development for all parties.

(15) The Commissioners of the Cherokee and Choctaw Nations and the Legislature of the Chicksaw Nation have each enacted tribal resolutions which would, contingent upon the approval of the Secretary of the Interior, disclaiming the Drybed Lands and would seriously impair long-term economic planning and development for all parties.

(16) The resolutions adopted by the respective Councils of the Cherokee, Choctaw, and Chicksaw Nations each provide that, contingent upon the approval of the Secretary of the Interior, the legislation and satisfaction of its terms, each Indian Nation agrees to dismiss, release, and forever discharge its claims asserted against the United States in the United States Court of Federal Claims, Case Nos. 218–89L and 630–89L, and to forever disclaim any and all right, title, and interest in and to the Disclaimed Drybed Lands, as set forth in those enactments of the respective councils of the Indian Nations.

(17) In those resolutions, each Indian Nation expressly reserved all of its beneficial interest and title to all other Riverbed lands, including minerals, as determined by the Secretary and title to all other Riverbed lands, and including minerals therein.

(a) Settle and forever release their respective claims against the United States asserted by them in United States Court of Federal Claims Case Nos. 218–89L, and 630–89L.

(b) Forever disclaim any and all right, title, and interest in and to the Disclaimed Drybed Lands, as set forth in those enactments of the respective councils of the Indian Nations.

(c) Approve and ratify such transfers of the Disclaimed Drybed Lands in violation of the Trade and Intercourse Act, Congress does hereby approve and ratify such transfers of the Disclaimed Drybed Lands to the extent that such transfers otherwise are valid under law; and

(d) The Secretary is authorized to execute an appropriate document citing this title, or any part thereof, as the authority for the payee being an employee of such other county official as appropriate, of those counties wherein the foregoing described lands are located, disclaiming any tribal or Federal interest on behalf of the Indian Nations in such Disclaimed Drybed Lands.

The Secretary is authorized to file with the counties a plat or map of the disclaimed lands should the Secretary determine that such filing will clarify the extent of lands disclaimed. Such a plat or map may be filed regardless of whether the map or plat has been previously approved for filing, whether or not the appropriate county official has been notified, and regardless of whether the map or plat constitutes a final determination by the Secretary of the extent of the Indian Nations’ original claim to the Disclaimed Drybed Lands. The disclaimer filed by the United States shall constitute a disclaimer of all claims of Drybed Lands for purposes of the Trade and Intercourse Act (23 U.S.C. 177).

(2) SPECIAL PROVISIONS.—Notwithstanding any provision of law (other than section 741 of the Indian Reorganization Act of 1934), the Indian Nations may have to the Disclaimed Drybed Lands and all right, title, and interest in the Disclaimed Drybed Lands.

(a) In general.—Pursuant to their respective resolutions, and in exchange for the benefits conferred under this title, the Indian Nations shall, on the date of enactment of this title, enter into a consent decree with the United States that waives, releases, and dismisses all the claims they have asserted or could have asserted in their cases numbered 218–89L, and 630–89L.

(b) Release of Tribal Claims to Certain Disclaimed Drybed Lands. The term ‘‘Disclaimed Drybed Lands’’ means those Riverbed lands which lie below the mean high water mark of the Arkansas River in the State of Oklahoma as of the date of the enactment of this title, exclusive of the Drybed Lands. The term ‘‘Wetbed Lands’’ means those Riverbed lands which lie below the mean high water mark of the Arkansas River in the State of Oklahoma as of the date of the enactment of this title, exclusive of the Drybed Lands.

(a) Extinguishment of Claims.—Pursuant to their respective resolutions, and in exchange for the benefits conferred under this title, the Indian Nations shall, on the date of enactment of this title, enter into a consent decree with the United States that waives, releases, and dismisses all the claims they have asserted or could have asserted in their cases numbered 218–89L, and 630–89L.

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(a) In general.—Upon entry of the consent decree described in section 606, the United States shall enter the consent decree with the Court of Federal Claims within 30 days of the date of enactment of this title, and shall move to have the claims and all their past, present, and future right, title, and interest to the Disclaimed Drybed Lands, shall be deemed extinguished.

(b) Release of Tribal Claims to Certain Disclaimed Drybed Lands. The term ‘‘Disclaimed Drybed Lands’’ means those Riverbed lands which lie below the mean high water mark of the Arkansas River in the State of Oklahoma as of the date of the enactment of this title, exclusive of the Drybed Lands.

(b) Release of Tribal Claims to Certain Disclaimed Drybed Lands. The term ‘‘Wetbed Lands’’ means those Riverbed lands which lie below the mean high water mark of the Arkansas River in the State of Oklahoma as of the date of the enactment of this title, exclusive of the Drybed Lands.

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(b) Release of Tribal Claims to Certain Disclaimed Drybed Lands. The term ‘‘Wetbed Lands’’ means those Riverbed lands which lie below the mean high water mark of the Arkansas River in the State of Oklahoma as of the date of the enactment of this title, exclusive of the Drybed Lands.

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(b) Release of Tribal Claims to Certain Disclaimed Drybed Lands. The term ‘‘Disclaimed Drybed Lands’’ means those Riverbed lands which lie below the mean high water mark of the Arkansas River in the State of Oklahoma as of the date of the enactment of this title, exclusive of the Drybed Lands.

(b) Release of Tribal Claims to Certain Disclaimed Drybed Lands. The term ‘‘Wetbed Lands’’ means those Riverbed lands which lie below the mean high water mark of the Arkansas River in the State of Oklahoma as of the date of the enactment of this title, exclusive of the Drybed Lands.
initiated by any private person or private entity after execution of the disclaimer set out in section 605(b)(1). The United States will have no obligation to undertake any future quiet title action to acquire or the recovery of lands or funds relating to any Drybed Lands retained by the Indian Nation or Indian Nations under this title, including any lands or funds acquired on the date of enactment of this title, but which subsequently lie above the mean high water mark of the Arkansas River and the failure or declination to initiate any quiet title action to or to manage any such Drybed Lands shall not constitute a breach of trust by the United States or be compensable to the Indian Nation or Indian Nations. The Secretary may appropriate and allocate pursuant to section 605(d).

(5) LAND TO BE CONVEYED IN FEE.—To the extent that the United States determines that it is able to effectively maintain the McClellan-Kerr Navigation Way without retaining title to lands above the high water mark of the Arkansas River as of the date of enactment of this title, said lands, after being declared surplus, shall be conveyed in fee to the Indian Nation within whose boundary the land is located. The United States shall not be obligated to accept such property in trust.

(c) AUTHORIZATION FOR SETTLEMENT APPROPRIATIONS.—There is authorized to be appropriated an aggregate sum of $40,000,000 as follows:

(1) $10,000,000 for fiscal year 2004.
(2) $10,000,000 for fiscal year 2005.
(3) $10,000,000 for fiscal year 2006.
(4) $10,000,000 for fiscal year 2007.
(5) $10,000,000 for fiscal year 2008.

(d) ALLOCATION AND DEPOSIT OF FUNDS.—After payment pursuant to section 607, the remaining funds authorized for appropriation under subsection (c) shall be allocated among the Indian Nations as follows:

(1) 50 percent to be deposited into the trust fund account established under section 606 for the Choctaw Nation.
(2) 37.5 percent to be deposited into the trust fund account established under section 606 for the Chickasaw Nation.
(3) 12.5 percent to be deposited into the trust fund account established under section 606 for the Chickasaw Nation.

SEC. 606. TRIBAL TRUST FUNDS.
(a) ESTABLISHMENT, PURPOSE, AND MANAGEMENT OF TRUST FUNDS.—

(1) ESTABLISHMENT.—There are hereby established in the United States Treasury 3 separate trust fund accounts for the benefit of each of the Indian Nations, respectively, for the purpose of receiving all appropriations made pursuant to section 605(c), and as provided by section 605(d).

(2) AVAILABILITY OF FUNDS.—Amounts in the tribal trust fund accounts established by this section shall be available to the Secretary for management and investment on behalf of the Indian Nations and distribution to the Indian Nations in accordance with this title. Funds made available from the tribal trust funds under this section shall be available without fiscal year limitation.

(b) MANAGEMENT OF FUNDS.—

(1) LAND ACQUISITION.—

(A) TRUST LAND STATUS PENDING REGULATIONS.—The funds appropriated and allocated to the Indian Nations pursuant to sections 209(c) and (d), and deposited into trust fund accounts pursuant to section 606(a), together with any interest earned thereon, may be used for the acquisition of land by the Indian Nations, and the Secretary may accept such lands into trust for the beneficiary Indian Nation pursuant to the authority provided in section 5 of the Act of June 18, 1934 (25 U.S.C. 351), and any amounts in such trust fund accounts established by section 606(a) shall be available to the Secretary’s land acquisition regulations at part 151 of title 25, Code of Federal Regulations, in effect at the time of the acquisition, except for those acquisitions covered by paragraph (1)(B).

(B) REQUIRED TRUST LAND STATUS.—Any such trust lands acquired on behalf of the Cherokee Nation shall be mandatory if the land proposed to be acquired is located within Township 12 North, Range 21 East, in Grant County, Oklahoma, Section 7, 18 East, in McIntosh County, Townships 11 and 12 North, Range 19 East, or Township 12 North, Range 20 East, in Muskogee County, Oklahoma, and not within the limits of any incorporated municipality as of January 1, 2002, if—

(i) the land proposed to be acquired meets the Indian Nations’ minimum environmental standards and requirements for real estate acquisitions set forth in 602 DM 2.6, or any similar successor standards or requirements for real estate acquisitions in effect on the date of acquisition; and

(ii) the title to such land meets applicable Federal trust status standards in effect on the date of the acquisition.

(C) OTHER EXPENDITURE OF FUNDS.—The Indian Nations may elect to expend all or a portion of the funds deposited into its trust fund account for other purposes authorized under paragraph (2).

(2) INVESTMENT OF TRUST FUNDS; NO PER CAPITA PAYMENTS.

(A) NO PER CAPITA PAYMENTS.—No money received by the Indian Nations hereunder may be used for any per capita payment.

(B) INVESTMENT BY SECRETARY.—Except as provided in this section and section 607, the principal of such funds deposited into the accounts established hereunder and any interest earned thereon shall be invested by the Secretary in accordance with current laws and regulations for the investing of tribal trust funds.

(C) USE OF PRINCIPAL FUNDS.—The principal amounts of said funds and any amounts earned thereon shall be made available to the Indian Nation for which the account was established for expenditure for purposes which may include construction or repair of health care facilities, law enforcement, cultural or other educational activities, economic development, social services, and land acquisition. Pursuant to section 205(c) and regulations for the investing of trust funds, such funds shall be subject to the provisions of subsections (b) and (d).

(3) DISBURSEMENT OF FUNDS.—The Secretary shall disburse the funds from a trust account established under this section pursuant to a budget adopted by the Council or Legislature of the Indian Nation setting forth the amounts and an intended use of such funds.

(4) ADDITIONAL RESTRICTION ON USE OF FUNDS.—None of the funds made available under this title may be allocated or otherwise assigned to authorized purposes of the Arkansas River Multipurpose Project as authorized by the River and Harbor Act of 1966, as amended by the Flood Control Act of 1948 and the Flood Control Act of 1950.

SEC. 607. ATTORNEY FEES.

(a) PAYMENT.—At the time the funds are paid to the Indian Nations, from funds authorized to be appropriated pursuant to section 605(c), the Secretary shall pay to the Tribe $10,000,000 in payment for the Tribe’s or Tribes’ costs and expenses incurred for the Indian Nations’ allocation of funds appropriated under section 605(c).

(b) LIMITATIONS.—Notwithstanding subsection (a), the total fees payable to attorneys under such contracts with an Indian Nation shall not exceed 10 percent of the average annual amount in any Indian Nation’s allocation of funds appropriated under section 605(c).

SEC. 608. RELEASE OF OTHER TRIBAL CLAIMS AND FILING OF CLAIMS.

(a) EXTINGUISHMENT OF OTHER TRIBAL CLAIMS.

(1) IN GENERAL.—As of the date of enactment of this title—

(A) all right, title, and interest of any Indian Nation defined in section 604 (referred to in this section and section 609 as a ‘‘claimant tribe’’) in or to the Disclaimed Drybed Lands, and any such right, title, or interest held by the United States on behalf of such a claimant tribe, shall be considered to be extinguished in accordance with section 177 of title 25, United States Code (section 2116 of the Revised Statutes); and

(B) if any party other than a claimant tribe holds transferred interests in or to the Disclaimed Drybed Lands, and any such right, title, or interest held by the United States on behalf of such a claimant tribe, shall be considered to be extinguished in accordance with section 177 of title 25, United States Code (section 2116 of the Revised Statutes), Congress approves and ratifies those transfers of interests to the extent that the transfers are in accordance with other applicable law; and

(C) the documents described in section 606(b)(1)(D) shall serve to identify the geographic scope of the interests extinguished by subparagraph (A).

(b) QUIET TITLE ACTIONS.

(1) IN GENERAL.—Notwithstanding any other provision of law, after the date of enactment of this title, either the United States or (any department or agency of the United States) nor the United States shall be included as a party to any civil action brought by any private person or private entity to quiet title to, or to determine ownership of any interest in or to, the Disclaimed Drybed Lands.

(b) QUIET TITLE ACTIONS.

(2) IN GENERAL.—As of the date of enactment of this title, the United States shall have no obligation to initiate any quiet title action to quiet title to, or to recover any land or funds relating to, the Disclaimed Drybed Lands (including any lands that are Wetbed Lands as of the date of enactment of this title but that are located at any time after that date above the mean high water mark of the Arkansas River).

(c) NO BREACH OF TRUST.—The failure or declination by the United States to initiate any civil action to quiet title to or to manage any Drybed Lands under this paragraph shall not—

(1) constitute a breach of trust by the United States; or

(ii) be compensable to a claimant tribe in any manner.

(b) CLAIMS OF OTHER INDIAN TRIBES.—

(1) LIMITED PERIOD FOR FILING CLAIMS.

(A) IN GENERAL.—Notwithstanding any provision of this title and section 609, as a condition to or otherwise related to payment to any Indian tribe or tribes of the amounts described in section 605(a) or subsection 608(a), the United States shall not be barred from filing any claim described in that subparagraph.

(b) CLAIMS OF OTHER INDIAN TRIBES.—

(2) SPECIAL HOLDING ACCOUNT.

(A) ESTABLISHMENT.—There is established for each Indian tribe involving any such claim, a special holding account established by section 606(a), an interest-bearing special holding account for the benefit of the Indian Nations.

(b) LIMITATIONS.—Notwithstanding any other provision of this title or any other law, of any funds that would otherwise be deposited in a tribal trust account established by section 606(a), the Secretary may accept in trust—

(i) be deposited in the special holding account established by subparagraph (A); and
Florida may mortgage, lease, sell, convey, alienate, or interest of any claimant tribe in or to real property and to establish a process by which alleged claims may be resolved in accordance with subparagraphs (B) through (D).

(i) if the final judgment awards to a claimant an amount that exceeds the amount of funds in the special holding account under paragraph (2) attributable to the claimant tribe; and

(ii) if the final judgment awards to a claimant an amount that exceeds the amount of funds in the special holding account attributable to the Indian Nation from the allocation of which under section 605(d) the funds in the special holding account are derived—

(T) that amount shall be distributed to the special holding account to the claimant tribe that filed the claim; and

(II) any remaining amount in the special holding account attributable to the claimant shall be transferred to the appropriate tribal trust account established by section 606(a); and

(ii) if the final judgment awards to a claimant an amount that exceeds the amount of funds in the special holding account under paragraph (2) attributable to the Indian Nation from the allocation of which under section 605(d) the funds in the special holding account are derived—

(1) the balance of funds in the special holding account attributable to the Indian Nation shall be distributed to the claimant tribe that filed the claim; and

(2) payment of the remainder of the judgment amount awarded to the claimant tribe shall be made from the permanent judgment fund under Public Law 106-243.

(a) TRANSACTIONS. This title shall not be construed to resolve any right, title, or interest of any Indian nation or of any claimant tribe, except their past, present, and future rights, claims relating to right, title, or interest in or to the Riverbed and the obligations and liabilities of the United States thereto.

This title may be cited as the “Jicarilla Apache Reservation Rural Water System Act”.

The purposes of this title are as follows:

(1) To ensure a safe and adequate rural, municipal, and water supply and wastewater systems for the residents of the Jicarilla Apache Reservation in the State of New Mexico in accordance with Public Law 106-243.

(2) To authorize the Secretary of the Interior, through the Bureau of Reclamation, in consultation with the Jicarilla Apache Nation—

(A) to plan, design, and construct the water supply, delivery, and wastewater collection systems on the Jicarilla Apache Reservation in the State of New Mexico; and

(B) to include service connections to facilities within the town of Dulce and the surrounding area and to individuals as part of the construction.

(3) To require the Secretary, at the request of the Jicarilla Apache Nation, to enter into a self-determination contract with the Jicarilla Apache Nation under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f et seq.) under which—

(A) the Jicarilla Apache Nation shall plan, design, and construct the water supply, delivery, and wastewater collection systems; and

(B) the Bureau of Reclamation shall provide technical assistance and oversight responsibility for such project.

(b) CONSTRUCTION. (1) To construct—

(A) facilities to provide water supply, delivery, and wastewater services for the communities of Dulce, the Mundo Ranch Development, and surrounding areas on the Reservation.

(2) Pumping and treatment facilities located on the Reservation.

(3) Distribution, collection, and treatment facilities to serve the needs of the Reservation, including, but not limited to, construction, operation, maintenance, and repair of existing water and wastewater systems, including systems owned by individual tribal members and other residents on the Reservation.

(c) COST SHARING. (1) Tribal share. Subject to paragraph (3) and subsection (d), the tribal share of the cost of the Rural Water Supply Project is comprised of the costs to design and initiate construction of the wastewater treatment plant, to replace the diversion structure on the San Juan River, and to construct water storage and distribution facilities to serve the needs of the Reservation, including, but not limited to, water storage tanks, water lines, maintenance equipment, and other facilities for the Tribe on the Reservation.

(2) Federal share. Subject to paragraph (3) and subsection (d), the Federal share of the cost of the Rural Water Supply Project shall be all remaining costs of the project identified in the Report.

(b) APPROPRIATION. The term “appropriation” means the Bureau of Reclamation, an agency within the Department of the Interior.

(c) INinosaur.—The term “irrigation” means the diversion of water to land for the purpose of establishing or maintaining commercial agriculture in order to produce field crops and vegetables for sale.

(d) RECLAMATION.—The term “Reclamation” means the Bureau of Reclamation, an agency within the Department of the Interior.

(e) REPORT.—The term “Report” means the report entitled “Planning Report/Environmental Assessment, Water and Wastewater Improvements, Jicarilla Apache Reservation, Dulce, New Mexico”, dated September 2001, which was completed pursuant to Public Law 106-243.
for and liability related to the annual operation, maintenance, and replacement cost of the project in accordance with this title and the Indian Self-Determination Act (Public Law 93–638, 25 U.S.C. 450 et seq.).

SEC. 805. GENERAL AUTHORITY.

The Secretary is authorized to enter into contracts, grants, cooperative agreements, and other arrangements and to exercise such other powers and authorities as are necessary to develop a project plan, which shall provide the necessary engineering drawings and general engineering plans. The Secretary shall incorporate such regulations as may be necessary to carry out the purposes and provisions of this title and the Indian Self-Determination Act (Public Law 93–638, 25 U.S.C. 450 et seq.).

SEC. 806. PROJECT REQUIREMENTS.

(a) PLANS.—

(1) PROJECT PLAN.—Not later than 60 days after the date on which funds are made available for this purpose, the Secretary shall prepare a recommended project plan, which shall include a general map showing the location of the proposed facilities and general engineering drawings of structures, and general standards for design for the Rural Water Supply Project.

(2) CONSTRUCTION MANAGER.—The Secretary shall have the authority to direct the construction manager to work with the Tribe in establishing rates and fees to be charged to customers of the Rural Water Supply Project.

(b) CONSTRUCTION MANAGER.—The Secretary shall require such technical assistance as may be necessary to the Tribe to plan, design, and construct the Rural Water Supply Project.

(c) MEMORANDUM OF AGREEMENT.—The Secretary shall enter into a memorandum of agreement with the Tribe that commits Reclamation to the operations and maintenance of the Rural Water Supply Project while the facilities are under construction and after completion of the project.

(d) OVERSIGHT.—The Secretary shall have oversight responsibility with the Tribe and its constructing entity and shall incorporate value engineering analysis as appropriate to the provisions of the Federal Highway Act (49 U.S.C. 3311 et seq.) for the Rural Water Supply Project.

(e) TECHNICAL ASSISTANCE.—The Secretary shall provide such technical assistance as may be necessary to the Tribe to plan, design, and construct the Rural Water Supply Project, including, but not limited to, operation and maintenance training.

(f) SERVICE AREA.—The service area of the Rural Water Supply Project shall be within the boundaries of the Reservation.

(g) REPORT.—During the year that construction of the Rural Water Supply Project begins and annually until such construction is completed, the Secretary, through Reclamation and in consultation with the Tribe, shall report to Congress on the status of the planning and construction of the Rural Water Supply Project.

TITLe IX—ROCKY BOY'S NORTH CENTRAL MONTANA REGIONAL WATER SYSTEM

SEC. 901. SHORT TITLE.

This title may be cited as the "Rocky Boy’s North Central Montana Regional Water System Act of 2002".

SEC. 902. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the water systems serving residents of the Rocky Boy’s Reservation in the State of Montana—

(A) do not meet minimum health and safety standards;

(B) pose a threat to public health and safety; and

(C) are inadequate to supply the water needs of the Chippewa Creek Tribe;

(2) the United States has a responsibility to ensure that adequate and safe water supplies are available to meet the environmental, water supply, and public health needs of the Reservation;

(3) the entities administering the rural and on-Reservation water supplies in North Central Montana are having difficulty complying with regulations promulgated under the Safe Drinking Water Act (42 U.S.C. 300f et seq.); and

(4) the study, defined in section 902(k), identifies Lake Elwell, near Chester, Montana, as an available, reliable, and safe rural and on-Reservation water supply for the needs of the Reservation and North Central Montana.

(b) PURPOSES.—The purposes of this title are—

(1) to ensure a safe and adequate rural, municipal, and industrial water supply for the residents of the Rocky Boy’s Reservation in the State of Montana;

(2) to assist the citizens residing in Rocky Boy’s, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties, Montana, but outside the Reservation, in developing safe and adequate rural, municipal, and industrial water supplies;

(A) to authorize the Secretary of the Interior to—

(i) through the Commissioner of Reclamation to plan, design, and construct the Rocky Boy’s North Central Montana Regional Water System in the State of Montana; and

(ii) through the Secretary of the Interior to authorize and operate, maintain, and fund the core system and the on-Reservation water distribution systems, including service connections to communities and individuals; and

(B) to authorize the Secretary, at the request of the Chippewa Creek Tribe, to enter into self-governance agreements with the Tribe under title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aa et seq.), under which the Tribe—

(i) through the Bureau of Reclamation, will plan, design, and construct the core system of the Rocky Boy’s North Central Montana Regional Water System and

(ii) through the Bureau of Indian Affairs, will operate, maintain, and fund the non-core system (including service connections to communities and individuals) of the core system and the on-Reservation water distribution systems.

SEC. 903. DEFINITIONS.

In this title:

(a) AUTHORITY.—The term "Authority" means the North Central Montana Regional Water Authority established under State law, Mont. Code Ann. Sec. 75–6–301, et seq. (2000), to allow public agencies to join together to secure and provide water for resale.

(b) CORE SYSTEM.—The term "core system" means a component of the water system as described in section 904(d) and the final engineering report.

(c) FINAL ENGINEERING REPORT.—The term "final engineering report" means the final engineering report prepared for the Rocky Boy’s North Central Montana Regional Water System, as approved by the Secretary of the Interior.

(d) FUND.—The term "fund" means the Chippewa Creek Water System Operating, Maintenance, and Replacement Trust Fund.

(e) ON-RESERVATION WATER DISTRIBUTION SYSTEMS.—The term "on-reservation water distribution systems" means that portion of the Rocky Boy’s North Central Montana Regional Water System served by the core system and within the boundaries of the Rocky Boy’s Reservation.

(f) RESERVATION.—The term "Reservation" means the Rocky Boy’s Reservation in the State of Montana.

(g) UNITED STATES.—The term "United States" includes all land and interests in land that are held in trust by the United States for the Tribe at the time of the enactment of this title.
SEC. 904. ROCKY BOY'S RURAL WATER SYSTEM.

(a) Final Engineering Report.—The following reports will serve as the basis for the final engineering report for the Rocky Boy's North Central Montana Regional Water System—

(1) pursuant to Public Law 104-204, a study, described in section 903(k), that was conducted to assess the water and related resources in North Central Montana and to evaluate alternatives for providing a municipal, rural and industrial supply of water to the citizens residing in Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties, Montana, residing both on and off the Reservation; and

(2) pursuant to section 202 of Public Law 106-163, the Tribe has conducted, through a self-governance agreements with the Secretary of Interior, acting through the Bureau of Reclamation, a feasibility study to evaluate alternatives for providing a municipal, rural and industrial supply of water to the Reservation.

(b) Core System.—

(1) The Secretary of Interior may require, through the agreements described in subsection (g) and section 905(d), that the final engineering report include appropriate additional studies and analyses.

(2) Core System.—

(A) Core System. —The Federal share of the Tribe's share of costs in the Agreement shall include the components of the final engineering report, the components of the core system shall be defined in section 914; and

(B) Core System. —The cost of operation, maintenance, and replacement of the core system shall be deemed as a core system and an on-reservation water distribution system.

(c) Agreements. —Federal funds made available to carry out this subsection may be obligated and expended only in accordance with the Agreements entered into under subsection (g).

(d) Components. —As described in the final engineering report, the on-reservation water distribution systems shall consist of—

(1) water systems in existence on the date of enactment of this title that may be purused, improved, and repaired in accordance with the Agreements entered into under subsection (g);

(2) water systems owned by individual members of the Tribe and other residents on the Reservation;

(3) any water distribution system that is upgraded to current standards, disconnected from low-quality wells; and

(4) the cost of operation, maintenance, and replacement of the on-reservation water distribution systems.

(e) Agreement. —Federal funds made available to carry out subsection (b), (c), and (d) may be obligated and expended only in accordance with the Agreements entered into under subsection (g).

(f) Construction of New Facilities, or Expansion or Rehabilitation of Current Facilities. —The Tribe shall use $10,000,000 of the $15,000,000 appropriated pursuant to the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Public Law 106-163), plus accrued interest, in the purchase, construction, expansion, or rehabilitation of the on-reservation water distribution systems.

(g) Agreements. —Federal funds made available to carry out subsections (b), (c), and (d) may be obligated and expended only in accordance with the Agreements entered into under this subsection.

(h) Service Area. —The service area of the Rocky Boy's Rural Water System shall be the core system and the Reservation.

(i) Title to Core System. —Title to the core system—

(1) shall be held in trust by the United States for the Tribe; and

(2) may not be transferred unless a transfer is authorized by the Secretary of Interior.

SEC. 905. NONCORE SYSTEM.

(a) In General.—The Secretary is authorized to enter into Cooperative Agreements with the Authority to provide Federal funds for the planning, design, and construction of the noncore system in Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties, Montana, outside the Reservation.

(b) Federal Share.—

(1) Planning, Design, and Construction. —The Tribal share of the cost of planning, design, and construction of the noncore system shall be 80 percent and will be funded through annual appropriations to the Bureau of Reclamation.

(2) Operation, Maintenance, and Replacement of Noncore System Components. —The cost of operation, maintenance, and replacement associated with water deliveries to the noncore system shall not be a Federal responsibility and shall be borne by the Authority.

(c) Cooperative Agreements. —Federal funds made available to carry out this section may be obligated and expended only in accordance with the Cooperative Agreements entered into under subsection (d).

(d) Components. —As described in the final engineering report, the components of the noncore system on which Federal funds may be obligated and expended under this section shall include—

(1) storage, pumping, and pipeline facilities;

(2) appurtenant buildings, maintenance equipment, and access roads;

(3) appurtenant buildings, maintenance equipment, and access roads;

(4) all property and property rights necessary for the facilities described in this subsection;

(5) interconnection facilities at the core pipeline to the noncore system; and

(6) electrical power transmission and distribution facilities necessary for services to core system facilities.

(e) Authority to Acquire Property. —Wherever the provisions of this title for construction of the core system, it becomes necessary to acquire any rights or property, the Authority, acting pursuant to State law, Mont. Code Ann. Sec. 75-6-313 (2001), is hereby authorized to acquire the same by condemnation under judicial process, and to pay such sums which may be needed for such purpose. Nothing in this section shall apply to land held in trust by the United States.

(f) Reservation Water Distribution Systems—

(1) In General. —The Secretary is authorized to operate, maintain, and replace the water distribution systems of the Reservation—

(2) Operation, Maintenance, and Replacement. —The cost of operation, maintenance, and replacement of reservation water distribution systems shall be allocated as follows:

(A) Up to 100 percent of the Tribe's share of the cost of planning, design, and construction of the core system, it becomes necessary to acquire any rights or property, the Authority, acting pursuant to State law, Mont. Code Ann. Sec. 75-6-313 (2001), is hereby authorized to acquire the same by condemnation under judicial process, and to pay such sums which may be needed for such purpose. Nothing in this section shall apply to land held in trust by the United States.

(g) Replacement Trust Fund established in section 913 and

(3) Agreements. —Federal funds made available to carry out this subsection may be obligated and expended only in accordance with the Agreements entered into under subsection (g).

(h) Components. —As described in the final engineering report, the on-reservation water distribution systems shall consist of—

(1) water systems in existence on the date of enactment of this title that may be purused, improved, and repaired in accordance with the Agreements entered into under subsection (g);

(2) water systems owned by individual members of the Tribe and other residents on the Reservation;

(3) any water distribution system that is upgraded to current standards, disconnected from low-quality wells; and

(4) the cost of operation, maintenance, and replacement of the on-reservation water distribution systems.

(i) Agreement. —Federal funds made available to carry out subsections (b), (c), and (d) may be obligated and expended only in accordance with the Agreements entered into under this subsection.

(j) Title to System. —Title to the noncore system—

(1) shall be held in trust by the United States for the Tribe; and

(2) may not be transferred unless a transfer is authorized by an Act of Congress enacted after the date of enactment of this title.

(k) Technical Assistance. —The Secretary is authorized to provide such technical assistance as is necessary to enable the Tribe to—

(1) plan, design, and construct the core system, including management training. Such technical assistance shall be deemed as a core system project construction cost, and

(2) operate, maintain, and replace the core system and the on-reservation water distribution systems. Such technical assistance shall be deemed as a core system and an on-reservation water distribution systems operation, maintenance, and replacement cost, as appropriate.

SEC. 906. RURAL WATER SYSTEM.

(a) In General.—The Secretary is authorized to enter into Cooperative Agreements with the Authority to provide Federal funds for the planning, design, and construction of the noncore system in Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties, Montana, outside the Reservation.

(b) Federal Share.—

(1) Planning, Design, and Construction. —The Federal share of the cost of planning, design, and construction of the noncore system shall be 80 percent and will be funded through annual appropriations to the Bureau of Reclamation.

(2) Operation, Maintenance, and Replacement of Noncore System Components. —The cost of operation, maintenance, and replacement associated with water deliveries to the noncore system shall not be a Federal responsibility and shall be borne by the Authority.

(c) Cooperative Agreements. —Federal funds made available to carry out this section shall not be transferred unless a transfer is authorized by the Cooperative Agreements entered into under subsection (d).

(d) Components. —As described in the final engineering report, the components of the noncore system on which Federal funds may be obligated and expended under this section shall include—

(1) storage, pumping, and pipeline facilities;

(2) appurtenant buildings, maintenance equipment, and access roads;

(3) all property and property rights necessary for the facilities described in this subsection;

(4) all property and property rights necessary for the facilities described in this subsection;

(5) electrical power transmission and distribution facilities necessary for service to noncore system facilities; and

(5) electrical power transmission and distribution facilities necessary for service to noncore system facilities; and

(6) other facilities and services customary to the development of a rural water distribution system in the State.

(d) Cooperative Agreements. —

(1) In General.—The Secretary is authorized to enter into Cooperative Agreements with the Authority to provide Federal funds and necessary assistance for the planning, design, and construction of the noncore system.

(2) Operating, Maintenance, and Replacement of Noncore System Components. —The cost of operation, maintenance, and replacement associated with water deliveries to the noncore system shall be 80 percent and will be funded through annual appropriations to the Bureau of Reclamation.

(3) Cooperative Agreements. —Federal funds made available to carry out this section shall not be transferred unless a transfer is authorized by the Cooperative Agreements entered into under subsection (d).

(4) Components. —As described in the final engineering report, the components of the noncore system on which Federal funds may be obligated and expended under this section shall include—

(1) storage, pumping, and pipeline facilities;
Tribe addressing the allocation of operation, maintenance and replacement costs for the core system and action that can be undertaken to keep those costs within reasonable levels.

(2) MANDATORY PROVISIONS.—The Cooperative Agreements under paragraph (1) shall specify, in a manner that is acceptable to the Secretary and the Authority:

(A) the responsibilities of each party to the agreements for—

(i) the final engineering report;

(ii) engineering and design;

(iii) construction;

(iv) water conservation measures;

(v) environmental and cultural resource compliance and permitting;

(vi) administration of contracts relating to performance of the activities described in clauses (i) through (v);

(B) the procedures and requirements for approval and acceptance of the design and construction and for carrying out other activities described in subparagraph (A); and

(C) the rights, responsibilities, and liabilities of each party to the agreements.

(3) PROJECT OVERSIGHT ADMINISTRATION.—The amount of Federal funds that may be used for technical assistance and to conduct the necessary construction oversight, inspection, and administration of activities in paragraph (1) shall be negotiated with the Authority, and shall be an allowable project cost.

(e) SERVICE AREA.—

(1) IN GENERAL.—Except as provided in paragraph (2), the service area of the noncore system shall be generally defined as the area—

(A) north of the Missouri River and Butte, Montana;

(B) south of the border between the United States and Canada;

(C) west of Havre, Montana—

(D) of Cut Bank Creek in Glacier County, Montana; and

(E) as further defined in the final engineering report, referenced in section 904(a).

(2) EXCLUSIONS FROM SERVICE AREA.—The service area of the noncore system shall not include the area inside the Reservation.

(f) LIMITATION ON USE OF FEDERAL FUNDS.—The costs of operations, maintenance, and replacement expenses for the noncore system—

(1) shall not be a Federal responsibility;

(2) shall be borne by the Authority; and

(3) may not obligate or expend any Federal funds for the O&M of the non-core system.

(g) TITLE TO NONCORE SYSTEM.—Title to the noncore system shall be held by the Authority.

(h) AUTHORITY TO ACQUIRE PROPERTY.—Where, in carrying out the provisions of this title for construction of the noncore system, it becomes necessary to acquire any rights or property, the Authority, acting pursuant to State law, Mont. Code Ann. Sec. 75–4–313 (2001), is authorized to acquire the same by condemnation under judicial process, and to pay such sums which may be needed for that purpose. Nothing in this section shall apply to land held in trust by the United States.

SEC. 906. LIMITATION ON AVAILABILITY OF CONSTRUCTION FUNDS.

The Secretary shall not obligate funds for construction of the core system or the noncore system until—

(1) the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) are met with respect to the core system and the noncore system;

(2) the date that is 90 days after the date of submission of the final engineering report approved and transmitted by the Secretary; and

(3) the Secretary publishes a written finding that the water conservation plan developed under section 911(a) includes prudent and reasonable water conservation measures for the core system and noncore system that have been shown to be economically and financially feasible.

SEC. 907. COOPERATION CHARGES.

The cost of connection of nontribal community water distribution systems and individual service systems to transmission lines of the core system and noncore system shall be the responsibility of the entities receiving water from the transmission lines.

SEC. 908. AUTHORIZATION OF CONTRACTS.

The Secretary to enter into contracts with the Authority for water from Lake Elwell providing for the repayment of its respective share of the construction, operation, maintenance and replacement costs of Tiber Dam and reservoir, as determined by the Secretary, in accordance with Federal Reclamation Law (Act of June 17, 1922, 32 Stat. 388, and acts amendatory thereof and supplemental thereto).

SEC. 909. TIBER RESERVOIR ALLOCATION TO THE TRIBE.

(a) NO DEPARTMENT OF STORAGE.—In providing for the delivery of water to the noncore system, the Secretary shall diminish the 10,000 acre-feet per year of water stored for the Tribe pursuant to section 201 of the Chippewa Cree Tribe of The Rocky Boy’s Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Public Law 106–163) in Lake Elwell, Lower Marias Unit, Upper Missouri Division, Pick–Sloan Missouri Basin Program, Montana.

(b) SALE OR PURCHASE OF ADDITIONAL WATER.—In providing for delivery of water to Rocky Boy’s Indian Reservation for the purposes of this title, the Tribe shall have the ability to purchase acre-feet per year of water stored for the Tribe pursuant to section 201 of the Chippewa Cree Tribe of The Rocky Boy’s Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Public Law 106–163) in Lake Elwell, Lower Marias Unit, Upper Missouri Division, Pick–Sloan Missouri Basin Program, Montana.

(c) MANAGEMENT OF THE FUND.—The Secretary of the Interior, in cooperation with the Secretary of Energy, is authorized to make Pick–Sloan Missouri Basin Program preference power available, for the purposes of this title. Power shall be made available when pumps are energized and upon completion of the Project.

SEC. 911. WATER CONSERVATION PLAN.

(a) IN GENERAL.—The Tribe and the Secretary shall develop and incorporate into the final engineering report a water conservation plan that contains—

(1) a description of water conservation objectives;

(2) a description of appropriate water conservation measures; and

(3) a time schedule for implementing the water conservation measures to meet the water conservation objectives.

(b) PURPOSE OF WATER CONSERVATION PLAN UNDER SUBSECTION (A) OF THIS SECTION.—The water conservation plan under subsection (a) shall be designed to ensure that users of water from the core system, on-reservation water distribution systems, and the noncore system will use the best practicable technology and management techniques to conserve water.

(c) COORDINATION OF PROGRAMS.—Section 218(a) of the Missouri Basin Program Reclamation Act of 1982 (43 U.S.C. 390(j)(a) and (c)) shall apply to activities under Section 911 of this title.

SEC. 912. WATER RIGHTS.

This title does not—

(1) impair the validity of or preempt any provision of State water law or any interstate compact governing water law or interstate compact concerning water quality or disposal;

(2) alter the right of any State to any appropriated share of the water of any stream or to any ground water, whether determined as of past or future priority or by any past or future legislative or final judicial allocation;

(3) preempt or modify any Federal or State water law or interstate compact concerning water resource or disposal;

(4) confer on any non-Federal entity the authority to exercise any Federal right to appropriate any stream or to any ground water resource; or

(5) affect any right of the Tribe to water, located within or outside the external boundaries of the Reservation, based on a treaty, compact, Executive Order, Agreements, Act of Congress, aboriginal title, the decision in Winters v. United States, 207 U.S. 564 (1908) (commonly known as the “Winters Doctrine”), or other law.

SEC. 913. CHIEPPWA CREE WATERP SYSTEM OPERATION, MAINTENANCE, AND REPLACEMENT TRUST FUND.

(a) ESTABLISHMENT OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the “Chippewa Creek Water System Operation, Maintenance, and Replacement Trust Fund”, to be managed and invested by the Secretary.

(b) CONTENTS OF FUND.—The Fund shall consist of—

(1) the amount of $15,000,000 as the Federal share, as authorized to be appropriated in section 914(c);

(2) the Tribe shall deposit into the Fund $50,000,000 of the $15,000,000 appropriated pursuant to the Chippewa Creek Tribe of the Rocky Boy’s Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Public Law 106–163); and

(3) such interest as may accrue, until expended according to subsections (d) and (f), Management of the Fund.—The Secretary shall manage the Fund, make investments from the Fund, and make monies available from the Fund for distribution to the Tribe, subject to the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.) (referred to in this section as the “Trust Fund Reform Act”), and this title.

(d) USE OF FUND.—The Tribe shall use accrued interest, only, from the Fund for operation, maintenance, and replacement of the core system and the on-reservation distribution, only, pursuant to an operation, maintenance and replacement plan approved by the Secretary.

(e) INVESTMENT OF FUND.—The Secretary shall, after consulting with the Tribe on the investment of the Fund, invest amounts in the Fund according to—

(1) the Act of April 1, 1880 (21 Stat. 70, chapter 41; 25 U.S.C. 161);

(2) the first section of the Act of February 12, 1929 (25 U.S.C. 161a); and

(3) the first section of the Act of June 24, 1938 (25 U.S.C. 162a); and

(4) subsection (b), (1) EXPENDITURES AND WITHDRAWAL.—

(A) TRIBAL MANAGEMENT PLAN.—

(B) REQUIREMENTS.—In addition to the requirements under the Trust Fund Reform Act, the tribal management plan shall require that the Tribe spend any funds only in
according to the purposes described in subsections 913(d) and (f).

(2) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce any provisions of any tribal management plan to ensure that any monies withdrawn from the Fund under the plan are used in accordance with this title.

(3) DEDICATION.—The Tribe exercises the right to withdraw monies from the Fund pursuant to the Trust Fund Reform Act, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the monies withdrawn.

(4) OPERATION, MAINTENANCE, AND REPLACEMENT FUND.—Funds made available to the Tribe will be used in the manner in which, and the purposes for which, funds made available to it under this section will be used.

(5) AVAILABILITY.—Funds made available from the Fund under this section shall be available without fiscal year limitation.

(6) ANNUAL REPORT.—The Tribe shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

SEC. 912. AUTHORIZATION OF APPROPRIATIONS.

(a) Core System.—There is authorized to be appropriated $129,280,000 to the Bureau of Reclamation for the planning, design, and construction of the core system. The Tribal portion of the costs shall be 76 percent. The Authority’s portion of the costs shall be 24 percent.

(b) On-Reservation Water Distribution Systems.—The Tribe shall use $10,000,000 of the $15,000,000 appropriated pursuant to the Chipewa Cree Water System of the Rocky Boy’s Reserve for construction of water rights settlement and Water Supply Enhancement Act of 1999 (Public Law 106-163), plus accrued interest, in the purchase, construction, expansion, or rehabilitation of the on-reservation water distribution systems.

(c) CHIPPEWA CREE WATER SYSTEM OPERATING, MAINTENANCE, AND REPLACEMENT TRUST FUND.—For the Federal contribution to the Fund, established in section 913, there is authorized to be appropriated to the Bureau of Reclamation for the planning, design, and construction of the noncore system.

(d) COST INDEXING.—The amounts authorized to be appropriated under this section may be increased or decreased by such amounts as are justified by reason of ordinary fluctuations in development costs incurred after the date of enactment of this title, as indicated by employment cost indices applicable for the type of construction involved.

TITLE X—MISCELLANEOUS

SEC. 1001. SANTEE SIOUX TRIBE, NEBRASKA, WATER SYSTEM STUDY.

(a) STUDY.—There is authorized to be appropriated such sums as may be necessary to study the feasibility of developing a safe and adequate municipal, rural, and industrial water treatment and distribution system for the Santee Sioux Tribe of Nebraska. The Tribe shall serve the tribal community and adjacent communities and incorporate population growth and economic development activities for a period of 40 years.

(b) COOPERATIVE AGREEMENT.—At the request of the Tribe, the Secretary shall enter into a cooperative agreement with the Tribe for the purposes of the study required by subsection (a) regarding which the Tribe has unique expertise or knowledge.

(c) REPORT.—Not later than 1 year after funds are made available to carry out this section, the Secretary shall transmit to Congress a report containing the results of the study required by subsection (a).

SEC. 1002. YUROK TRIBE AND HOPLAND BAND INCLUSION IN LONG TERM LEASING.

(a) IN GENERAL.—The first section of the Act entitled “An Act to authorize the leasing of reserved Indian lands for public, religious, educational, recreational, business, and other purposes requiring the expenditure or investment of the monies in accordance with this title.

(b) Cooperating Authority.—(1) A VAILABILITY.—Funds made available to the Tribe will be used in the manner in which, and the purposes for which, funds made available to it under this section will be used.

(2) APPLICA TION.—There is authorized to be appropriated $500,000 to carry out this section.

SEC. 1003. BIG SUR WILDERNESS AND CONSERVATION ACT OF 2002

Mr. HANSEN (during the reading). Mr. Speaker, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The amendment in the nature of a substitute was agreed to.

Mr. HANSEN. The amendment made by subsection (a) shall apply to any lease entered into or renewed after the date of enactment of this title.


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

SECTION 1. SHORT TITLE AND DEFINITIONS.

(a) Short Title.—This Act may be cited as the “Big Sur Wilderness and Conservation Act of 2002.”

(b) Definitions.—As used in this Act, the term “Secretary” means the Secretary of the Interior or the Secretary of Agriculture, as appropriate.

SEC. 2. ADDITIONS TO THE WILDERNESS PRESERVATION SYSTEM.

(a) Additions to Ventana Wilderness.—

(1) In General.—The areas described in paragraph (2) are hereby designated as components of the National Wilderness Preservation System;

(2) AREAS DESCRIBED.—The areas referred to in paragraph (1) are the following lands in the State of California administered by the Bureau of Land Management or the United States Forest Service:

(A) Certain lands which comprise approximately 995 acres, as generally depicted on a map entitled “Anastasia Canyon Proposed Wilderness Additions to the Ventana Wilderness” and dated March 22, 2002.

(B) Certain lands which comprise approximately 3,530 acres, as generally depicted on a map entitled “Arroyo Seco Corridor Proposed Wilderness Addition to the Ventana Wilderness” and dated March 22, 2002.

(C) Certain lands which comprise approximately 14,550 acres, as generally depicted on a map entitled “Bears Canyon Proposed Wilderness Addition to the Ventana Wilderness” and dated March 22, 2002.

(D) Certain lands which comprise approximately 855 acres, as generally depicted on a map entitled “Black Rock Proposed Wilderness Additions to the Ventana Wilderness” and dated March 22, 2002.

(E) Certain lands which comprise approximately 6,550 acres, as generally depicted on a map entitled “Horse Canyon Proposed Wilderness Addition to the Ventana Wilderness” and dated March 22, 2002.

(F) Certain lands which comprise approximately 1,346 acres, as generally depicted on a map entitled “Chews Ridge Proposed Wilderness Addition to the Ventana Wilderness” and dated March 22, 2002.

(G) Certain lands which comprise approximately 2,130 acres, as generally depicted on a map entitled “Coast Ridge Proposed Wilderness Additions to the Ventana Wilderness” and dated March 22, 2002.

(H) Certain lands which comprise approximately 2,270 acres, as generally depicted on a map entitled “Horse Canyon Proposed Wilderness Addition to the Ventana Wilderness” and dated March 22, 2002.

(I) Certain lands which comprise approximately 755 acres, as generally depicted on a map entitled “Little Sur Proposed Wilderness Addition to the Ventana Wilderness” and dated March 22, 2002.

(J) Certain lands which comprise approximately 990 acres, as generally depicted on a map entitled “San Antonio Proposed Wilderness Addition to the Ventana Wilderness” and dated March 22, 2002.

(b) Additions to Silver Peak Wilderness.—

(1) In General.—The areas described in paragraph (2) are hereby designated as components of the National Wilderness Preservation System.

(2) AREAS DESCRIBED.—The areas referred to in paragraph (1) are the following lands in the State of California administered by the Bureau of Land Management or the United States Forest Service:
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(A) Certain lands which comprise approximately 8,820 acres, as generally depicted on a map entitled “San Carpoforo Proposed Wilderness Addition to the Silver Peak Wilderness” and dated March 22, 2002.

(B) Certain lands which comprise approximately 8,820 acres, as generally depicted on a map entitled “Willow Creek Proposed Wilderness Addition to the Silver Peak Wilderness” and dated March 22, 2002.

(c) ADDITIONS TO PINNACLES WILDERNESS.—(1) IN GENERAL.—The areas described in paragraph (1) are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System; and

(2) AREAS DESCRIBED.—The areas referred to in paragraph (1) are the lands in the State of California administered by the National Park Service which comprise approximately 2,715 acres, as generally depicted on a map entitled “Pinnacles Proposed Wilderness Additions” and dated October 30, 2001.

(d) MAPS AND DESCRIPTIONS.—(1) FILING.—As soon as practicable after the date on which this Act is enacted, the appropriate Secretary shall file a map and a boundary description of each area designated as wilderness by this Act with the Committee on Appropriations of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(2) EFFECT.—Each map and description shall have the same force and effect as if included in this Act, except that the appropriate Secretary is authorized to correct clerical and typographical errors in such boundaries and maps.

(3) AVAILABILITY.—Such maps and boundary descriptions shall be on file and available for public inspection in the Office of the Director of the Land Management and in the Office of the Chief of the Forest Service, as appropriate.

(e) STATE AND PRIVATE LANDS.—Lands within the exterior boundaries of any area added to a wilderness area under this section that are owned by the State or by a private entity shall be included within such wilderness area as is determined by the United States. Such lands may be acquired by the United States only as provided in the Wilderness Act of 1964 (16 U.S.C. 1133 and following).

SEC. 3. ADMINISTRATIVE PROVISIONS.

(a) IN GENERAL.—Subject to valid existing rights, lands designated as wilderness by this Act shall be managed by the Secretary of Agriculture or the Secretary of the Interior, as appropriate, in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act, except that, with respect to any wilderness areas designated by this Act, any reference in the Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

(b) GRAZING.—Grazing of livestock in wilderness areas designated by this Act shall be managed by the Secretary of Agriculture or the Secretary of the Interior, as appropriate, in accordance with the Wilderness Act (16 U.S.C. 1133(d)(4)), as further interpreted by section 108 of Public Law 96-560, and the guidelines set forth in Appendix A of House Report 101-365 of the 101st Congress.

(c) STATE JURISDICTION.—As provided in section 4(d)(7) of the Wilderness Act (16 U.S.C. 1133(d)(7)), nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State of California with respect to wildlife and fish in California.

(d) WATER.—(1) AUTHORIZATION OF WATER.—With respect to each wilderness area designated by this Act, Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this Act. The priority date of such reserved rights shall be the date of enactment of this Act.

(2) REQUIREMENT TO PROTECT RIGHTS.—The appropriate Secretary and all other officers of the United States shall take steps necessary to protect the rights reserved by paragraph (1). The Secretary shall, in filing the Secretary of a claim for the quantification of such rights in any present or future appropriate stream adjudication in the courts of the State of California in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment Act of 1956 (28 U.S.C. 1341), or the adjoining states, the rights reserved by this Act are hereby incorporated in and shall be deemed to be a part of the Pinnacles Wilderness designated by Public Law 94-567.

(3) NO REDUCTION OR RELINQUISHMENT.—Nothing in this Act shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of California on or before the date of enactment of this Act.

(4) LIMITATION ON EFFECT.—The Federal government is hereby authorized to continue in wilderness the areas described in paragraph (1) are the lands in the State of California designated by this Act. Nothing in this Act related to reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto.

SEC. 4. WILDERNESS FIRE MANAGEMENT.

(a) REVISION OF MANAGEMENT PLANS.—The Secretary of Agriculture shall, by not later than 1 year after the date of the enactment of this Act, amend the management plans that apply to each of the Ventana Wilderness and the Silver Peak Wilderness, respectively, to authorize the Forest Supervisor of the Los Padres National Forest to take whatever appropriate actions in such wilderness areas are necessary to maintain the watershed protection consistent with wilderness values, including best management practices for fire suppression and fire suppression measures and techniques.

(b) INCORPORATION INTO FOREST PLANNING.—Any special provisions contained in the management plan for the Ventana Wilderness and Silver Peak Wilderness pursuant to subsection (a) shall be incorporated into the management plan for the Los Padres National Forest.

SEC. 5. MILITARY TRAINING AT FORT HUNTER LIGGETT.

(a) OVERVIEW.—Nothing in this Act shall preclude low level overflights of military aircraft, the designation of new units of special airpace, or the use or establishment of military flight routes in wilderness areas designated by this Act.

(b) MILITARY ACCESS.—Nonmotorized access to and use of the wilderness areas designated by this Act for military training shall be authorized to continue in wilderness areas designated by this Act in the same manner and degree as authorized prior to enactment of this Act.

SEC. 6. BIG SUR INVASIVE SPECIES ERADICATION.

(a) IN GENERAL.—The Secretary of Agriculture may conduct a 5-year pilot program to target the eradication of invasive plant and animal species in the Monterey District of the Los Padres National Forest.

(b) APPLICATION TO OTHER PROPERTY.—Activities under the program may include actions to address invasive species problems on nearby private land or other land that is not Forest Service property, if—

(1) the land owner, or the head of the governmental agency having administrative jurisdiction over the land in the case of State, local, or Federal government-owned land, seeks to participate in the program; and

(2) the invasion of invasive species occurs on the land and poses a threat to national forest lands.

(c) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section there is authorized to be appropriated $1,000,000 for each of 5 fiscal years.

SEC. 8. SILVER PEAK WILDERNESS WATER SYSTEM SPLIT.

The Secretary of Agriculture may authorize the construction and maintenance of a water line and corresponding spring box improvements adjacent to an existing domestic water service in the Silver Peak Wilderness.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HANSEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their re-election bills and include extraneous material on the bills and resolutions just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

Mr. WATKINS of Oklahoma asked and was given permission to speak out of order.

GRATITUDE AND THANKS

Mr. WATKINS of Oklahoma. Mr. Speaker, I would like to express my personal gratitude and thanks to the gentleman from Utah (Mr. HANSEN) for his tremendous years of service, 20 years, and for his great leadership on the Committee on Standards of Official Conduct as well as the Committee on Resources. I would like to also thank, and we would be remiss if we did not thank, the staff for the tremendous work they have done in trying to put things together so they would be workable and also so we could pass something.

So, I thank the chairman and thanks to all of the staff for all of their tremendous work and help. It has been wonderful being in this body. This is my last remarks as an official Member and I just want to thank all of my colleagues for allowing me to come and be with you and serve over these years.

(Mr. DAVIS of Virginia asked and was given permission to speak out of order.)

TRIBUTE TO MR. ARMEY

Mr. DAVIS of Virginia. Mr. Speaker, before we get to the majority leader being recognized, this is his final night on the job. I wanted to pay tribute to the gentleman from Texas (Mr. ARMEY) and his contribution to this House just in the short time I have been here.

First elected in 1984, an article in the Texas Observer called him one of the Texas 6-packs that year, 6 new Republican Members that had been elected and the consensus was these Members are never going to amount to anything,
if you read the article. But the gentleman from Texas (Mr. ARMSTRONG) has made a tremendous difference in this House, with the crowning achievement I think just this week with the Homeland Security legislation which he worked so hard to get to the floor between committees of jurisdiction, negotiating with the Senate, moving a bill that was considered dead just a week ago, bringing it to life, and bringing it to a very successful conclusion here in the House and over to the Senate.

Mr. Speaker, I congratulate the gentleman for this most important piece of legislation that I think is going to change the course of this Nation for a long time.

He has also been active in passing the Government Performance Results Act. This is an act that not every Member understands, but it tries to hold Federal agencies accountable for performance and results, and with this administration according to some of those results come in as we exercise legislative oversight over the executive branch.

We think of BRACs and the base closing commissions, something that this body has struggled with for a generation and could not work out because of the political wheeling and dealing it went through. This has saved billions of dollars in the defense budget. We have been able to transfer those dollars into other defense items and into domestic purposes, and this was Mr. ARMSTRONG’s idea, though not even on the committee of jurisdiction, that he brought forward to this body, because a good idea will win any day. You do not have to be strong and powerful and in a leadership position to get it through. This was done early in his career.

The Contract With America, something that I signed as a candidate in 1984, was the brainchild of Mr. ARMSTRONG, something that came through this body. Much of that legislation became law, everything from welfare reform, unfunded mandates and a number of areas balancing the budget, as a part of that Contract With America. DICK ARMSTRONG was the author of that and the leader of that as we moved it through the 104th Congress.

The gentleman from Texas (Mr. ARMSTRONG) is a native of Condo, North Dakota with a doctorate in economics. Many of us do not realize that he ran in and completed six marathons. I also want to congratulate him for just over the last few days losing over 40 pounds, getting down to that marathon weight again. Maybe perhaps we will see him do some others.

DICK, I wish you the best in your retirement. You have made a lasting contribution to this country. You have set a high standard for your success and Mr. Majority Leader, it has been my great privilege to serve with you.

Mr. NUSSLE. Mr. Speaker, will the gentleman yield?

Mr. DAVIS of Virginia. I yield to the gentleman from Iowa.

Mr. NUSSLE. Mr. Speaker, I would like to add my words as well to a brief tribute to our majority leader. We would not be a majority if it was not for DICK ARMSTRONG. There are many people who know that. Unfortunately, there are too many people who do not know that. His work and his labor oftentimes is done behind the scenes and oftentimes I think many people, many people are allowed to take the credit because of his work. I think it was Ronald Reagan that said that if you are willing to share the credit, you can get anything done in Washington, or something like that. He has always been willing to share the credit, to allow somebody to move up, to be elevated, to get their work done, to facilitate a dream on their behalf. His famous phrase or his motto has always been “Freedom works,” and it does work. America works because freedom works, and America is better off because of the freedom that DICK ARMSTRONG has come to fight for in the Congress of the United States.

This is a terrible way to end at 2:30 in the morning, because there were so many things done at 2:30 in the afternoon to be proud of, but you can be proud of all of the things that you have done from the moment you came here to the moment that you depart, and I think probably the one thing that I will always know is that you will always be there as a friend, not only to me, but to all of us. That is what I will know the most and that is what I will remember the most. It is your friendship and the pat on the back and sometimes the kick in the drawers, and we all need that from time to time. That is what friends are for. I hope that friendship will continue with all of us.

We wish you Gods speed and we also wish Susan and your family Gods speed, because we know there are great things ahead, because freedom does work and you will ensure that freedom continues to work in America, no matter what ventures you undertake. So Godspeed, friend. Thank you for much for your service. We love you.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF TIME FOR FEDERAL ENERGY REGULATORY COMMISSION PROJECT.

(a) In General.—Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that otherwise apply to the Federal Energy Regulatory Commission project number 11509, the Commission shall, at the request of the licensee for the project, and after reasonable notice, extend the time period during which the licensee is required to commence the construction of the project described in subsection (a) shall take effective as of the date of such expiration authorized under subsection (a) shall take effect on the date of such expiration.

(b) Effective Date.—Subsection (a) takes effect on the date of the expiration of the extension issued by the Commission under section 13 of the Federal Power Act (16 U.S.C. 806) for Federal Energy Regulatory Commission project number 11509.

SEC. 2. SELECTION CRITERIA.

This Act may be cited as the “Mental Health Parity Reauthorization Act of 2002.”

SEC. 3. EXTENSION OF MENTAL HEALTH PROVIDER TIME.


(b) PHSA.—Section 2706(f) of the Public Health Service Act (42 U.S.C. 300gg-5(f)) is amended by striking “December 31, 2002” and inserting “December 31, 2003.”

Mr. BOEHNER. Mr. Speaker, in 1996, Congress enacted the Mental Health Parity Act to prevent employers and health insurers from establishing annual and lifetime limits on mental health insurance coverage unless similar limits were also applied to medical and surgical health coverage. These mental health parity benefits offered through the Employee Retirement Income Security Act (ERISA) were set to expire on December 31, 2002.

Today the House will take an important step to extend mental health parity benefits for another year. Over the past six years, the parity law has made significant improvements in mental health coverage. It did so by striking a good balance—providing important mental health benefits to patients without placing unacceptable mandates on employers.

I committed last year to give the issue of mental health parity serious and substantial consideration at the Committee on Education and the Workforce. As part of that commitment, the Subcommittee on Employer-Employee Relations held the first House hearing on the issue of mental health parity on March 13, 2002. At this hearing, the Subcommittee heard testimony from both mental health advocates and employers concerning current federal mental health parity law, state laws that impact the issue, and the implications of expanding mental health parity for other employers and employees.

The Committee will continue to examine the issue of mental health parity in a balanced manner that doesn’t jeopardize workers’ existing health care benefits of discourage employers from voluntarily providing quality benefits to their employees. It is important to remember that the number of uninsured Americans increased to 41.2 million last year, and health insurance costs are expected to rise by 15 percent this year. I urge you to carefully consider the implications of any new or expanded federal regulations before enacting proposals that increase health care costs and force more Americans to lose their health insurance.

However, today’s vote on H.R. 5716 is a vote to preserve the mental health benefits that workers currently enjoy. I hope you will join me in support of this bill.
DISCHARGED FROM THE COMMITTEE ON
FINANCIAL SERVICES AND PASSED
SEC. 2399, to amend the National Housing Act to simplify the downpayment requirements for FHA mortgage insurance for single family homebuyers.

S. 2399

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 “FHA Downpayment Simplification Act of 2002.”

SEC. 2. DOWNPAYMENT SIMPLIFICATION. Section 203 of the National Housing Act (12 U.S.C. 1710f) is amended—

(1) in subsection (b)—

(A) by striking “shall—” and inserting “shall comply with the following;”;

(B) by striking paragraph (ii) and inserting in lieu thereof:

(i) the matter that precedes clause (ii), by moving the margin 2 ems to the right;

(ii) in subparagraph (A), in the matter that precedes clause (ii), by moving the margin 2 ems to the right;

(iii) in subparagraph (B), after the period at the end of the first sentence of the undesignated paragraph that immediately follows subparagraph (B)(iii), inserting the following:

“(1) by striking the second and third sentence of such matter;”;

(II) by striking the seventh sentence (relating to principal obligation) and all that follows through the end of the ninth sentence of such matter; and

(III) by striking the eleventh sentence (relating to disclosure notice) and all that follows through the end of the last undesignated paragraph (relating to disclosure notice requirements); and

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

“(B) in the case of—

(i) a mortgage for a property with an appraised value in excess of $125,000, 97.65 percent of the appraised value of the property;

(ii) a mortgage for a property with an appraised value in excess of $50,000, 97.65 percent of the appraised value of the property;

(iii) a mortgage for a property with an appraised value in excess of $50,000 that is located in an area of the State for which the average closing cost exceeds 2.10 percent of the average, for the State, of the sale price of properties located in the State for which mortgages have been executed, 97.65 percent of the appraised value of the property;”;

(C) by inserting in lieu of the first sentence of paragraph (10)(B) after the period at the end of the first sentence of the undesignated paragraph that immediately follows subparagraph (B)(iii) the following:

“and inserting the text of paragraph (10)(B) after the period at the end of the first sentence of the undesignated paragraph that immediately follows paragraph (10)(B) (relating to the definition of “area”);”;

(D) by striking paragraph (10); and

(E) by inserting after subsection (e), the following:

“(f) DISCLOSURE OF OTHER MORTGAGE PROD-

UTS.—

(1) IN GENERAL.—In conjunction with any loan insured under this section, an original lender shall provide to each prospective bor-

rower a disclosure notice that provides a 1-

page analysis of mortgage products offered by that lender and for which the borrower would qualify.

(2) NOTICE.—The notice required under paragraph (1) shall include—

(A) a generic analysis comparing the note rate (and associated interest payments), in-

surance premiums, and other costs and fees that would be due over the life of the loan for a loan insured by the Secretary under subsection (b) with the note rates, insurance premiums, and other costs and fees that would be expected to be due if the mortgagor obtained instead other mortgage products offered by the lender and for which the borrower qualifies, with similar loan-to-value ratio in connection with a convent-

ional mortgage (as that term is used in section 385(a)(2) of the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1454(a)(2)) or section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1731m(b)(2)), assuming prevailing interest rates; and

(B) a statement regarding when the re-

quirement of the mortgagor to pay the mort-

gage insurance premiums for a mortgage in-

sured under this section would terminate, or a statement that the requirement shall ter-

minate only if the mortgage is refinanced, paid off, or otherwise terminated.”

SEC. 3. CONFORMING AMENDMENTS. Section 245 of the National Housing Act (12 U.S.C. 1715e-10) is amended—

(1) in subsection (a), by striking “(A)” and inserting “(A)”; and

(2) by striking paragraph (B) and inserting the following:

“(B) notwithstanding subclauses (II) and (III), a mortgage for a property with an appraised value in excess of $125,000, 97.15 percent of the appraised value of the property; or

(III) by striking the eleventh sentence (relating to “for veterans.”).

SEC. 4. REPEAL OF GNMA GUARANTEE FEE INCREASE. Section 1500 of the Federal Mortgage Assistance Amendments of 1999 (Public Law 105-162) is hereby repealed.

SEC. 5. INDEXING OF FHA MULTIFAMILY HOUS-

ING LIMITS.

(a) The National Housing Act (12 U.S.C. 1701 et seq.) is amended by inserting after section 206 the following new section 206A (12 U.S.C. 1712A):

“§ 206A. INDEXING OF FHA MULTIFAMILY HOUSING LIMITS.

(1) The dollar amounts set forth in—

(I) section 207(c)(3)(A) (12 U.S.C. 1715l(d)(3)(ii));


(VI) section 207(c)(3)(A) (12 U.S.C. 1715l(d)(3)(A)); and

(VII) section 207(c)(3)(A) (collectively hereinafter referred to as the “Dollar Amounts”) shall be adjusted annually (commencing in 2004) on the effective date of the Federal Reserve Board’s adjustment of the Consumer Price Index for Urban Consumers (CPI-U) as applied to Federal Reserve Board for purposes of the above-described HOEPA adjustment.

(b) The Federal Reserve Board shall, on a timely basis shall notify the Sec-

retary, or his designee, in writing of the ad-

justment, in subsection (a) and of the effective date of such adjustment in order to permit the Secretary to undertake publication in the Federal Register of cor-

responding adjustments to the Dollar Amounts. The dollar amount of any adjust-

ment shall be rounded to the nearest lower dol-

lar.”

(c) TECHNICAL AND CONFORMING CHANGES.— (1) Section 207(c)(3) of the National Housing Act (12 U.S.C. 1715l(c)(3)) is amended—

(A) by inserting “(A)” after “(C)”; and

(B) by striking “and accept that the Sec-

retary” through and including “in this para-

graph and inserting in lieu thereof;”

(II) by striking paragraph (b) and inserting the following:

“(b) by inserting “(A)” following “(A)”; and

(C) by striking “and” and inserting in lieu thereof “or”;

(b) by striking “: Provided further, That” the first time that it occurs, through and in-

cluding “in this paragraph” and inserting in lieu thereof;”

(c) by striking paragraph (b) and inserting in lieu thereof “or”;

(b) by striking “: Provided further, That” the second time it occurs and inserting in lieu thereof;”

(d) by striking “: Provided further, That” and inserting in lieu thereof “: ”;

(c) by striking paragraph (b) and inserting in lieu thereof “or”;

(b) by striking “: Provided further, That” and inserting in lieu thereof “: ”;

(c) by striking paragraph (b) and inserting in lieu thereof “or”;

(b) by striking “: Provided further, That” and inserting in lieu thereof “: ”;

(c) by striking paragraph (b) and inserting in lieu thereof “or”;

(b) by striking “: Provided further, That” and inserting in lieu thereof “: ”;

(c) by striking paragraph (b) and inserting in lieu thereof “or”;

(b) by striking “: Provided further, That” and inserting in lieu thereof “: ”;

(c) by striking paragraph (b) and inserting in lieu thereof “or”;

(b) by striking “: Provided further, That” and inserting in lieu thereof “: ”;

(c) by striking paragraph (b) and inserting in lieu thereof “or”.

SEC. 6. DIRECT INDEXING OF FHA SINGLE FAMILY HOUSING LIMITS.

(a) The National Housing Act (12 U.S.C. 1715 et seq.) is amended by inserting after section 206 the following new section 206A (12 U.S.C. 1712A):
the Secretary may, by regulation, increase any of the dollar limitations in subsection (I) (as such limitations may have been adjusted in accordance with section 206A of this Act).

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the James R. Berry Post Office Building.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the Martha Berry Post Office.

DISCHARGED FROM THE COMMITTEE ON GOVERNMENT REFORM AND PASSED

H.R. 5609, to designate the facility of the United States Postal Service located at 500 East 1st Street in Rome, Georgia, as the "Martha Berry Post Office".

H.R. 5609

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

SECTION 1. MARTHA BERRY POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 500 East 1st Street in Rome, Georgia, shall be known and designated as the "Martha Berry Post Office".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the Martha Berry Post Office.

DISCHARGED FROM THE COMMITTEE ON GOVERNMENT REFORM AND PASSED

H.R. 628, to designate the facility of the United States Postal Service located at 1601–1 Main Street in Jackson- ville, Florida, as the "Arthur 'Pappy' Kennedy Post Office".

H.R. 628

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

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 490 South Orange Blossom Trail in Orlando, Florida, shall be known and designated as the "Arthur 'Pappy' Kennedy Post Office".

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Arthur 'Pappy' Kennedy Post Office referred to in section 1 shall be deemed to be a reference to the "Arthur 'Pappy' Kennedy Post Office".

DISCHARGED FROM THE COMMITTEE ON GOVERNMENT REFORM AND PASSED

H.R. 629, to designate the facility of the United States Postal Service located at 1601–1 Main Street in Jacksonville, Florida, as the "Eddie Mae Steward Post Office".

H.R. 629

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

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 1601–1 Main Street in Jacksonville, Florida, shall be known and designated as the "Eddie Mae Steward Post Office".

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the Eddie Mae Steward Post Office.

DISCHARGED FROM THE COMMITTEE ON GOVERNMENT REFORM AND PASSED

H.R. 3775, to designate the facility of the United States Postal Service located at 1502 East Kiest Boulevard in Dallas, Texas, as the "Dr. Caesar A.W. Clark, Sr. Post Office Building".

H.R. 3775

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

SECTION 1. DR. CAESAR A.W. CLARK, SR. POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 1502 East Kiest Boulevard in Dallas, Texas, shall be known and designated as the "Dr. Caesar A.W. Clark, Sr. Post Office Building".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the Dr. Caesar A.W. Clark, Sr. Post Office Building.

DISCHARGED FROM THE COMMITTEE ON GOVERNMENT REFORM AND PASSED

H.R. 5495, to designate the facility of the United States Postal Service located at 115 West Pine Street in Hattiesburg, Mississippi, as the "Major Henry A. Commiskey, Sr. Post Office Building".

H.R. 5495

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

SECTION 1. MAJOR HENRY A. COMMiskey, Sr. POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 115 West Pine Street in Hattiesburg, Mississippi, shall be known and designated as the "Major Henry A. Commiskey, Sr. Post Office Building".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the Major Henry A. Commiskey, Sr. Post Office Building.

DISCHARGED FROM THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE AND PASSED

H.R. 5604, to designate the Federal building and United States courthouse located at 46 East Ohio Street in Indianapolis, Indiana, as the "Birch Bayh Federal Building and United States Courthouse".

H.R. 5604

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

SECTION 1. DESIGNATION.

The Federal building and United States courthouse located at 46 East Ohio Street in Indianapolis, Indiana, shall be known and designated as the "Birch Bayh Federal Building and United States Courthouse".

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Birch Bayh Federal Building and United States Courthouse referred to in section 1 shall be deemed to be a reference to the "Birch Bayh Federal Building and United States Courthouse".

Mr. OBERSTAR. Mr. Speaker, H.R. 5604 is a bill to designate the federal building located at 46 East Ohio St., Indianapolis, Indiana, as the "Birch Bayh Federal Building and United States Courthouse." This bill is sponsored by the entire Indiana delegation in the U.S. House of Representatives.

Birch Bayh was born on January 22, 1928, in Terre Haute, Indiana. He attended public schools in Indiana and joined the army in
1946. In 1954, he was elected to the Indiana House of Representatives where he served for eight years, including terms as Minority Leader and later, as Speaker of the House.

In 1962, when he was only 34 years old, Birch Bayh was elected to the first of three terms in the U.S. Senate. Senator Bayh quickly became a leader on issues of education, equal rights, and Constitutional law. As Chairman of the Constitutional Subcommittee of the Senate Judiciary Committee, Senator Bayh authored two amendments to the Constitution—the 25th Amendment setting forth the order of Presidential succession, and the 26th Amendment lowering the voting age from 21 to 18 years of age. During his time in the Senate, Senator Bayh also served on the Appropriations Committee and the Select Committee on Intelligence.

Senator Bayh was a champion of equal rights for women and minorities. He authored Title IX to the Higher Education Act, which mandates equal opportunities for women students and faculty in our Nation’s schools. Further, Senator Bayh was a strong supporter of two pieces of legislation—the 1964 Civil Rights Act and the 1965 Voting Rights Act. He was also instrumental in enacting the Juvenile Justice Act, which mandates the separation of juvenile offenders from adult prison populations.

Since leaving the Senate in the 1980s, Senator Bayh has continued his commitment to public service. He serves as a member of the William Fulbright Foreign Scholarship Board, National Institute Against Prejudice and Violence, and the University of Virginia’s Miller Center Commission on Presidential Disability and the 25th Amendment. It is entirely fitting and proper to honor the contributions of Senator Birch Bayh with this designation and I urge my colleagues to support H.R. 5604.

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

SECTION 1. DESIGNATION.

The Federal building located at 324 Twenty-Fifth Street in Ogden, Utah, as the “James V. Hansen Federal Building”. H.R. 5611.

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

TITLE I—FAIRNESS IN TAX COLLECTION PROCEDURES

SEC. 101. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) In General.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking “satisfy liability for payment of” and inserting “make payment on”, and

(B) by inserting “full” after “partial”.

(b) Requirement to Review Partial Payment Agreements Every Two Years.—Section 6159 is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and inserting after subsection (e) the following new subsection:

(c) FAIRNESS IN TAX COLLECTION PROCEDURES.—

Sec. 101. Partial payment of tax liability in installment agreements.

Sec. 102. Extension of time for return of property.

Sec. 103. Individuals held harmless on wrongful levy, etc. on individual retirement plan.

Sec. 104. Seven-day threshold on tolling of statute of limitations during tax review.

Sec. 105. Study of liens and levies.

Sec. 106. Low-income taxpayer clinics.

TITLE II—IMPROVED ADMINISTRATIVE EFFICIENCY AND CONFIDENTIALITY

SUBTITLE A—EFFICIENCY OF TAX ADMINISTRATION

Sec. 201. Revisions relating to termination of employment of Internal Revenue Service employees for misconduct.

Sec. 202. Confirmation of authority of Tax Court to apply doctrine of equitable recoupment.

Sec. 203. Jurisdiction of Tax Court over collection due process cases.

Sec. 204. Office of Chief Counsel review of offers in compromise.

Sec. 205. Date for filing electronically filed individual income tax returns.
of section 6343 (relating to return of property) is amended by striking “9 months” and inserting “2 years”.

(b) PERIOD OF LIMITATION ON SUITS.—Subsection (c) of section 6332 (relating to suits by persons other than taxpayers) is amended—

(1) in paragraph (1) by striking “9 months” and inserting “2 years”, and

(2) in paragraph (2) by striking “9-month” and inserting “2-year”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) levies made after the date of the enactment of this Act, and

(2) levies made before such date if the 9-month period has not expired under section 6343(b) of the Internal Revenue Code of 1986 (without regard to this section) as of such date.

SEC. 103. INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC., ON INDIVIDUAL RETIREMENT PLAN.

(a) IN GENERAL.—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

“(f) INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC., ON INDIVIDUAL RETIREMENT PLAN.

“SEC. 106. LOW-INCOME TAXPAYER CLINICS.

(a) LIMITATION ON AMOUNT OF GRANTS.—(1) Paragraph (1) of section 7526(c) (relating to special rules and limitations) is amended by striking “$6,000,000” and inserting “$9,000,000 for 2002, $12,000,000 for 2003, and $15,000,000 for each year thereafter”.

(b) PROMOTION OF CLINICS.—Section 7526(c) is amended at the end of such section by inserting the following paragraph:

“(7) PROMOTION OF CLINICS.—The Secretary is authorized to promote the benefits of and encourage the use of low-income taxpayer clinics through the use of mass communications, referrals, and other means.”.

TITLE II—IMPROVED ADMINISTRATIVE DISCIPLINARY ACTIONS

Subtitle A—Efficiency of Tax Administration

SEC. 201. REVISIONS RELATING TO TERMINATION OF EMPLOYMENT OF INTERNAL REVENUE SERVICE EMPLOYEES FOR MISCONDUCT.

(a) DISCIPLINARY ACTIONS.—(1) In general.—Subject to subsection (c), the Commissioner shall take an action in accordance with the guidelines established under paragraph (2) against any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in connection with such employee’s official duties or where a nexus to the employee’s position exists.

(2) GUIDELINES.—The Commissioner shall issue guidelines determining the appropriate level of discipline, up to and including termination of employment, for committing any act or omission described under subsection (b).

(b) ACTS OR OMISSIONS.—(1) Acts or omissions described under this subsection are—

(1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer’s home, personal belongings, or business assets;

(2) willfully providing a false statement under oath with material misrepresentation involving a taxpayer or taxpayer representative;

(3) with respect to a taxpayer or taxpayer representative willful violation of—

(A) any right under the Constitution of the United States;

(8) and any right established under—

(1) title VI or VII of the Civil Rights Acts of 1964;

(2) title IX of the Education Amendments of 1972;

(3) the Age Discrimination in Employment Act of 1967;

(4) the Age Discrimination Act of 1975;

(5) title VI or VII of the Rehabilitation Act of 1973; or

(6) title I of the Americans with Disabilities Act of 1990;

(7) the Internal Revenue Service policy on unauthorized inspection of returns or return information;

(4) willfully falsifying or destroying documents or records to conceal misconduct by any employee with respect to a matter involving a taxpayer or taxpayer representative;

(5) assault or battery on a taxpayer or taxpayer representative, but only if there is a criminal conviction, or a final adverse judgment by a court in a civil case, with respect to the assault or battery;

(6) willful violations of this title, Department of the Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer or taxpayer representative;

(7) willful misuse of the provisions of section 6662 for the purpose of concealing information from a congressional committee;

(8) willful failure to file any return of tax required under this title on or before the date prescribed therefor (including any extensions) when a tax is due and owing, unless such failure is due to reasonable cause and not due to willful neglect;

(9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not due to willful neglect; and

(10) threatening to audit a taxpayer, or to take other action under this title, for the purpose of extracting personal gain or benefit.

(c) DETERMINATIONS OF COMMISSIONER.—(1) IN GENERAL.—The Commissioner may take a personnel action other than a disciplinary action provided for in the guidelines described under subsection (b) for an act or omission described under subsection (b).

(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may not be delegated to any other officer. The Commissioner, in his sole discretion, may establish a procedure to determine if an individual should be referred for a determination by the Commissioner under paragraph (1).

(3) NO APPEAL.—Notwithstanding any other provision of law, any determination of the Commissioner under this subsection may not be reviewed in any administrative or judicial proceeding. A finding that an act or omission described under subsection (b) occurred may be reviewed.

(d) DEFINITION.—For the purposes of the provisions described in clauses (i), (ii), and (iii) of subsection (b) a program or activity conducted by the Internal Revenue Service for a taxpayer.

(e) ANNUAL REPORT.—The Commissioner shall submit to Congress annually a report on disciplinary actions under this section.

(f) CLERICAL AMENDMENT.—The table of sections for chapter 80 is amended by inserting the following new item:

“Sec. 7804A. Disciplinary actions for misconduct.”.
SEC. 201. COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN DISCLOSURE TO EITHER SPOUSE BASED ON ORAL REQUEST.

(a) In General.—Section 6103(p)(4) (relating to collection activities with respect to joint return) is amended by amending (b) to read as follows—

"(1) Judicial review of determination.—The period of 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter)."

(b) Effective Date.—The amendment made by subsection (a) shall apply to judicial review filed after the date of the enactment of this Act.

SEC. 202. OFFICE OF CHIEF COUNSEL REVIEW OF OFFERS IN COMPROMISE.

(a) In General.—Section 6103(a)(1) (relating to judicial review of determination) is amended by adding the following new paragraph:

"(1) Judicial review of determination.—The period of 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter)."

(b) Effective Date.—The amendment made by subsection (a) shall apply to judicial review filed after the date of the enactment of this Act.

SEC. 203. JURISDICTION OF TAX COURT OVER COLLECTION DUE PROCESS CASES.

(a) In General.—Section 6103(p)(1) (relating to judicial review of determination) is amended by adding the following new paragraph:

"(1) Judicial review of determination.—The period of 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter)."

(b) Effective Date.—The amendment made by subsection (a) shall apply to judicial review filed after the date of the enactment of this Act.

SEC. 204. OFFICE OF CHIEF COUNSEL REVIEW OF OFFERS IN COMPROMISE.

(a) In General.—Section 6103(a)(1) (relating to judicial review of determination) is amended by adding the following new paragraph:

"(1) Judicial review of determination.—The period of 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter)."

(b) Effective Date.—The amendment made by subsection (a) shall apply to judicial review filed after the date of the enactment of this Act.

SEC. 205. 15-DAY DELAY IN DUE DATE FOR ELECTRONICALLY FILED INDIVIDUAL INCOME TAX RETURNS.

(a) In General.—Section 6072 (relating to time for filing income tax returns) is amended by adding the following new subsection:

"(f) Electronically filed returns of individuals.—

"(1) In general.—Returns of an individual under section 6012 or 6013 (other than an individual to whom subsection (c) applies) which are filed electronically—

"(A) in the case of returns filed on the basis of a calendar year, shall be filed on or before the 30th day of April following the close of the calendar year, and

"(B) in the case of returns filed on the basis of a fiscal year, shall be filed on or before the last day of the 4th month following the close of the fiscal year.

"(2) Electronic filing.—Paragraph (1) shall apply to returns under this subsection—

"(A) such return is accepted by the Secretary, and

"(B) the balance due (if any) shown on such return is paid electronically in a manner prescribed by the Secretary."

"(3) Special rules.—

"(A) Election to use.—(i) paragraph (1) applies to an individual for any taxable year, and

"(ii) there is an overpayment of tax shown on the return, or a deficiency assessed against the individual allows against the individual’s obligations under section 6641, then, with respect to the amount so allowed, any reference to section 6602 to the April 15 following such taxable year shall be treated as a reference to April 30.

"(B) References to due date.—(Parahraph (1) shall apply for purposes of section 6602 to determining the due date for the individual’s obligation to file and pay tax and, except as otherwise provided by the Secretary, shall be administered as extended due date for any other purpose under this title.

"(4) Effective date.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 2001.

Subtitle B—Confidentiality and Disclosure

SEC. 211. COLLECTION ACTIVITIES WITH RESPECT TO ELECTRONICALLY FILED INDIVIDUAL INCOME TAX RETURNS.

(a) In General.—Section 6103(c) of the Internal Revenue Code of 1986, as amended by subsection (a), shall be treated as if it were an addition to the Code of 1986 as of the date of the enactment of this Act.

SEC. 212. TAXPAYER REPRESENTATIVES NOT SUBJECT TO EXAMINATION ON SOLE BASIS OF REPRESENTATION OF TAXPAYERS.

(a) In General.—Subsection (b) of section 6103 (relating to disclosure to certain Federal officers and employees for purposes of tax administration) is amended by striking "Section 6103(c) of the Internal Revenue Code of 1986, as added by subsection (a), shall be treated as if it were an addition to the Code of 1986 as of the date of the enactment of this Act." and substituting therefor—

"(b) Effective date.—The amendment made by this section shall apply to any action or proceeding in the Tax Court with respect to which a decision has not become final (as determined under section 7461 of the Internal Revenue Code of 1986) as of the date of the enactment of this Act.

SEC. 213. COMPLIANCE BY CONTRACTORS WITH STATE LAWS.

(a) In General.—Section 6103(1) (relating to judicial review of determination) is amended by adding, at the end of the section, the following new paragraphs:

"(A) Judicial review of determination.—The period of 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter)."

(b) Effective Date.—The amendment made by subsection (a) shall apply to judicial review filed after the date of the enactment of this Act.

SEC. 214. HIGHER STANDARDS FOR REQUESTS FOR AND CONSENTS TO DISCLOSE.

(a) In General.—Subsection (c) of section 6103 (relating to disclosure of returns and return information to a person other than the taxpayer) is amended by adding the following new paragraph:

"(4) Requirements for valid requests and consents.—A request for or consent to disclosure under paragraph (1) shall only be valid for purposes of this section or sections 7223, 7225A, or 7401 if—

"(A) at the time of execution, such request or consent designates a recipient of such disclosure and is dated, and

"(B) the request or consent is submitted to the Secretary, the submitter of such request or consent certifies, under penalty of perjury, that such request or consent complied with paragraph (A).

"(2) Restrictions on persons obtaining information.—Any person shall, as a condition for receiving return or return information under paragraph (1),—

"(A) ensure that such return and return information is kept confidential,

"(B) use such return and return information for the purpose for which it was requested, and

"(C) not disclose such return and return information except to accomplish the purpose for which it was requested or consent.

"(3) Records of returns and return information.—For purposes of this subsection, the Secretary shall prescribe a form for requests and consents which shall—

"(A) contain a warning, prominently displayed, informing the taxpayer that the form shall not be signed unless it is completed,

"(B) state that if the taxpayer believes there is an attempt to coerce him to sign an incomplete or blank form, the taxpayer should report the matter to the Treasury Inspector General for Tax Administration, and

"(C) contain the address and telephone number of the Treasury Inspector General for Tax Administration.

(b) Report.—Not later than 18 months after the date of the enactment of this Act, the Treasury Inspector General for Tax Administration shall submit a report to the Congress on compliance with the designation and certification requirements applicable to the requests or consents to disclosure of returns and return information under section 6103(c) of the Internal Revenue Code of 1986, as amended by subsection (a). Such report shall—

"(1) evaluate (on the basis of random sampling) whether—
(A) the amendment made by subsection (a) is achieving the purposes of this section;

(B) requesters and submitters for such disclosure are continuing to evade the purposes of this section and, if so, how;

(C) the sanctions for violations of such requirements are adequate; and

(2) include such recommendations that the Treasury Inspector General for Tax Administration considers necessary or appropriate to better achieve the purposes of this section.

(c) CONFORMING AMENDMENT.—Section 6108C(c) of the Code of Federal Regulations (relating to procedure and recordkeeping), as inserted by section 7431(a) of this Act, is amended by adding at the end the following new paragraphs:

‘‘(1) IN GENERAL.—The Secretary and State officials shall apply to requests and consents made after 3 months after the date of the enactment of this Act.

(2) DISCLOSURE OF PROPOSED ACTIONS RELATED TO ADMINISTRATIVE DETERMINATION OF BROWSING; ANNUAL REPORT.

(a) NOTICE TO TAXPAYER.—Subsection (e) of section 7431 (relating to notification of unlawful inspection and disclosure) is amended by adding at the end the following:

‘‘The Secretary shall also notify such taxpayer if the Treasury Inspector General for Tax Administration determines that such taxpayer’s return or return information was inspected or disclosed in violation of any of the provisions specified in paragraph (1), (2), or (3).’’

(b) REPORTS.—Subsection (p) of section 6103 (relating to procedure and recordkeeping), as amended by section 245, is further amended by adding at the end the following:

‘‘(1) IN GENERAL.—Reports may be made under this section (a) shall apply to determinations made by this section after the date of the enactment of this Act, the Treasury Inspector General for Tax Administration and, if so, how; and

(2) EFFECTIVE DATE.—The amendments made by the provisions of this Act and those made under section 7431(a) of this Act shall not apply to requests made before such date.

Subtitle C—Other Provisions

SEC. 221. BETTER MEANS OF COMMUNICATING WITH TAXPAYERS.

Not later than 18 months after the date of the enactment of this Act, the Treasury Inspector General for Tax Administration shall submit a report to Congress evaluating whether technological advances, such as e-mail and facsimile transmission, permit the use of alternative means for the Internal Revenue Service to communicate with taxpayers.

SEC. 222. ENROLLED AGENTS.

(a) IN GENERAL.—Chapter 77 of title 31, United States Code, is amended by adding at the end the following new section:

‘‘7527. ENROLLED AGENTS.

‘‘(a) IN GENERAL.—The Secretary may prescribe such regulations as may be necessary to regulate the conduct of enrolled agents in regards to their practice before the Internal Revenue Service.

(b) USE OF CREDENTIALS.—Any enrolled agents properly licensed to practice as required under rules promulgated under section 7525(a) of this title shall use the credentials or designation as enrolled agent. ‘‘EA’’, or ‘‘E.A.’’. ‘‘

(c) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following item:

‘‘Sec. 7525. Enrolled agents.’’

(c) PRIOR REGULATIONS.—Nothing in the amendments made by this section shall be construed to have any effect on part 10 of title 31, Code of Federal Regulations, or any other Federal rule or regulation issued before the date of the enactment of this Act.

SEC. 223. FINANCIAL MANAGEMENT SERVICE FEES.

Notwithstanding any other provision of law, the Financial Management Service may charge the Internal Revenue Service, and the Internal Revenue Service may pay the Financial Management Service, a fee sufficient to cover the full cost of implementing a continuous levy program under subsection (h) of section 6331 of the Internal Revenue Code of 1986. Any such fee shall be based on actual levies made and shall be collected by the Financial Management Service, and the Internal Revenue Service may use the credentials or designation as ‘‘enrolled agent’’, ‘‘EA’’, or ‘‘E.A.’’.

SEC. 224. AMENDMENT TO TREASURY AUCTION REPORT.

(a) IN GENERAL.—Clause (i) of section 292(c)(4)(B) of the Government Securities Act
Amendments of 1993 (11 U.S.C. 3121 note) is amended by inserting before the semicolon “(or, if earlier, at the time the Secretary re- leases the minutes of the meeting in accord- ance with the rules of such committee)”.

(b) Effective Date.—The amendment made by subsection (a) shall apply to meet- ings held after the date of the enactment of this Act.

TITLe III—REFORM OF PENALTY AND INTEREST PROVISIONS

SEC. 301. FAILURE TO PAY ESTIMATED TAX PEN- ALTY CONVERTED TO INTEREST CHARGED ON UNPAID BALANCE.

(a) Penalty Moved to Interest Chapter of Code.—The Internal Revenue Code of 1986 is amended by striking section 6654 and moving section 6641 (as so redesignated) from part I of subchapter A of chapter 63 to the end of subchapter E of chapter 67 (as added by subsection (e)(1) of this section).

(b) Penalty Converted to Interest Charge.—The heading and subsections (a) and (b) of section 6641 (as so redesignated) are amended to read as follows:

**SEC. 6641. INTEREST ON FAILURE BY INDIVID- UAL TO PAY ESTIMATED INCOME TAX.**

“(a) IN GENERAL.—Interest shall be paid on any underpayment of estimated tax by an individual for a taxable year for each day of the taxable year resulting in the overpayment on the original return if the Secretary determines that the principal purpose of such failure is to take advantage of the underpayment of tax imposed by this subtitle.

“(b) Exception.—Subsection (a) shall not apply in the case of a failure to claim items resulting in the overpayment on the original return if the Secretary determines that the primary purpose of such failure is to take advantage of the underpayment of tax imposed by this subtitle.

“(c) Special Rule for Determining Modified Adjusted Gross Income.—For purposes of this title, interest not included in gross income determined under subsection (a) shall not be treated as interest which is exempt from tax for purposes of sections 22(2)(B) and 6012(d) or any computation in which interest ex- empt from tax under this title is added to ad-justed gross income.”

(b) Clerical Amendment.—The table of sections for part III of subchapter B of chap- ter 1 is amended by striking the item rela- ting to section 3196 and inserting the following new item:

“Sec. 319A. Exclusion from gross income for interest on overpayments of in- come tax.”

(c) Effective Date.—The amendments made by this section shall apply to interest received in calendar years beginning after the date of the enactment of this Act.

SEC. 302. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UN- DERRAytS.

(a) Abatement of Interest With Respect to Erroneous Refund Check Without Re- gard to Size of Refund.—Paragraph (2) of section 6609(e) is amended by striking “(2) in paragraph (1) and in subparagraph (B) of paragraph (2), by striking “unless the taxpayer (or a related party) has in any way caused such erroneous refund.”

(b) Abatement of Interest to Extent Inter- est is Attributable to Taxpayer Reli- ance on Written Statements of the IRS.—Subsection (i) of section 6604 is amended—

(1) in the subsection heading, by striking “‘INTEREST, PENALTY, OR ADDITION’;” and inserting “‘INTEREST, PENALTY, OR ADDITION’;” and

(2) in paragraph (1) and in subparagraph (B) of paragraph (2), by striking “‘penalty or addition’ and inserting “‘interest, penalty, or addition’.”

(c) Effective Date.—The amendments made by this section shall apply to interest accruing on or after the date of the enactment of this Act.

SEC. 303. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UN- DERRAytS.

(a) In General.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

**SEC. 6603. DEPOSITS MADE TO SUSPEND RUN-NING OF INTEREST ON POTENTIAL UNDERRAytS, ETC.**

“(a) Authority To Make Deposits Other Than As Payment of Tax.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B of chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

“(b) No Interest Imposed.—To the extent that such deposit is used for payment of tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

“Exception.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall
return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

(iv) Payment of Interest—(1) In General.—For purposes of section 6611 (relating to interest on overpayments), a deposit made to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a taxable period for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

(2) Disputable Tax—(A) In General.—For purposes of this section, the term ‘disputable tax’ means the amount of tax specified at the time of the deposit as the taxpayer’s reasonable estimate of the amount of any tax attributable to disputable items.

(B) Safe Harbor Based on 30-Day Letter.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

(3) Other Definitions.—For purposes of paragraph (2) (A)(ii), the term ‘creditable items’ means any item of income, gain, loss, deduction, or credit if the taxpayer—

(i) has a reasonable basis for its treatment as such an item, and

(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer’s treatment of such item.

(B) 30-Day Letter.—The term ‘30-day letter’ means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

(4) Rate of Interest.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

(5) Use of Deposits.—(A) Payment of Tax.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

(B) Return of Deposits.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.

(6) Clerical Amendment.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

“Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.”

(c) Effective Date.—(1) In General.—The amendments made by this section shall apply to deposits made after the date of the enactment of this Act.

(2) Coordination with Deposits Made Under Revenue Procedure 84-58.—In the case of an amount held by the Secretary of the Treasury on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84-58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of this section.

SEC. 305. Expansion of Interest Netting for Individuals.

(a) In General.—Subsection (d) of section 6631 (relating to elimination of interest on overlapping periods of tax overpayments and underpayments) is amended by adding at the end the following new subsection:

“(iv) for purposes of the preceding sentence, section 6611(e) shall not apply in the case of an individual.”

(b) Effective Date.—The amendment made by subsection (a) shall apply to interest accrued after December 31, 2002.

SEC. 306. Waiver of Certain Penalties for First-Time Unintentional Minor Errors.

(a) In General.—Section 6651 (relating to failure to file tax return or to pay tax) is amended by adding at the end the following new subsections:

“(l) Treatment of First-Time Unintentional Minor Errors.—(1) In General.—If in the context of a return of tax imposed by title A filed by an individual, the Secretary may waive an addition to tax under subsection (a) if—

(A) the individual has a history of compliance with the requirement of this title,

(B) it is shown that the failure is due to an unintentional minor error,

(C) the penalty would be grossly disproportionate to the action or expense that would have been needed to avoid the error, and

(D) waiving the penalty would promote compliance with the requirements of this title and effective tax administration, and

(2) Exceptions.—Paragraph (1) shall not apply if—

(A) the Secretary has waived any addition to tax under this subsection with respect to any prior failure by such individual,

(B) the failure is a mathematical or clerical error (as defined in section 6213(g)(2)), or

(C) the failure is the lack of a required signature.

(b) Effective Date.—The amendment made by this section shall take effect on January 1, 2003.

SEC. 307. frivolous Tax Submissions.

(a) Civil Penalties.—Section 6662 is amended to read as follows:

“Sec. 6662. frivolous Tax Submissions.

(a) Civil Penalty for frivolous Tax Returns.—A person shall pay a penalty of $5,000 if—

(1) such person files what purports to be a return of a tax imposed by this title but which—

(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

(B) contains information that on its face reflects a desire to delay or impede further administrative or judicial review;

(B) the taxpayer took all reasonable steps to remedy the error promptly after discovering it.

(2) Exceptions.—Paragraph (1) shall not apply if—

(A) the Secretary has waived any addition to tax under this subsection with respect to any prior failure by such individual,

(B) the failure is a mathematical or clerical error (as defined in section 6213(g)(2)), or

(C) the failure is the lack of a required signature.

(b) Effective Date.—The amendment made by this section shall take effect on January 1, 2003.

SEC. 308. frivolous Tax Submissions.

(a) Civil Penalty for frivolous Tax Returns.—A person shall pay a penalty of $5,000 if—

(1) such person files what purports to be a return of a tax imposed by this title but which—

(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

(2) the conduct referred to in paragraph (1) —

(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

(B) reflects a desire to delay or impede the administration of Federal tax laws.

(b) Civil Penalty for specified frivolous Submissions.—(1) Imposition of Penalty.—Except as provided in paragraph (2), any person who submits a specified frivolous submission shall pay a penalty in an amount determined by the Secretary.

(2) Specified frivolous Submission.—For purposes of this section—

(A) Specified frivolous submission.—The term ‘specified frivolous submission’ means a specified submission if any portion of such submission—

(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

(ii) reflects a desire to delay or impede the administration of Federal tax laws.

(B) Specified frivolous submission.—The term ‘specified submission’ means—

(i) a request for a hearing under—

(1) section 6229 (relating to notice and opportunity for hearing upon filing of notice of lien), or

(2) section 6330 (relating to notice and opportunity for hearing before levy), and

(II) an application under—

(1) section 7811 (relating to taxpayer assistance orders), and

(2) section 6159 (relating to agreements to remedy errors promptly after discovery), or

(III) section 7122 (relating to compromises), and

(3) Opportunity to Withdraw Submission.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission promptly after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

(c) Listing of frivolous Positions.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary identifies as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirements of section 6662(d)(2)(B)(ii)(II).

(d) Reduction of Penalty.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such penalty would promote compliance with and administration of the Federal tax laws.

(e) Penalties in addition to Other Penalties.—The penalties imposed by this section shall be in addition to any other penalty provided by law.

(b) Treatment of frivolous Requests for Hearings before Levy.—(1) frivolous Requests Disregarded.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

“(g) frivolous Requests for Hearing Before Levy.—

(1) frivolous Requests Disregarded.—Section 6330 (relating to notice and opportunity for hearing before levy) does not apply with respect to any portion of a request for a hearing under this section if the Secretary determines that such portion was filed as a means to delay or impede further administrative or judicial review.

(2) Preclusion of frivolous issues at Hearing.—Section 6330(c)(4) is amended—

(A) by striking “(A)” and inserting “(A)”;

(B) by striking “(B)” and inserting “(ii)”; and

(C) by striking the period at the end of section (A) and inserting “; or”;

and

(d) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

“(B) the issue meets the requirements of clause (i) or (ii) of section 6702(b)(2)(A).”

(2) Treatment of frivolous Submissions.—Section 6330(b)(1) is amended by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing.”

(c) Treatment of frivolous Requests for Hearings upon Filing of Notice of Lien.—Section 6330 is amended—

(1) in subsection (b)(1), by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the hearing”; and

(2) in subsection (c)(1), by striking “(e)” and inserting “(e), (g)”.

(d) Treatment of frivolous Applications for Offers-In-Compromise and Installment Agreements.—Section 7122 is amended by adding at the end the following new subsection:
H. R. 5436, to extend the deadline for commencement of construction of a hydroelectric project in the State of Oregon.
trafficking, and use of illicit narcotics in Afghani-
stan.  
(2) ROLE OF WOMEN.—Assistance should in-
crease the participation of women at the na-
tional and local levels in Afghanist-
stan, wherever feasible, by enhancing the role
of women in decisionmaking processes, as well as
by providing support for programs that
promote women's economic growth, educa-
tional opportunities and health programs
for women and educational and health pro-
grams for girls.  
(3) LAND OWNERSHIP.—Assistance should build
upon Afghan traditions and practices. The strong tra-
tition of community responsi-
bility and self-reliance in Afghanistan should
not presume that all services that may have suffered
as a result of the Afghan people and institutions to par-
ticipate in the reconstruction of Afghanist-
stan.  
(4) STABILITY.—Assistance should encour-
age the restoration of security in Afghanist-
stan, including, among other things, the dis-
armament, demobilization, and reintegra-
tion of combatants, and the establishment
of the rule of law, including the establishment
of a police force and an effective, inde-
pendent judiciary;  
(5) CoORDINATION.—Assistance should be part
of a larger donor effort for Afghanistan. The magnitude of the devastation—natural and
man-made—to institutions and infra-
structure is so extensive that there must be
the close coordination and collaboration among
donors. The United States should endeavor
to assert its leadership to have the efforts of
international donors help achieve the pur-
poses established by this title.  
SEC. 104. AUTHORIZATION OF ASSISTANCE.  
(a) IN GENERAL.—The President is author-
ized to provide assistance for Afghanistan for
the following activities:  
(1) URGENT HUMANITARIAN NEEDS.—To as-
sist in meeting the urgent humanitarian
needs of the people of Afghanistan, including
assistance such as—  
(A) emergency food, shelter, and medical assistance;  
(B) clean drinking water and sanitation;  
(C) preventative health care, including
childhood vaccination, therapeutic feeding,
maternal health services, and infections
control and treatment;  
(D) family tracing and reunification serv-
ices; and  
(E) clearance of landmines.  
(2) RECONSTRUCTION OF BASIC INFRASTRUCTURE.
—To assist refugees and internally dis-
placed persons as they return to their
homes, through the United Nations High
Commissioner for Refugees and other organi-
izations charged with providing such assist-
ance.  
(3) COUNTERNARCOTICS EFFORTS.—(A) To as-
sist in the eradication of poppy cultivation,
the diversion of labor from narcotics produc-
tion and the reduction of the overall supply and demand
for illicit narcotics in Afghanistan and the region, with particular emphasis on assistance to—  
(i) eradicate opium poppy, establish crop
substitution programs, purchase nonopium
products from farmers in opium-growing regions, and programs to
(divert labor from narcotics production,
develop projects directed specifically at
narcotics production or trafficking;  
(A) programs that support the expanded
participation of women and members of all ethnic groups in government at national, re-
(1) assistance to Afghan refugees returning
to Afghanistan;  
(B) for each of the fiscal years 2002 through 2005, $15,000,000 of the amount made
available to carry out this title is authorized
to be made available for a contribution to the
United Nations Drug Control Program (iv) continue the annual opium crop survey and
strategic studies on opium crop planting
and farming in Afghanistan; and  
(v) reduce demand for illicit narcotics
among the people of Afghanistan, including
refugees returning to Afghanistan.  
(B) For each of the fiscal years 2002 through 2005, $15,000,000 of the amount made
available to carry out this title is authorized
to be made available for a contribution to the
United Nations Drug Control Program
for the purpose of carrying out activities de-
scribed in clauses (i) through (v) of subpar-
graph (A). Amounts made available under
the preceding sentence are in addition to
amounts otherwise available for such pur-
poses.  
(4) REESTABLISHMENT OF FOOD SECURITY, REHABILITATION OF THE AGRICULTURAL SECTOR, IMPROVEMENT OF WATER SUPPLY AND THE RECONSTRUCTION OF BASIC INFRASTRUCTURE.—To assist in expanding access to markets in Afghanistan and the availability of food in markets in Afghanistan, to rehabili-
tate the agriculture sector in Afghanistan by
creating jobs for former combatants, return-
ing Afghan refugees and displaced persons,
to improve health conditions, and as-
sist in the rebuilding of basic infrastructure in
Afghanistan, including assistance such as—
(A) rehabilitation of the agricultural infra-
structure, including irrigation systems and
rural roads;  
(B) reformation of credit;  
(C) provision of critical agricultural inputs,
such as seeds, tools, and fertilizer, and strengthening of seed multiplication, certifi-
cation and distribution systems;  
(D) improvement in the quantity and qual-
ity of water available through, among other
things, rehabilitation of existing irrigation systems and the development of local capac-
ity to manage irrigation systems;  
(E) livestock rehabilitation through mar-
ket development and other mechanisms to
contribute to food security;  
(F) mine awareness and de-mining programs and
programs to assist mine victims, war or-
phans, and displaced persons;  
(G) programs relating to infant and young
child feeding, immunizations, vitamin A sup-
plementation, and prevention and treatment of
diarrheal diseases and respiratory infec-
tions;  
(H) programs to improve maternal and child health and reduce maternal and child mortal-
ity;  
(I) programs to improve hygienic and sani-
tization practices and for the prevention and
control of communicable diseases, such as tu-
berculosis and malaria; and  
(J) programs to reconstitute the delivery of
health care, including the reconstruction of
basic health infrastructure, with particular emphasis on health care for children who are orphans;
(K) programs for housing, rebuilding urban
infrastructure, and supporting basic urban
services; and  
(L) disarmament, demobilization, and re-
integration of armed combatants into soci-
ety, particularly child soldiers.  
(5) REESTABLISHMENT OF AFGHANISTAN AS A VIABLE NATION-STATE.—(A) To assist in the development of the capacity of the Govern-
ment of Afghanistan to meet the needs of the people of Afghanistan through, among other
things, support for the development and ex-
pansion of democratic and market-based insti-
tutions, including assistance such as—  
(i) support for international organizations
that provide civil advisers to the Govern-
ment of Afghanistan;  
(ii) support for an educated citizenry
through improved access to basic education,
with particular emphasis on basic education for children with particular emphasis on
education for children;  
(iii) programs to enable the Government of
Afghanistan to recruit and train teachers,
with special focus on the recruitment and
training of female teachers;  
(iv) programs to enable the Government of
Afghanistan to develop a curriculum
that incorporates relevant information such as
landmine awareness, food security and ag-
ricultural education, human rights aware-
ness, and civic education;  
(v) support for the activities of the Govern-
ment of Afghanistan to draft a new constitu-
tion, other legal frameworks, and other ini-
tiatives to promote the rule of law in Af-
ghanistan;  
(vi) support to increase the transparency,
accountability, and participatory nature of
government;  
(vii) support for the effective administra-
tion of justice at the national, regional, and
local levels;  
(ix) programs to strengthen civil society
organizations that promote human rights
and support human rights monitoring;  
(x) support for national, regional, and local
elections and political party development;  
(xi) support for the effective administra-
tion of justice at the national, regional, and
local levels, including the establishment of a
responsible and community-based police
force; and  
(xii) support for establishment of a central
court and national budgetary authority.  
(B) For each of the fiscal years 2003 through
2005, not less than $10,000,000 of the amount made available to carry out this title
should be made available for the pur-
poses of carrying out a traditional Afghan
assembly or a "Loya Jirga" and for support for national, regional, and local elections
and political party development under sub-
paragraph (A)(ix).  
(6) MARKET ECONOMY.—To support the es-
tablishment of a market based economy, the estab-
lishment of private financial institutions,
the adoption of policies to promote foreign
direct investment, the development of a basic telecommunication infrastructure, and the development of trade and other commercial links with countries in the region and with the United States, including policies to—

(A) encourage the return of Afghanistan citizens or nationals living abroad who have marketable and business-related skills;

(B) establish financial institutions, including credit unions, cooperatives, and other entities providing microenterprise credit and other new-economy-generation programs for the poor, with particular emphasis on women;

(C) facilitate expanded trade with countries in the region;

(D) promote and foster respect for basic workers’ rights and protections against exploitation of child labor; and

(E) provide financing programs for the reconstruction of Kabul and other major cities in Afghanistan.

LIMITATION.—

(1) IN GENERAL.—Amounts made available to carry out this title except amounts made available for assistance under paragraphs (1) through (3) and subparagraphs (F) through (I) of paragraph (4) of subsection (a) may be provided only if the President first determines and certifies to Congress with respect to the fiscal year involved that substantial progress has been made toward adopting a constitution and establishing a democratically elected government for Afghanistan.

(2) WAIVER.—

(A) IN GENERAL.—The President may waive the application of paragraph (1) if the President first determines and certifies to Congress that it is important to the national interests of the United States to do so.

(B) CONTENTS OF CERTIFICATION.—A certification transmitted to Congress under subparagraph (A) shall include a written explanation of the basis for the determination of the President to waive the application of paragraph (1).

SEC. 105. COORDINATION OF ASSISTANCE.

(a) IN GENERAL.—The President shall ensure that assistance made available under this title is coordinated with assistance made available under other titles of this Act, under other titles of the Agricultural Act of 1949, and under Public Law 105–338.

(b) USE OF THE EXPERTISE OF AFGHAN-AMERICANS.—In providing assistance authorized by this title, the President should—

(1) maximize the use, to the extent feasible, of the services of Afghan-Americans who have experience in the areas for which assistance is authorized by this title; and

(2) in providing assistance authorized by this title, to the maximum extent practicable, shall—

(A) encourage the donation of appropriate excess or obsolete manufacturing and related equipment by United States businesses (including small businesses) for the reconstruction of Afghanistan; and

(B) utilize to the maximum extent possible the experience and expertise of United States land grant colleges and universities and the technical expertise of professionals within those institutions, particularly in the areas of agriculture and rural development.

(c) DONATIONS OF MANUFACTURING EQUIPMENT.—The proceeds from sales of excess or obsolete equipment donated under this title may be used by United States Government agencies for administrative expenses in connection with such assistance.

(d) ADMINISTRATIVE EXPENSES.—Not more than 5 percent of the amounts made available under this title may be used by a Federal department or agency to carry out this title for a fiscal year may be used by the department or agency for administrative expenses in connection with such assistance.

(e) MONITORING.—

(1) COMPTROLLER GENERAL.—The Comptroller General shall monitor the provision of assistance under this title.

(2) INSPECTOR GENERAL OF USAID.—The Inspector General of the United States Agency for International Development shall conduct audits, inspections, and other activities, as appropriate, associated with the expenditure of the funds to carry out this title.

(f) COMMISSIONER GENERAL.—The Inspector General shall—

(1) ensure that—

(A) the activities monitored under paragraph (2) are implemented in a manner that is consistent with applicable laws and regulations; and

(B) the activities monitored under paragraph (2) are implemented in a manner that is consistent with applicable laws and regulations.

(ii) tabulate and report to the Congress, annually, on the extent to which assistance was provided, and the results achieved.

(g) CONGRESSIONAL NOTIFICATION PROCEDURE.—

(1) FUNDING.—The aggregate value (as defined in section 644(m) of the Foreign Assistance Act of 1961) of assistance provided pursuant to this title may not exceed $300,000,000 for each of the fiscal years 2002 through 2005, and $250,000,000 for fiscal year 2005. Amounts authorized to be appropriated pursuant to this title for the fiscal year 2002 are in addition to amounts otherwise available for assistance for Afghanistan.

(h) AUTHORIZATION OF APPROPRIATIONS.—

Title II—Military Assistance for Afghanistan and Certain Other Foreign Countries and International Organizations

SECTION 201. SUPPORT FOR SECURITY DURING TRANSITION.

It is the sense of Congress that, during the transition to a broad-based, multi-ethnic, gender-sensitive, fully representative government in Afghanistan, the United States should support—

(1) the development of a civilian-controlled and centrally-governed standing army that respects human rights and prohibits the use of children as soldiers or combatants;

(2) the creation and training of a professional civilian police force that respects human rights; and

(3) a multinational security force in Afghanistan.

SECTION 202. AUTHORIZATION OF ASSISTANCE.

(a) TYPES OF ASSISTANCE.—

(1) IN GENERAL.—To the extent that funds are appropriated in any fiscal year for the purposes of this Act, the President may provide, consistent with existing United States statutes, defense articles, defense services, counter-narcotics and counter-terrorism law enforcement services, and other support (including training) to the Government of Afghanistan.

(2) OTHERWISE.—The President is authorized to direct the drawdown of defense articles, defense services, and military education and training for the Government of Afghanistan, eligible foreign countries, and eligible international organizations.

(3) AUTHORITY TO ACQUIRE BY CONTRACT OR OTHERWISE.—The assistance authorized under paragraphs (1) and (2) and under Public Law 105–338 may include the supply of defense articles, defense services, counter-narcotics and counter-terrorism law enforcement services, and other support (including training) that are acquired by contract or otherwise.

(b) AMOUNT OF ASSISTANCE.—The aggregate value (as defined in section 644(m) of the Foreign Assistance Act of 1961) of assistance provided pursuant to this title may not exceed $300,000,000, provided that such limitation shall be increased by any amounts appropriated pursuant to appropriations for assistance in section 206(b)(1).

SECTION 203. ELIGIBLE FOREIGN COUNTRIES AND ELIGIBLE INTERNATIONAL ORGANIZATIONS.

(a) ELIGIBILITY FOR ASSISTANCE.—

(1) IN GENERAL.—Except as provided in this paragraph, a foreign country or international organization shall be eligible to receive assistance under this Act if the President determines that—

(A) the foreign country or international organization is participating in or directly supporting United States military activities authorized under Public Law 107–40 or is participating in military, peacekeeping, or policing operations in Afghanistan aimed at restoring or maintaining peace and security in that country; and

(2) EXCEPTION.—No country the government of which has been determined by the
Secretary of State to have repeatedly provided support for acts of international terrorism under section 526A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 6(a)(2) of the Arms Export Control Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) shall be eligible to receive assistance under this Act.

(b) WAIVER.—The President may waive the application of subsection (a)(2) if the President certifies to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives and notifies the Committee on International Security and Long-term Policy of the President that it is important to the national security interest of the United States to do so.

SEC. 204. REIMBURSEMENT FOR ASSISTANCE.

(a) IN GENERAL.—Defense articles, defense services, and military education and training provided under section 202(a)(2) shall be made available without reimbursement to the Department of Defense except to the extent that funds are appropriated pursuant to the authorization of appropriations under subsection (b)(1).

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the President such sums as may be necessary to reimburse the applicable appropriation, fund, or account for the value (as defined in section 644m of the Foreign Assistance Act of 1961) of defense articles, defense services, or military education and training provided under section 202(a)(2).

(2) ADDITIONAL AUTHORIZATION.—The amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended, and are in addition to amounts otherwise available for the purposes described in this title.

SEC. 205. ELIGIBLE FOREIGN COUNTRIES AND ELIGIBLE INTERNATIONAL ORGANIZATIONS.

(a) AUTHORITY.—The President may provide assistance under this title to any eligible foreign country or eligible international organization.

(b) DETERMINATIONS.—The President determines that such assistance is important to the national security interest of the United States and notifies the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate of such determination at least 15 days in advance of providing such assistance.

(c) REPORT.—The report described in subsection (a) shall be submitted in classified and unclassified form and shall include information relating to the type and amount of assistance that is being provided to the country, and the actions that the proposed recipient of such assistance has taken or has committed to take.

SEC. 206. PROMOTING SECURE DELIVERY OF HUMANITARIAN AND OTHER ASSISTANCE IN AFGHANISTAN.

(a) FINDINGS.—Congress finds the following:

(1) The President has declared his view that the United States should provide significant assistance to Afghanistan so that it never again becomes a haven for terrorism.

(2) The delivery of humanitarian and reconstruction assistance from the international community is necessary for the safe return of refugees and is critical to the future stability of Afghanistan.

(3) Enhanced stability in Afghanistan through an improved security environment is critical to the continued existence of the Afghan Interim Authority and the traditional Afghan assembly or “Loya Jirga” process, which is intended to lead to a permanent national government.

(4) Incidents of violence between armed factions and among regional commanders and serious abuses of human rights, including attacks on women and ethnic minorities throughout Afghanistan, create an insecure, volatile, and unsafe environment in parts of Afghanistan, displacing thousands of Afghan civilians from their local communities.

(b) THE DELIVERY OF GRANTS.—The United States may jeopardize the “Loya Jirga” process, undermine efforts to build a strong central government, severely impede reconstruction and the delivery of humanitarian assistance, and increase the likelihood that parts of Afghanistan will once again become safe havens for al-Qaeda, Talibans, forces, and drug traffickers.

(c) SECURITY OF U.S. CIVILIAN AND MILITARY PERSONNEL.—

(1) The delivery of humanitarian assistance, and in particular assistance to the Afghan Interim Authority as it begins to build a national army and police force to provide security throughout Afghanistan, but this effort is not meeting the immediate security needs of Afghanistan.

(2) Because of these immediate security needs, the Afghan Interim Authority, its partners, and many Afghan regional leaders have called for the International Security Assistance Force, which has successfully brought stability to Kabul, to be scaled up throughout the country, and this request has been strongly supported by a wide range of international humanitarian organizations, including the United Nations High Commissioner for Refugees, the International Committee of the Red Cross, Catholic Relief Services, and Refugees International.

(d) THE DELIVERY OF GRANTS.—The President certifies that: “[w]e will help the new Afghan government provide the security that is the foundation of peace.”

(e) PREPARATION STRATEGY.—Not later than 45 days after the date of the enactment of this Act, and every six months thereafter, the President shall transmit to the Congress a strategy for meeting the immediate and long-term security needs of Afghanistan in order to promote safe and effective delivery of humanitarian assistance throughout Afghanistan, further the rule of law and civil order, and support the formation of a functioning, representative Afghan national government.

SEC. 207. REQUIREMENT TO REPORT BY CERTAIN UNITED STATES OFFICIALS.

(a) REQUIREMENT.—An officer or employee of a Federal department or agency involved in the provision of assistance under this Act may knowingly encourage or participate in poppy cultivation or illicit narcotics growth, production, or trafficking in Afghanistan. No United States military or civilian aircraft or other United States vehicle that is used with respect to the provision of assistance under this Act may be used to facilitate the distribution of poppies or illicit narcotics in Afghanistan.

SEC. 208. TITLE III—ADDITIONAL REQUIREMENTS WITH RESPECT TO ASSISTANCE FOR AFGHANISTAN.

SEC. 301. PROHIBITION ON UNITED STATES INVOLVEMENT IN POPPY CULTIVATION OR ILLICIT NARCOTICS GROWTH, PRODUCTION, OR TRAFFICKING.

No officer or employee of any Federal department or agency who is involved in the provision of assistance under this Act may knowingly encourage or participate in poppy cultivation or illicit narcotics growth, production, or trafficking in Afghanistan. No United States military or civilian aircraft or other United States vehicle that is used with respect to the provision of assistance under this Act may be used to facilitate the distribution of poppies or illicit narcotics in Afghanistan.

SEC. 302. REQUIREMENT TO REPORT BY CERTAIN UNITED STATES OFFICIALS.

(a) REQUIREMENT.—An officer or employee of a Federal department or agency involved in the provision of assistance under this Act and having knowledge of facts or circumstances that reasonably indicate that there are any drug-related activities in Afghanistan shall report such knowledge or facts to the appropriate official.

(b) DEFINITION.—In this section, the term ‘‘appropriate official’’ means the Attorney General, the Inspector General of the Federal department or agency involved, or the head of such department or agency.

SEC. 303. REPORT BY THE PRESIDENT.

Not later than 6 months after the date of the enactment of this Act, and annually thereafter, the President shall transmit to Congress a written report of the Government of Afghanistan toward the eradication of poppy cultivation, the disruption of heroin production, and the reduction of the illegal supply of illicit narcotics in Afghanistan in accordance with the provisions of this Act.

SEC. 304. AUTHORIZATION OF APPROPRIATIONS.

The authority of this title shall expire December 31, 2003.

SEC. 209. TITLE IV—CONDITIONS OF ASSISTANCE TO AFGHANISTAN.

SEC. 301. PROHIBITION ON UNITED STATES INVOLVEMENT IN POPPY CULTIVATION OR ILLICIT NARCOTICS GROWTH, PRODUCTION, OR TRAFFICKING.

No officer or employee of any Federal department or agency who is involved in the provision of assistance under this Act may knowingly encourage or participate in poppy cultivation or illicit narcotics growth, production, or trafficking in Afghanistan. No United States military or civilian aircraft or other United States vehicle that is used with respect to the provision of assistance under this Act may be used to facilitate the distribution of poppies or illicit narcotics in Afghanistan.

SEC. 302. REQUIREMENT TO REPORT BY CERTAIN UNITED STATES OFFICIALS.

(a) REQUIREMENT.—An officer or employee of any Federal department or agency involved in the provision of assistance under this Act and having knowledge of facts or circumstances that reasonably indicate that there are any drug-related activities in Afghanistan shall report such knowledge or facts to the appropriate official.

(b) DEFINITION.—In this section, the term ‘‘appropriate official’’ means the Attorney General, the Inspector General of the Federal department or agency involved, or the head of such department or agency.

SEC. 303. REPORT BY THE PRESIDENT.

Not later than 6 months after the date of the enactment of this Act, and annually thereafter, the President shall transmit to Congress a written report of the Government of Afghanistan toward the eradication of poppy cultivation, the disruption of heroin production, and the reduction of the illegal supply of illicit narcotics in Afghanistan in accordance with the provisions of this Act.

TAKEN FROM THE SPEAKER’S TABLE AND PASSED:

S. 3044, to authorize the Court Services and Offender Supervision Agency of the District of Columbia to provide for the interstate supervision of offenders on parole, probation, and supervised release.

S. 3044

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 ‘‘Court Services and Offender Supervision Agency Interstate Supervision Act of 2002’’.

SEC. 2. INTERSTATE SUPERVISION.

Section 1223(b)(2) of the National Capital Revitalization and Self-Government Improvement Act of 1997 (sec. 24-133(b)(2), D.C. Official Code) is amended—

(1) by amending paragraph (G) to read as follows:

‘‘(G) arrange for the supervision of District of Columbia offenders on parole, probation, and...’’
and supervised release who seek to reside in jurisdictions outside the District of Columbia;"

(2) by striking the period at the end of subparagraph (f), inserting a semicolon, and
(3) by adding at the end the following new subparagraphs:

"(I) arrange for the supervision of offenders on probation and supervised release from jurisdictions outside the District of Columbia who seek to reside in the District of Columbia; and

(J) the authority to enter into agreements, including the Interstate Compact for Adult Offender Supervision, with any State or group of States in accordance with the Agency’s responsibilities under subparagraphs (G) and (I)."

TAKEN FROM THE SPEAKER’S TABLE AND PASSED
S. 3156, to provide grant for the construction of a new community center in St. Paul, Minnesota, in honor of the late Senator Paul Wellstone and his beloved wife, Sheila.
S. 3156

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 “Paul and Sheila Wellstone Center for Community Building Act”.

SEC. 2. FINDINGS.
Congress finds the following:

(1) Senator Paul Wellstone was a tireless advocate for the people of Minnesota, particularly for new immigrants and the economically disadvantaged.

(2) Paul and Sheila Wellstone loved St. Paul, Minnesota, and often walked the neighborhoods of St. Paul to better understand the needs of the people.

(3) Neighborhood House was founded in the late 1800’s in St. Paul, Minnesota, by the women of Mount Zion Temple as a settlement house to help newly arrived Eastern European Jewish immigrants establish a new life and thrive in their new community.

(4) Paul and Sheila Wellstone were very committed to Neighborhood House and its mission of helping the residents of its services.

(5) When Senator Wellstone became aware that the Neighborhood House Community Center was no longer adequate to meet the needs of the community, he suggested that Neighborhood House request Federal funding to construct a new facility.

(6) As an honor to Paul and Sheila Wellstone, a Federal grant shall be awarded to Neighborhood House to be used for the design and construction of a new community center in St. Paul, Minnesota, to be known as “The Paul and Sheila Wellstone Center for Community Building”.

SEC. 3. CONSTRUCTION GRANT.
(a) GRANT AUTHORIZED.—The Secretary of Housing and Urban Development shall award a grant to Neighborhood House of St. Paul, Minnesota, to finance the construction of a new community center in St. Paul, Minnesota, to be known as “The Paul and Sheila Wellstone Center for Community Building”.

(b) MAXIMUM AMOUNT.—The grant awarded under this section shall not be $10,000,000.

(c) USE OF FUNDS.—Funds awarded under this section shall only be used for the design and construction of the Paul and Sheila Wellstone Center for Community Building.

(d) USE OF PROCEEDS.—There is authorized to be appropriated $10,000,000 for fiscal year 2003, which shall remain available until expended, to carry out this Act.

Ms. MCCOLLUM. Mr. Speaker, I rise today in support of legislation (S. 3156) to create a living memorial for Paul and Sheila Wellstone in my home district of St. Paul. I am pleased that both the House and Senate were able to agree on such a fitting tribute.

Senator Wellstone was my colleague, but Paul and Sheila were also my constituents and my friends. Over the years, Paul and I have cooperated and listened and listened to the concerns of Minnesotans, working together to address the challenges of our communities and neighborhoods. Paul and Sheila’s enthusiasm for public service and their commitment to Minnesota were unmatched.

Today, I stand with the Minnesota Congressional delegation to pay tribute to Paul and Sheila with a true living memorial to their lives of serving the people of Minnesota.

This legislation will authorize the design and construction of a new community center in St. Paul at the Neighborhood House. The Neighborhood House has played a long-standing role in building community values among diverse peoples. Since the 19th century, the Neighborhood House has supported ethnic and cultural groups through times of transition or need and has been more self-sufficient, develop critical workforce skills, and become active members of our democratic process. From Hmong immigrants to Hispanic women facing domestic violence, the Neighborhood House provides all those who come an opportunity to improve the quality of their lives.

The new center to be named after Paul and Sheila Wellstone will host youth and family programs, immigrant education programs such as English classes, employment services and workforce development. It will provide a forum for new citizens to learn and integrate themselves into their new society and will strengthen Minnesota’s richly diverse community.

Paul and Sheila Wellstone were advocates for people from all walks of life. They were open to all Minnesotans. In the Senate, Paul spoke for those who had no voice and he worked hard to empower those who needed help the most. This new center embodies the ideals and principles that Paul and Sheila lived every day.

I thank all my colleagues in Congress for honoring Paul and Sheila Wellstone in a way that will continue their work and improve the lives of Minnesotans for years to come.

DISCHARGED FROM THE COMMITTEE ON INTERNATIONAL RELATIONS AND AGREED TO
H. Res. 604, expressing the sense of the House of Representatives that the United States should adopt a global strategy to respond to the current coffee crisis, and for other purposes.

H. Res. 604

Whereas since 1997 the price of coffee has declined nearly 70 percent on the world market and to that they go beyond a critical level in a century;

Whereas the collapse of coffee prices has resulted in a widespread humanitarian crisis in 25 million or more farmers in more than 50 developing countries where coffee is a critical source of rural employment and foreign exchange earnings;

Whereas the collapse of coffee prices has referred to the coffee crisis as “the silent Mitch”, equating the impact of record-low coffee prices upon Central American countries with the damage done to such countries by Hurricane Mitch in 1998;

Whereas 6 of 14 immigrants who died in the Arizona desert in May 2003 were small coffee farmers from Veracruz, Mexico;

Whereas The Washington Post, The New York Times, and The Wall Street Journal report that cultivation of illicit crops such as coca and opium poppy is increasing in traditional coffee-growing countries, such as Colombia and Peru, which have been adversely affected by low international coffee prices;

Whereas the economies of some of the poorest countries in the world, particularly those in Africa, are highly dependent on trade in coffee;

Whereas coffee accounts for approximately 80 percent of export revenues for Burundi, 54 percent of export earnings for Indonesia, 34 percent of export revenues for Uganda, and 31 percent of export revenues for Rwanda;

Whereas, according to the Oxfam International Report “Mugged: Poverty in your Coffee Cup”, in the Dak Lak province of Vietnam, one of the lowest-cost coffee producers in the world, the price farmers receive for their product varies little as 60 percent of their cost of production and the income derived by the worst-off farmers in that region is categorized as “pre-starvation income”;

Whereas on February 1, 2002, the International Coffee Organization (ICO) passed Resolution 407;

Whereas Resolution 407 calls for exporting member countries to observe minimum standards for exportable coffee and provide for the issuance of ICO certificates of origin according to those standards;

Whereas ICO Resolution 407 calls on importing member countries to “make their best endeavors to support the objectives of the programme”;

Whereas both the Specialty Coffee Association of America (SCAA) and the National Coffee Association (NCA) support ICO Resolution 407 and have publicly advocated for the United States to rejoin the International Coffee Organization;

Whereas on July 24, 2002, the Subcommittee on the Western Hemisphere of the Committee on International Relations of the House of Representatives held a hearing on the coffee crisis in the Western Hemisphere;

Whereas the United States Agency for International Development (USAID) has established assistance programs for Colombia, Bolivia, the Dominican Republic, East Timor, El Salvador, Ethiopia, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru, Rwanda, Tanzania, and Uganda; and

Whereas the report accompanying the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003 (House Report 107-663), highlights the coffee price crisis as a global issue and “urges USAID to focus its rural development and relief programs on regions severely affected by the coffee crisis, especially in Colombia”: Now, therefore, be it

Resolved, That—

(1) it is the sense of the House of Representatives that—

(A) the United States should adopt a global strategy to respond to the coffee crisis with coordinated activities in Latin America, Africa, and Asia to address the short-term humanitarian needs and long-term rural development needs of countries adversely affected by the collapse of coffee prices; and

(B) the President should explore measures to support and complement multilateral efforts to respond to the global coffee crisis; and

(2) the House of Representatives urges private sector coffee buyers and roasters to
work with the United States Government to find a solution to the crisis which is eco-
nomically, socially, and environmentally sustainable for all interested parties, and that we address the fundamental problem of oversupply in the world coffee market.

DISCHARGED FROM THE COMMITTEE ON GOVERNMENT REFORM AND AGREED TO H. Con. Res. 499, honoring George Rogers Clark

H. CON. RES. 499

Whereas George Rogers Clark was a colonial frontiersman who succeeded in pro-
\underline{\textbf{June 14, 2002}}

Whereas youth who have been expelled from their homes by their families, physically, sexually, and emotionally abused at home, discharged by State custodial systems without adequate transition plans, separated from their school and district support, too poor to secure their own basic needs, and ineligible or unable to access adequate medical or mental health resources;

Whereas the National Network for Youth and its members advocate on behalf of run-
away youth, families, and communities: Now, therefore, be it

Resolved, That the House of Representa-
tives—

(1) congratulates the Anaheim Angels for winning the 2002 Major League Baseball World Series championship and for their outstanding per-
formance during the 2002 Major League Base-
ball season; and

(2) recognizes the achievements of the Anaheim Angels, coaches, and support staff whose hard work, dedication, and never-say-
die spirit proved instrumental in the Angels’ first-ever World Series victory;

(3) commends the San Francisco Giants for a valiant performance during the World Series and for showing their strength and skill as a team; and

(4) directs the Clerk of the House of Representa-
tives to transmit an enrolled copy of this resolution to—

(A) the Anaheim Angels; 

(B) Angels Manager Mike Scioscia; 

(C) Angels General Manager Bill Stoneman; 

(D) The Walt Disney Company; and 

(E) Jackie Autry.

H. RES. 612, honoring the life of Dr. Roberto Cruz.

H. RES. 612

Whereas Dr. Cruz received a bachelor’s degree in Spanish from the Wichita State Uni-
versity, a masters degree in education from the University of California-Berkeley, and a doctoral degree in policy, planning, and ad-
ministration from the University of Cali-
ifornia-Berkeley;

Whereas Dr. Cruz was appointed by the State Board of Education and the run-away youth and homeless youth and provide an array of community-based supports that ad-
dress their critical needs;

Whereas the National Runaway Switchboard provides crisis intervention and refer-
\underline{\textbf{CONGRESSIONAL RECORD—HOUSE}}
SEC. 3. IMPROVEMENT OF SAFETY OF CHILD RESTRAINTS IN PASSENGER MOTOR VEHICLES.

(a) IN GENERAL.—The Secretary of Transportation (hereafter referred to as the "Secretary") shall initiate rulemaking proceedings to establish performance requirements for child restraints, including booster seats, for the restraint of children weighing more than 50 pounds.

(b) ELEMENTS FOR CONSIDERATION.—In the rulemaking proceeding required by subsection (a), the Secretary shall—

(1) consider whether to include injury performance criteria for child restraints, including booster seats and other products for use in passenger motor vehicles for the restraint of children weighing more than 50 pounds, under the requirements established in the rulemaking proceeding;

(2) consider whether to establish performance requirements for seat belts, such as allowing tethered child restraint systems for such children; and

(3) consider whether to establish performance requirements for seat belt fit when used with booster seats and other belt guidance devices.

(c) C OMPLETION.—The Secretary shall complete the rulemaking proceeding required by subsection (a) not later than 30 months after the date of the enactment of this Act.

SEC. 4. DEVELOPMENT OF ANTHROPOMORPHIC TEST DEVICE SIMULATING A 10-YEAR OLD CHILD.

(a) DEVELOPMENT AND EVALUATION.—Not later than 24 months after the date of the enactment of this Act, the Secretary shall develop and evaluate an anthropomorphic test device that simulates a 10-year old child for use in testing child restraints used in passenger motor vehicles.

(b) OPERATION BY RULEMAKING.—Within 1 year following the development and evaluation carried out under subsection (a), the Secretary shall initiate a rulemaking proceeding for the adoption of an anthropomorphic test device as developed under subsection (a).

SEC. 5. REQUIREMENTS FOR INSTALLATION OF LAP AND SHOULDER BELTS.

(a) IN GENERAL.—Not later than 3 months after the date of the enactment of this Act, the Secretary shall complete a rulemaking proceeding to amend Federal motor vehicle safety standard No. 208 under section 571.208 of title 49, Code of Federal Regulations, to require the use of lap and shoulder belts for children involved in motor vehicle crashes.

(b) LIMITATION.—Funds appropriated under subsection (a) shall not be available for the general administrative expenses of the Secretary.

Mr. TAUZIN. Mr. Speaker, today we are considering an important and needed piece of safety legislation, H.R. 5504, the "Child Safety Enforcement Act of 2002." This bill, introduced by Rep. SHIMKUS, aims to protect the "forgotten child"—those children who are too large for the child safety seat, but too small for adult seat belts. Make no mistake about it, this bill will save the lives of innocent children who are too often the victims of automobile accidents.

This bill will enhance child passenger safety by requiring the National Highway Traffic Safety Administration (NHTSA) to draft a final rule establishing performance requirements for child restraints, including booster seats, for children weighing more than 50 pounds when riding in passenger vehicles, and the installation of three-point lap and shoulder belts in rear seats.

The legislation mandates that NHTSA initiate a rulemaking that will require the installation of the three-point, lap and shoulder belt...
assembly in certain rear seats within one year after enactment. This installation requirement must be phased in over three production years. NHTSA may, in accordance with past practice, allow for the earning of credits for early compliance or compliance beyond the mandated deadlines for achieving manufacturers to utilize credits in future model years. This section is intended to maximize occupant safety and it should not be construed to promote or inhibit liability. This legislation does not change the law on liability, and it is not intended to prevent a manufacturer from using a sword or a shield in litigation.

Again, I thank Mr. Shimkus for shepherding this good bill through the Energy and Commerce Committee, and I strongly support its passage.

PASSED, AS AMENDED BY THE COMMITTEE

H. R. 3429, to direct the Secretary of Transportation to make grants for security improvements to over-the-road bus operations, and for other purposes.

H. R. 3429

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 “Over-the-Road Bus Security and Safety Act of 2001”.

SEC. 2. EMERGENCY OVER-THE-ROAD BUS SECURITY ASSISTANCE.

(a) IN GENERAL.—The Secretary of Transportation may make grants to private operators of over-the-road buses for system-wide security improvements to their operations, including the reimbursement of extraordinary security-related costs determined by the Secretary to have been incurred by such operators since September 11, 2001, and including—

(1) constructing and modifying garages, facilities, or over-the-road buses to assure their security;

(2) acquiring, upgrading, installing, or operating equipment, software, or accessory services for collection, storage, or exchange of passenger and driver information through ticketing systems or otherwise, and information links with government agencies;

(3) training employees in recognizing and responding to terrorist threats, evacuation procedures, passenger screening procedures, and baggage inspection;

(4) hiring and training security officers or “bus marshals”;

(5) installing cameras and video surveillance equipment on over-the-road buses and at garages and over-the-road bus facilities;

(6) hiring and training security officers; and

(7) creating a program for employee identification or background investigation;

(b) DUE CONSIDERATION.—In making grants under this Act, the Secretary shall give due consideration to private operators of over-the-road buses that have taken measures to consider the reimbursement of the Secretary share of the cost for which any grant is made under this Act shall be 90 percent.

(c) REIMBURSEMENT.—The Secretary may not make a grant under this Act to a private operator of an over-the-road bus if the cost of the trip is more than $5. Subject to subsection (c) and notwithstanding section 9701 of title 31, United States Code, and the procedural requirements of section 553 of title 5, United States Code, the Secretary shall impose the fee through the publication of notice of fee in the Federal Register, and begin collection of the fee within 60 days of the date of enactment of this Act, or as soon as possible thereafter.

(d) PAYMENTS TO SECRETARY.—All fees imposed and amounts collected under this section are payable to the Secretary.

(e) RECEIPTS CREDITED TO ACCOUNT.—Notwithstanding section 3102(a) of title 31, United States Code, all fees collected under this section—

(1) shall be credited to a separate account established in the Treasury;

(2) shall be available immediately, without further appropriation, for expenditure but only for making grants under section 2 in fiscal years 2003 and 2004; and

(3) shall remain available until expended.

(f) FEES COLLECTED BY BUS OPERATORS.—A fee imposed under this section shall be collected by the private operators of over-the-road buses and shall be remitted to the Secretary on the last day of each calendar quarter, in an amount determined by the Secretary to be reasonable and required for the efficient operation of the system under this Act.

(g) I NFORMATION.—The Secretary may require the provision of such information as the Secretary decides is necessary to verify that fees have been collected and remitted at the proper time and in the proper amount.

(h) REFUNDS.—The Secretary may refund to a private operator of an over-the-road bus any fee paid by such operator by mistake or any amount paid by such operator in excess of that required.

Further amendment:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Max Cleland Over-the-Road Bus Security and Safety Act of 2002”.

SEC. 2. EMERGENCY OVER-THE-ROAD BUS SECURITY ASSISTANCE.

(a) IN GENERAL.—The Secretary of Transportation, acting through the Administrator of the Federal Motor Carrier Safety Administration, shall establish a program for making grants to private operators of over-the-road buses for system-wide security improvements to their operations, including—

(1) constructing and modifying terminals, garages, facilities, or over-the-road buses to assure their security;

(2) protecting or isolating the driver;

(3) acquiring, upgrading, installing, or operating equipment, software, or accessory services for collection, storage, or exchange of passenger and driver information through ticketing systems or otherwise;

(4) establishing emergency communications system linked to law enforcement and emergency personnel; and

(5) implementing and operating passenger screening programs at terminals and on over-the-road buses.

(b) REIMBURSEMENT.—A grant under this Act may be used to provide reimbursement to private operators of over-the-road buses for extraordinary security-related costs for improvements described in paragraphs (1) through (5) of subsection (a), determined by the Secretary to have been incurred by such operators since September 11, 2001.

(c) PLAN REQUIREMENT.—The Secretary may not make a grant under this Act to a private operator of an over-the-road bus unless the operator has first submitted to the Secretary a plan for making security improvements described in section 2 and the Secretary has first submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a preliminary report in accordance with the requirements of this section.

SEC. 3. PLAN REQUIREMENT.

(a) IN GENERAL.—The Secretary may not make a grant under this Act to a private operator of an over-the-road bus unless the operator has first submitted to the Secretary a plan for making security improvements described in section 2 and the Secretary has first submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a preliminary report in accordance with the requirements of this section.

SEC. 4. OVER-THE-ROAD BUS DEFINED.

In this Act, the term “over-the-road bus” means a bus characterized by an elevated passenger deck located over a baggage compartment.
The Administration’s failure to make these funds available is inexcusable. The recent California attack was the fourth attack on an intercity bus driver in the past year. Any further delay in releasing these funds risks the lives of thousands of low-income Americans whose only mode of transportation may be the intercity bus. The Administration must take immediate action to make these funds available.

Mr. Speaker, H.R. 3429, as amended, moves us in the right direction. It directs the Secretary to establish a program for making grants to private operators of over-the-road buses for system-wide security improvements to their operations, including constructing and modifying terminals, garages, or over-the-road buses to assure their security; protecting the driver; training employees in recognizing security threats; hiring and training security officers; installing camera and video surveillance equipment; and establishing an emergency communications system linked to law enforcement and emergency personnel. The motorcoach industry has spent millions on enhanced security measures. The funds provided by the bill will supplement measures already undertaken by the industry to increase the security of the bus system and restore the public’s confidence in traveling by bus. Mr. Speaker, section 6 requires the President to move forward expeditiously to utilize these funds for their intended purpose.

I urge my colleagues to support the amendment in the nature of a substitute to H.R. 3429.

Mr. YOUNG of Alaska. The purposes of this bill are to establish a direct grant program to help improve the system-wide security of over-the-road bus operations, and to authorize the Secretary of Transportation to conduct a security assessment of over-the-road bus operations. Over-the-road buses, or motorcoaches, operate in both commuter and intercity operations. The motorcoach industry, which includes regularly scheduled point-to-point service and charted tour operations, carried more than 774 million passengers in the United States in 2000. According to the Bureau of Transportation Statistics, the intercity bus transportation industry serves 5000 locations nationwide, many of which are rural communities that might not have other modes of intercity transportation available to the public. Of the 4000 bus companies operating in this country, 90 percent operate fewer than 25 buses.

There are worrisome precedents for security breaches on buses. For example, in the Middle East, terrorists have used buses to cause mass casualties in a number of crowded cities. In the United States, Greyhound drivers and passengers were the targets of a least 4 serious assaults last year, one killing 7 passengers and another injuring 33 passengers; and at least 3 other serious security breaches. No other major United States transportation mode had as many incidents of passenger attacks during that period. These incidents occurred in states throughout the country, including Tennessee, Arizona, Utah, Oklahoma, Pennsylvania, and Vermont.

In response to the incidents, bus companies have taken a number of steps to enhance security. These steps include: performing random screening of passengers and baggage at selected terminals; requiring ticket identification; providing cell phones to drivers as an interim emergency communications system; increasing security personnel in terminals; giving the driver the right to limit access to the first row of seats; and establishing information and communications systems to aid and coordinate with law enforcement.

In the 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States (P.L. 107-206), $15 million was provided for bus security improvements intended to address the same type of security-related issues as identified in this bill. This appropriation represents the first installment of funds for over-the-road bus security and the Mangers encourage the Secretary to move forward expeditiously to utilize these funds for their intended purpose.
Section 4. Over-the-road bus defined.

This section defines an over-the-road bus as a bus characterized by an elevated passenger deck located over a baggage compartment, consistent with the definition used in the Transportation Equity Act for the 21st Century (P.L. 105–178).

Section 5. Bus security assessment.

This section directs the Secretary to submit a preliminary report within 180 days of enactment to the Senate Committee on Commerce, Science and Transportation and the House Committee on Transportation and Infrastructure. The report will include assessments of: the grant program established by the bill; actions taken by public and private entities to address security issues and recommendations on whether additional actions; including legislation are needed; the economic impact of security upgrades on the over-the-road bus industry and its employees; ongoing and needed research on over-the-road bus security; and industry best practices to enhance security. In conducting the assessments, the Secretary is to consult with over-the-road bus managers and labor representatives, public safety and law enforcement officials, and the National Academy of Sciences.

Section 6. Funding.

This section authorizes $99 million for the grant program for fiscal year 2003 and provides that such sums shall remain available until expended.

Mr. YOUNG of Alaska. Mr. Speaker, I move to call up H.R. 3429, as amended, from the desk, and pass the bill by unanimous consent.

Mr. Speaker, thank you for allowing this bill to move through in these last days of the 107th Congress.

PASSED, AS AMENDED BY THE COMMITTEE AMENDMENT AS FURTHER AMENDED H.R. 2458, to enhance the management and promotion of electronic Government services and processes by establishing a Federal Chief Information Officer within the Office of Management and Budget, and by establishing a broad framework of measures that require using Internet-based information technology to enhance citizen access to Government information and services, and for other purposes.

H.R. 2458

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 “E-Government Act of 2002”.

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

Sec. 1. Short title: table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Information security.
Sec. 4. Management and promotion of electronic Government services.
Sec. 5. Outsourcing and privatization.
Sec. 6. Modernization of Federal information systems.
Sec. 7. Strengthening Federal information security.
Sec. 8. Protection of Federal information resources.
Sec. 9. Improving Federal information technology acquisition and management.
Sec. 10. Improving Federal Internet accessibility.
Sec. 11. Coordination and oversight of policies.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The use of computers and the Internet is rapidly transforming societal interactions and the relationships among citizens, private businesses, and the Government.

(2) The Federal Government has had uneven success in applying advances in information technology to enhance Governmental functions and services, achieve more efficient performance, increase access to Government information, and increase citizen participation in Government.

(3) Most Internet-based services of the Federal Government are developed and presented separately, according to the jurisdictional boundaries of an individual department or agency, rather than being integrated cooperatively according to function or topic.

(4) Internet-based Government services involving interagency cooperation are especially difficult to develop and promote, in part because of a lack of sufficient funding mechanisms to support such interagency cooperation.

(5) Electronic Government has its impact through improved Government performance and outcomes within and across agencies.

(6) Electronic Government is a critical element in the management of Government, to be implemented as part of a management framework.
that also addresses finance, procurement, human capital, and other challenges to improve the performance of Government.

(7) To take full advantage of the improved Government services that can be achieved through the use of Internet-based technology requires strong leadership, better organization, improved interagency collaboration, and more focused oversight of agency compliance with statutes related to information resource management.

(b) PURPOSE.—The purposes of this Act are the following:

(1) To provide effective leadership of Federal Government efforts to develop and promote electronic Government services and processes by establishing an Administrator of a new Office of Electronic Government within the Office of Management and Budget.

(2) To promote use of the Internet and other information technologies to provide increased opportunities for citizen participation in Government.

(3) To promote interagency collaboration in providing electronic Government services, where this collaboration would improve the service to citizens by integrating related functions, and in the use of internal electronic Government processes, where this collaboration would improve the efficiency and effectiveness of the processes.

(4) To improve the ability of the Government to achieve agency missions and program performance goals.

(5) To promote the use of the Internet and emerging technologies within and across Government agencies to provide citizen-centric Government information and services.

(6) To reduce costs and burdens for businesses and other Government entities.

(7) To promote better informed decisionmaking by policy makers.

(8) To promote access to high quality Government information and services across multiple channels.

(9) To make the Federal Government more transparent and accountable.

(10) To transform agency operations by utilizing, where appropriate, best practices from public and private sector organizations.

(11) To provide enhanced access to Government information and services in a manner consistent with laws regarding protection of personal privacy, national security, records retention, access for persons with disabilities, and other relevant laws.

TITLE I—OFFICE OF MANAGEMENT AND BUDGET ELECTRONIC GOVERNMENT SERVICES

SEC. 101. MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES.

(a) In GENERAL.—Title 44, United States Code, is amended by inserting after chapter 35 the following:

"CHAPTER 36—MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES"

"Sec. 3601. Definitions.

3602. Office of Electronic Government.

3603. Chief Information Officers Council.

3604. E-Government Fund.

3605. Program to encourage innovative solutions to enhance electronic Government services and processes.

3606. E-Government report.

§3601. Definitions

"In this chapter, the definitions under section 3602 shall apply, and the term—

(1) 'Administrator' means the Administrator of the Office of Electronic Government established under section 3602;

(2) 'Council' means the Chief Information Officers Council provided under section 3603;

(3) 'electronic Government' means the use by the Government of web-based Internet applica-

...
technology to increase the efficiency of Government-to-business transactions; 

(iii) identification of mechanisms for providing incentives to program managers and other employees to develop and implement innovative uses of information technologies; and 

(iv) identification of opportunities for public-private intergovernmental collaboration in addressing the disparities in access to the Internet and information technology. 

(10) Sponsor activities to encourage the general public, private sector, and nongovernmental organizations to engage with Federal agencies in promoting and supporting initiatives that engage multiple agencies providing similar or related information and services. 

(11) Oversee the work of the General Services Administration and other agencies in developing the integrated Internet-based system under section 204 of the E-Government Act of 2002. 

(12) Coordinate with the Administrator for Federal Procurement Policy to ensure effective implementation of electronic procurement activities. 

(13) Assist Federal agencies, including the General Services Administration, the Department of Justice, and the United States Access Board in—

(A) implementing accessibility standards under section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d); and 

(B) ensuring compliance with those standards through the budget review process and other means. 

(14) Oversee the development of enterprise architectures within and across agencies. 

(15) Assist the Director and the Deputy Director for Management in overseeing agency efforts to ensure that electronic Government activities incorporate adequate, risk-based, and cost-effective security compatible with business processes. 

(16) Administer the Office of Electronic Government established under this section. 

(17) Assist the Director in preparing the E-Government report established under section 3606. 

(18) The Director shall ensure that the Office of Management and Budget, including the Office of Electronic Government, the Office of Information and Regulatory Affairs, and other relevant Federal agencies and their staffs and resources to properly fulfill all functions under the E-Government Act of 2002. 

§3603. Chief Information Officers Council 

(a) There is established in the executive branch of the Government an Office of Information Officers Council. 

(b) The members of the Council shall be as follows: 

(1) The Deputy Director for Management of the Office of Management and Budget, who shall act as chairperson of the Council. 

(2) The Administrator of the Office of Electronic Government. 

(3) The Administrator of the Office of Information and Regulatory Affairs. 

(4) The chief information officer of each agency. 

(5) The chief information officer of the Central Intelligence Agency. 

(6) The chief information officer of the Department of the Army, the Department of the Navy, and the Department of the Air Force, if chief information officers have been designated for those departments under section 3506(a)(2)(B). 

(7) Any other officer or employee of the United States designated by the chairperson. 

(c) The membership of the Office of Electronic Government shall lead the activities of the Council on behalf of the Deputy Director for Management. 

(1) The Vice Chairman of the Council shall be selected by the Council from among its members. 

(2) The Vice Chairman shall serve a 1-year term, and may serve multiple terms. 

(3) The Administrator of General Services shall provide administrative and other support for the Council. 

(4) The Council is designated the principal interagency forum for improving agency practices related to the design, acquisition, development, modernization, use, operation, sharing, and performance of Federal Government information resources. 

(e) In performing its duties, the Council shall consult regularly with representatives of State, local, and tribal governments. 

(f) The Council shall perform functions that include the following: 

(1) Make recommendations for the Director on Government information resources management policies and requirements. 

(2) Share experiences, ideas, best practices, and innovative approaches related to information resources management. 

(3) Assist the Administrator in the identification, development, and coordination of multi-agency projects and other innovative initiatives to improve Government performance through the use of information technology. 

(4) Promote the development and use of common performance measures for agency information resources management under this chapter and title II of the E-Government Act of 2002. 

(5) Work with the (i) National Institute of Standards and Technology and the Administrator to develop recommendations on information technology standards developed under section 3504 of this title; and (ii) National Institute of Standards and Technology Act (15 U.S.C. 276c–3) and promulgated under section 11331 of title 40, and maximize the use of commercial standards as appropriate. 

(A) Standards and guidelines for interconnectivity and interoperability as described under section 3504. 

(1) Contributes, if a project or process under section 207(d) of the E-Government Act of 2002, standards and guidelines for categorizing Federal Government electronic information to enable efficient use of technologies, such as through the use of extensible markup language. 

(2) Standards and guidelines for Federal Government computer system efficiency and security. 

(3) Work with the Office of Personnel Management to assess and address the hiring, training, classification, and professional development needs of the Government related to information resources management. 

(4) Work with the Archivist of the United States to assess the Federal Records Act can be amended to improve Federal information resources management activities. 

§3604. E-Government Fund 

(a)(1) There is established in the Treasury of the United States the E-Government Fund. 

(2) The Fund shall be administered by the Administrator of the General Services Administration to support projects approved by the Director, assisted by the Administrator of the Office of Electronic Government, that enable the Federal Government to expand its ability, through the development and implementation of innovative uses of the Internet or other electronic methods, to conduct activities electronically. 

(3) Projects under the subsection may include efforts to— 

(A) make Federal Government information and services more readily available to members of the public (including individuals, businesses, grantees, and State and local governments); 

(B) make it easier for the public to apply for benefits, receive services, pursue business opportunities, submit information, and otherwise conduct transactions with the Federal Government; and 

(C) enable Federal agencies to take advantage of information technology in sharing information and conducting transactions with each other and with State and local governments. 

(b)(1) The Administrator shall— 

(A) establish procedures for accepting and reviewing proposals for funding; 

(B) consult with interagency councils, including the Chief Information Officers Council, the Federal Financial Management Council, and other interagency management councils, in establishing procedures and reviewing proposals; and 

(C) assist the Director in coordinating resources that agencies receive from the Fund, with other resources available to agencies for similar purposes. 

(2) When reviewing proposals and managing the Fund, the Administrator shall observe and incorporate the following procedures: 

(A) A project requiring substantial involvement or funding from an agency shall be approved by a senior official with agencywide authority on behalf of the head of the agency, who shall report directly to the head of the agency. 

(B) Projects shall adhere to fundamental capital planning and investment control processes. 

(C) Agencies shall identify in their proposals resource commitments from the agencies involved and how these resources would be coordinated with support from the Fund, and include plans for potential continuance of projects after funds made available from the Fund are expended. 

(D) After considering the recommendations of the interagency councils, the Director, as authorized by the Administrator, shall have final authority to determine which of the candidate projects shall be funded from the Fund. 

(E) Agencies shall assess the results of funded projects. 

(c) In determining which proposals to recommend for funding, the Administrator— 

(1) shall consider criteria that include whether a proposal— 

(A) identifies the group to be served, including citizens, businesses, the Federal Government, or other governments; 

(B) indicates what service or information the project will provide that meets needs of groups identified under subparagraph (A); 

(C) ensures proper security and protects privacy; 

(D) is interagency in scope, including projects implemented by a primary or single agency that— 

(i) could confer benefits on multiple agencies; and 

(ii) have the support of other agencies; and 

(E) has performance objectives that tie to agency missions and strategic goals, and interim results that relate to the objectives; and 

(F) has been also rank- or score-based on criteria that include whether a proposal— 

(G) has Governmentwide application or implications; 

(H) has demonstrated support by the public to be served; 

(I) integrates Federal with State, local, or tribal approaches to service delivery; 

(J) describes how business processes across agencies will reflect appropriate transformation strategies and an improved structure for delivery; 

(K) describes how business processes across agencies will reflect appropriate transformation strategies and an improved structure for delivery; 

(1) is new or innovative and does not supplant existing funding streams within agencies. 

"
“(d) The Fund may be used to fund the integrated Internet-based system under section 204 of the E-Government Act of 2002.

(e) None of the funds provided from the Fund established under this Act by the Director may be used for an agency to develop, test, or implement any service or system until 15 days after the Administrator of the General Services Administration has submitted to the Committee on Appropriations of the Senate and the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the appropriate authorizing committees of the Senate and the House of Representatives, a notification and description of how the funds are to be allocated and how the expenditure will further the purposes of this chapter.

“(f)(1) The Director shall report annually to Congress on the operation of the Fund, through the report established under section 3606.

“(2) The report under paragraph (1) shall describe—

“(A) all projects which the Director has approved for funding from the Fund; and

“(B) the results that have been achieved to date for these funded projects.

“(g)(1) There are authorized to be appropriated to the Fund—

“(A) $45,000,000 for fiscal year 2003;

“(B) $50,000,000 for fiscal year 2004;

“(C) $100,000,000 for fiscal year 2005;

“(D) $90,000,000 for fiscal year 2006; and

“(E) such sums as are necessary for fiscal year 2007.

“(2) Funds appropriated under this subsection shall be available until September 30, 2007.

“§3605. Program to encourage innovative solutions to enhance electronic Government services and processes

“(a) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish and promote Governmentwide programs to encourage contractor innovation and excellence in facilitating the development and enhancement of electronic Government services and processes. The Administrator may consult with the Administrator of the Office of Management and Budget or the Administrator of the General Services Administration to promote innovative ideas for the efficient use of information technologies by Federal agencies.

“(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 3 of title 44, United States Code, is amended by inserting after the item relating to chapter 35 the following:

“36. Management and Promotion of Electronic Government Services ... 3605”.

“SEC. 102. CONFORMING AMENDMENTS.

“(a) ELECTRONIC GOVERNMENT AND INFORMATION TECHNOLOGIES.—

“(1) IN GENERAL.—Chapter 3 of title 40, United States Code, is amended by inserting after section 304 the following new section:

“§305. Electronic Government and information technologies.

“(1) The Administrator of General Services shall consult with the Administrator of the Office of Electronic Government on programs undertaken to promote the efficient use of information technologies by Federal agencies.

“(b) MODIFICATION OF DEPUTY DIRECTOR FOR MANAGEMENT FUNCTIONS.—Section 506(b) of title 31, United States Code, is amended by inserting after the item relating to 506 the following:

“36. E-Government report

“(a) Not later than March 1 of each year, the Director shall submit an E-Government status report to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

“(b) The report under subsection (a) shall contain—

“(1) a summary of the information reported by agencies under section 202(f) of the E-Government Act of 2002;

“(2) the information required to be reported by section 304(f); and


“(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for title 44, United States Code, is amended by inserting after the item relating to chapter 35 the following:

“36. Management and Promotion of Electronic Government Services ... 3657”.

“TITLE II—FEDERAL MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

“SEC. 201. DEFINITIONS.

“Except as otherwise provided, in this title the definitions under sections 3502 and 3501 of title 44, United States Code, shall apply.

“SEC. 202. FEDERAL AGENCY RESPONSIBILITIES.

“(a) IN GENERAL.—The head of each agency shall be responsible for—

“(1) complying with the requirements of this Act (including the amendments made by this Act), the related information resource management policies established by the Director of the Office of Management and Budget, and the related information technology standards promulgated by the Secretary of Commerce;

“(2) ensuring that the information resource management policies and guidance established under this Act by the Director of the Office of Management and Budget, and computer system standards promulgated under this Act by the Secretary of Commerce are communicated promptly and accurately to all relevant officials within their agency; and

“(3) supporting the efforts of the Director and the Administrator of the General Services Administration to develop, maintain, and promote an integrated Internet-based system of delivering Federal Government information and services to the public under section 204.

“(b) PERFORMANCE INTEGRATION.—

“(1) Agencies shall develop performance measures that demonstrate how electronic government initiatives enable programs to achieve objectives, strategic goals, and statutory mandates.

“(2) In measuring performance under this section, agencies shall rely on existing data collections to the extent practicable.

“(3) Areas of performance measurement that agencies should consider include—

“(A) customer service;

“(B) agency productivity; and

“(C) adoption of innovative information technologies, including the appropriate use of commercial best practices.

“(4) Agencies shall link their performance goals, as appropriate, to key groups, including businesses, agencies, and the public, and to internal Federal Government operations.

“(5) As appropriate, agencies shall work collectively in linking their performance goals to internal Federal Government operations.

“(c) AVOIDING DIMINISHED ACCESS.—When promulgating policies and implementing programs regarding the provision of Government information and services, agencies of the Federal Government shall ensure that information and services are available to persons with disabilities.

“(d) ACCESSIBILITY TO PEOPLE WITH DISABILITIES.—All actions taken by Federal departments and agencies under this Act shall be in accordance with—


“(B) the policies of agencies under this Act that are intended to ensure implementation of this Act; and

“(C) the policies for the improvement of effectiveness and security.

“(e) SPONSORED ACTIVITIES.—Agencies shall sponsor activities that use information technologies to engage the public in the development and implementation of policies and programs.

“(f) CHIEF INFORMATION OFFICER.—The Chief Information Officer of each of the agencies designated under section 36 of title 44, United States Code (as added by this Act) shall be responsible for—

“(1) participating in the functions of the Chief Information Officers Council; and

“(2) monitoring the implementation, within their respective agencies, of information technology standards promulgated under this Act by the Secretary of Commerce, including common standards for interoperability and interoperability, categorization of Federal Government electronic information, and computer system efficiency and security.

“(g) E-GOVERNMENT STATUS REPORT.—

“(1) IN GENERAL.—Each year, the Director shall compile and submit to the Director an annual E-Government Status Report on—

“(A) the status of the implementation by the agency of electronic government initiatives; and

“(B) compliance by the agency with this Act; and

“(2) how electronic Government initiatives of the agency improve performance in delivering programs to constituents.

“November 14, 2002

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(2) SUBMISSION.—Each agency shall submit an annual report under this subsection—
(A) to the Director at such time and in such manner as the Director requires;
(B) in accordance with related reporting requirements; and
(C) which addresses any section in this title relevant to that agency.

(b) USE OF TECHNOLOGY.—Nothing in this Act supersedes the responsibility of an agency to use or manage information technology to deliver Government information and services that fulfill or manage information technology to deliver electronic transactions with Government.

(iii) CONTENTS.—A notification submitted under this paragraph shall state—
(I) the reasons for the deferral; and
(II) the online methods, if any, or any alternate methods, such as postal delivery, to provide greater public access to information.

(b) EXCEPTION.—To the extent that the Supreme Court, a court of appeals, district, or bankruptcy court of a district maintains a website under subsection (a), the Supreme Court or that court of appeals or district shall comply with subsection (b)(1).

(2) REPORT.—Not later than 1 year after the effective date of this title, and every year thereafter, the Judicial Conference of the United States shall submit a report to the Committees on Governmental Affairs and the Judiciary of the Senate and the Committees on Government Reform and the Judiciary of the House of Representatives that—
(A) contains all notifications submitted to the Administrative Office of the United States Courts under this subsection; and
(B) summarizes and evaluates all notifications.

(ii) CONTENTS.—A notification submitted under this section with respect to the Supreme Court, a court of appeals, district, or bankruptcy court of a district shall state—
(I) the reasons for the deferral; and
(II) the online methods, if any, or any alternate methods, such as postal delivery, to provide greater public access to information.

(j) USE OF TECHNOLOGY.—Nothing in this Act supersedes the responsibility of an agency to use or manage information technology to deliver electronic transactions with Government.

(b) EXCEPTION.—To the extent that the Supreme Court, a court of appeals, district, or bankruptcy court of a district maintains a website under subsection (a), the Supreme Court or that court of appeals or district shall comply with subsection (b)(1).

(2) REPORT.—Not later than 1 year after the effective date of this title, and every year thereafter, the Judicial Conference of the United States shall submit a report to the Committees on Governmental Affairs and the Judiciary of the Senate and the Committees on Government Reform and the Judiciary of the House of Representatives that—
(A) contains all notifications submitted to the Administrative Office of the United States Courts under this subsection; and
(B) summarizes and evaluates all notifications.

(ii) CONTENTS.—A notification submitted under this section with respect to the Supreme Court, a court of appeals, district, or bankruptcy court of a district shall state—
(I) the reasons for the deferral; and
(II) the online methods, if any, or any alternate methods, such as postal delivery, to provide greater public access to information.

(j) USE OF TECHNOLOGY.—Nothing in this Act supersedes the responsibility of an agency to use or manage information technology to deliver electronic transactions with Government.

(b) EXCEPTION.—To the extent that the Supreme Court, a court of appeals, district, or bankruptcy court of a district maintains a website under subsection (a), the Supreme Court or that court of appeals or district shall comply with subsection (b)(1).

(2) REPORT.—Not later than 1 year after the effective date of this title, and every year thereafter, the Judicial Conference of the United States shall submit a report to the Committees on Governmental Affairs and the Judiciary of the Senate and the Committees on Government Reform and the Judiciary of the House of Representatives that—
(A) contains all notifications submitted to the Administrative Office of the United States Courts under this subsection; and
(B) summarizes and evaluates all notifications.

(ii) CONTENTS.—A notification submitted under this section with respect to the Supreme Court, a court of appeals, district, or bankruptcy court of a district shall state—
(I) the reasons for the deferral; and
(II) the online methods, if any, or any alternate methods, such as postal delivery, to provide greater public access to information.
(A) organizes Government information on the Internet according to subject matter; and
(B) may be created with the participation of human editors.

(c) Interagency Committee.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this title, the Director shall establish the Interagency Committee on Government Information.

(2) MEMBERSHIP.—The Committee shall be chaired by the Director or the designee of the Director, and shall include representatives from—

(i) the National Archives and Records Administration;
(ii) the offices of the Chief Information Officer from Federal agencies; and
(iii) other relevant officers from the executive branch.

(d) Functions.—The Committee shall—

(1) engage in public consultation to the maximum extent feasible, including consultation with interested communities such as public advocacy organizations;

(B) conduct studies and submit recommendations, as provided under this section, to the Director and Congress; and

(C) share effective practices for access to, dissemination of, and retention of Federal information.

(e) Termination.—The Committee may be terminated on a date determined by the Director, except that the Committee may not terminate before the Committee submits all recommendations required under this section.

(a) Categorizing of Information.—Not later than 2 years after the date of enactment of this Act, the Committee shall submit recommendations to the Director on—

(A) the adoption of standards, which are open to the maximum extent feasible, to enable the organization and categorization of Government information;

(B) the definition of categories of Government information which should be classified under the standards; and

(C) determining priorities and developing schedules for the initial implementation of the standards by agencies.

(b) Functions of the Director.—Not later than 1 year after the submission of recommendations under paragraph (a), the Director shall issue policies—

(A) requiring that agencies use standards, which are open to the maximum extent feasible, to enable the organization and categorization of Government information—

(i) in a way that is searchable electronically, including by searchable identifiers; and

(ii) in ways that are interoperable across agencies;

(B) the definition of categories of Government information which should be classified under the standards; and

(C) determining priorities and developing schedules for the initial implementation of the standards by agencies.

(c) Modification of Policies.—After the submission of agency reports under paragraph (a), the Director shall modify the policies as needed, in consultation with the Committee.

(d) Public Access to Electronic Information.—

(1) Committee Functions.—Not later than 2 years after the date of enactment of this Act, the Committee shall submit recommendations to the Director and the Archivist of the United States on—

(A) the adoption by agencies of policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code, are applied effectively and comprehensively to Government information on the Internet and to other electronic records; and

(B) the imposition of timetables for the implementation of the policies and procedures by agencies.

(2) Functions of the Archivist.—Not later than 1 year after the submission of recommendations by the Committee under paragraph (1), the Archivist of the United States shall issue policies—

(A) requiring the adoption by agencies of policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code, are applied effectively and comprehensively to Government information on the Internet and to other electronic records; and

(B) imposing timetables for the implementation of the policies, procedures, and technologies by agencies.

(e) Public Domain Directory of Public Federal Government Websites.—

(1) Establishment.—Not later than 2 years after the effective date of this title, the Director and each agency shall—

(i) develop and establish a public domain directory of public Federal Government websites; and

(ii) post the directory on the Internet with a link to the integrated Internet-based system established under section 204.

(2) Development.—With the assistance of each agency, the Director shall—

(i) direct the development of the directory through a collaborative effort, including input from—

(I) agency librarians;

(II) information technology managers;

(III) program managers;

(IV) records managers;

(V) Federal depository librarians; and

(VI) other interested parties; and

(ii) solicit interested persons for improvements to the directory.

(f) Access to Federally Funded Research and Development.—

(1) Development and Maintenance of Governmentwide Repository and Website.—

(A) Establishment.—The Director of the Office of Management and Budget, in consultation with the Director of the Office of Science and Technology Policy and other relevant agencies, shall ensure the development and maintenance of—

(i) a repository that fully integrates, to the maximum extent feasible, information about research and development funded by the Federal Government, and the repository shall—

(aa) include information about research and development funded by the Federal Government, including State, local, and foreign governments; industrial firms; educational institutions; not-for-profit organizations; federally funded research and development centers; and private individuals; and

(bb) entities of the Federal Government, including research and development laboratories, centers, and offices; and

(ii) integrate information about each separate research and development task or award, including—

(aa) the dates upon which the task or award is expected to start and end;

(bb) a brief summary describing the objective and the scientific and technical focus of the task or award;

(cc) the entity or institution performing the task or award and its contact information;

(dd) the total amount of Federal funds expected to be provided to the task or award over its lifetime and the amount of funds expected to be provided in each fiscal year in which the work of the task or award is ongoing;

(ee) any restrictions attached to the task or award that would prevent the sharing with the general public of any or all of the information required by this subsection, and the reasons for such restrictions; and

(ff) such other information as may be determined to be appropriate; and

(g) other websites upon which all or part of the repository of Federal research and development shall be made available to and searchable by Federal agencies and non-Federal entities, including the general public, facilitated by—

(I) the coordination of Federal research and development activities;
(II) collaboration among those conducting Federal research and development;  
(III) the transfer of technology among Federal agencies and between Federal agencies and non-Federal entities; and  
(IV) access by policymakers and the public to information concerning Federal research and development activities.  

(B) OVERSIGHT.—The Director of the Office of Management and Budget shall issue any guidance determined necessary to ensure that agencies provide all information requested under this subsection.  

(2) AGENCY FUNCTIONS.—Any agency that funds Federal research and development under this subsection shall provide the information required under subsection (A) to non-Federal entities in the manner prescribed by the Director of the Office of Management and Budget.  

(3) COMMITTEE FUNCTIONS.—Not later than 18 months after the date of enactment of this Act, working with the Director of the Office of Science and Technology Policy, and after consultation with interested parties, the Committee shall submit recommendations to the Director on—  

(A) policies to improve agency reporting of information for the repository established under this subsection;  

(B) policies to disseminate the results of research performed by Federal agencies and federally funded research and development centers.  

(4) FUNCTIONS OF THE DIRECTOR.—After submission of recommendations by the Committee under paragraph (3), the Director shall report on the recommendations of the Committee and Director to Congress, in the E-Government report under section 3606 of title 44 (as added by this Act).  

(A) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the development, maintenance, and operation of the Governmentwide repository and website under this subsection—  

(A) $2,000,000 in each of the fiscal years 2003 through 2005; and  

(B) such sums as are necessary in each of the fiscal years 2006 and 2007.  

SEC. 208. PRIVACY PROVISIONS.  

(a) PURPOSE.—The purpose of this section is to ensure sufficient protections for the privacy of personal information as agencies implement citizen-centered electronic Government.  

(b) PRIVACY IMPACT ASSESSMENTS.—  

(1) RESPONSIBILITIES OF AGENCIES.—An agency shall take actions described under subparagraph (B) before developing or procuring information technology that collects, maintains, or disseminates information in an identifiable form.  

(B) AGENCY ACTIVITIES.—To the extent required under subparagraph (A), each agency shall—  

(i) conduct a privacy impact assessment;  

(ii) ensure the review of the privacy impact assessment by the Chief Information Officer, or equivalent official, as determined by the head of the agency;  

(iii) if practicable, after completion of the review under clause (ii), make the privacy impact assessment publicly available through the website of the agency, publication in the Federal Register, or other means.  

(C) SENSITIVE INFORMATION.—Subparagraph (B)(iii) may be modified or waived for security reasons, or to protect classified, sensitive, or private information contained in an assessment.  

(D) COPY TO DIRECTOR.—Ages shall provide the Director with a copy of the privacy impact assessment for each system for which funding is requested.  

(2) CONTENTS OF A PRIVACY IMPACT ASSESSMENT.—  

(A) IN GENERAL.—The Director shall issue guidance to agencies specifying the required contents of a privacy impact assessment.  

(B) GUIDANCE.—The guidance shall—  

(i) ensure that a privacy impact assessment is commensurate with the size of the information system being assessed, the sensitivity of information that is in the system, and the risk of harm from unauthorized release of that information; and  

(ii) require that a privacy impact assessment address—  

(I) what information is to be collected;  

(II) why the information is being collected;  

(III) the intended use of the agency of the information;  

(IV) with whom the information will be shared;  

(V) what notice or opportunities for consent would be provided to individuals regarding what information is collected and how that information is shared;  

(VI) how the information will be secured; and  

(VII) whether a system of records is being created under section 552a of title 5, United States Code, (commonly referred to as the “Privacy Act”).  

(C) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall—  

(A) develop policies and guidelines for agencies on the conduct of privacy impact assessments;  

(B) oversee the implementation of the privacy impact assessment process throughout the Government; and  

(C) require agencies to conduct privacy impact assessments of existing information systems or ongoing collections of information that is in an identifiable form as the Director determines appropriate.  

(D) PRIVACY PROTECTIONS ON AGENCY WEBSITES.—  

(1) PRIVACY POLICIES ON WEBSITES.—  

(A) GUIDELINES FOR NOTICES.—The Director shall develop guidance for privacy notices on agency websites.  

(B) CONTENTS.—The guidance shall require that a privacy notice address, consistent with section 552a of title 5, United States Code—  

(i) what information is to be collected;  

(ii) why the information is being collected;  

(iii) the intended use of the agency of the information;  

(iv) with whom the information will be shared;  

(v) what notice or opportunities for consent would be provided to individuals regarding what information is collected and how that information is shared;  

(vi) how the information will be secured; and  

(vii) whether a system of records is being created under section 552a of title 5, United States Code (commonly referred to as the “Privacy Act”), and other laws relevant to the protection of the privacy of an individual.  

(2) PRIVACY POLICIES IN MACHINE-READABLE FORMATS.—The Director shall issue guidance requiring agencies to translate privacy policies into a standardized machine-readable format.  

(D) DEFINITION.—In this section, the term “identifiable form” means any representation of information that permits the identity of an individual to be reasonably inferred by either direct or indirect means.  

SEC. 209. FEDERAL INFORMATION TECHNOLOGY WORKFORCE DEVELOPMENT.  

(a) PURPOSE.—The purpose of this section is to improve the skills of the Federal workforce in using information technology to deliver Government services used by the public.  

(b) WORKFORCE DEVELOPMENT.—  

(1) IN GENERAL.—In consultation with the Director, the Chief Information Officers Council, and the Association of Governmental Information Sciences, the Director of the Office of Personnel Management shall—  

(A) analyze, on an ongoing basis, the personnel needs of the Federal Government related to information technology and information resource management;  

(B) oversee the development of curricula, training methods, and training priorities that correspond to the projected personnel needs of the Federal Government related to information technology and information resource management; and  

(C) assess the training of Federal employees in information technology disciplines, as necessary, in order to ensure that the information resource management needs of the Federal Government are addressed.  

(2) AUTHORITY TO DETAIL EMPLOYEES TO NON-FEDERAL EMPLOYERS.—In carrying out paragraph (1), the Director of the Office of Personnel Management may provide for a program under which a Federal employee may be detailed to a non-Federal employer. The Director of the Office of Personnel Management shall prescribe regulations for such program, including the conditions for service and duties as the Director considers necessary.  

(C) COORDINATION PROVISION.—An assignment described in section 7370 of title 5, United States Code, shall be made only in accordance with the program established under paragraph (2), if any.  

(A) EMPLOYEE PARTICIPATION.—Subject to information resource management needs and the provisions imposed by Federal law for other occupational areas, and consistent with their overall workforce development strategies, agencies shall encourage employees to participate in occupational information technology training.  

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Office of Personnel Management for the implementation of this subsection, $7,000,000 in fiscal year 2003, and such sums as are necessary for each fiscal year thereafter.  

(c) INFORMATION TECHNOLOGY EXCHANGE PROGRAM.—  

(1) IN GENERAL.—Subtitle B of part III of title 5, United States Code, is amended by adding at the end the following:—  

“CHAPTER 37—INFORMATION TECHNOLOGY EXCHANGE PROGRAM”  

“Sec. 3701. Definitions.  

“3702. General provisions.  

“3703. Assignment of employees to private sector organizations.  

“3704. Assignment of employees from private sector organizations.  


“3706. Reporting requirement.  

“3707. Regulations.”  

“3701. Definitions.  

“For purposes of this chapter—  

(1) the term ‘agency’ means an Executive agency, but does not include the General Accounting Office; and  

(2) the term ‘detail’ means—  

(A) the assignment or loan of an employee of an agency to a private sector organization without a change of position from the private sector employing the individual, or  

(B) the assignment or loan of an employee of a private sector organization to an agency without a change of position from the private sector organization that employs the individual, whichever is appropriate in the context in which such term is used.  

“3702. General provisions.  

“(a) ASSIGNMENT AUTHORITY.—On request from or with the agreement of a private sector organization, and with the consent of the employee concerned, the head of an agency may arrange for the assignment of an employee of the agency to the private sector organization or an employee of a private sector organization to the agency. An eligible employee is an individual who—  

(i) works in the field of information technology management;  

(ii) has the authority to manage information technology projects; and  

(iii) is identified by the Director of the Office of Personal Management as meeting the qualifications and experience needs of the Federal Government.”
§3703. Assignment of employees to private sector organizations

(a) In general.—An employee of an agency assigned to a private sector organization under this chapter is deemed, during the period of the assignment, to be on detail to a regular work assignment in his agency.

(b) Coordination with chapter 81.—Notwithstanding any other provision of law, an employee of an agency assigned to a private sector organization under this chapter is entitled to retain coverage, rights, and benefits under subchapter I of chapter 81, and employment during the assignment is deemed employment by the head of the agency from which assigned.

§3704. Assignment of employees from private sector organizations

(a) In general.—An employee of a private sector organization under this chapter is deemed, during the period of the assignment, to be on detail to a regular work assignment in his agency.

(b) Coordination with chapter 81.—An employee of a private sector organization under this chapter is deemed, during the period of the assignment, to be on detail to a regular work assignment in his agency.

(c) Reimbursements.—The assignment of an employee to a private sector organization under this chapter may be made with or without reimbursement by the private sector organization for the travel and transportation expenses for or from the place of assignment, subject to the same terms and conditions as apply with respect to an employee of a Federal agency or a State or local government under section 3753, 3755, local government under section 3753, and for the pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the agency used for paying the travel and transportation expenses or pay.

(d) Tort liability; supervision.—The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee of a private sector organization assigned to a private sector organization under this chapter. The supervision of the duties of an employee of an agency so assigned to a private sector organization may be governed by an agreement between the agency and the organization.

(e) Small business concerns.—(1) In general.—The head of each agency shall take such actions as may be necessary to ensure that, of the assignments made under this chapter from such agency to private sector organizations in any year, at least 20 percent are to small business concerns.

(2) Definitions.—For purposes of this subsection—

(A) the term small business concern means a business concern that satisfies the definitions and standards specified by the Administrator of the Small Business Administration under section 3(a)[1] of the Small Business Act (as from time to time amended by the Administrator); (B) the term year refers to the 12-month period beginning on the date of the enactment of this chapter, and each succeeding 12-month period in which any assignments under this chapter may be made; and

(C) the assignments made in a year are those commencing in such year.

(f) Reporting requirement.—An agency which fails to comply with paragraph (1) in a year shall, within 60 days after the end of such year, submit a report to the Committees on Government Reform and Small Business of the House of Representatives and the Committees on Governmental Affairs and Small Business of the Senate. The report shall include—

(A) the total number of assignments made under this chapter from such agency to private sector organizations in any year; (B) of that total number, the number (and percentage) made to small business concerns; and

(C) the reasons for the agency’s noncompliance with paragraph (1).

(g) Exclusion.—This subsection shall not apply to an agency in any year in which it makes fewer than 5 assignments under this chapter to private sector organizations.

§3707. Reporting requirement

(a) In general.—The Chief Technology Officer of the District of Columbia shall, not later than April 30 of each year, prepare and submit to the Committees on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate a semi-annual report summarizing the operation of this
chapter during the immediately preceding 6-month period ending on March 31 and September 30, respectively.

(b) Contest.—Each report shall include, with each report for each of the 6-month period to which such report relates—

(1) the total number of individuals assigned to, and the total number of individuals assigned from, each agency under chapter 37 of title 5, United States Code, for the three-year period ending at the end of the period to which such a report relates.

(2) a brief description of each assignment included under paragraph (1), including—

(A) the name of the assigned individual, as well as the private sector organization and the agency (including the specific bureau or other agency component) to or from which such individual was assigned;

(B) the respective positions to and from which the individual was assigned, including the duties and responsibilities and the pay grade or level associated with each; and

(C) the duration and objectives of the individual’s assignment; and

(3) such other information as the Office considers relevant.

(c) Publication.—A copy of each report submitted under subsection (a)—

(1) shall be published in the Federal Register;

(2) shall be made publicly available on the Internet; and

(d) Agency Cooperation.—On request of the Committee, each agency shall furnish such information and reports as the Office may require.

SEC. 3707. Regulations

The Director of the Office of Personnel Management shall prescribe regulations for the administration of this chapter.

(2) Report.—Not later than 4 years after the date of the enactment of this Act, the General Accounting Office shall prepare and submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate a report on the operation of chapter 37 of title 5, United States Code (as added by this subsection). Such report shall include—

(A) an evaluation of the effectiveness of the program established by such chapter; and

(B) a recommendation as to whether such program should be continued (with or without modification) or allowed to lapse.

(3) Appropriations.—The analysis for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 37 of title 5, United States Code, the following:

"3707. Regulations (c) by striking the period at the end of clause (b); and

(d) by adding at the end the following:

"(C) in subparagraph (B), by striking "or" at the end; and

(2) REPORTING REQUIREMENT.—Not later than 1 year after the date of the enactment of this Act, the Office of Personnel Management shall prepare and submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate a report identifying all existing exchange programs.

(3) Specific Information.—The report shall include—

(A) a brief description of the program, including its size, eligibility requirements, and terms or conditions for participation;

(B) specific citation to the law or other authority under which the program is established;

(C) the name of the contractor (or contact) for more information, and how they may be reached; and

(D) any other information which the Office considers appropriate.

(4) Report on Establishment of a Governmentwide Information Technology Training Program.—

(A) In general.—Not later January 1, 2003, the Office of Personnel Management, in consultation with the Chief Information Officers Council and the Administrator of General Services, shall review and submit to the Committee on Governmental Affairs of the Senate a report on the operation of the Governmentwide Information Technology Training Program established by chapter 37 of title 5, United States Code (as added by this subsection).

(B) Costs—(1) The head of an agency shall—

(i) the level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the government from obtaining the needed information technology competitively at a fair and reasonable price; or

(ii) that the contractor in savings achieved through contract performance is limited in duration to a period of five years or less; and

(C) Appropriations.—The analysis for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 37 of title 5, United States Code, the following:

"3707. Regulations (d) by adding at the end the following:

") (I) CONTRACT ADVISEMENT.—Whoever, being an employee of a private sector organization assigned to an agency under chapter 37 of title 5, United States Code, in connection with such assignment of such employee, knowingly represents or aids, with any contract with that agency shall be

.....
(d) TERMINATION.—No share-in-savings contracts may be entered into under this section after September 30, 2009.

(3) The amount payable in the event of cancellation or termination of a share-in-savings contract shall be negotiated with the contractor at the time the contract is entered into.

(f) Funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3), may not be transferred to any other appropriation.

(b) OTHER CONTRACTS.—Title III of the Federal Property and Administrative Services Act of 1949 is amended by adding at the end the following:

"SEC. 137. SHARE-IN-SAVINGS CONTRACTS.—(a) AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS CONTRACTS.—(1) The head of an executive agency may enter into a share-in-savings contract for information technology (as defined in section 3509 of this title and United States Code) in which the Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in the savings achieved through contract performance.

(2)(A) Except as provided in subparagraph (B), a share-in-savings contract shall be awarded for a period not more than five years.

(B) A share-in-savings contract may be awarded for a period greater than five years, but not more than 10 years, if the head of the agency determines, in writing prior to award of the contract, that—

(i) the level of risk to be assumed and the investment required to enter into such a contract is likely to inhibit the government from obtaining the needed information technology competitively at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

(ii) usage of the information technology to be acquired is likely to continue for a period of time sufficient to generate reasonable benefit for the government.

(3) Contracts awarded pursuant to the authority of this section shall, to the maximum extent practicable, be based on statements that identify objective outcomes and contain performance standards that will be used to measure achievement and milestones that must be met before payment is made.

(4) Contracts awarded pursuant to the authority of this section shall include a provision containing a quantifiable baseline that is to be the basis upon which a savings share ratio is established that governs the amount of payment a contractor is to receive under the contract. Before commencement of performance of such a contract, the head of the procurement executive of the agency shall determine in writing that the terms of the provision are quantifiable and will likely yield value to the Government.

(5)(A) The head of the agency may retain an amount equal to a portion of the savings derived by the agency from—

(i) monetary savings to an agency; or

(ii) improvements in mission-related or administrative processes; or

(iii) accelerating the achievement of agency missions.

(B) The aggregate number of share-in-savings contracts that may be entered into under subparagraph (A) by all agencies for which this chapter applies in a fiscal year—

(i) may not exceed 5, in each of fiscal years 2003, 2004, and 2005; and


(c) DEFINITIONS.—In this section:

(1) The term 'contractor' means a private entity that enters into a contract with an agency.

(2) The term 'savings' means—

(A) a contractor provides solutions for—

(i) improving the agency's mission-related or administrative processes; or

(ii) accelerating the achievement of agency missions; and

(B) the head of the agency pays the contractor an amount equal to a portion of the savings derived by the agency from—

(i) improving mission-related or administrative processes which result from implementation of the solution; or

(ii) accelerating achievement of agency missions.

(3) The term 'share-in-savings contract' means a contract under this section which—

(A) a contractor provides solutions for—

(i) improving the agency's mission-related or administrative processes; or

(ii) accelerating the achievement of agency missions,

(B) the head of the agency pays the contractor an amount equal to a portion of the savings derived by the agency from—

(i) improving mission-related or administrative processes which result from implementation of the solution; or

(ii) accelerating achievement of agency missions,

(C) contracts subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3), may not be transferred to any other appropriation.

(d) TERMINATION.—No share-in-savings contracts may be entered into under this section after September 30, 2009.

(3) The amount payable in the event of cancellation or termination of a share-in-savings contract shall be negotiated with the contractor at the time the contract is entered into.
by executive agencies, including the use of innovative provisions for technology refreshment and nonstandard Federal Acquisition Regulation contract clauses.

(e) DUTY OF GUIDANCE.—The Administrator of General Services shall—

(1) from the Office of Management and Budget, provide guidance to executive agencies for determining mutually beneficial savings share ratios and baselines from which savings may be measured.

(f) OMB REPORT TO CONGRESS.—In consultation with executive agencies, the Director of the Office of Management and Budget shall, not later than 30 days after the date of the enactment of this Act, submit to Congress a report containing—

(1) a description of the number of share-in-savings contracts entered into by each executive agency under this section and the amendments made by this section, and, for each contract identified:

(A) the information technology acquired;

(B) the total amount of payments made to the contractor; and

(C) any additional savings or other measurable benefits realized;

(2) a description of the share-in-savings contracts by executive agencies.

(3) any recommendations, as the Director deems appropriate, regarding additional changes in laws that may be necessary to ensure effective share-in-savings contracts by executive agencies.

(g) GAO REPORT TO CONGRESS.—The Comptroller General shall, not later than 6 months after the date required under subsection (b), submit a report to Congress with respect to the share-in-savings contracts established under this section, and any recommendations, as the Comptroller General deems appropriate, upon the use of share-in-savings contracts by executive agencies.

(h) DEFINITIONS.—In this section, the terms “contractor”, “savings”, and “share-in-savings contract” have the meanings given those terms in section 317 of the Federal Property and Administrative Services Act of 1949.

SEC. 211. AUTHORIZATION FOR ACQUISITION OF INFRASTRUCTURE TECHNOLOGY BY THE STATE AND LOCAL GOVERNMENTS THROUGH FEDERAL SUPPLY SCHEDULES.

(a) AUTHORITY TO USE CERTAIN SUPPLY SCHEDULES.—Section 502 of title 40, United States Code, is amended by adding at the end the following new subsection:

“(c) Use of Certain Schedule.—

(1) In General.—The Administrator may provide for the use by State or local governments of Federal supply schedules of the General Services Administration for automated data processing equipment (including firmware), software, supplies, support equipment, and services (as contained in Federal supply classification code group 70).

(2) Voluntary Use.—In any case of the use by a State or local government of a Federal supply schedule, the Administrator may permit participation by a firm that sells to the Federal Government through the supply schedule to participate voluntarily with respect to a sale to the State or local government through such supply schedule.

(3) Definitions.—In this subsection:

(A) The term ‘State or local government’ includes any State, local, regional, or tribal government, the District of Columbia, the Commonwealth of Puerto Rico, any insular area, or any entity of the District of Columbia, or the Commonwealth of Puerto Rico, or any insular area, or any international educational agency or institution of higher education.

(B) The term ‘tribal government’ means a tribal government as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(“C) The term ‘local educational agency’ has the meaning given that term in section 803 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7113).

(“D) The term ‘institution of higher education’ has the meaning given that term in section 10(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(“E) The term ‘hospital’ means a hospital as defined in section 1861(v)(3)(B)(iv) of title 18, United States Code.”

(b) PROCEDURES.—Not later than 30 days after the date of the enactment of this Act, the Administrator shall establish procedures to implement section 502(c) of title 40, United States Code (as added by subsection (a)).

(c) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Administrator shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate a report on the implementation of the amendments made by subsection (a).

SEC. 212. INTEGRATED REPORTING STUDY AND PILOT PROJECTS.

(a) PURPOSES.—The purposes of this section are to—

(1) enhance the interoperability of Federal information systems;

(2) assist the public, including the regulated community, in electronically submitting information to agencies under Federal requirements, by reducing the time required to submit information, and ensuring the accuracy of submitted information;

(3) enable any person to participate, and obtain similar information held by 1 or more agencies, without violating the privacy rights of an individual.

(b) DEFINITIONS.—In this section—

(1) ‘agency’ means an Executive agency as defined under section 105 of title 5, United States Code;

(2) ‘person’ means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, interstate body, or agency or component of the Federal Government.

(c) REPORT.—

(1) In General.—Not later than 3 years after the date of enactment of this Act, the Director shall oversee a study, in consultation with the appropriate agencies and committees of Congress, on the implementation of the pilot projects.

(2) STUDY.—Not later than 3 years after the date of enactment of this Act, the Director shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate a report on the implementation of the amendment made by subsection (a).

SEC. 213. COMMUNITY TECHNOLOGY CENTERS.

(a) PURPOSES.—The purposes of this section are to—

(1) study and enhance the effectiveness of community technology centers, public libraries, and other institutions that provide computer and Internet access to the public; and

(2) promote awareness of the availability of online government information and services, to users of community technology centers, public libraries, and other public facilities that provide access to computer technology and Internet access to the public.

(b) STUDY AND REPORT.—Not later than 2 years after the effective date of this title, the Administrator shall—

(1) conduct a study to evaluate the best practices of community technology centers that have received Federal funds; and

(2) submit a report to Congress to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Health, Education, Labor, and Pensions of the Senate;

(C) the Committee on Government Reform of the House of Representatives; and

(D) the Committee on Education and the Workforce of the House of Representatives.

(c) CONTENTS.—The report under subsection (b) shall—

(1) provide recommendations for the best practices being used by successful community technology centers;
(2) a strategy for—
(A) continuing the evaluation of best practices used by community technology centers; and
(B) establishing a network to share information and resources as community technology centers evolve;
(3) the identification of methods to expand the use of online public interest centers to assist community technology centers, public libraries, and other institutions that provide computer and Internet access to the public;
(4) a database of all community technology centers that have received Federal funds, including—
(A) each center’s name, location, services provided, director, other points of contact, number of individuals served; and
(B) other relevant information;
(5) a report on whether community technology centers have been deployed effectively in urban and rural areas throughout the Nation; and
(6) recommendations of how to—
(A) enhance the development of community technology centers; and
(B) establish a network to share information and resources.
(d) COOPERATION.—All agencies that fund community technology centers shall provide to the Administrator any information and assistance necessary for the completion of the study and the report under this section.
(e) ASSISTANCE.—
(1) IN GENERAL.—The Administrator, in consultation with the Secretary of Education, shall work with Federal agencies and other interested persons in the private and nonprofit sectors to—
(A) assist in the implementation of recommendations; and
(B) identify other ways to assist community technology centers, public libraries, and other institutions that provide computer and Internet access to the public.
(2) TYPES OF ASSISTANCE.—Assistance under this subsection may include—
(A) providing on-line tutorials;
(B) donations of equipment, and training in the use and maintenance of the equipment; and
(C) the provision of basic instruction or training material in computer skills and Internet usage.
(f) ONLINE TUTORIAL.—
(1) IN GENERAL.—The Administrator, in consultation with the Secretary of Education, the Director of the Institute of Museum and Library Services, the Access Board, and other agencies and organizations, shall develop an online tutorial that—
(A) explains how to access Government information on the Internet; and
(B) provides a guide to available online resources.
(2) DISTRIBUTION.—The Administrator, in consultation with the Secretary of Education, shall distribute information on the tutorial to community technology centers, public libraries, and other institutions that afford Internet access to the public.
(g) PROMOTION OF COMMUNITY TECHNOLOGY CENTERS.—The Administrator, with assistance from the Department of Education and in consultation with other agencies and organizations, shall promote the availability of community technology centers to raise awareness within each community where such a center is located.
(h) AUTHORIZATION OF APPROPRIATIONS.—
There are authorized to be appropriated for the study of best practices at community technology centers, for the development and dissemination of the online tutorial, and for the promotion of community technology centers under this section—
(1) $2,000,000 in fiscal year 2003;
(2) $2,000,000 in fiscal year 2004; and
(3) such sums as are necessary in fiscal years 2005 through 2007.
SEC. 214. ENHANCING CRISIS MANAGEMENT THROUGH ADVANCED INFORMATION SECURITY

(a) PURPOSE.—The purpose of this section is to improve how information technology is used in coordinating and facilitating information on disaster preparedness, response, and recovery, while ensuring the availability of such information across multiple access channels.
(b) STUDY ON ENHANCEMENT OF CRISIS RESPONSE.—Not later than 90 days after the date of enactment of this Act, the Administrator, in consultation with the Federal Emergency Management Agency, shall enter into a contract to conduct a study on using information technology in the context of crisis preparedness, response, and consequence management of natural and manmade disasters.
(c) REPORT.—The report under subsection (a) shall include a study of—
(1) how disparities in Internet access influence the effectiveness of online Government services, including a recommendation on the nature of disparities in Internet access;
(2) the affordability of Internet service;
(3) the incidence of disparities among different groups within the population; and
(4) changes in the nature of personal and public Internet access that may allocate or aggrivate effective access to online Government services;
(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $300,000 in fiscal year 2003 to carry out this section.

TITLE III—INFORMATION SECURITY

SEC. 301. INFORMATION SECURITY.

(a) SHORT TITLE.—This title may be cited as the “Federal Information Security Management Act of 2002.”
(b) INFORMATION SECURITY.—
(1) IN GENERAL.—Subchapter II of chapter 35 of title 44, United States Code, is amended as follows:
"SUBCHAPTER II—INFORMATION SECURITY"
"§ 3531. Purposes
"The purposes of this subchapter are to—
(1) provide a comprehensive framework for ensuring the effectiveness of information security programs; and
(2) recognize the highly networked nature of the current Federal computing environment and provide effective governmentwide management and oversight of the related information security risks, including coordination of information security efforts throughout the civilian, national security, and law enforcement communities;"
"§ 3532. Definitions
""(a) IN GENERAL.—Except as provided under subsection (b), the definitions under section 3502 shall apply to this subchapter.
(b) ADDITIONAL DEFINITIONS.—As used in this subchapter—
(1) the term ‘information security’ means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—
(A) integrity, which means guarding against improper modification of information in storage or transmission; and
(B) confidentiality, which means preserving authorized restrictions on access to information, including means for protecting personal privacy and proprietary information; and
"(C) availability, which means ensuring timely and reliable access to and use of information;" "(2) the term ‘national security system’ means any information system (including any telecommunications systems) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency—" "(A) the function, operation, or use of which—" "(i) involves intelligence activities;" "(ii) involves cryptography activities related to national security;" "(iii) involves command and control of military forces;" "(iv) involves equipment that is an integral part of a weapon or weapons system; or" "(e) is critical to the nation’s ability to direct or perform military or intelligence missions;" except that this subparagraph does not include a system that is used for routine administrative and personnel management purposes; and "(3) the term ‘information technology’ has the meaning given that term in section 1101 of title 40.

§3533. Authority and functions of the Director

(a) The Director shall oversee agency information security policies and practices, including—" "(1) developing and overseeing the implementation of policies, principles, standards, and guidelines on information security, including through the promulgation of standards and guidelines under section 11331 of title 40;" "(2) requiring agencies, consistent with the standards promulgated under such section 11331 and the requirements of this subsection, to identify and protect information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of—" "(i) information collected or maintained by or on behalf of the agency; and" "(ii) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;" "(3) coordinating the development of standards and guidelines under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3) with agencies operating or exercising control of national security systems (including the National Security Agency) to assure, to the maximum extent feasible, that such standards and guidelines are complementary with standards and guidelines developed for national security systems;" "(4) overseeing agency compliance with the requirements of this subsection, including through any authorized action under section 11303 of title 40 to enforce accountability for compliance with such requirements;" "(5) reviewing at least annually, and approving or disapproving, agency information security programs required under section 3533(b);" "(6) coordinating information security policies and procedures with related information resources management policies and procedures;" "(7) overseeing the operation of the Federal information security incident center required under section 3536; and" "(8) reporting to Congress no later than March 1 of each year on agency compliance with the requirements of this subsection, including—" "(A) a summary of the findings of evaluations requiring agency improvement;" "(B) significant deficiencies in agency information security practices;" "(C) planned remedial action to address such deficiencies; and" "(D) a summary of, and the views of the Director on, the report prepared by the National Institute of Standards and Technology under section 20(e)(7) of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3)." "(b) Except for the authorities described in paragraphs (4) and (6) of subsection (a), the authorities of the Director under this section shall not apply to national security systems.

§3534. Federal agency responsibilities

(a) The head of each federal agency shall—" "(1) be responsible for—" "(A) providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of—" "(i) information collected or maintained by or on behalf of the agency; and" "(ii) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;" "(B) complying with the requirements of this subsection and related policies, procedures, standards, and guidelines, including—" "(i) information security standards promulgated by the Director under section 11331 of title 40; and" "(ii) information security standards and guidelines for national security systems issued in accordance with law and as directed by the President; and" "(C) ensuring that information security management processes are integrated with agency strategic and operational planning processes;" "(2) ensure that senior agency officials provide information security for the information and information systems that support the operations and assets under their control, including through—" "(A) assessing the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of such information or information systems;" "(B) determining the levels of information security appropriate to protect such information and information systems in accordance with standards promulgated under section 11331 of title 40; for information security classifications and related requirements under section 11331 of title 40;" "(C) implementing policies and procedures to cost-effectively reduce risks to an acceptable level; and" "(2) periodically testing and evaluating information security controls and techniques to ensure that they are effectively implemented;" "(3) developing and maintaining a Chief Information Officer established under section 3506 (or comparable official in an agency not covered by such section) the authority to ensure compliance with the information security requirements imposed on the agency under this subsection, including—" "(A) designating a senior agency information security officer who shall—" "(i) carry out the Chief Information Officer’s responsibilities under this section;" "(ii) possess professional qualifications, including training and experience, required to administer the functions described under this section;" "(iii) have information security duties as that official’s primary duty; and" "(iv) have a budget and funding as appropriate to carry out such responsibilities;" "(B) develop and maintain an agencywide information security program as required by subsection (b);" "(C) develop and maintain information security policies, procedures, and control techniques throughout the agency, including those issued under section 3533 of this title, and section 11311 of title 40;" "(D) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and" "(E) assisting senior agency officials concerning their responsibilities under paragraph (2);" "(4) ensure that the agency has trained personnel sufficient to assist the agency in complying with the requirements of this chapter and related policies, procedures, standards, and guidelines; and" "(5) ensure that the agency Chief Information Officer, in coordination with other senior agency officials, reports annually to the agency head on the effectiveness of the agency information security program, including progress of remedial actions;" "(b) Each agency shall develop, document, and implement an agencywide information security program, approved by the Director under section 3523(a)(5), to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source, that includes—" "(1) periodic assessments of the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency;" "(2) policies and procedures that—" "(A) are based on the risk assessments required by paragraph (1);" "(B) cost-effectively reduce information security risks to an acceptable level;" "(C) ensure that information security is addressed throughout the life cycle of each agency information system; and" "(D) ensure compliance with—" "(i) the requirements of this subsection;" "(ii) the information security standards and guidelines prescribed by the Director, and information security standards promulgated under section 11331 of title 40;" "(iii) minimally acceptable system configuration requirements, as determined by the agency; and" "(iv) any other applicable requirements, including standards and guidelines for national security systems issued in accordance with law and as directed by the President;" "(3) subordinate plans for providing adequate information security to agency components, systems or groups of information systems, as appropriate;" "(4) security awareness training to inform personal, including contractors and other users of information systems that support the operations and assets of the agency, of—" "(A) information security risks associated with their activities; and" "(B) their responsibilities in complying with agency policies and procedures designed to reduce such risks;" "(5) procedures for detecting, reporting, and responding to security incidents, consistent with the standards and guidelines issued pursuant to section 3533 of this chapter; and" "(6) (A)mitigating risks associated with such incidents before substantial damage is done;"
“(B) notifying and consulting with the Federal information security incident center referred to in section 3536; and
(C) notifying and consulting with, as appropriate, (i) law enforcement agencies and relevant Offices of Inspector General; (ii) an office designated by the President for any incident involving a national security system; and (iii) any other agency or office, in accordance with law or as directed by the President; and
(8) plans and procedures to ensure continuity of operations for information systems that support the operations and assets of the agency.

(c) Each agency shall—
(1) report annually to the Director, the Committee on Government Reform and Science of the House of Representatives, the Committees on Governmental Affairs and Commerce, Science, and Transportation of the Senate, the appropriate subcommittees of Congress, and the Comptroller General on proposed information security policies, procedures, and practices, and compare them with the requirements of this subchapter, including compliance with each requirement of subsection (b);
(2) address the adequacy and effectiveness of information security policies, procedures, and practices, and compare them with the requirements of this subchapter, including compliance with each requirement of subsection (b);
(3) report any significant deficiency in a policy, procedure, or practice identified under paragraph (1) or (2)—
(A) as a material weakness in reporting under section 3512 of title 31; or
(B) that constitutes a material weakness in internal accounting and administrative controls.

(d) Each agency shall—
(1) provide timely technical assistance to operators of agency information systems regarding security incidents, including guidance on detecting and handling information security incidents;
(2) compile and analyze information about incidents that threaten information security;
(3) inform operators of agency information systems about current and potential information security threats, and vulnerabilities; and
(4) consult with agencies or offices operating or exercising control of national security systems (including the National Security Agency) and such other agencies or offices in accordance with law and as directed by the President regarding information security incidents and related matters.

(e) Each agency operating or exercising control of a national security system shall share information about information security incidents, threats, and vulnerabilities with the Federal information security incident center to the extent consistent with standards and guidelines for national security systems, issued in accordance with law and as directed by the President.

§3537. National security systems

The head of each agency operating or exercising control of a national security system shall be responsible for ensuring that the agency

(1) provides information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of the information contained in such system;

(2) implements information security policies and practices as required by standards and guidelines for national security systems, issued in accordance with law and as directed by the President; and

(3) complies with the requirements of this subchapter.

§3538. Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this subchapter such sums as may be necessary for each of fiscal years 2003 through 2007.

§3539. Effect on existing law

Nothing in this subsection, section 11331 of title 40, or section 20 of the National Standards and Technology Act (15 U.S.C. 278q–3) may be construed as affecting the authority of the President, the Office of Management and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of an agency, with respect to the appropriate use or disclosure of information, including with regard to the protection of personal privacy under section 552a of title 5, the disclosure of information contained in agency records, and the disposition of records under chapters 29, 31, or 33 of title 44, the management of information resources under chapter 1 of part 35 of this title, or the disclosure of information to the Congress or the Comptroller General of the United States.”;

(2) Clerical Amendment.—The item in the table of sections at the beginning of this chapter 35 under the heading “SUBCHAPTER II—INFORMATION SECURITY” are amended to read as follows:

“§3525. Annual independent evaluation

(a)(1) Each year each agency shall have performed an independent evaluation of the information security program and practices of that agency to determine the effectiveness of such programs.
(2) Each evaluation by an agency under this section shall include—

(A) testing of the effectiveness of information security policies, procedures, and practices of a representative subset of the agency’s information systems;
(B) an assessment (made on the basis of the results of the testing) of compliance with—
(i) the requirements of this subchapter; and
(ii) relevant laws, policies, procedures, standards, and guidelines; and
(C) separate presentations, as appropriate, regarding information security relating to national security systems;

(b) Subject to subsection (c)—
(1) for each agency with an Inspector General appointed under the Inspector General Act of 1978, the annual evaluation required by this section shall be performed by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and
(2) for each agency to which paragraph (1) does not apply, the head of the agency shall engage an independent external auditor to perform the evaluation.

(c) For each agency operating or exercising control of a national security system, that portion of the evaluation required by this section directly relating to a national security system shall be performed—
(1) only by an entity designated by the agency head; and
(2) in such a manner as to ensure appropriate protection for information associated with and stored in such system commensurate with the risk and in accordance with all applicable laws.

(d) The evaluations by this section may be based in whole or in part on an audit, evaluation, or report relating to programs or practices of the applicable agency.

(e) Each agency shall submit to the Director the results of the testing and (g) internal accounting and administrative controls under sections 1105 and 1115 through 1119 of title 31, and sections 2801 and 2805 of title 39;

(F) financial management systems under the Federal Financial Management Improvement Act (31 U.S.C. 5302); and
(G) financial management systems under title 20 of title 31, as the ‘‘Federal Managers Financial Integrity Act’’; and
(1) timely technical assistance to operators of agency information systems regarding information security incidents, which, if disclosed, may adversely affect information security; Such protections shall be commensurate with the risk and comply with all applicable laws and regulations.

(2) The results of the evaluations conducted under this section in the report to Congress required under section 3533(a).

(3) The Director shall provide the public with timely notice and opportunities for comment on proposed information security policies and procedures to the extent that such policies and procedures affect communication with the public.

§3535. Annual independent evaluation

(a)(1) Each year each agency shall have performed an independent evaluation of the information security program and practices of that agency to determine the effectiveness of such programs.

(2) Each evaluation by an agency under this section shall include—

(A) testing of the effectiveness of information security policies, procedures, and practices of a representative subset of the agency’s information systems;
(B) an assessment (made on the basis of the results of the testing) of compliance with—
(i) the requirements of this subchapter; and
(ii) relevant laws, policies, procedures, standards, and guidelines; and
(C) separate presentations, as appropriate, regarding information security relating to national security systems;

(b) Subject to subsection (c)—
(1) for each agency with an Inspector General appointed under the Inspector General Act of 1978, the annual evaluation required by this section shall be performed by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and
(2) for each agency to which paragraph (1) does not apply, the head of the agency shall engage an independent external auditor to perform the evaluation.

(c) Each agency shall—
(1) provide timely technical assistance to operators of agency information systems regarding security incidents, including guidance on detecting and handling information security incidents;

(2) compile and analyze information about incidents that threaten information security;

(3) inform operators of agency information systems about current and potential information security threats, and vulnerabilities; and

(4) consult with agencies or offices operating or exercising control of national security systems (including the National Security Agency) and such other agencies or offices in accordance with law and as directed by the President regarding information security incidents and related matters.

(5) Each agency operating or exercising control of a national security system shall share information about information security incidents, threats, and vulnerabilities with the Federal information security incident center to the extent consistent with standards and guidelines for national security systems, issued in accordance with law and as directed by the President.

§3537. National security systems

The head of each agency operating or exercising control of a national security system shall be responsible for ensuring that the agency

(1) provides information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of the information contained in such system;

(2) implements information security policies and practices as required by standards and guidelines for national security systems, issued in accordance with law and as directed by the President; and

(3) complies with the requirements of this subchapter.

§3538. Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this subchapter such sums as may be necessary for each of fiscal years 2003 through 2007.

§3539. Effect on existing law

Nothing in this subsection, section 11331 of title 40, or section 20 of the National Standards and Technology Act (15 U.S.C. 278q–3) may be construed as affecting the authority of the President, the Office of Management and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of an agency, with respect to the appropriate use or disclosure of information, including with regard to the protection of personal privacy under section 552a of title 5, the disclosure of information contained in agency records, and the disposition of records under chapters 29, 31, or 33 of title 44, the management of information resources under chapter 1 of part 35 of this title, or the disclosure of information to the Congress or the Comptroller General of the United States.”;
of the Secretary of Defense, the Director of Central Intelligence, or other agency head, as authorized by law and as directed by the President, with regard to the operation, control, or management of national security systems, as defined by section 3522(b)(2) of title 44, United States Code.

(B) Section 2224 of title 10, United States Code, is amended by striking paragraph (1), and inserting `(1) Notwithstanding any other law, all Federal departments and agencies shall promulgate, enforce, and oversee as otherwise authorized by law, any matter or regulations in the field of national security systems, as defined by section 3522(b)(2) of title 44, United States Code, to the extent that the Secretary determines necessary to carry out this section.'

SEC. 303. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

Section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), is amended by striking the text and inserting the following:

"(a) Standards, as required under subsection (b)(1)(A), no later than 12 months after the date of the enactment of this section; and

(b) minimum information security requirements for each category, as required under subsection (a) and (b), the Institute shall consult with other agencies and offices and the private sector (including the Director of the Office of Management and Budget, the Departments of Defense and Energy, the National Security Agency, the Office of Management and Budget, and the Secretary of Homeland Security) to assure —

(1) use of appropriate information security policies, procedures, and techniques, in order to improve information security and avoid unnecessary and costly duplication of effort; and

(2) that such standards and guidelines are complementary with standards and guidelines employed for the protection of national security systems and information contained in such systems.

"(2) provide the public with an opportunity to comment on proposed standards and guidelines;

"(3) submit to the Director of the Office of Management and Budget a report detailing the Institute's role under section 11331 of title 40, United States Code.

"(A) standards, as required under subsection (b)(1)(A), no later than 12 months after the date of the enactment of this section; and

"(B) minimum information security requirements for each category, as required under subsection (b)(1)(C), no later than 36 months after the date of the enactment of this section; and

"(C) ensure that such standards and guidelines do not specify the use or procurement of certain products, including any specific hardware or software;

"(D) ensure that such standards and guidelines provide for sufficient flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

"(E) use flexible, performance-based standards and guidelines that, to the greatest extent possible, permit the use of off-the-shelf commercially developed information security products.

"(2) The Office for Information Security Programs shall be headed by a senior executive and shall be compensated at a level in the Senior Executive Service under section 5382 of title 5, United States Code, as determined by the Secretary of Commerce.

"(3) The Director of the Institute shall delegate to the Director of the Office of Information Security Programs the authority to administer all functions under this section, except that any such delegation shall not relieve the Director of the Institute of responsibility for the administration of such functions. The Director of the Office for Information Security Programs shall serve as principal adviser to the Director of the Institute on all functions under this section.
(1) submit standards developed pursuant to subsection (a), along with recommendations as to the extent to which these should be made computer compatible, to the Director of the Office of Management and Budget for promulgation under section 11331 of title 40, United States Code;

(2) provide assistance to agencies regarding—

(A) compliance with the standards and guidelines developed under subsection (a);

(B) detecting and handling information security incidents; and

(C) information security policies, procedures, and practices;

(3) conduct research, as needed, to determine the nature and extent of information security vulnerabilities and techniques for providing cost-effective information security;

(4) develop and periodically revise performance indicators and measures for agency information security policies and practices;

(5) evaluate private sector information security policies and practices and commercially available information technologies to assess potential application by agencies to strengthen information security;

(6) evaluate security policies and practices developed for national security systems to assess potential application by agencies to strengthen information security;

(7) periodically assess the effectiveness of standards and guidelines developed under this section and undertake revisions as appropriate;

(8) review and consider the recommendations of the Information Security and Privacy Advisory Board established by section 21, regarding standards and guidelines developed under subsection (a) and submit such recommendations to the Director of the Office of Management and Budget with such standards submitted to the Director;

(9) prepare an annual public report on activities undertaken in the previous year, and planned for the coming year, to carry out responsibilities under this section.

(f) As used in this section—

(1) the term ‘agency’ has the same meaning as provided in section 3502(1) of title 44, United States Code;

(2) the term ‘information security’ has the same meaning as provided in section 3532(b)(1) of such title;

(3) the term ‘information system’ has the same meaning as provided in section 3532(b)(8) of such title;

(4) the term ‘information technology’ has the same meaning as provided in section 11101 of title 40, United States Code; and

(5) the term ‘national security system’ has the same meaning as provided in section 3532(b)(2) of such title.

(g) There are authorized to be appropriated to the Secretary of Commerce $20,000,000 for each of fiscal years 2004, 2005, 2006, and 2007 to enable the National Institute of Standards and Technology to carry out the provisions of this section.

SEC. 304. INFORMATION SECURITY AND PRIVACY ADVISORY BOARD.

Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–4), as amended by section 2(a), is amended by—

(1) in subsection (a), by striking ‘Computer System Security and Privacy Advisory Board’ and inserting ‘Information Security and Privacy Advisory Board’;

(2) in subsection (a)(1), by striking ‘computer or telecommunications’ and inserting ‘information technology’;

(3) in subsection (a)(2), by striking ‘computer or telecommunications technology’ and inserting ‘information technology’;

(4) in subsection (a)(3)—

(A) by striking ‘computer systems and information system’; and

(B) by striking ‘computer systems security’ and inserting ‘information security’;

(5) in subsection (b)(1) by striking ‘computer systems security’ and inserting ‘information security’;

(6) in subsection (b)(2) by striking paragraph (2) and inserting the following:

(2) to advise the Director and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including through the review of proposed standards and guidelines developed under section 20; and

(7) in subsection (b)(3) by inserting ‘annually’ after ‘by’;

(8) by inserting after subsection (e) the following new subsection:

(f) The Board shall hold meetings at such locations and at such time and place as determined by a majority of the Board.

(9) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(10) by striking subsection (k), as redesignated by paragraph (9), and inserting the following:

(k) As used in this section, the term ‘information technology’ means the services or products used to support information technology.


SEC. 305. TECHNICAL AND CONFORMING AMENDMENTS.

(a) COMPUTER SECURITY ACT.—Subsections (b) and (c) of section 11332 of title 40, United States Code, are repealed.


(c) PAPERWORK REDUCTION ACT.—(1) Section 3504(p) of title 44, United States Code, is amended—

(A) by adding ‘and’ at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking ‘sections 11331 and 11332(b) and (c) of title 40’ and inserting ‘section 11331 of title 40 and subchapter I of this chapter’;

(ii) by striking ‘;’ and inserting a period; and

(C) by striking paragraph (3).

(2) Section 2305 of such title is amended by adding at the end—

(1) the head of each agency shall develop and maintain a major information systems inventory (including major national security systems) operated by or under the control of such agency;

(2) the identification of information systems in an inventory under this subsection shall include an identification of the interfaces between each such system and all other systems or networks, including those not operated by or under the control of the agency;

(3) such inventory shall be—

(A) updated at least annually;

(B) made available to the Comptroller General; and

(C) used to support information resources management, including—

(i) preparation and maintenance of the inventory of information resources under section 3506(h)(4); and

(ii) information technology planning, budgeting, acquisition, and management under section 3506(h), subtitle III of title 40, and related laws and guidance;

(iii) monitoring, testing, and evaluation of information security controls under subchapter II;

(iv) preparation of the index of major information systems required under section 552(g) of title 5, United States Code; and

(v) preparation of information system inventories for records management under chapters 21, 29, 31, and 33.

(4) The Director shall issue guidance for and oversee the implementation of the requirements of this subsection.

(5) Section 2006(g) of such title is amended—

(A) by adding ‘and’ at the end of paragraph (1); and

(B) in paragraph (2)—

(i) by striking ‘section 11332 of title 40’ and inserting ‘subsection (a) of chapter II’; and

(ii) by striking ‘;’ and inserting a period; and

(C) by striking paragraph (3).

SEC. 306. CONSTRUCTION.

Nothing in this title, or the amendments made by this title, affects the authority of the National Institute of Standards and Technology or the Department of Commerce relating to the development and promulgation of standards or guidelines under paragraphs (1) and (2) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).

TITLE IV—AUTHORIZATION OF APPROPRIATIONS AND EFFECTIVE DATES

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

SEC. 402. EFFECTIVE DATES.

SEC. 501. SHORT TITLE.

SEC. 502. DEFINITIONS.

As used in this title—

(1) the term ‘agency’ means any entity that falls within the definition of an ‘executive agency’ as defined in section 102 of title 31, United States Code, or ‘agency’, as defined in section 3502 of title 44, United States Code.

(2) the term ‘agency’—

(A) means an employee of a private organization or a researcher affiliated with an institution of higher learning (including a person granted special sworn status by the Bureau of the Census under section 23(c) of title 13, United States Code) with whom a contract or other agreement is executed, on a temporary basis, by an executive agency to perform exclusively statistical activities under the control and supervision of an officer or employee of that agency; or

(B) means an individual who is working under the authority of a government entity with which a contract or other agreement is executed by an executive agency to perform exclusively statistical activities under the control of an officer or employee of that agency;

or

(C) means an individual who is a self-employed researcher, a consultant, or a contractor, or who is an employee of a contractor and with whom a contract or other agreement is executed by an executive agency to perform a statistical activity under the control of an officer or employee of that agency; or

(D) means an individual who is a contractor or who is an employee of a contractor engaged to design or maintain the systems for handling or storage of data received under this title; and

TITLE V—CONFIDENTIAL INFORMATION PROTECTION AND STATISTICAL EFFICIENCY

SEC. 501. SHORT TITLE.

This title may be cited as the ‘Confidential Information Protection and Statistical Efficiency Act of 2002’.

SEC. 502. DEFINITIONS.

As used in this title—

(1) the term ‘agency’ means any entity that falls within the definition of an ‘executive agency’ as defined in section 102 of title 31, United States Code, or ‘agency’, as defined in section 3502 of title 44, United States Code.

(2) the term ‘agency’—

(A) means an employee of a private organization or a researcher affiliated with an institution of higher learning (including a person granted special sworn status by the Bureau of the Census under section 23(c) of title 13, United States Code) with whom a contract or other agreement is executed, on a temporary basis, by an executive agency to perform exclusively statistical activities under the control and supervision of an officer or employee of that agency; or

(B) means an individual who is working under the authority of a government entity with which a contract or other agreement is executed by an executive agency to perform exclusively statistical activities under the control of an officer or employee of that agency; or

(C) means an individual who is a self-employed researcher, a consultant, or a contractor, or who is an employee of a contractor and with whom a contract or other agreement is executed by an executive agency to perform a statistical activity under the control of an officer or employee of that agency; or

(D) means an individual who is a contractor or who is an employee of a contractor engaged to design or maintain the systems for handling or storage of data received under this title; and

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(E) who agrees in writing to comply with all provisions of law that affect information acquired by that agency.

(3) The term ‘business data’ means operating and financial information about business enterprises, tax-exempt organizations, and government entities.

(4) The term ‘identifiable form’ means any representation of information that permits the identity of the respondent to whom the information applies to be reasonably inferred by either direct or indirect means.

(5) The term ‘nonstatistical purpose’—

(A) means the use of data in identifiable form for any purpose that is not a statistical purpose, including, for example, regulatory, law enforcement, adjudicatory, or other purpose that affects the rights, privileges, or benefits of a particular identifiable respondent; and

(B) includes the disclosure under section 522 of title 5, United States Code (popularly known as the Freedom of Information Act) of data that are acquired for exclusively statistical purposes under a pledge of confidentiality.

(6) The term ‘respondent’ means a person who, or organization that, is requested or required to supply information to an agency, is the subject of information requested or required to be supplied to an agency, or provides that information to an agency.

(7) The term ‘statistical activity’—

(A) means the collection, compilation, processing, or analysis of data for the purpose of describing or making estimates concerning the whole, or relevant groups or components within, the economy, society, or the natural environment; and

(B) includes the development of methods or resources that support those activities, such as measurement methods, models, statistical classifications, or sampling frames.

(8) The term ‘statistical agency or unit’ means an agency, organizational unit of the executive branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes.

(9) The term ‘statistical purpose’—

(A) means the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups; and

(B) includes the development, implementation, or maintenance of methods, technical or administrative data or information resources that support the purposes described in subparagraph (A).

SEC. 503. COORDINATION AND OVERSIGHT OF POLICIES.

(a) IN GENERAL.—The Director of the Office of Management and Budget shall coordinate and oversee the confidentiality and disclosure policies established by this title. The Director may promulgate rules or provide other guidance to ensure consistent interpretation of this title by the affected agencies.

(b) NOTWITHSTANDING.—Subject to subsection (c), agencies may promulgate rules to implement this title. Rules governing disclosures of information that are authorized by this title shall be promulgated by the agency that originally collected the information.

(c) REVIEW AND APPROVAL OF RULES.—The Director shall review any rules proposed by an agency pursuant to this title for consistency with the provisions of this title and chapter 35 of title 44, United States Code, and such rules shall be subject to the approval of the Director.

(d) REPORTS.—

(1) The head of each agency shall provide to the Director of the Office of Management and Budget reports and other information as the Director requests.

(2) Each Designated Statistical Agency referred to in section 522 shall report annually to the Director of Management and Budget, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate on the actions it has taken to implement sections 523 and 524. The report shall include copies of each written agreement entered into pursuant to section 524.

(3) The Director of the Office of Management and Budget shall include a summary of reports submitted to the committee under paragraph (2) and actions taken by the Director to advance the purposes of this title in the annual report to the Congress on statistical programs prepared under section 390 of title 44, United States Code.

SEC. 504. EFFECT ON OTHER LAWS.

(a) SECTION 3510 OF TITLE 44, UNITED STATES CODE.—Data or information acquired by an agency under a pledge of confidentiality for statistical purposes made under this title, does not diminish the authority under section 3510 of title 44, United States Code, of the Director of the Office of Management and Budget to direct, and of an agency to make, disclosures that are not inconsistent with any applicable law.

(b) SECTIONS 16, 301, AND 401 OF TITLE 13, UNITED STATES CODE.—This title, including amendments made by this title, does not diminish the authority of the Bureau of the Census to provide information on the basis of the statistics collected under sections 3510 and 401 of title 13 and section 2108 of title 44, United States Code.

(c) SECTION 9 OF TITLE 13, UNITED STATES CODE.—This title, including amendments made by this title, shall not be construed as authorizing the disclosure for nonstatistical purposes of demographic data or information collected by the Census Bureau pursuant to section 9 of title 13, United States Code.

(d) SECTION 12 OF THE FEDERAL ENERGY ADMINISTRATION ACT OF 1974.—In accordance with the provisions of this title, data acquired for exclusively statistical purposes under a pledge of confidentiality are exempt from mandatory disclosure under section 211(a) of title 13, United States Code.

(e) PREEMPTION OF STATE LAW.—Nothing in this title shall preempt applicable State law regarding the confidentiality of data collected by the States.

(f) DISCLOSURES REGARDING FALSE STATEMENTS.—Notwithstanding section 512, information collected by an agency for exclusively statistical purposes under a pledge of confidentiality may be provided by the collecting agency or a law enforcement agency for the prosecution of submissions to the collecting agency of false statistical information under statutes that authorize criminal penalties (under section 221 of title 13, United States Code) or civil penalties for the provision of false statistical information, unless such disclosure or use would otherwise be prohibited by applicable law.

(g) CONSTRUCTION.—Nothing in this title shall be construed as restricting or diminishing any confidentiality protections or penalties for unauthorized disclosure to data or information collected for statistical purposes or nonstatistical purposes, including, but not limited to, section 6102 of the Internal Revenue Code of 1986 and section 502 of title 44, United States Code.

Subtitle A—Confidential Information Protection

SEC. 511. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Individuals and other organizations have varying degrees of legal protection when providing information to the Federal Government.

(2) Pledges of confidentiality by the Federal Government provide assurances to the public that information about individuals or organizations provided by individuals or organizations for exclusively statistical purposes will be held in confidence and will not be used against such individuals or organizations in any Federal legal proceeding.

(3) Protecting the confidentiality interests of individuals or organizations who provide information for Federal statistical programs serves both the interests of the public and the needs of society.

(b) DECLINING TRUST OF THE PUBLIC.—Declining trust of the public in the protection of information provided to the Federal Government adversely affects both the accuracy and completeness of statistical analyses.

(c) ENSURING THAT INFORMATION PROVIDED FOR STATISTICAL PURPOSES IS PROTECTED.—Ensuring that information provided for statistical purposes is protected is essential in continuing public cooperation in statistical programs.

(d) PURPOSE.—The purposes of this subtitle are the following:

(1) To ensure that information supplied by individuals or organizations to an agency for statistical purposes under confidentiality is used exclusively for statistical purposes.

(2) To ensure that individuals or organizations who supply information to the Federal Government for statistical purposes will neither have that information disclosed in identifiable form to anyone not authorized by this title nor have that information disclosed for any purpose other than a statistical purpose.

(3) To safeguard the confidentiality of individually identifiable information acquired under a pledge of confidentiality for statistical purposes by controlling access to, and uses made of, such information.

SEC. 512. LIMITATIONS ON USE AND DISCLOSURE OF DATA AND INFORMATION.

(a) USE OF STATISTICAL DATA OR INFORMATION.—Data or information acquired by an agency under a pledge of confidentiality for exclusively statistical purposes shall not be disclosed by an agency in identifiable form, for any use other than an exclusively statistical purpose, except with the informed consent of the respondent.

(b) A disclosure pursuant to paragraph (1) is authorized only when the head of the agency agrees such disclosure would not be prohibited by any other law.

(c) This section does not restrict or diminish any confidentiality protections in law that otherwise apply to data or information supplied by an agency under a pledge of confidentiality for exclusively statistical purposes.

(d) RULES FOR USE OF DATA OR INFORMATION FOR NONSTATISTICAL PURPOSES.—A statistical agency or unit shall clearly distinguish any data or information collected for statistical purposes from data or information collected for nonstatistical purposes.

(e) DESIGNATION OF AGENTS.—A statistical agency or unit may designate agents, by contract or by entering into a special agreement containing the provisions referred to in section 502, who may perform exclusively statistical activities, subject to the limitations and penalties described in this title.
The head of each of the Designated Statistical Agencies shall—

(1) identify opportunities to eliminate duplication and otherwise reduce reporting burden and cost imposed on the public in providing information for statistical purposes;

(2) enter into joint statistical projects to improve the quality and reduce the cost of statistical programs; and

(3) protect the confidentiality of individually identifiable information acquired for statistical purposes by adhering to safeguard principles, including—

(A) informing to their officers, employees, and agents the importance of protecting the confidentiality of information in cases where the identity of individual respondents can reasonably be inferred by either direct or indirect means;

(B) training their officers, employees, and agents in their legal obligations to protect the confidentiality of individually identifiable information and in the procedures that must be followed to provide access to such information;

(C) implementing appropriate measures to assure the physical and electronic security of confidential data;

(D) establishing a system of records that identifies individuals accessing confidential data and the project for which the data were required; and

(E) being prepared to document their compliance with these requirements.

SEC. 525. LIMITATIONS ON USE OF BUSINESS DATA PROVIDED BY DESIGNATED STATISTICAL AGENCIES.

(a) IN GENERAL.—Business data provided by a Designated Statistical Agency pursuant to this subtitle shall be used exclusively for statistical purposes.

(b) PUBLICATION OF DATA.—Publication of business data acquired by a Designated Statistical Agency shall occur in a manner whereby the data furnished by any particular respondent are not identifiable.

SEC. 526. CONFORMING AMENDMENTS.

(a) DEPARTMENT OF COMMERCE.—Section 1 of the Act of January 27, 1938 (15 U.S.C. 176a) is amended by striking “The” and inserting “Except as provided in the Confidential Information Protection and Statistical Efficiency Act of 2002, this "".

(b) Title 13.—Chapter 10 of title 13, United States Code, is amended—

(1) by adding after section 401 the following: “*§402. Providing business data to Designated Statistical Agencies."

Further amendment:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “E-Government Act of 2002”.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.

TITLE I—OFFICE OF MANAGEMENT AND BUDGET ELECTRONIC GOVERNMENT SERVICES

Sec. 101. Management and promotion of electronic government services.
Sec. 102. Conforming amendments.

TITLE II—FEDERAL MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

Sec. 201. Definitions.
Sec. 203. Compatibility of executive agency methods for use and acceptance of electronic signatures.
Sec. 204. Federal Internet portal.
Sec. 205. Federal courts.
Sec. 206. Regulatory agencies.
Sec. 207. Accessibility, usability, and preservation of government information.
Sec. 208. Privacy provisions.
Sec. 209. Federal information technology workforce development.
Sec. 211. Authorization for acquisition of information technology by State and local governments through Federal supply schedules.
Sec. 212. Integrated e-planning study and pilot projects.
Sec. 213. Community technology centers.
Sec. 525. Limitations on use of business data

Sec. 523. Responsibilities of designated sta-

Sec. 512. Limitations on use and disclosure

Sec. 511. Findings and purposes.

Sec. 502. Definitions.

Sec. 501. Short title.

Sec. 504. Effect on other laws.

Sec. 402. Effective dates.

Sec. 401. Authorization of appropriations.

Sec. 305. Technical and conforming amend-

Sec. 304. Information Security and Privacy

Sec. 301. Information security.

Sec. 302. Management of information tech-

Sec. 303. National Institute of Standards and Technology.

Sec. 304. Information Security and Privacy

Sec. 306. Technical and conforming amend-
ments.

TITLIE III—INFORMATION SECURITY

Sec. 301. Information security.

Sec. 302. Management of information tech-

Sec. 303. National Institute of Standards and Technology.

Sec. 304. Information Security and Privacy

Sec. 306. Technical and conforming amend-
ments.

TITLIE III—INFORMATION SECURITY

Sec. 301. Information security.

Sec. 302. Management of information tech-

Sec. 303. National Institute of Standards and Technology.

Sec. 304. Information Security and Privacy

Sec. 306. Technical and conforming amend-
ments.

TITLIE IV—AUTHORIZATION OF APPRO-
PRIATIONS AND EFFECTIVE DATES

Sec. 401. Authorization of appropriations.

Sec. 402. Effective dates.

TITLIE V—CONFIDENTIAL INFORMATION
PROTECTION AND STATISTICAL EFFICI-
ENCY

Sec. 501. Short title.

Sec. 502. Definitions.

Sec. 503. Coordination and oversight of pol-

Sec. 504. Effect on other laws.

Subtitle A—Confidential Information Protection

Sec. 511. Findings and purposes.

Sec. 512. Limitations on use and disclosure

Sec. 513. Fines and penalties.

Subtitle B—Statistical Efficiency

Sec. 521. Findings and purposes.

Sec. 522. Designation of statistical agencies.

Sec. 523. Responsibilities of designated sta-

Sec. 524. Sharing of business data among
designated statistical agencies.

Sec. 525. Limitations on use of business data
where this collaboration would improve the service to citizens by integrating related functions, and in the use of internal elec-
tronic Government processes, where this col-
laboration would improve the efficiency and effectiveness of the processes.

(4) To improve the ability of the Govern-
ment to achieve its missions and pro-
gram performance goals.

(5) To promote the use of the Internet and emerging technologies within and across Government and to provide citizen-cen-
tric Government information and services.

(6) To reduce costs and burdens for busi-
nesses and other Government entities.

(7) To promote better informed decision-
making by policy makers.

(8) To promote access to high quality Gov-
ernment information and services across multiple channels.

(9) To make the Federal Government more transparent and accountable.

(10) To transform agency operations by uti-

lizing Electronic Government best practices from public and private sector organizations.

(11) To provide enhanced access to Gov-
ernment information and services in a manner consistent with laws regarding protection of personal privacy, national security, records retention, access for persons with disabili-
ties, and other relevant laws.

TITLIE I—OFFICE OF MANAGEMENT AND BUDGET ELECTRONIC GOVERNMENT SERVICES

Sec. 101. Management and Promotion of Electronic Government Services

(a) In General.—Title 44, United States Code, is amended by inserting after chapter 35 the following:

"CHAPTER 38—MANAGEMENT AND PRO-
MOTION OF ELECTRONIC GOVERNMENT SERVICES

"Sec. 3801. Definitions.
"3801. Office of Electronic Government.
"3804. Chief Information Officers Council.
"3805. E-Government Fund.
"3806. Program to encourage innovative so-
lutions to government and business electronic Government services and proc-
esses.
"3807. E-Government report.

"3801. Definitions.

"In this chapter, the definitions under sec-
tion 3502 shall apply, and the term:

"(1) ‘Administrator’ means the Adminis-
trator of the Office of Electronic Govern-
ment established under section 3502;

"(2) ‘Council’ means the Chief Information
 Officers Council established under section 3503;

"(3) ‘electronic Government’ means the use
by the Government of web-based Internet ap-
plications and other information tech-
nologies, combined with processes that im-
plement these technologies, to—

(A) enhance the access to and delivery of
Government information and services to
the public, the other Executive agen-
cies, and other Government entities;

(B) bring about improvements in Govern-
ment operations that may include effective-
ness, service quality, or trans-
formation;

(‘4) ‘enterprise architecture’—

(A) means—

(i) a strategic information asset base, which
defines the mission;

(ii) the information necessary to perform
the mission;

(iii) the technologies necessary to perform
the mission; and

(iv) the transitional processes for imple-
menting new technologies in response to
changes in mission needs; and

(B) includes—

(i) a baseline architecture;

(ii) a target architecture; and

(iii) a sequencing plan.

(5) ‘Fund’ means the E-Government Fund
established under section 3504.

(6) ‘Interoperability’ means the ability
of different operating systems, appli-
cations, and services to communicate and
exchange data in an effective, consistent,
and manner;

(7) ‘Integrated service delivery’ means the
provision of Internet-based Federal Govern-
ment information or services integrated
across function or topic rather than 

(8) ‘tribal government’ means—

(A) the governing body of any Indian tribe,
band, nation, or other organized group
or community located in the continental
United States (excluding the State of Alas-
ka) that is recognized as eligible for the spe-
cific benefits and services provided by the
United States to Indians because of their
status as Indians, and

(B) any Alaska Native regional or village
corporation established pursuant to the
Alaska Native Claims Settlement Act (43
U.S.C. 1601 et seq.).

*3802. Office of Electronic Government

(a) There is established in the Office of
Management and Budget an Office of Elec-
tronic Government.

(b) There shall be at the head of the Office
an Administrator who shall be appointed by
the President.

(c) The Administrator shall assist the Di-
rector in carrying out:

(1) all functions under this chapter;

(2) all of the functions assigned to the Di-
rector under title II of the E-Government
Act of 2002; and

(3) other electronic government initia-
tives, consistent with other statutes.

(d) The Administrator shall assist the Di-
rector and the Deputy Director for Manage-
ment and work with the Administrator of
the Office of Information and Regulatory Af-
fairs in setting strategic direction for imple-
menting electronic Government, under rel-
vant statutes, including—

(1) chapter 38; and

(2) subtitle III of title 40, United States
Code.

*3802a. Information Security

(a) section 502a of title 5 (commonly re-
fers to as the ‘Privacy Act’); and

(b) the General Government Paperwork
Elimination Act (4 U.S.C. 3504 note); and

(c) the Federal Information Security
Management Act of 2002.

(d) The Administrator shall work with the
Administrator of the Office of Informa-
tion and Regulatory Affairs and with other
offices within the Office of Management and

Sec. 216. Common protocols for geographic
information systems.

Sec. 215. Disparities in access to the Inter-

Sec. 214. Enhancing crisis management
through advanced information technology.

Sec. 213. Common protocols for geographic
information systems.
Budget to oversee implementation of electronic Government under this chapter, chapter 35, the E-Government Act of 2002, and other relevant statutes, in a manner consistent with law, relating to

(1) capital planning and investment control for information technology; (2) the development of enterprise architectures; (3) information security; (4) privacy; (5) access to, dissemination of, and preservation of Government information; (6) accessibility of information technology for persons with disabilities; and

(7) the development of innovative models—

(1) for electronic Government management and Government information technology contracts; and—

(2) that have been developed through focused discussions or using separately sponsored research;

(3) identification of mechanisms for providing incentives to program managers and other Government employees to develop and implement innovative uses of information technologies; and

(4) identification of opportunities for public, private, and intergovernmental collaboration in addressing the disparities in access to the Internet and information technology.

(10) Sponsor activities to engage the general public in the development and implementation of electronic Government initiatives, particularly activities aimed at fulfilling the goal of using the most effective citizen-centered strategies and those activities which engage multiple agencies, similar or related information and services.

(11) Oversee the work of the General Services Administration and other agencies in developing the integrated Internet-based system under section 204 of the E-Government Act of 2002.

(12) Coordinate with the Administrator for Federal Procurement Policy to ensure effective implementation of electronic procurement initiatives.

(13) Assist Federal agencies, including the General Services Administration, the Department of Justice, and the United States Access Board in—

(A) implementing accessibility standards under section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d); and

(B) ensuring compliance with those standards through the budget review process and other mechanisms.

(14) Oversee the development of enterprise architectures within and across agencies.

(15) Assist the Director and the Deputy Director for Management in overseeing agency efforts to ensure that electronic Government activities incorporate adequate, risk-based, and cost-effective security compatible with business processes.

(16) Administer the Office of Electronic Government established under this section.

(17) Assist the Director in preparing the E-Government report established under section 3606.

(18) The Director shall ensure that the Office of Management and Budget, including the Office of Electronic Government, the Office of Information and Regulatory Affairs, and other relevant offices, have adequate staff and resources to properly fulfill all functions under the E-Government Act of 2002.

§ 3603. Chief Information Officers Council

(a) There is established in the executive branch a Chief Information Officers Council.

(b) The members of the Council shall be as follows:

(1) The Deputy Director for Management of the Office of Management and Budget, who shall act as chairperson of the Council.

(2) The Administrator of the Office of Electronic Government.

(3) The Administrator of the Office of Information and Regulatory Affairs.

(4) The chief information officer of each agency described under section 901(b) of title 31.

(5) The chief information officer of the Central Intelligence Agency.

(6) The chief information officer of the Department of the Army, the Department of the Navy, and the Department of the Air Force, if chief information officers have been designated for such departments under section 3506(a)(2)(B).

(7) Any other officer or employee of the United States designated by the chairperson.

(c)(1) The Administrator of the Office of Electronic Government shall lead the activities of the Council on behalf of the Deputy Director for Management.

(2)(A) The Vice Chairman of the Council shall be selected by the Council from among its members.

(B) The Vice Chairman shall serve a 1-year term, and may serve multiple terms.

(3) The Administrator of General Services shall provide administrative and other support for the Council.

(d) The Council is designated the principal interagency forum for improving agency practices related to the design, acquisition, development, modernization, use, operation, and funding, and coordination of Federal Government information resources.

(e) In performing its duties, the Council shall consult regularly with representatives of State, local, and tribal governments.

(f) The Council shall perform functions that include the following:

(1) Develop recommendations for the Director on Government information resources management policies and requirements.

(2) Share good experiences, ideas, best practices, and innovative approaches related to information resources management.

(3) Assist the Administrator in the identification, development, and coordination of multiagency projects and other innovative initiatives to improve Government performance through the use of information technology.

(4) Promote the development and use of common performance measures for agency information resources, managed under this chapter and title II of the E-Government Act of 2002.

(5) Work as appropriate with the National Institute of Standards and Technology and the Administrator to develop recommendations on information technology standards developed under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278c-3) and promulgated under section 1131 of title 40, and maximize the use of commercial standards as appropriate, including the following:

(1) Standards and guidelines for interconnectivity and interoperability as described under section 3504.

(2) Consistent with the process under section 207(d) of the E-Government Act of 2002, standards and guidelines for categorizing Federal computer and electronic information to enable efficient use of technologies, such as through the use of extensible markup language.

(3) Standards and guidelines for Federal Government computer system efficiency and security.

(9) Sponsored on-going dialogue that—

(A) promotes sharing among Federal, State, local, and tribal government leaders on electronic Government in the executive, legislative, and judicial branches, as well as leading computer and non-profits, to encourage collaboration and enhance understanding of best practices and innovative approaches in acquiring, using, and managing information technology.

(B) is intended to improve the performance of governments in collaborating on the
(c) enable Federal agencies to take advantage of information technology in sharing information and conducting transactions with each other and with State and local governments;

(b)(1) The Administrator shall—

(A) make Federal Government information and services more readily available to members of the public (including individuals, businesses, grantees, and State and local governments); and

(c) enable Federal agencies to take advantage of information technology in sharing information and conducting transactions with each other and with State and local governments.

(b)(1) The Administrator shall—

(A) make Federal Government information and services more readily available to members of the public (including individuals, businesses, grantees, and State and local governments); and

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(c) enable Federal agencies to take advantage of information technology in sharing information and conducting transactions with each other and with State and local governments.
such title is amended by inserting after the item relating to section 304 the following: “305. Electronic Government and information technologies.”.

(b) MODIFICATION OF DEPUTY DIRECTOR FOR MANAGEMENT FUNCTIONS—Section 505(b) of title 31, United States Code, is amended—

(1) by redesignating paragraphs (5), (6), (7), (8), and (9), as paragraphs (6), (7), (8), (9), and (10), respectively;

(2) by inserting after paragraph (4) the following:

“(5) Chair the Chief Information Officers Council established under section 3003 of title 44.”.

(c) OFFICE OF ELECTRONIC GOVERNMENT.—

(1) IN GENERAL.—Chapter 5 of title 31, United States Code, is amended by inserting after section 506 the following:

“§ 507. Office of Electronic Government

“The Office of Electronic Government, established under section 3602 of title 44, is an office in the Office of Management and Budget.”.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 31, United States Code, is amended by inserting after the item relating to section 3007 the following:

“§ 507. Office of Electronic Government.”.

TITLE II—FEDERAL MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

SEC. 201. DEFINITIONS.

Except as otherwise provided, in this title the definitions under sections 3002 and 3003 of title 44, United States Code, shall apply.

SEC. 202. FEDERAL AGENCY RESPONSIBILITIES.

(a) In General.—The head of each agency shall be responsible for—

(1) complying with the requirements of this Act (including the amendments made by this Act), the related information resource management policies and guidance established by the Director of the Office of Management and Budget, and the related information technology standards promulgated by the Secretary of Commerce;

(2) ensuring that the information resource management policies and guidance established under this Act by the Director, the Office of Management and Budget, and the related information technology standards promulgated by the Secretary of Commerce are communicated promptly and effectively to all relevant officials within their agency;

(3) supporting the efforts of the Director and the Administrator of the General Services Administration to develop, maintain, and promote an Internet-based system of delivering Federal Government information and services to the public under section 204;

(b) PERFORMANCE INTEGRATION.—

(1) Agencies shall develop performance measures that demonstrate how electronic government enables progress toward agency objectives, strategic goals, and statutory mandates.

(2) In measuring performance under this section, agencies shall rely on existing data collections to the extent practicable.

(3) Areas of performance measurement that agencies should consider include—

(A) customer service;

(B) accuracy of delivery; and

(C) adoption of innovative information technology, including the appropriate use of commercial best practices.

(4) Agencies shall establish linkages between their performance goals, as appropriate, to key groups, including citizens, businesses, and other governments, and to internal Federal Government operations.

(5) As appropriate, agencies shall work collectively in linking their performance goals to groups identified under paragraph (4) and shall use information technology in delivering Government information and services to those groups.

(c) AVAILABILITY OF DIMINISHED ACCESS.—When promulgating policies and implementing programs regarding the provision of Government information and services over the Internet, the Director shall ensure that the impact on persons without access to the Internet, and shall, to the extent practicable—

(1) ensure that the availability of Government information and services has not been diminished for individuals who lack access to the Internet; and

(2) pursue alternate modes of delivery that make Government information and services more accessible to individuals who do not own computers or lack access to the Internet.

(d) ACCESSIBILITY TO PEOPLE WITH DISABILITIES.—All actions taken by Federal departments and agencies under this Act shall be in compliance with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(e) SPONSORED ACTIVITIES.—Awards shall sponsor activities that use information technology to engage the public in the development and implementation of policies and programs.

(f) CHIEF INFORMATION OFFICERS.—The Chief Information Officer of each of the agencies designated under chapter 36 of title 44, United States Code (as added by this Act) shall be responsible for—

(1) participating in the functions of the Chief Information Officers Council; and

(2) monitoring the implementation, within their respective agencies, of information technology standards promulgated by the Secretary of Commerce, including common standards for interconnectivity and interoperability, categorization of Federal Government information and services, and computer system efficiency and security.

(g) E-GOVERNMENT STATUS REPORT.—

(1) IN GENERAL.—Each agency shall compile and submit to the Director an annual E-Government Status Report on—

(A) the status of the implementation by the agency of electronic government initiatives;

(B) compliance by the agency with this Act; and

(C) how electronic Government initiatives of the agency improve performance in delivering programs to constituencies.

(2) SUBMISSION.—Each agency shall submit an annual report to the Director on—

(A) the status of the implementation by the agency of electronic government initiatives;

(B) consistent with relevant reporting requirements; and

(C) which addresses any section in this title relevant to that agency.

(h) USE OF TECHNOLOGY.—Nothing in this Act shall preclude the use of electronic technology to deliver Government information and services that fulfill the statutory mission and programs of the agency.

(i) NATIONAL SECURITY SYSTEMS.—

(1) INAPPLICABILITY.—Except as provided under paragraph (2), this title does not apply to national security systems as defined in section 11103 of title 40, United States Code.

(2) APPLICABILITY.—This section, sections 203, and section 214 do apply to national security systems to the extent practicable and consistent with law.

SEC. 203. COMPATIBILITY OF EXECUTIVE AGENCY MACHINERY, METHODS FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES.

(a) PURPOSE.—The purpose of this section is to achieve interoperable implementation of electronic signatures for appropriately secure electronic transactions with Government.

(b) ELECTRONIC SIGNATURES.—In order to fulfill the objectives of the Government Paperwork Elimination Act (Public Law 105–277; 112 Stat. 2861–749 through 2861–751), each Executive agency (as defined in section 105 of title 5, United States Code) shall ensure that its methods for use and acceptance of electronic signatures are compatible with their relevant policies and procedures issued by the Director.

(c) AUTHORITY FOR ELECTRONIC SIGNATURES.—The Administrator of General Services shall support the Director by establishing a framework to allow efficient interoperability among Executive agencies when using electronic signatures, including processing of digital signatures.

(d) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated to the General Services Administration, to ensure the development and operation of a Federal bridge certification authority for digital signatures, compatibility, and for other activities consistent with this section, $8,000,000 or such sums as are necessary in fiscal year 2003, and such sums as are necessary for each fiscal year thereafter.

SEC. 204. FEDERAL INTERNET PORTAL.

(a) IN GENERAL.—

(1) PUBLIC ACCESS.—The Director shall work with the Administrator of General Services Administration and other agencies to maintain and promote an integrated Internet-based system of providing the public with access to Government information and services.

(2) CRITERIA.—To the extent practicable, the integrated system shall be designed and operated according to the following criteria:

(A) The provision of Internet-based Government information and services directed to key groups, including citizens, business, and other governments, and integrated according to function or topic rather than separated according to the boundaries of agency jurisdiction.

(B) An ongoing effort to ensure that Internet-based Government services relevant to a given citizen activity are available from a single point.

(C) Access to Federal Government information and services consolidated, as appropriate, with Internet-based information and services provided by State, local, and tribal governments.

(D) Access to Federal Government information held by 1 or more agencies shall be made available in a manner that protects public confidence and privacy.

(b) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated to the General Services Administration $15,000,000 for the maintenance, improvement, and promotion of the integrated Internet-based system for fiscal year 2003, and such sums as are necessary for fiscal years 2004 through 2007.

SEC. 205. FEDERAL COURTS.

(a) INDIVIDUAL COURT WITNESSES.—The Chief Justice of the United States is authorized to appoint, subject to the approval of the relevant policies and procedures issued by the Director, each circuit and district of the Court of Federal Claims, and the chief bankruptcy judge of each district shall cause to be established and maintained, in such manner as the Chief Justice or judge deems best, a court of electronic signatures, including processing of digital signatures.

(b) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated to the General Services Administration $15,000,000 for the maintenance, improvement, and promotion of the integrated Internet-based system for fiscal year 2003, and such sums as are necessary for fiscal years 2004 through 2007.

(b) ELECTRONIC SIGNATURES.—In order to fulfill the objectives of the Government Paperwork Elimination Act (Public Law 105–277; 112 Stat. 2861–749 through 2861–751), each Executive agency (as defined in section 105 of title 5, United States Code) shall ensure that its methods for use and acceptance of electronic signatures are compatible with their relevant policies and procedures issued by the Director.

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(b) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated to the General Services Administration $15,000,000 for the maintenance, improvement, and promotion of the integrated Internet-based system for fiscal year 2003, and such sums as are necessary for fiscal years 2004 through 2007.
(5) Access to the substance of all written opinions issued by the court, regardless of whether such opinions are to be published in the official court reporter, in a text searchable format.

(6) Access to documents filed with the courthouse in electronic form, to the extent provided under subsection (c).

(7) Any other information (including forms in a format that can be downloaded) that the court determines useful to the public.

(b) ADOPTED DATA ONLINE.—

(1) UPDATE OF INFORMATION.—The information and rules on each website shall be updated regularly and kept reasonably current.

(2) ELECTRONIC FILES AND DOCKET INFORMATION.—Electronic files and docket information for cases closed for more than 1 year are not required to be made available online, except all written opinions with a date of issuance after the effective date of this section shall remain available online.

(c) ELECTRONIC FILINGS.—

(1) IN GENERAL.—Except as provided under paragraph (2) or in the rules prescribed under paragraph (3), each court shall make any document that is filed electronically publicly available online. A court may convert any document that is filed in paper form to electronic form. To the extent such conversions are made, all such electronic versions and security concerns arising from electronic forms shall be maintained by electronic means, consistent with an timetable established by the Director and reported to Congress in the first annual report under section 3606 of title 44, in a format that can be downloaded.

(2) EXCEPTIONS.—Documents that are filed that are not available to the public, such as those filed under seal, shall not be made available online.

(3) PRIVACY AND SECURITY CONCERNS.—(A) The Supreme Court shall prescribe rules, in accordance with sections 2072 and 2075 of title 31, United States Code, to protect privacy and security concerns relating to electronic information and the public availability under this subsection of documents filed electronically.

(ii) The online methods, if any, or any alternative methods, such court or district is using to provide greater public access to information.

(2) REPORT.—Not later than 1 year after the effective date of this section, and every year thereafter, the Judicial Conference of the United States shall submit a report to the Committees on Governmental Affairs and the Judiciary and the Committees on Government Reform and the Judiciary of the House of Representatives that—

(A) contains all notifications submitted to the Administrative Office of the United States Courts under this subsection; and

(B) summarizes and evaluates all notifications.

SEC. 206. REGULATORY AGENCIES.

(a) PURPOSE.—The purposes of this section are—

(1) improve performance in the development and issuance of agency regulations by using information technology to increase access, accountability, and transparency; and

(2) ensure participation in Government by electronic means, consistent with requirements under subchapter II of chapter 5 of title 5, United States Code, commonly referred to as the “Administrative Procedures Act”.

(b) INFORMATION PROVIDED BY AGENCIES ONLINE.—To the extent practicable, and as determined by the agency in consultation with the Director, agencies shall ensure that a publicly accessible Federal Government website contains electronic dockets for all rulemakings under section 553 of title 5, United States Code.

(2) INFORMATION AVAILABLE.—Agency electronic dockets shall make publicly available online to the extent practicable, as determined by the agency in consultation with the Director—

(A) all submissions under section 553(c) of title 5, United States Code; and

(B) other materials that by agency rule or practice are included in the rulemaking docket under section 553(c) of title 5, United States Code, whether or not submitted electronically.

(c) TIME LIMITATION.—Agencies shall implement the requirements of this section consistent with a timetable established by the Director and reported to Congress in the first annual report under section 3606 of title 44.

SEC. 207. ACCESSIBILITY, USBABILITY, AND PRESERVATION OF GOVERNMENT INFORMATION.

(a) PURPOSE.—The purpose of this section is to improve the methods by which Government information, including information on the Internet, is preserved, as determined by the Director.

(b) DEFINITIONS.—In this section, the term—

(1) “Committee” means the Interagency Committee on Government Information established under subsection (c); and

(2) “directory” means a taxonomy of subject records to which subjects are linked.

(3) AGENCIES.—The Committee shall be comprised of the following—

(A) the National Archives and Records Administration; and

(B) the offices of the Chief Information Officers from Federal agencies.

(c) ELECTRONIC DOCKETING.—

(1) IN GENERAL.—To the extent practicable, and as determined by the agency in consultation with the Director, agencies shall ensure that a publicly accessible Federal Government website contains electronic dockets for all submission under section 553(c) of title 5, United States Code, by electronic means.

(d) ELECTRONIC DOCKETING.—

(1) IN GENERAL.—To the extent practicable, and as determined by the agency in consultation with the Director, agencies shall ensure that a publicly accessible Federal Government website contains electronic dockets for all rulemakings under section 553 of title 5, United States Code.

(e) TIME LIMITATION.—Agencies shall implement the requirements of this section consistent with a timetable established by the Director and reported to Congress in the first annual report under section 3606 of title 44.

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(A) the National Archives and Records Administration; and

(B) the offices of the Chief Information Officers from Federal agencies.

(c) ELECTRONIC DOCKETING.—

(1) IN GENERAL.—To the extent practicable, and as determined by the agency in consultation with the Director, agencies shall ensure that a publicly accessible Federal Government website contains electronic dockets for all submission under section 553(c) of title 5, United States Code, by electronic means.

(d) ELECTRONIC DOCKETING.—

(1) IN GENERAL.—To the extent practicable, and as determined by the agency in consultation with the Director, agencies shall ensure that a publicly accessible Federal Government website contains electronic dockets for all rulemakings under section 553 of title 5, United States Code.

(e) TIME LIMITATION.—Agencies shall implement the requirements of this section consistent with a timetable established by the Director and reported to Congress in the first annual report under section 3606 of title 44.

SEC. 207. ACCESSIBILITY, USBABILITY, AND PRESERVATION OF GOVERNMENT INFORMATION.

(a) PURPOSE.—The purpose of this section is to improve the methods by which Government information, including information on the Internet, is preserved, as determined by the Director.

(b) DEFINITIONS.—In this section, the term—

(1) “Committee” means the Interagency Committee on Government Information established under subsection (c); and

(2) “directory” means a taxonomy of subject records to which subjects are linked.

(3) AGENCIES.—The Committee shall be comprised of the following—

(A) the National Archives and Records Administration; and

(B) the offices of the Chief Information Officers from Federal agencies.

(c) ELECTRONIC DOCKETING.—

(1) IN GENERAL.—To the extent practicable, and as determined by the agency in consultation with the Director, agencies shall ensure that a publicly accessible Federal Government website contains electronic dockets for all submission under section 553(c) of title 5, United States Code, by electronic means.

(d) ELECTRONIC DOCKETING.—

(1) IN GENERAL.—To the extent practicable, and as determined by the agency in consultation with the Director, agencies shall ensure that a publicly accessible Federal Government website contains electronic dockets for all rulemakings under section 553 of title 5, United States Code.

(e) TIME LIMITATION.—Agencies shall implement the requirements of this section consistent with a timetable established by the Director and reported to Congress in the first annual report under section 3606 of title 44.

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(1) IN GENERAL.—To the extent practicable, and as determined by the agency in consultation with the Director, agencies shall ensure that a publicly accessible Federal Government website contains electronic dockets for all rulemakings under section 553 of title 5, United States Code.

(e) TIME LIMITATION.—Agencies shall implement the requirements of this section consistent with a timetable established by the Director and reported to Congress in the first annual report under section 3606 of title 44.
(A) the adoption of standards, which are open to the maximum extent feasible, to enable the organization and categorization of Government information—
(i) that are search-able electronically, including by searchable identifiers; and
(ii) in ways that are interoperable across agencies;
(B) the definition of categories of Government information which shall be classified under the standards; and
(C) determining priorities and developing schedules for the initial implementation of the standards by agencies.
(2) MODIFICATION OF DIRECTOR.—Not later than 1 year after the submission of recommendations under paragraph (1), the Director shall issue policies—
(A) requiring that agencies use standards, which are open to the maximum extent feasible, to enable the organization and categorization of Government information—
(i) in a way that is search-able electronically, including by searchable identifiers; and
(ii) in ways that are interoperable across agencies; and
(B) that are, as appropriate, consistent with the provisions under section 360Z(f)(8) of title 44, United States Code;
(B) the imposition of timetables for the implementation of the standards by agencies.
(3) MODIFICATION OF POLICIES.—After the submission of agency reports under paragraph (4), the Director shall modify the policies, as needed, in consultation with the Committee and interested parties.
(4) AGENCY FUNCTIONS.—Each agency shall report annually to the Director, in the report established under section 202(g), on compliance of that agency with the policies issued under paragraph (2)(A).
(e) PUBLIC ACCESS TO ELECTRONIC INFORMATION.—
(1) COMMITTEE FUNCTIONS.—Not later than 2 years after the date of enactment of this Act, the Committee shall submit recommendations to the Director and the Archivist of the United States on—
(A) the development of policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code, are applied effectively and comprehensively to Government information on the Internet and to other electronic records; and
(B) the imposition of timetables for the implementation of the policies and procedures agencies.
(2) FUNCTIONS OF THE ARCHIVIST.—Not later than 1 year after the submission of recommendations by the Committee under paragraph (1), the Archivist shall—
(A) modify the policies and procedures issued by the Committee on the Archivist of the United States shall institute policies—
(B) imposing timetables for the implementation of the policies, procedures, and technologies by agencies.
(3) MODIFICATION OF POLICIES.—After the submission of agency reports under paragraph (4), the Archivist of the United States shall modify the policies, as needed, in consultation with the Committee and interested parties.
(4) AGENCY FUNCTIONS.—Each agency shall report annually to the Director, in the report established under section 202(g), on compliance of that agency with the policies issued under paragraph (2)(A).
(f) AGENCY WEBSITES.—
(1) STANDARDS FOR AGENCY WEBSITES.—Not later than 2 years after the effective date of this title, the Director shall promulgate guidance for agency websites that includes—
(A) requirements that websites include direct links to—
(i) descriptions of the mission and statutory authority of the agency;
(ii) information made available to the public under subsections (a)(1) and (b) of section 552 of title 5, United States Code (commonly referred to as the ‘‘Freedom of Information Act’’);
(iii) information about the organizational structure and performance of the agency; and
(iv) the strategic plan of the agency developed under section 306 of title 5, United States Code; and
(B) requiring agency websites to assist public users to navigate agency websites, including—
(i) speed of retrieval of search results;
(ii) the relevance of the results;
(iii) tools to aggregate and disaggregate data; and
(iv) security protocols to protect information.
(2) AGENCY REQUIREMENTS.—(A) Not later than 2 years after the date of enactment of this Act, each agency shall—
(i) consult with the Committee and solicit public comment;
(ii) establish a process for determining which Government information the agency intends to make accessible to the public on the Internet and by other means;
(iii) develop priorities and schedules for making Government information available and accessible;
(iv) make such final determinations, priorities, and schedules available for public comment; and
(v) post such final determinations, priorities, and schedules on the Internet, and
(vi) post such final determinations, priorities, and schedules to the Director, in the report established under section 202(g).
(B) After the date of enactment of this Act, each agency shall—
(i) update the directory as necessary, but not less than every 6 months; and
(ii) establish a process for determining access to federal research and development activities.
(g) ACCESS TO FEDERALLY FUNDED RESEARCH AND DEVELOPMENT.—
(1) DEVELOPMENT AND MAINTENANCE OF GOVERNMENTWIDE REPOSITORY AND WEBSITE.—
(A) REPOSITORY AND WEBSITE.—The Director of the Office of Management and Budget (or the Director’s delegate), in consultation with the Director of the Office of Science and Technology Policy and other relevant agencies, shall ensure the development and maintenance of a repository that fully integrates, to the maximum extent feasible, information about research and development funded by the Federal Government, and the repository shall—
(i) include information about research and development funded by the Federal Government, consistent with any relevant protections for the information under section 552 of title 5, United States Code, and performed by—
(aa) institutions not a part of the Federal Government, including State, local, and foreign institutions; not-for-profit organizations; federally funded research and development centers; and private individuals; and
(bb) any other information as government, including research and development laboratories, centers, and offices; and
(ii) integrate information about each separate research and development task or award, including—
(aa) the dates upon which the task or award is expected to start and end;
(bb) a brief summary describing the objectives, the scientific and technical focus of the task or award;
(cc) the entity or institution performing the task or award and its contact information;
(dd) the total amount of Federal funds expected to be provided to the task or award over its lifetime and the amount of funds expected to be provided in each fiscal year in which the work of the task or award is ongoing;
(ee) any restrictions attached to the task or award that prevent the sharing with the general public of any or all of the information required by this subsection, and the reasons for such restrictions; and
(ff) such other information as may be determined to be appropriate; and
(B) develop and maintain a public domain directory of Federal Government websites—
(i) that are, as appropriate, consistent with the provisions under section 360Z(f)(8) of title 44, United States Code;
(ii) 1 or more websites upon which all or part of the repository of Federal research and development activities shall be made available to and searchable by Federal agencies and non-Federal entities, including the general public, to facilitate—
(i) the coordination of Federal research and development activities; (II) collaboration among those conducting Federal research and development; and
(III) the transfer of technology among Federal agencies and between Federal agencies and non-Federal entities; and
(iv) access by policymakers and the public to information concerning Federal research and development activities.
(B) OVERSIGHT.—The Director of the Office of Management and Budget shall issue any guidance determined necessary to ensure that agencies provide all information requested under this subsection.
(2) AGENCY FUNCTIONS.—Any agency that funds Federal research and development under this subsection shall provide the information required to populate the repository in the manner prescribed by the Director of the Office of Management and Budget.
(C) COMMITTEE FUNCTIONS.—Not later than 18 months after the date of enactment of this Act, working with the Director of the Office of Science and Technology Policy, and after consultation with interested parties, the Committee shall submit recommendations to the Director on—
SEC. 209. FEDERAL INFORMATION TECHNOLOGY WORKFORCE DEVELOPMENT.

(a) PURPOSE.—The purpose of this section is to improve the skills of the Federal workforce in using information technology to deliver Government information and services.

(b) WORKFORCE OF THE DIRECTOR.—

(1) In general.—In consultation with the Director of the Office of Management and Budget, the Chief Information Officers Council, and the Administrator of General Services, the Director of the Office of Personnel Management shall—

(A) analyze, on an ongoing basis, the personnel needs associated with the use of information technology and information resource management;

(B) identify where current information technology and information resource management training do not satisfy the personnel needs described in subparagraph (A); and

(C) oversee the development of curricula, training methods, and training priorities that correspond to the projected personnel needs of the Federal Government related to information technology and information resource management.

(2) Authority to detail employees to non-Federal employers.—In carrying out the preceding provisions of this subsection, the Director of the Office of Personnel Management may provide for a program under which a Federal employee may be detailed to a non-Federal employer. The Director of the Office of Personnel Management shall prescribe regulations for such program, including the conditions for service and duties as the Director considers appropriate and warranted in view of the agency head established in accordance with this section by Executive agencies.

(3) Coordination.—An assignment described in section 3703 of title 5, United States Code, may not be made unless the personnel needs of the agency involved are satisfied, and the assignment is made in accordance with the requirements of such program.
(8) EMPLOYEE PARTICIPATION.—Subject to information resource management needs and the limitations imposed by resource needs in other occupational areas, and consistent with the agency's workforce development strategies, agencies shall encourage employees to participate in occupational information technology training.

(9) INFORMATION TECHNOLOGY EXCHANGE PROGRAM.—There are authorized to be appropriated to the Office of Personnel Management for the implementation of this subsection, $15,000,000 in fiscal year 2003, and such sums as are necessary for each fiscal year thereafter.

(10) EXECUTIVE AGENCY DEFINED.—For purposes of this subsection, the term "Executive agency" means the agency designated as an Executive agency under section 3701 of title 5, United States Code, as amended by subsection (c).

(c) INFORMATION TECHNOLOGY EXCHANGE PROGRAM.—

(1) IN GENERAL.—Subpart B of part III of title 5, United States Code, is amended by adding at the end the following:

"§ 3701. Definitions.

"Sec. 3701. Definitions.

"3701. Assignment of employees to private sector organizations.

"3704. Assignment of employees from private sector organizations.


"3706. Reporting requirement.

"3707. Regulations.

"§ 3701. Definitions.

"For purposes of this section—

"(1) the term 'agency' means an Executive agency, but does not include the General Accounting Office; and

"(2) the term 'detail' means—

"(A) the assignment or loan of an employee of an agency to a private sector organization without a change of position from the agency that employs the individual, or

"(B) the assignment or loan of an employee of a private sector organization to an agency without a change of position from the private sector organization that employs the individual, whichever is appropriate in the context in which such term is used.

"§ 3702. General provisions

"(a) ASSIGNMENT AUTHORITY.—On request from or with the agreement of a private sector organization, and with the consent of the employee, the head of an agency may arrange for the assignment of an employee of the agency to a private sector organization or an employee of a private sector organization to the agency. An eligible employee is an individual who—

"(1) works in the field of information technology management;

"(2) is expected to be an exceptional performer by the individual's current employer; and

"(3) is expected to assume increased information technology management responsibilities in the future.

An employee of an agency shall be eligible to participate in this program only if the employee is employed at the GS-11 level or above (or equivalent) and is serving under a career or career-conditional appointment or an appointment of equivalent tenure in the excepted service, and applicable requirements of subpart 209(b) of the E-Government Act of 2002 are met with respect to the proposed assignment of such employee.

(b) AGREEMENTS.—Each agency that exercises its authority under this chapter shall provide for a written agreement between the agency and the employee concerned regarding the terms and conditions of the employee's assignment. In the case of an employee of the agency, the agreement shall—

(1) require the employee to serve in the civil service, upon completion of the assignment, for a period equal to the length of the assignment; and

(2) provide that, in the event the employee leaves the civil service, the agency shall be liable to the United States for the payment of all expenses of the assignment.

An amount under paragraph (2) shall be treated as a debt due the United States.

(c) DURATION.—Assignments under this chapter shall be for a period of between 3 months and 1 year, and may be extended in 3-month increments for a total of not more than 1 additional year, except that no assignment under this chapter may commence after the end of the 5-year period beginning on the date of the enactment of this chapter.

(d) TERMINATION.—Assignments under this chapter are deemed, during the period of the assignment, to be on detail to a private sector organization under this chapter, establishing mentoring relationships for the benefit of individuals who are given assignments under this chapter, and publicizing the program.

(e) REPORTING REQUIREMENT.—An agency which fails to comply with paragraph (1) in a year shall, within 90 days after the end of such year, submit a report to the Committees on Governmental Affairs and Appropriations of the Senate. The report shall include—

(A) the total number of assignments made under this chapter from such agency to private sector organizations in the year;

(B) of that total number, the number (and percentage) made to small business concerns; and

(C) the reasons for the agency's non-compliance with paragraph (1).

(f) EXCLUSION.—This subsection shall not apply to an agency in any year in which it made more than 20 assignments under this chapter to private sector organizations.

(g) ASSIGNMENT OF EMPLOYEES TO PRIVATE SECTOR ORGANIZATIONS.—

(1) IN GENERAL.—An employee of an agency assigned to a private sector organization under this chapter shall—

(i) be entitled to retain coverage, rights, and benefits under subchapter I of chapter 81.

(ii) be entitled to retain work benefits in the United States, except that, if the employee or the employee's dependents receive from the private sector organization any payment under an insurance policy, the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

(iii) REPLACEMENTS.—The assignment of an employee to a private sector organization under this chapter may be made with or without reimbursement by the private sector organization for the travel and transportation of the employee to and from the place of assignment, subject to the same terms and conditions as apply with respect to an employee of a Federal agency or a State or local government under section 3323, and for the pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the agency used for paying the travel and transportation expenses or pay.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the term 'small business concern' means a business concern that satisfies the definitions and standards specified by the Administrator of the Small Business Administration under section 3(a)(2) of the Small Business Act (as from time to time amended by the Administrator);

(B) the term 'year' refers to the 12-month period beginning on the date of the enactment of this chapter, and each succeeding 12-month period in which any assignments under this chapter may be made; and

(C) the assignments 'made' in a year are those commencing in such year.

(h) ASSIGNMENT OF EMPLOYEES FROM PRIVATE SECTOR ORGANIZATIONS.—

(1) IN GENERAL.—An employee of a private sector organization assigned to an agency under this chapter—

(i) may continue to receive pay and benefits from the private sector organization from which he is assigned;

(ii) is deemed, notwithstanding subsection (a), to be an employee of the agency for the purposes of paragraph (1);

(iii) complies with the following:

(A) section 201, 203, 207, 208, 209, 603, 606, 607, 643, 645, 1905, and 1913 of title 18; and

(iv) submits a report to the Committees on Governmental Reform and Small Business of the House of Representatives and the Committees on Governmental Affairs and Small Business of the Senate. The report shall include—

(A) the total number of assignments made under this chapter from such agency to private sector organizations in the year;

(B) the number and (and percentage) made to small business concerns; and

(C) the reasons for the agency's non-compliance with paragraph (1).

(i) EXCLUSION.—This subsection shall not apply to an agency in any year in which it made more than 20 assignments under this chapter to private sector organizations.

(j) ASSIGNMENT OF EMPLOYEES TO PRIVATE SECTOR ORGANIZATIONS.—An employee of a private sector organization assigned to an agency under this chapter—

(1) may continue to receive pay and benefits from the private sector organization from which he is assigned;

(2) is deemed, notwithstanding subsection (a), to be an employee of the agency for the purposes of paragraph (1).

(3) submits a report to the Committees on Governmental Reform and Small Business of the House of Representatives and the Committees on Governmental Affairs and Small Business of the Senate. The report shall include—

(A) the total number of assignments made under this chapter from such agency to private sector organizations in the year;

(B) of that total number, the number (and percentage) made to small business concerns; and

(C) the reasons for the agency's non-compliance with paragraph (1).

(k) ORGANIZATIONAL STANDARDS.—The Administrator of the Small Business Administration shall ensure that, of the assignments made under this chapter to private sector organizations, at least 20 percent are to small business concerns.
which is of commercial value to the private sector organization from which he is assigned; and

(4) is subject to such regulations as the President may prescribe.

The supervision of an employee of a private sector organization assigned to an agency under this chapter may be governed by agreement between the agency and the private sector organization concerned, Such an assignment may be made with or without reimbursement by the agency for the pay, or a part thereof, of the employee during the period of assignment for any contribution of the private sector organization to employee benefit systems.

(c) Coordination with Chapter 81.—An employee of a private sector organization assigned to an agency under this chapter who suffers disability or dies as a result of personal injury sustained while performing duties during the assignment shall be treated, for the purpose of subsection I of chapter 81, as an employee as defined by section 8101 who had sustained the injury in the performance of duty, except that, if the employee or his dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under subsection I of chapter 81.

(d) Prohibition against charging certain costs to the Federal Government.—A private sector organization may not charge the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the organization to an employee assigned to an agency under this chapter for the period of the assignment.

§3705. Application to Office of the Chief Technology Officer of the District of Columbia

(a) In General.—The Chief Technology Officer of the District of Columbia may arrange, by agreement with an employee of an agency of the Federal Government, for an employee of the District of Columbia to serve as the head of an agency under this chapter.

(b) Terms and Conditions.—An assignment made pursuant to subsection (a) shall be subject to the terms and conditions as an assignment made by the head of an agency under this chapter, except that in applying such terms and conditions to an assignment made pursuant to subsection (a), any reference in this chapter to a provision of law or regulations of the United States shall be understood as a reference to the applicable provision of law or regulations of the District of Columbia, including the applicable provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1976 (sec. 1-601.01 et seq., D.C. Official Code) and section 601 of the District of Columbia Campaign Finance Reform and Conflict of Interest Act (sec. 1-1106.01, D.C. Official Code).

(c) Definition.—For purposes of this section, the term ‘Office of the Chief Technology Officer’ means the office established in the District of Columbia to advise the agency under the District of Columbia Government Comprehensive Merit Personnel Act of 1976 (sec. 1-601.01 et seq., D.C. Official Code).

§3706. Reporting requirement

(a) In General.—The Office of Personnel Management shall, not later than April 30 and October 31 of each year, prepare and submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate a report on the operation of chapter 37 of title 5, United States Code, during the immediately preceding 6-month period ending on March 31 and September 30, respectively.

(b) Content. —Such report shall include, with respect to the 6-month period to which such report relates—

(1) the total number of individuals assigned to an agency under this chapter who had sustained an injury in the performance of duty, except that, if the employee or his dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under chapter 37 of title 5, United States Code; in addition to the restriction in the preceding sentence, such employee shall not, other than as provided by law, knowingly disclose to a contractor any information or source selection information during the three-year period after the end of the assignment.

(2) a brief description of each assignment included under paragraph (1), including—

(A) the name of the assigned individual, as well as the private sector organization and the agency (including the specific bureau or other agency component) to or from which such individual was assigned;

(B) the respective positions to and from which the individual was assigned, including the duties and responsibilities and the pay grade or level associated with each; and

(C) the duration and objectives of the individual’s assignment; and

(d) such other information as the Office considers appropriate.

(c) Publication.—A copy of each report submitted under subsection (b) shall be published in the Federal Register.

(d) Agency Cooperation.—On request of the Office, agencies shall furnish such information and reports as the Office may require in order to carry out this section.

§3707. Regulations

The Director of the Office of Personnel Management shall prescribe regulations for the administration of this chapter.

(b) Reporting requirement.—Not later than 1 year after the date of the enactment of this Act, the Office of Personnel Management shall prepare and submit to the Committee on Governmental Affairs of the Senate a report identifying all existing exchange programs.

(c) Specific information.—The report shall, for each such program, include—

(A) a brief description of the program, including its size, eligibility requirements, and terms or conditions for participation;

(B) specific citation to the law or other authority under which the program is established;

(C) the names of persons to contact for more information, and how they may be reached; and

(D) any other information which the Office considers necessary.

(d) Report on the Establishment of a Governmentwide Information Technology Training Program.—In general.—Not later than January 1, 2003, the Office of Personnel Management, in consultation with the Chief Information Officers Council and the Administrator of General Services, shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate a written report on the following:

(A) The adequacy of any existing information technology training programs available to Federal employees on a Governmentwide basis;

(B) (i) If one or more such programs already exist, recommendations as to how they might be improved;

(ii) whether such program yet exists, recommendations as to how such a program might be designed and established;

(C) With respect to any recommendations under paragraph (B)(ii), whether such program under chapter 37 of title 5, United States Code, might be used to help carry them out.
(2) Cost Estimate.—The report shall, for any recommended program (or improvements) under paragraph (1)(B), include the estimated costs associated with the implementation and operation of such program as so established (or estimated difference in costs of any such program as so improved).

(3) Technical and Conforming Amendments.—

(a) Amendments to Title 5, United States Code.—Title 5, United States Code, is amended by adding at the end the following:

"..."(d) Notwithstanding section 3142 of title 31, the agency may accept voluntary service for the United States under chapter 37 of this title and regulations of the Office of Personnel Management..."

(b) In section 4108, by striking subsection (d); and

(c) In section 7332(b), by adding at the end the following:

"...Nothing in this section precludes an employee of a private sector organization, while assigned to an agency under chapter 37, from continuing to receive pay and benefits from such organization in accordance with such chapter..."

(2) Amendment to Title 18, United States Code.—Title 18, United States Code, is amended by adding at the end the following:

"..."(g) This section shall not be construed to prohibit an agency from entering into a share-in-savings contract with a private sector organization, while assigned to an agency under chapter 37, from continuing to receive pay and benefits from such organization in accordance with such chapter..."

(3) Other Amendments.—Section 125(c)(1) of Public Law 100–203 (5 U.S.C. 6412 note) is amended—

(A) in subparagraph (B), by striking "or" at the end;

(B) subparagraph (C), by striking "and" at the end and inserting "or"; and

(C) by adding at the end the following:

"...An individual assigned from a Federal agency to a private sector organization under chapter 37 of title 5, United States Code; and..."

SEC. 210. SHARE-IN-SAVINGS INITIATIVES.

(a) Authority To Enter Into Share-In-Savings Contracts.—(1) The head of an agency may enter into a share-in-savings contract for information technology (as defined in section 11101(6) of title 40, United States Code) in which the Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in savings achieved through contract performance.

(2)(A) Except as provided in subparagraph (B), a share-in-savings contract shall be awarded for a period of not more than five years.

(B) A share-in-savings contract may be awarded for a period greater than five years, but not more than ten years, if the head of the agency determines in writing prior to award of the contract that—

(i) the level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the government from obtaining the needed information technology at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

(ii) usage of the information technology to be acquired is likely to continue for a period of time sufficient to generate reasonable benefit for the government.

(C) A contractor providing pursuant to the authority of this section shall, to the maximum extent practicable, be performance-based contracts that identify objective outcomes and contain performance standards that will be used to measure achievement and milestones that must be met before payment is made.

(D) A share-in-savings contract under this section shall not be awarded if—

(i) the head of the agency determines that the contractor is not qualified; or

(ii) the head of the agency determines that the contractor is likely to fail to meet the performance standards contained in the contract.

(E) The aggregate amount of share-in-savings contracts that may be entered into under subparagraph (A) by all agencies to which this chapter applies in a fiscal year shall not exceed 5 in each of fiscal years 2003, 2004, and 2005.

(D) Definitions.—In this section:

(1) The term ‘contractor’ means—

(A) a private sector organization that enters into a contract with an agency;

(B) a head of an agency; or

(C) a savings in time or other benefits realized by the agency, including enhanced revenues (other than enhanced revenues from the collection of fees, taxes, debts, claims, or other amounts owed the Federal Government).

(3) The term ‘share-in-savings contract’ means a contract under which—

(A) a contractor provides solutions for—

(i) improving the agency’s mission-related or administrative processes; or

(ii) accelerating the achievement of agency missions;

(B) the head of the agency pays the contractor an amount equal to a portion of the savings derived from the savings resulting from any improvement in mission-related or administrative processes that result from implementation of the solution; or

(C) a contractor is entitled to a portion of the savings in time or other benefits realized by the agency, including enhanced revenues (other than enhanced revenues from the collection of fees, taxes, debts, claims, or other amounts owed the Federal Government).

(4) Termination.—No share-in-savings contracts may be entered into under this section after September 30, 2005.

(b) The Secretary of the Appropriations Committee of each House of Congress shall, during the 107th Congress, report on the extent to which the savings in time or other benefits realized by the agency, including enhanced revenues (other than enhanced revenues from the collection of fees, taxes, debts, claims, or other amounts owed the Federal Government) are spent.
is to be the basis upon which a savings share ratio is established that governs the amount of payment a contractor is to receive under the contract. Before commencement of performance under a contract, the senior procurement executive of the agency shall determine in writing that the terms of the provision are quantifiable and will likely yield value for the taxpayers.

"(5)(A) The head of the agency may retain savings realized through the use of a share-in-savings contract under this section that are in excess of the total amount of savings paid to the contractor under the contract, but may not retain any portion of such savings that is attributable to a decrease in the number of civilian employees of the Federal Government performing the function. Except as provided in subparagraph (B), savings shall be credited to the appropriation or fund against which charges were made to carry out the contract and shall be used for information technology.

"(B) Amounts retained by the agency under this subsection shall—

"(i) without further appropriation, remain available until expended; and

"(ii) be used to fund any contingent liabilities associated with share-in-savings procurements that are not fully funded.

"(6) CANCELLATION AND TERMINATION.—(1) If funds are not made available for the continuation of a share-in-savings contract entered into under this section in a subsequent fiscal year, the contract shall be canceled or terminated. Before commencement of cancellation or termination—

"(A) appropriations available for the performance of the contract;

"(B) appropriations available for acquisition of the information technology procured under the contract, and not otherwise obligated or available;

"(C) funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3)."
SEC. 213. COMMUNITY TECHNOLOGY CENTERS.

(a) PURPOSES.—The purposes of this section are to—

(1) study and enhance the effectiveness of community technology centers, public libraries, and other institutions that provide computer and Internet access to the public; and

(2) promote awareness of the availability of on-line government information and services, to users of community technology centers, public libraries, and other public facilities that provide access to technology and Internet access to the public.

(b) STUDY AND REPORT.—Not later than 2 years after the effective date of this title, the Administrator shall—

(1) ensure that a study is conducted to evaluate the best practices of community technology centers that have received Federal funds; and

(2) submit a report on the study to—

(A) the Committee on Governmental Affairs of the Senate; and

(B) the Committee on Health, Education, Labor, and Pensions of the Senate.

(2) GOALS OF PILOT PROJECTS.—(A) General direction—The Director shall designate, in consultation with the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate, the number of community technology centers that have received Federal funds, including—

(i) an analysis of whether community technology centers are being used by successful community technology centers; and

(2) a strategy for—

(A) continuing the evaluation of best practices used by community technology centers; and

(B) establishing a network to share information and resources as community technology centers evolve;

(3) the identification of methods to expand the use of best practices to assist community technology centers, public libraries, and other institutions that provide computer and Internet access to the public;

(4) a database of community technology centers that have received Federal funds, including—

(A) each center's name, location, services provided, director, other points of contact, number of individuals served; and

(B) other relevant information;

(5) an analysis of whether community technology centers are being used by successful community technology centers that have received Federal funds, including—

(A) each center's name, location, services provided, director, other points of contact, number of individuals served; and

(B) other relevant information;
(6) recommendations of how to—
(A) enhance the development of community technology centers; and
(B) establish a network to share information among agencies;
(d) cooperation.—All agencies that fund community technology centers shall provide to the Administrator information and assistance necessary for the completion of the study and the report under this section.
(e) assistance.—
(1) in general.—The Administrator, in consultation with the Secretary of Education, shall ensure that a study is conducted on using in-formation technology to enhance crisis preparedness, response, and consequence management.
(2) report.—Not later than 2 years after the date on which a contract is entered into under paragraph (1), the Administrator shall submit a report to the Congress, including findings and recommendations to—
(A) the Committee on Governmental Affairs of the Senate; and
(B) the Committee on Government Reform of the House of Representatives.
(f) authorization of appropriations.—Other Federal departments and agencies with responsibility for crisis preparedness, response, and consequence management, including the Federal Emergency Management Agency, shall distribute information on the tutorial to the public.
SEC. 215. DISPARITIES IN ACCESS TO THE INTERNET.
(a) study and report.—
(1) in general.—Not later than 90 days after the date of enactment of this Act, the Administrator, in consultation with the National Academy of Sciences, shall submit to the Congress a report on the study of disparities in Internet access for online Government services, including a review of—
(A) the nature of disparities in Internet access; and
(B) the affordability of Internet service;
(2) the incidence of disparities among different groups within the population; and
(3) related societal effects arising from the interplay of disparities in Internet access and the increase in online Government services.
(b) recommendations.—The report shall include recommendations on actions to ensure that online Government initiatives shall not have an unintended result of increasing any deficiency in public access to Government services.
(c) in general.—The Administrator, in consultation with the National Academy of Sciences, shall ensure that a study is conducted on using information technology to enhance crisis preparedness, response, and consequence management among agencies in the private sector to—
(A) assist in the implementation of recommendations; and
(B) identify other ways to assist community technology centers; public libraries; and other institutions that provide computer and Internet access to the public.
(2) types of assistance.—Assistance under this subsection may include—
(A) contribution of funds;
(B) donations of equipment, and training in the use and maintenance of the equipment; and
(C) the provision of basic instruction or training material in computer skills and Internet access.
(f) online tutorial.—
(1) in general.—The Administrator, in consultation with the National Academy of Sciences, shall ensure that an online tutorial to community technology centers, public libraries, and other institutions that afford Internet access to the public;
(g) promotion of community technology centers.—The Administrator, with assistance from the Department of Education and in consultation with other agencies and organizations, shall promote the availability of cooperative community technology centers to raise awareness within each community where such a center is located.
(h) authorization of appropriations.—There are authorized to be appropriated for the study of best practices at community technology centers, for the development and dissemination of online tutorial, and for the promotion of community technology centers under this section—
(1) $2,000,000 in fiscal year 2003;
(2) $2,000,000 in fiscal year 2004; and
(3) such sums as are necessary in fiscal years 2005 through 2007.
SEC. 214. ENHANCING CRISIS MANAGEMENT THROUGH ADVANCED INFORMATION TECHNOLOGY.
(a) purpose.—The purpose of this section is to enhance the development of information technology centers to raise awareness within each community where such a center is located.
(b) study.—
(1) in general.—The Secretary of Education, the Director of the Institute of Museum and Library Services, tribal governments, and public libraries, shall conduct a study of the potential improvement as determined during the course of the study of—
(A) the nature of disparities in Internet access; and
(B) the affordability of Internet service;
(2) the nature of disparities in Internet access for online Government services, including a review of—
(A) the nature of disparities in Internet access;
and
(B) the consequences of these disparities among different groups within the population; and
(3) related societal effects arising from the interplay of disparities in Internet access and the increase in online Government services.
(b) contents.—The study under this subsection shall address—
(A) a research and implementation strategy for effective use of information technology in crisis response and consequence management, including the more effective use of information technology research initiatives, and in-corporation of research advances into the information and communication systems of—
(i) the Federal Emergency Management Agency;
and
(ii) other Federal, State, and local agencies responsible for crisis preparedness, response, and consequence management.
(B) opportunities for research and development on enhanced technologies into areas of potential improvement as determined during the course of the study.
(d) report.—Not later than 2 years after the date on which a contract is entered into under paragraph (1), the Administrator shall submit a report to the study, including findings and recommendations to—
(A) the Committee on Governmental Affairs of the Senate; and
(B) the Committee on Government Reform of the House of Representatives.
(e) interagency cooperation.—Other Federal, State, and local agencies responsible for crisis preparedness, response, and consequence management, including the Federal Emergency Management Agency, shall distribute information on the tutorial to the public.
(f) authorization of appropriations.—There are authorized to be appropriated $950,000 in fiscal year 2003 to carry out this section.
SEC. 216. COMMON PROTOCOLS FOR GEOGRAPHIC INFORMATION SYSTEMS.
(a) purposes.—The purposes of this section are to—
(1) reduce redundant data collection and information; and
(2) promote collaboration and use of standards for geographic information.
(b) definition.—In this section, the term "geographic information" means information systems that involve locational data, such as maps or other geospatial information resources.
(c) in general.—
(1) common protocols.—The Administrator, in consultation with the Secretary of the Interior, the Federal Emergency Management Agency; and through an interagency group, and working with private sector experts, State, local, and tribal governments, commercial and international standards developers, and other interested persons in Federal, State, local, and tribal governments, shall develop a network to share information on the development of common protocols for the development, acquisition, maintenance, distribution, and application of geographic information. If practicable, the Administrator shall incorporate intergovernmental and public private geographic information partnerships as efforts under this subsection.
(2) interagency group.—The interagency group referred to under paragraph (1) shall include representatives of the National Institute of Standards and Technology and other agencies.
(d) director.—The Director shall oversee—
(1) the interagency initiative to develop common protocols; and
(2) the coordination with State, local, and tribal governments, public private partners, and other interested persons on effective and efficient ways to align geographic information and develop common protocols;
(e) adoption of standards.—The adoption of common standards relating to the protocols shall be designed to—
(1) allow widespread, low-cost use and sharing of geographic data by Federal agencies, States, local, and tribal governments, and the public; and
(2) enhance the development of interoperable geographic information systems technologies that shall—
(A) allow widespread, low-cost use and sharing of geographic data by Federal agencies, States, local, and tribal governments, and the public; and
(B) enable the enhancement of services using geographic data.
(f) authorization of appropriations.—There are authorized to be appropriated such sums as are necessary to carry out this section, for each of the fiscal years 2003 through 2007.
TITLE III—INFORMATION SECURITY
SEC. 301. INFORMATION SECURITY.
(a) Purpose.—The title may be cited as the "Federal Information Security Management Act of 2002".
"SUBCHAPTER III—INFORMATION SECURITY"

§3541. Purposes

The purposes of this subchapter are to—

(1) provide a comprehensive framework for ensuring the effectiveness of information security controls over information resources that support Federal operations and assets;

(2) recognize the highly networked nature of Federal computing environments and provide effective governmentwide management and oversight of the related information resources, including coordination of information security efforts throughout the civilian, national security, and law enforcement communities;

(3) provide for development and maintenance of minimum controls required to protect Federal information and information systems;

(4) provide a mechanism for improved oversight of Federal agency information security programs; and

(5) acknowledge that commercially developed information security products offer advanced, dynamic, robust, and effective information security solutions, reflecting market solutions for the protection of critical information infrastructures important to the national defense and economic security of the nation that are designed, built, and operated by the private sector; and

(6) recognize that the selection of specific technical hardware and software information security solutions should be left to individual agencies from among commercially developed products.

§3542. Definitions

(a) In General.—Except as provided under subsection (b), the definitions under section 502 shall apply to this subchapter.

(b) Additional Definitions.—As used in this subchapter:

(1) the term ‘‘information security’’ means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

(A) integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

(B) availability, which means preserving authorized access to and disclosure, including means for protecting personal privacy and proprietary information;

(C) availability, which means ensuring timely and reliable access to and use of information;

(D) the term ‘‘national security system’’ means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency—

(i) the function, operation, or use of which involves intelligence activities;

(ii) involves cryptologic activities related to national security;

(iii) involves command and control of military forces;

(iv) involves equipment that is an integral part of a weapon or weapons system; or

(v) subject to subparagraph (B), is critical to the direct fulfillment of military or intelligence missions; or

(ii) is protected at all times by procedures established for information that have been specified and authorized under criteria established by an Executive order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

(B) A national security system does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).

(3) The term ‘‘information technology’’ has the meaning given that term in section 1101 of title 41.

(4) The term ‘‘authority and functions of the Director’’ includes—

(a) In General.—The Director shall oversee agency information security policies and practices, including—

(i) developing and overseeing the implementation of policies, principles, standards, and guidelines on information security, including through the promulgation of and compliance with standards promulgated under section 11331 of title 40;

(ii) requiring agencies, consistent with the standards promulgated under section 11331 and the requirements of this subchapter, to identify and provide information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of—

(A) information collected or maintained by or on behalf of an agency; or

(B) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

(iii) coordinating the development of standards and guidelines under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3) with agency policies and offices operating or exercising control of national security systems (including the National Security Agency) to assure, to the maximum extent feasible, that such standards and guidelines are complementary with standards and guidelines developed for national security systems;

(iv) overseeing compliance with the requirements of this subchapter, including through any authorized action under section 11303 of title 40, to enforce accountability for compliance with such requirements;

(v) reviewing at least annually, and approving or disapproving, agency information security programs required under section 354(b); and

(vi) coordinating information security policies and procedures with related information resources management policies and procedures;

(vii) overseeing the operation of the Federal information security incident center required under section 3543.

(B) The term ‘‘information security standards and guidelines’’ means—

(1) providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of—

(i) information collected or maintained by or on behalf of the agency; and

(ii) information systems used or operated by an agency or a contractor of an agency or other organization on behalf of an agency;

(2) complying with the requirements of this subchapter and promulgating policies, guidelines, and procedures, standards, and guidelines, including—

(i) information security standards promulgated under section 11331 of title 40; and

(ii) information security standards and guidelines for national security systems issued in accordance with law and as directed by the President; and

(C) ensuring that information security management processes are integrated with agency strategic and operational planning processes.

(2) ensure that senior agency officials provide information security for the information and information systems that support operations and assets under their control, including—

(A) the risk and magnitude of the harm that could result from unauthorized access, use, disclosure, disruption, modification, or destruction of such information or information systems;

(B) determining the levels of information security appropriate to protect such information and information systems in accordance with standards promulgated under section 11331 of title 40, for information security classifications and related policies and procedures;

(C) implementing policies and procedures to cost-effectively reduce risks to an acceptable level; and

(D) periodically testing and evaluating information security controls and techniques to ensure that they are effectively implemented.

(C) delegate to the agency Chief Information Officer established under section 3506 (or comparable official in an agency not covered by such section) the authority to ensure compliance with the requirements imposed on the agency under this subchapter, including—

(A) designating a senior agency information security officer to carry out the Chief Information Officer’s responsibilities under this section;
"(i) possess professional qualifications, including training and experience, required to administer the functions described under this section;

(ii) conduct such information security duties as that official’s primary duty; and

(iv) head an office with the mission and resources to assist in ensuring agency compliance with this subchapter, including standards and guidelines for national security system.

(B) developing and maintaining an agencywide information security program as required by subsection (b);

(C) developing and maintaining information security policies, procedures, and control techniques to address all applicable requirements, including those issued under section 3545 of this title, and section 11331 of title 40;

(D) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and

(E) assisting senior agency officials concerning their responsibilities under paragraph (2);

"(4) ensure that the agency has trained personnel sufficient to assist the agency in complying with the requirements of this subchapter, including policies, procedures, standards, and guidelines; and

"(5) ensure that the agency Chief Information Officer, in coordination with other senior agency officials, reports annually to the agency head on the effectiveness of the agency's information security program, including progress of remedial actions.

(b) AGENCY PROGRAM.—Each agency shall develop, document, and implement an agencywide information security program, approved by the Director under section 3543(a), to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by contractors, subcontractors, or other source, that includes—

(1) periodic assessments of the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, modification, or destruction of information and information systems that support the operations and assets of the agency;

(2) policies and procedures that—

(A) are based on the risk assessments required by paragraph (1); and

(B) are sufficient to reduce information security risks to an acceptable level;

(3) ensure that information security is addressed throughout the life cycle of each agency system; and

(4) ensure compliance with—

(i) the requirements of this subchapter;

(ii) policies and procedures as may be prescribed by the Director, and information security standards promulgated under section 11331 of title 40;

(iii) minimally acceptable system configurations, as determined by the agency; and

(iv) any other applicable requirements, including standards and guidelines for national security systems issued in accordance with law and as directed by the President;

(5) subordinate plans for providing adequate security information for networks, facilities, and systems or parts of information systems, as appropriate;

(6) security awareness training to inform personnel, including contractors and other users of systems that support the operations and assets of the agency, of—

(A) information security risks associated with their activities; and

(B) the importance of complying with agency policies and procedures designed to reduce these risks;

(7) periodic testing and evaluation of the effectiveness of information security policies, procedures, and practices, to be performed with a frequency depending on risk, but no less than annually, of which such testing—

(A) shall include testing of management, operational, and technical controls of every information system in information inventory required under section 3506(c); and

(B) may include testing relied on in a evaluation under section 3546;

(8) a program for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the agency;

(7) procedures for detecting, reporting, and responding to security incidents, consistent with standards and guidelines issued pursuant to section 3546(b), including—

(A) mitigating risks associated with such incidents before substantial damage is done;

(B) notifying and consulting with the Federal information security incident center referred to in section 3546; and

(C) notifying and consulting with, as appropriate—

(i) law enforcement agencies and relevant Offices of Inspector General;

(ii) an office designated by the President for any incident involving a national security system;

(iii) any other agency or office, in accordance with law or as directed by the President; and

(9) plans and procedures to ensure continuity of operations for information systems that support the operations and assets of the agency.

(c) AGENCY REPORTING.—Each agency shall—

(1) report annually to the Director, the Committees on Government Reform and Oversight of the House of Representatives, the Committees on Governmental Affairs and Commerce, Science, and Transportation of the Senate, the appropriate authorizations and appropriations committees of Congress, and the Comptroller General on the adequacy and effectiveness of information security policies, procedures, and practices, and copies of the requirements of this subchapter, including compliance with each requirement of subsection (b); and

(2) address the adequacy and effectiveness of information security policies, procedures, and practices in plans and reports relating to—

(A) annual agency budgets;

(B) information resources management under subchapter 1 of this chapter;

(C) information technology management under subchapter III of title 40;

(D) program performance under sections 1015 and 1115 through 1119 of title 31, and sections 2801 and 2805 of title 39;

(E) financial management under chapter 9 of title 31 of the United States Code, as the Federal Financial Management Improvement Act of 1990 (31 U.S.C. 501 note; Public Law 101-576) and the amendments made by that Act;

(F) financial management systems under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note); and

(G) internal accounting and administrative controls under section 3512 of title 31, (as the ‘Federal Managers Financial Integrity Act’); and

(3) report any significant deficiency in a policy, procedure, or practice identified under paragraph (1) or (2)—

(A) as a material weakness in reporting under section 3512 of title 31; and

(B) in the annual financial management systems, as an instance of a lack of substantial compliance under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note).

(d) PERFORMANCE PLAN.—(1) In addition to the requirements of subsection (c), each agency, in consultation with the Director, shall include as part of the performance plan required under section 1115 of title 31 a description of—

(A) the time periods, and

(B) the resources, including budget, staffing, and training, that are necessary to implement the program required under subsection (b).

(2) The description under paragraph (1) shall be based on the risk assessments required by subsection (b)(2)(D).

(e) PUBLIC NOTICE AND COMMENT.—Each agency shall provide the public with timely notice and opportunity for comment on proposed information security policies and procedures to the extent that such policies and procedures affect communication with the public.

§ 3545. Annual independent evaluation

(1) IN GENERAL.—(1) Each year each agency shall have performed an independent evaluation of the information security program and practices of that agency to determine the effectiveness of such program and practices.

(2) Each evaluation under this section shall include—

(A) testing the effectiveness of information security policies, procedures, and practices of a representative subset of the agency's information systems;

(B) an assessment (made on the basis of the results of the testing) of compliance with—

(i) the requirements of this subchapter;

(ii) related information security policies, procedures, standards, and guidelines; and

(C) separate presentations, as appropriate, regarding information security relating to national security systems.

(b) INDEPENDENT AUDITOR.—Subject to subsection (c)—

(1) each agency with an Inspector General appointed under the Inspector General Act of 1978, the annual evaluation required by this section shall be performed by the Inspector General or by an independent external auditor approved by the Inspector General of the agency; and

(2) for each agency to which paragraph (1) does not apply, the head of the agency shall submit to the Director the results of an independent external auditor to perform the evaluation.

(c) NATIONAL SECURITY SYSTEMS.—For each agency operating or exercising control of a national security system, that portion of the evaluation required by this section directly relating to a national security system shall be performed—

(1) only by an entity designated by the agency head; and

(2) in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

(d) EXCLUSION OF INFORMATION SECURITY VULNERABILITY TECHNIQUES.—The evaluation required by this section may be based in whole or in part on an audit, evaluation, or report relating to programs or practices of the applicable agency.

(e) AGENCY REPORTING.—(1) Each year, not later than such date established by the Director, the head of each agency shall submit to the Director the results of the evaluation required under this section.

(2) To the extent an evaluation required under this section directly relates to a national security system, the evaluation results submitted to the Director shall contain a summary and assessment of that portion of the evaluation directly relating to a national security system.
"(f) PROTECTION OF INFORMATION.—Agen-
cies and evaluators shall take appropriate steps to ensure the protection of information which, if disclosed, may adversely affect inform-
ation systems or such protection shall be commensurate with the risk and comply with all applicable laws and regulations.

"(g) COMPTROLLER GENERAL.—(1) The Director shall summarize the results of the evaluations conducted under this section in the report to Congress required under section 3542(a)(8).

"(2) The Director’s report to Congress under this subsection shall summarize information regarding information security relating to national security systems in a manner as to ensure appropriate protection for information associated with any information system’s confidentiality in such system commensurate with the risk and in accordance with all applicable laws.

"(3) Evaluations and any other descriptions of information systems under the authority and control of the Director of Central Intelligence or of National Foreign Intelligence Programs systems under the authority and control of the Secretary of Defense shall be made available to Congress only through the appropriate oversight committee of Congress, in accordance with applicable laws.

"(h) COMPTROLLER GENERAL.—The Com-
ptroller General shall periodically evaluate and report to Congress on—

"(1) the adequacy and effectiveness of agency information security policies and practices; and

"(2) implementation of the requirements of this subchapter.

"§ 3546. Federal information security incident center

(a) RG GENERAL.—The Director shall en-
sure the operation of a central Federal information security incident center to—

(1) provide timely technical assistance to agencies operating information systems securing information systems, including guidance on detecting and handling information security incidents;

(2) compile and analyze information about incidents that threaten information security;

(3) inform operators of agency information systems about current and potential information security threats, and vulnerabilities; and

(4) consult with the National Institute of Standards and Technology, agencies operating or exercising control of national security systems (including the National Security Agency), and other agencies for advice concerning law and as directed by the President regarding information security incidents and related matters.

(b) NATIONAL SECURITY SYSTEMS.—Each agency operating or exercising control of a national security system shall share information about information security incidents and vulnerabilities with the Federal information security incident center to the extent consistent with standards and guidelines for national security systems, issued in accordance with law and as directed by the President.

"§ 3547. National security systems

"The head of each agency operating or exercis-
ing control of a national security system shall be responsible for ensuring that the agency—

(1) provides information security protections commensurate with the risk and nature of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of the information contained in the information system;

(2) implements information security poli-
cies and practices as required by standards and guidelines for national security systems, issued in accordance with law and as directed by the President; and

(3) complies with the requirements of this subchapter.

"§ 3548. Authorization of appropriations

"There are authorized to be appropriated to carry out the provisions of this subchapter such sums as may be necessary for each of fiscal years 2003 through 2007.

"§ 3549. Effect on existing law

"Nothing in this subchapter, section 11331 of title 40, or section 20 of the National Technology Act (15 U.S.C. 278g–3) may be construed as affecting the author-

ity of the President, the Office of Manage-
ment and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 52a of title 5, the disclosure of information under section 522 of title 5, the management and control of information under chapters 29, 31, or 33 of title 44, the management of informa-
tion resources under subchapter I of chapter 35 of this title, or the disclosure of infor-
mation regarding information security relat-
ing to national security systems in such a manner as to ensure appropriate protection for information associated with any information system’s confidentiality in such system commensurate with the risk and in accordance with all applicable laws.

"§ 3549. Effect on existing law

"Nothing in this subchapter, section 11331 of title 40, or section 20 of the National Technology Act (15 U.S.C. 278g–3) may be construed as affecting the author-

ity of the President, the Office of Manage-
ment and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 52a of title 5, the disclosure of information under section 522 of title 5, the management and control of information under chapters 29, 31, or 33 of title 44, the management of informa-
tion resources under subchapter I of chapter 35 of this title, or the disclosure of infor-
mation regarding information security relat-
ing to national security systems in such a manner as to ensure appropriate protection for information associated with any information system’s confidentiality in such system commensurate with the risk and in accordance with all applicable laws.

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ity of the President, the Office of Manage-
ment and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 52a of title 5, the disclosure of information under section 522 of title 5, the management and control of information under chapters 29, 31, or 33 of title 44, the management of informa-
tion resources under subchapter I of chapter 35 of this title, or the disclosure of infor-
mation regarding information security relat-
ing to national security systems in such a manner as to ensure appropriate protection for information associated with any information system’s confidentiality in such system commensurate with the risk and in accordance with all applicable laws.

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ity of the President, the Office of Manage-
ment and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 52a of title 5, the disclosure of information under section 522 of title 5, the management and control of information under chapters 29, 31, or 33 of title 44, the management of informa-
tion resources under subchapter I of chapter 35 of this title, or the disclosure of infor-
mation regarding information security relat-
ing to national security systems in such a manner as to ensure appropriate protection for information associated with any information system’s confidentiality in such system commensurate with the risk and in accordance with all applicable laws.
(g) Definitions.—In this section:

(1) Federal information system.—The term ‘Federal information system’ means an information system used or operated by an executive agency, by a contractor of an executive agency, or by another organization on behalf of an executive agency.

(2) Information security.—The term ‘information security’ has the meaning given that term in section 3542(b)(1) of title 44.

(3) National security system.—The term ‘national security system’ has the meaning given that term in section 3542(b)(2) of title 44.

(b) Clerical Amendment.—The item relating to the table of sections at the beginning of chapter 113 of such title is amended to read as follows:

‘11311. Responsibilities for Federal information systems standards.’

SEC. 303. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

Section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), is amended by striking the text and inserting the following:

(1) in General.—The Institute shall—

(A) develop standards of developing standards, guidelines, and associated methods and techniques for information systems;

(B) develop standards and guidelines, including minimum requirements, for information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency, other than national security systems (as defined in section 3542(b)(2) of title 44, United States Code); and

(C) develop standards and guidelines, including minimum requirements, for providing adequate information security for all agency operations and assets, but such standards and guidelines shall not apply to national security systems;

(b) Minimum Requirements for Standards and Guidelines.—The standards and guidelines required by subsection (a) shall include, at a minimum—

(1) standards to be used by all agencies to categorize all information and information systems collected or maintained by or on behalf of each agency based on the objectives of providing appropriate levels of information security according to a range of risk levels;

(2) guidelines recommending the types of information and information systems to be included in each such category; and

(3) minimum security requirements for information and information systems in each such category;

(4) a definition of and guidelines concerning detection and handling of information security incidents; and

(5) guidelines developed in conjunction with the Department of Defense, including the National Security Agency, for identifying an information system as a national security system consistent with applicable requirements for national security systems, issued in accordance with law and as directed by the President;

(c) Development of Standards and Guidelines.—In developing standards and guidelines required by subsections (a) and (b), the Institute shall—

(1) consult with other agencies and offices and the private sector (including the Director of the Office of Management and Budget, the Department of Defense and Energy, the National Security Agency, the General Accounting Office, the Secretary of Homeland Security) to assure—

(A) use of appropriate information security policies, procedures, and techniques, in order to maintain security and avoid unnecessary and costly duplication of effort; and

(B) that such standards and guidelines are complementary with standards and guidelines employed for the protection of national security systems and information contained in such systems;

(2) provide the public with an opportunity to comment on proposed standards and guidelines;

(3) submit to the Secretary of Commerce for promulgation under section 11331 of title 40, United States Code—

(A) standards, as required under subsection (b)(1)(A), no later than 12 months after the date of the enactment of this section; and

(B) minimum information security requirements for each category, as required under subsection (b)(1)(C), no later than 36 months after the date of the enactment of this section;

(4) issue guidelines as required under subsection (b)(1)(B), no later than 18 months after the date of the enactment of this section;

(5) to the maximum extent practicable, ensure that such standards and guidelines do not require the use or procurement of specific products, including any specific hardware or software;

(6) to the maximum extent practicable, ensure that such standards and guidelines do not require the use or procurement of specific products, including any specific hardware or software, use flexible, performance-based standards and guidelines that permit the use of off-the-shelf commercially developed information security products.

(d) Information Security Functions.—The Institute shall—

(1) submit standards developed pursuant to subsection (a), along with recommendations as to the extent to which these should be made compulsory and binding, to the Secretary of Commerce for promulgation under section 11331 of title 40, United States Code;

(2) provide technical assistance to agencies, upon request, regarding—

(A) compliance with the standards and guidelines developed under subsection (a);

(B) detecting and handling information security incidents; and

(C) information security policies, procedures, and practices;

(3) conduct research, as needed, to determine the nature of information security vulnerabilities and techniques for providing cost-effective information security;

(4) develop and periodically revise performance indicators and measures for agency information security policies and practices; and

(5) evaluate private sector information security policies, procedures, and practices developed in conjunction with the Secretary of Commerce, and the Director of the Office of Management and Budget on information security issues pertaining to Federal Government information systems, including through review of proposed standards and guidelines developed under section 20, and;

(6) in subsection (b) by striking paragraph (2) and inserting the following:

(A) by striking “Board shall hold meetings at such locations and at such time and place as determined by a majority of the Board.”;

(B) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(10) by striking subsection (h), as redesignated by paragraph (9), and inserting the following:

(11) as used in this section, the term ‘information system’ and ‘information technology’ have the meanings given in section 20;”.

SEC. 304. INFORMATION SECURITY AND PRIVACY ADVISORY BOARD.

Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278q–4), is amended—

(1) in subsection (a) by striking—

(1) ‘Computer System Security and Privacy Advisory Board’ and inserting “Information Security and Privacy Advisory Board’;

(2) in subsection (a)(4) by striking “computer or telecommunications” and inserting “information technology”; and

(3) in subsection (a)(8) by striking “the term ‘national security system’ has the same meaning as provided in section 3542(b)(1) of title 44, United States Code.”;

(2) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary of Commerce $20,000,000 for each of fiscal years 2003, 2004, 2005, 2006, and 2007 to enable the National Institute of Standards and Technology to carry out the provisions of this section.”.

SEC. 305. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Computer Security Act.—Section 11332 of title 46, United States Code, and the item that specifies that section 11332 shall be applied in the table of sections for chapter 113 of such title, are repealed.
(A) by adding “and” at the end of paragraph (1);
(B) in paragraph (2)—
(i) striking “sections 1331I and 1332(b)” and “section 1331 of title 40 and chapter II of this chapter” and inserting “section 1331 of chapter 21 and chapter II of this title”;
(ii) by striking “; and” and inserting “period”; and
(C) by striking paragraph (3).
(2) Section 3505 of such title is amended by adding at the end—
“(c) INVENTORY OF MAJOR INFORMATION SYSTEMS.—(1) The head of each agency shall develop and maintain an inventory of major information systems (including major national security systems) operated by or under the control of such agency.

(2) The identification of information systems under subsection (a) shall include an identification of the interfaces between each such system and all other systems or networks, including those not operated by or under the control of the agency.

(3) Such inventory shall—
(A) updated at least annually;
(B) made available to the Comptroller General;
and
(C) used to support information resources management, including—
(i) preparation and maintenance of the inventory, information resources under section 3506(b)(4);
(ii) information technology planning, budgeting, acquisition, and management under section 3506(b), subchapter III of title 40, and related laws and guidance;
(iii) monitoring, testing, and evaluation of information security controls under subchapter II;
(iv) preparation of the index of major information systems required under section 552(g) of title 5, United States Code; and
(v) preparation of information system inventories required for records management under chapters 21, 29, 31, and 33.

(4) The Director shall issue guidance for and oversee the implementation of the requirements of this subsection.

(5) Section 3506(g) of such title is amended—
(A) by adding “and” at the end of paragraph (1);
(B) in paragraph (2)—
(i) by striking “section 1332 of title 40” and inserting “subchapter II of this chapter”;
and
(ii) by striking “; and” and inserting a period;
and
(C) by striking paragraph (3).

TITLE IV—AUTORIZATION OF APPROPRIATIONS AND EFFECTIVE DATES

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

Except for those purposes for which an authorization of appropriations is specifically provided in this title, including the amendments made by such titles, there are authorized to be appropriated such sums as are necessary to carry out titles I and II and for each of fiscal years 2012 and 2013.

SEC. 402. EFFECTIVE DATES.

(a) TITLES I AND II.—

(1) IN GENERAL.—Except as provided under paragraph (2), titles I and II and the amendments made by such titles shall take effect 120 days after the date of enactment of this Act.

(2) IMMEDIATE ENACTMENT.—Sections 207, 214, and 215 shall take effect on the date of enactment of this Act.

(b) TITLES III AND IV.—Title III and this title shall take effect on the date of enactment of this Act.

TITLE V—CONFIDENTIAL INFORMATION PROTECTION AND STATISTICAL EFFICIENCY

SEC. 501. SHORT TITLE.

This title may be cited as the “Confidential Information Protection and Statistical Efficiency Act of 2002”.

SEC. 502. DEFINITIONS.

As used in this title:

(1) The term “agency” means any agency, instrumentality, or entity of the Federal Government.

(A) means the use of data in identifiable form for any purpose that is not a statistical purpose, including the use of the data for the purposes of—
(i) identification, location, or contact of an individual;
(ii) the employment, assignment, or compensation of an individual;
(iii) inspection, supervision, or enforcement of compliance with Federal, State, or local laws or regulations; or
(iv) the provision of health, medical, or other services for an individual.

(3) The term “information” means—
(A) means a person or organization that provides information to an agency.

(B) includes the disclosure under section 552 of title 5, United States Code (popularly known as the Freedom of Information Act) of data that are acquired for exclusively statistical purposes under a pledge of confidentiality.

(6) The term “respondent” means a person who, or organization that, is requested or required to supply information to an agency, including the subject of information requested or required to be supplied to an agency, or provides that information to an agency.

(A) means the collection, compilation, processing, or analysis of data for the purpose of describing or making estimates concerning the whole, or relevant groups or components within, the economy, society, or the natural environment, and

(B) includes the development of methods or resources that support those activities, such as measurement methods, models, statistical classifications, or sampling frames.

The term “statistical classification” means an agency or organizational unit of the executive branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes.

(9) The term “statistical purpose” means—

(A) means the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups; and

(B) includes the development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support the purposes described in subparagraph (A).

SEC. 503. COORDINATION AND OVERSIGHT OF POLICIES.

(a) IN GENERAL.—The Director of the Office of Management and Budget shall coordinate and oversee the confidentiality and disclosure policies established by this title. The Director may promulgate rules or provide other guidance to ensure consistent interpretation of this title by agencies.

(b) AGENCY RULES.—Subject to subsection (c), agencies may promulgate rules to implement this title. Rules governing disclosures of information that are authorized by this title shall be promulgated by the agency that originally collected the information.

(c) REVIEW AND APPROVAL OF RULES.—The Director shall review any rules promulgated by an agency pursuant to this title for consistency with the provisions of this title and chapter 35 of title 44, United States Code, and such rules shall be subject to the approval of the Director.

(d) REPORTS.—

(1) The head of each agency shall provide to the Director of the Office of Management and Budget such reports and other information as the Director requests.

(2) Each Designated Statistical Agency referred to in section 2202 shall submit an annual report to the Director of the Office of Management and Budget, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate on the actions it has taken to implement sections 523 and 524. The report shall include copies of each written agreement entered into pursuant to section 524(a) for the applicable year.

(3) The Director of the Office of Management and Budget shall include a summary of the reports submitted to the Director under paragraph (2) and actions taken by the Director to advance the purposes of this title in the annual report to the Congress on statistical programs and activities under section 3506(c)(2) of title 44, United States Code.

SEC. 504. EFFECT ON OTHER LAWS.

(a) TITLE 44, UNITED STATES CODE.—This title, including amendments made by this title, does not diminish the authority under section 3510 of title 44, United States Code, of the Director of the Office of Management and Budget to direct, and an agency to make, disclosures that are not inconsistent with any applicable law.

(b) TITLE 13 AND TITLE 44, UNITED STATES CODE.—This title, including amendments made by this title, does not diminish the authority of the Bureau of the Census to provide information in accordance with sections 3501 through 3505 of title 13, United States Code, and section 2108 of title 44, United States Code.
(c) Title 13, United States Code.—This title, including amendments made by this title, shall not be construed as authorizing the disclosure for nonstatistical purposes of data or information collected by the Census Bureau pursuant to section 9 of title 13, United States Code.

(d) Various Energy Statutes.—Data or information acquired by the Energy Information Administration under a pledge of confidentiality and designated by the Energy Information Administration to be used for exclusively statistical purposes shall not be disclosed in identifiable form for nonstatistical purposes under:

(1) section 12, 20, or 59 of the Federal Energy Administration Act of 1974 (15 U.C.S. 771, 779, 790);

(2) section 11 of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 786); or


(e) Section 201 of Congressional Budget Act of 1974.—This title, including amendments made by this title, shall not be construed to limit any authorities of the Congress to work consistent with laws governing the confidentiality of information the disclosure of which would be a violation of Federal law, or with databases of Designated Statistical Agencies (as defined in section 522), either separately or, for data that may be shared pursuant to section 524 of this title, jointly, in order to improve the general utility of these databases for the statistical purpose of analyzing pension and health care financing issues.

(f) Preemption of State Law.—Nothing in this title shall preempt applicable State law regarding the confidentiality of data collected by the States.

(g) Statutes Regarding False Statements.—Notwithstanding section 521, information collected by an agency for exclusively statistical purposes under a pledge of confidentiality may be provided by the collecting agency to a law enforcement agency for the prosecution of submissions to the collecting agency of false statistical information under statutes that authorize criminal penalties (such as section 221 of title 13, United States Code) or civil penalties for the provision of false statistical information, unless such use would otherwise be prohibited under Federal law.

(h) Construction.—Nothing in this title shall be construed as restricting or diminishing confidentiality protections or penalties for unauthorized disclosure that otherwise apply to data or information collected for statistical purposes or nonstatistical purposes, including, but not limited to, section 6103 of the Internal Revenue Code of 1986 (26 U.S.C. 6103).

(i) Authority of Congress.—Nothing in this title shall be construed to affect the authority of the Congress, including its committees, members, or agents, to obtain data or information for a statistical purpose, including oversight of an agency’s statistical activities.

Subtitle A—Confidential Information Protection

SEC. 511. FINDINGS AND PURPOSES

(a) FINDINGS.—The Congress finds the following:

(1) Individuals, businesses, and other organizations have varying degrees of legal protection for data or information collected for statistical purposes but also demonstrated how data sharing and the Bureau of Labor Statistics continues to improve the comparability and accuracy of Federal economic statistics by allowing the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics to share data on for consumers, businesses, investors, and workers. The Congress enacted the International Investment and Trade in Services Act of 1990 that allowed the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics to share data on for consumers, businesses, investors, and workers.

(b) PURPOSES.—The purposes of this subtitle are the following:

(1) To improve the comparability and accuracy of Federal economic statistics by allowing the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics to share data on for consumers, businesses, investors, and workers.

(2) To reduce the paperwork burdens imposed on businesses that provide requested information to the Federal Government.

(3) To improve the comparability and accuracy of Federal economic statistics by allowing the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics to share data on for consumers, businesses, investors, and workers.

(4) To increase understanding of the United States economy, especially for key industry

in confidence and will not be used against such individuals or organizations in any agency action.

(3) Protecting the confidentiality interests of individuals, ensuring that information under a pledge of confidentiality for Federal statistical programs serves both the interests of the public and the needs of society.

(4) Declining trust of the public in the protection of information provided under a pledge of confidentiality to the agencies adversely affects both the accuracy and completeness of statistical analyses.

(5) Ensuring that information provided under a pledge of confidentiality for exclusively statistical purposes is used exclusively for statistical purposes.

(6) To ensure that individuals or organizations who supply information under a pledge of confidentiality for specifically statistical purposes will not have that information disclosed in identifiable form to anyone not authorized by this title nor have that information used for any purpose other than a statistical purpose.

(7) To safeguard the confidentiality of individually identifiable information acquired under a pledge of confidentiality for statistical purposes by controlling access to, and uses made of, such information.

SEC. 512. LIMITATIONS ON USE AND DISCLOSURE OF DATA OR INFORMATION

(a) USE OF STATISTICAL DATA OR INFORMATION.—Data or information acquired by an agency under a pledge of confidentiality and for exclusively statistical purposes shall not be used by officers, employees, or agents of the agency exclusively for statistical purposes.

(b) DISCLOSURE OF STATISTICAL DATA OR INFORMATION.—

(1) Data or information acquired by an agency under a pledge of confidentiality for exclusively statistical purposes shall not be disclosed by an agency in identifiable form, for any use other than an exclusively statistical purpose, except with the informed consent of the respondent.

(2) A disclosure pursuant to paragraph (1) is authorized only when the head of the agency approves such disclosure and the disclosure is not prohibited by any other law.

(3) This section does not or diminish any confidentiality protections in law that otherwise apply to data or information acquired by an agency under a pledge of confidentiality for exclusively statistical purposes.

(c) RULE FOR USE OF DATA OR INFORMATION FOR NONSTATISTICAL PURPOSES.—A statistical agency or unit may clearly distinguish any data or information it collects for nonstatistical purposes (as authorized by law) and provide data and information to the public, before the data or information is collected, that the data or information could be used for non-statistical purposes.

(d) DESIGNATION OF AGENTS.—A statistical agency or unit may designate agents, by contract or by entering into a special agreement containing the provisions required under section 522, for the collection of data or information under that section, who may perform exclusively statistical activities, subject to the limitations and penalties described in this title.

SEC. 513. FINES AND PENALTIES.

Whoever, being an officer, employee, or agent of an agency acquiring information for exclusively statistical purposes, having taken and subscribed the oath of office, or having sworn to observe the limitations imposed by section 512, comes into possession of such information by reason of his or her office, and knowing that the disclosure of the specific information is prohibited under the provisions of this title, willfully discloses the information in any manner or for any reason or for the payment of any fee or compensation to any person, knowing that such disclosure or use would otherwise be prohibited by any other law.

(a) FINDINGS.—The Congress finds the following:

(1) Federal statistics are an important source of information for public and private decision-makers such as policymakers, consumers, businesses, investors, and workers.

(2) Federal statistical agencies should continuously seek to improve their efficiency. Statutory constraints limit the ability of these agencies to share data and thus to achieve higher efficiency for Federal statistical programs.

(3) The quality of Federal statistics depends on the willingness of businesses to respond to statistical programs. Increasing reporting burdens will increase response rates, and therefore lead to more accurate characterizations of the economy.

(4) Enhanced sharing of business data among the Bureau of the Census, the Bureau of Economic Analysis, and the Bureau of Labor Statistics for exclusively statistical purposes will improve their ability to track more accurately the large and rapidly changing nature of United States business. In particular, the statistical agencies will be able to improve the measurement of the consistently classified in appropriate industries, resolve data anomalies, produce statistical samples that are consistently adjusted for the entry and exit of new businesses in a timely manner, and correct faulty reporting errors quickly and efficiently.


Subtitle B—Statistical Efficiency
and regional statistics, to develop more accurate measures of the impact of technology on productivity growth, and to enhance the reliability of the Nation’s most important economic data such as the National Income and Product Accounts.

SEC. 522. DESIGNATION OF STATISTICAL AGENCIES.

For purposes of this subtitle, the term “Designated Statistical Agency” means each of the following:

(1) The Bureau of the Census of the Department of Commerce.
(2) The Bureau of Economic Analysis of the Department of Commerce.

SEC. 523. RESPONSIBILITIES OF DESIGNATED STATISTICAL AGENCIES.

The head of each of the Designated Statistical Agencies shall—

(1) identify opportunities to eliminate duplication and otherwise reduce reporting burden and cost imposed on the public in providing information for statistical purposes;
(2) enter into joint statistical projects to improve the quality and reduce the cost of statistical programs; and
(3) protect the confidentiality of individually identifiable information acquired for statistical purposes by adhering to safeguard principles, including principles, including (A) emphasizing to their officers, employees, and agents the importance of protecting the confidentiality of information in cases where the identity of individual respondents can reasonably be inferred by either direct or indirect means;
(B) training their officers, employees, and agents in their legal obligations to protect the confidentiality of individually identifiable information and in the procedures that must be followed to provide access to such information;
(C) implementing appropriate measures to assure the physical and electronic security of confidential data;
(D) establishing a system of records that identifies individuals accessing confidential data and the project for which the data were required; and
(E) being prepared to document their compliance with safeguard principles to other agencies authorized by law to monitor such compliance.

SEC. 524. SHARING OF BUSINESS DATA AMONG DESIGNATED STATISTICAL AGENCIES.

(a) In General.—A Designated Statistical Agency may share business data in an identifiable form to another Designated Statistical Agency under the terms of a written agreement among the agencies sharing the business data that specify—

(1) the business data to be shared;
(2) the statistical purposes for which the business data are to be used;
(3) the officers, employees, and agents authorized to examine the business data to be shared; and
(4) appropriate security procedures to safeguard the confidentiality of the business data.

(b) Responsibilities of Agencies Under Other Laws.—The provision of business data by an agency to a Designated Statistical Agency under this subtitle shall in no way alter the responsibility of the agency providing the data under other statutes (including section 552 of title 5, United States Code (popularly known as the Freedom of Information Act), and section 552b of title 5, United States Code (popularly known as the Privacy Act of 1974)) with respect to the provision or withholding of such information by the agency providing the data.

(c) Responsibilities of Officers, Employees, and Agents.—Examination of business data in identifiable form shall be limited to the officers, employees, and agents authorized to examine the data in accordance with written agreements pursuant to this section. Officers, employees, and agents of a Designated Statistical Agency who receive business data from another Designated Statistical Agency shall be subject to all provisions of law, including penalties, that relate—

(1) to the unlawful provision of the business data that would apply to the officers, employees, and agents of the agency that originally obtained the information; and
(2) to the unlawful provision of the business data that would apply to officers, employees, and agents of the agency that originally obtained the information.

(d) Notice.—A written agreement concerning data that respondents were required by law to report and the respondents were not informed that the data could be shared pursuant to a Designated Statistical Agency, for exclusively statistical purposes, the terms of such agreement shall be described in a public notice issued by the agency that intends to provide the data. Such notice shall allow a minimum of 60 days for public comment.

SEC. 525. LIMITATIONS ON USE OF BUSINESS DATA PROVIDED BY DESIGNATED STATISTICAL AGENCIES.

(a) Use Generally.—Business data provided by a Designated Statistical Agency pursuant to this subtitle shall be used exclusively for statistical purposes.

(b) Publication.—Publication of business data acquired by a Designated Statistical Agency shall occur in a manner whereby the data furnished by any particular respondent is not linkable.

SEC. 526. CONFORMING AMENDMENTS.

(a) Department of Commerce.—Section 1 of the Act of January 27, 1938 (35 U.S.C. 176a) is amended by striking “Title” and inserting “Business”.

(b) Publication.—Section 3 of the Act of January 27, 1938 (35 U.S.C. 176c) is amended by striking “title” and inserting “Business”.

Mr. SAWYER. Mr. Speaker, I rise in support of this bill. I am pleased that H.R. 2458 includes title 5 of the bill to improve the government’s statistical capabilities. As the lead Democrat on this subject, I would like to thank the gentleman from California (Mr. HORN) for the opportunity to work with him on this legislation and for his leadership on this issue. This measure has been years in the making. It builds on the gentleman from California’s approach to provide limited data sharing to improve government statistical, and to strengthen the confidentiality of government statistics. My remarks focus on the new confidentiality provisions contained in the bill.

The confidentiality measures create a uniform set of protections for statistical information that would replace the current patchwork of rules and extend these protections to all individually identifiable data collected for statistical purposes. This will encourage greater public cooperation with government surveys and improve the quality of statistics.

In too many instances, existing law does not ensure that personal information collected with remain confidential. More than 70 federal agencies or statistical units collect such data, but only 12 are covered by government regulations to protect personal identifiable information from disclosure, and only a handful of those have the strongest protection of law. Some of these uncovered units collected information on highly sensitive topics such as substance abuse and mental health. Such sensitive data deserves the most stringent of protections from disclosure. While agency policy may have once been enough in the past, real public trust requires that information be shielded by the force of law.

Statutory protections under this legislation would prevent any regulatory or law enforcement misuse of these data. This recommendation was first made under the Privacy Act of 1974. However, that Act has several loopholes that allow for disclosure of personally identifiable information without the informed consent of the person who supplied the data. These are twelve categories of such exemptions and the Act fails to distinguish between data collected for research purposes and data collected for administrative purposes, offering minimal protection from improper disclosure.

The commission recommended that no record or information collected for statistical purpose be used in identifiable form to make any decision or take any action directly affecting the person to whom the record pertains. H.R. 5215 embodies the commission’s recommendation.

Improvements that this bill would make in our nation’s statistical programs are long overdue. The measures are needed not only to protect the public but also to ensure the public’s continued cooperation and participation in essential government surveys. Informed public policy relies on it. I am pleased that this measure has the support of the House and urge the Senate to pass this legislation before adjourning for the year.

Mr. TOM DAVIS of Virginia. Mr. Speaker, as the federal government has increased its use of the Internet and other information technologies to conduct its business, the need for a comprehensive approach to the management of Electronic Government initiatives has become evident. Therefore, Congressman JIM Turner, the Ranking Member of the House Government Reform Subcommittee on Technology and Procurement Policy, introduced H.R. 2458, the Electronic Government Act of 2002. H.R. 2458 is a bipartisan bill to enhance the management and promotion of electronic government services and processes and to increase the electronic availability of information to the public. I worked closely with Congressman TURNER to develop this bill. H.R. 2458 was reported favorably by the Committee on Government Reform with a unanimous vote.

With agreed upon changes reflected in the text of the House version of the bill, I urge the Senate to adopt the recommendations of the Senate Committee on Commerce, Science, and Transportation, as well as by the leadership of the Senate Governmental Affairs Committee.
Following action by the House, the legislation is expected to be taken up by the Senate and acted on in its present form.

The bill contains five titles, covering a broad array of government information management issues.


Title IV would provide authorization of appropriations for the legislation and effective dates for its provisions.

Title V would reduce paperwork burdens and improve privacy protections by establishing new procedures for statistical data sharing among key statistical agencies. Following favorable action on the bill by the Committee on Government Reform, the managers renewed discussions with the Administration, including OMB, the Department of Defense, and the Department of Commerce, and the Committees on Science and Armed Services, and the Senate Committee on Government Reform in the House and Senate to move swiftly to capitalize on the opportunities presented by these changes.
Title V also include language introduced in this Congress by Representatives SAWYER and WAXMAN, which provides strong protection from disclosure for information provided to the government by individuals and businesses. A new provision added to Title V provides a resolution of the problem of information exchange between the Congressional Budget Office and statistical agencies by making it clear that Congressional intent is for CBO, in fulfilling its statistical service to the Congress, to have access to the necessary information held by statistical agencies in the executive branch.

Finally, a number of technical corrections are made: At §3532(b)(2)(A) in sec. 101 to correct a paragraph indentation; and at §3533(a)(6)(D) in sec. 101 to correct a subsection cross-reference.

With these changes, the managers of H.R. 2458 are able to state that the legislation before the House of Representatives today reflects agreement across the aisle, among key members, of the bipartisan House of Government Reform Committee, with the Senate, and with the executive branch. I urge passage of this bill.

Mr. TURNER. Mr. Speaker, I want to thank Chairman DAVIS for the bipartisan manner in which we have worked to address the issues in H.R. 2458. The Government Reform Act of 2002 as amendment. In addition to incorporating many of the changes agreed to by the Senate and Administration, we have been able to address concerns that I and others had with this legislation since the bill has been marked up by the Government Reform Committee. I thank Chairman DAVIS and BURTON, as well as Representative HENRY WAXMAN, ranking member of the Government Reform Committee, for working constructively with me on those issues. I believe all of us hope that this bill will become law before the end of the 107th Congress.

The information technology revolution of the last decade has had a profound impact on almost all aspects of our economy and government. Providing the statutory basis for applying necessary step. The Subcommittee on Technology and Procurement Policy has held numerous hearings on the issues H.R. 2458 addresses, and I commend Chairman DAVIS for his attention to this topic.

When it comes to information technology, effective use of the internet, and other cutting edge information resources, the federal government is playing catch-up with the private sector, which seems to have been able to in-
(2) CONFORMING AMENDMENT.—The analysis for chapter 61 is amended by striking the item relating to section 6105 and inserting the following:


(d) AUTHORIZATION OF APPROPRIATIONS.—(1) FOR GRANTS FOR STATES.—Section 6107(a) is amended by striking ‘‘an amount of not less than $2,000,000 for each fiscal year 2000’’ and all that follows before the period at the end of the first sentence and inserting ‘‘$2,000,000 for each of fiscal years 2003 through 2007’’.

(2) FOR ADMINISTRATION.—Section 6107(b) is amended by striking ‘‘for fiscal years 1999, 2000, and 2001’’ and inserting ‘‘for fiscal years 2003 through 2006’’.

SEC. 3. ONE-CALL NOTIFICATION OF PIPELINE OPERATORS.

(a) LIMITATION ON PREEMPTION.—Section 60114(a)(2) is amended by inserting ‘‘, including a government employee or contractor, after ‘person’.

(b) PENALTIES.—Section 60123(d) is amended—

(1) in the matter preceding paragraph (1) by striking ‘‘knowingly and willfully’’;

(2) by inserting ‘‘knowingly and willfully’’ before ‘‘engages’’;

(3) by striking paragraph (2)(B) and inserting the following:

‘‘(B) The State meets the minimum standards for one-call notification programs under this chapter or chapter 61.’’;

(c) CRIMINAL PENALTIES.—Section 60123(d) is amended—

(1) by adding after paragraph (2) the following:

‘‘Penalties under this subsection may be reduced in the case of a violation that is promptly reported by the violator.’’;

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 60114(a)(2) is amended by striking ‘‘an amount of not less than $2,000,000 for each fiscal year 2000’’ and all that follows before the period at the end of the first sentence and inserting ‘‘$2,000,000 for each of fiscal years 2003 through 2007’’.

(e) ENDING AGREEMENTS.—(1) IN GENERAL.—The Secretary may not enter into an agreement under this section that includes an activity that poses an imminent hazard.

(2) CONFORMING AMENDMENT.—Section 60106, including—

(A) the agreement allowing participation of a State authority, and

(B) the State meets the minimum standards for one-call notification programs under this chapter or chapter 61.

(f) DISCRIMINATION AGAINST EMPLOYEE.—No employer may discharge any employee or otherwise discriminate against any employee with respect to his or her compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) or—

(A) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information—

(i) relating to any violation or alleged violation of any order, regulation, or standard under this chapter or any other Federal law relating to pipeline safety;

(ii) that the employee engaged in any practice made unlawful by this chapter or any other Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer;

(B) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information—

(i) relating to any violation or alleged violation of any order, regulation, or standard under this chapter or any other Federal law relating to pipeline safety;

(ii) that the employee engaged in any practice made unlawful by this chapter or any other Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer.

(3) PROCEDURAL REQUIREMENTS.—The Secretary shall give notice and an opportunity for a hearing before ending an agreement under this section. The Secretary may provide an agreement that was in effect before enactment of the Pipeline Safety Improvement Act of 2002—

(a) IN GENERAL.—The Secretary may enter into an agreement under this section that includes an activity that poses an imminent hazard.

(b) CONFORMING AMENDMENT.—Section 60106, including—

(A) the agreement allowing participation of a State authority, and

(B) the State meets the minimum standards for one-call notification programs under this chapter or chapter 61.

(f) DISCRIMINATION AGAINST EMPLOYEE.—No employer may discharge any employee or otherwise discriminate against any employee with respect to his or her compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) or—

(A) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information—

(i) relating to any violation or alleged violation of any order, regulation, or standard under this chapter or any other Federal law relating to pipeline safety;

(ii) that the employee engaged in any practice made unlawful by this chapter or any other Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer;

(B) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information—

(i) relating to any violation or alleged violation of any order, regulation, or standard under this chapter or any other Federal law relating to pipeline safety;

(ii) that the employee engaged in any practice made unlawful by this chapter or any other Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer.

(3) PROCEDURAL REQUIREMENTS.—The Secretary shall give notice and an opportunity for a hearing before ending an agreement under this section. The Secretary may provide an agreement that was in effect before enactment of the Pipeline Safety Improvement Act of 2002—

(a) IN GENERAL.—The Secretary may enter into an agreement under this section that includes an activity that poses an imminent hazard.

(b) CONFORMING AMENDMENT.—Section 60106, including—

(A) the agreement allowing participation of a State authority, and

(B) the State meets the minimum standards for one-call notification programs under this chapter or chapter 61.

(f) DISCRIMINATION AGAINST EMPLOYEE.—No employer may discharge any employee or otherwise discriminate against any employee with respect to his or her compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) or—

(A) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information—

(i) relating to any violation or alleged violation of any order, regulation, or standard under this chapter or any other Federal law relating to pipeline safety;

(ii) that the employee engaged in any practice made unlawful by this chapter or any other Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer;

(B) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information—

(i) relating to any violation or alleged violation of any order, regulation, or standard under this chapter or any other Federal law relating to pipeline safety;

(ii) that the employee engaged in any practice made unlawful by this chapter or any other Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer.

(3) PROCEDURAL REQUIREMENTS.—The Secretary shall give notice and an opportunity for a hearing before ending an agreement under this section. The Secretary may provide an agreement that was in effect before enactment of the Pipeline Safety Improvement Act of 2002—

(a) IN GENERAL.—The Secretary may enter into an agreement under this section that includes an activity that poses an imminent hazard.

(b) CONFORMING AMENDMENT.—Section 60106, including—

(A) the agreement allowing participation of a State authority, and

(B) the State meets the minimum standards for one-call notification programs under this chapter or chapter 61.

(f) DISCRIMINATION AGAINST EMPLOYEE.—No employer may discharge any employee or otherwise discriminate against any employee with respect to his or her compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) or—

(A) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information—

(i) relating to any violation or alleged violation of any order, regulation, or standard under this chapter or any other Federal law relating to pipeline safety;

(ii) that the employee engaged in any practice made unlawful by this chapter or any other Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer;

(B) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information—

(i) relating to any violation or alleged violation of any order, regulation, or standard under this chapter or any other Federal law relating to pipeline safety;

(ii) that the employee engaged in any practice made unlawful by this chapter or any other Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer.

(3) PROCEDURAL REQUIREMENTS.—The Secretary shall give notice and an opportunity for a hearing before ending an agreement under this section. The Secretary may provide an agreement that was in effect before enactment of the Pipeline Safety Improvement Act of 2002—

(a) IN GENERAL.—The Secretary may enter into an agreement under this section that includes an activity that poses an imminent hazard.

(b) CONFORMING AMENDMENT.—Section 60106, including—

(A) the agreement allowing participation of a State authority, and

(B) the State meets the minimum standards for one-call notification programs under this chapter or chapter 61.
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“(E) provided, caused to be provided, or is about to provide or cause to be provided, testimony in any proceeding described in subparagraph (D); or

(2) employed or participated in or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding, or in any manner to carry out the purposes of this chapter or any other Federal law relating to pipeline safety.

(2) EMPLOYER DEFINED.—In this section, the term ‘employer’ means

(A) a person owning or operating a pipeline facility; or

(B) a contractor or subcontractor of such a person;

(3) DEPARTMENT OF LABOR COMPLAINT PROCEEDING.—

(1) FILING AND NOTIFICATION.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination.

Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person or persons named in the complaint and the Secretary of Labor shall commence an investigation to determine whether there is reasonable cause to believe that the complaint has merit and notify in writing the complainant and the person or persons alleged to have committed a violation of subsection (a) of the Secretary of Labor’s findings. If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary of Labor shall include with the Secretary of Labor’s findings with a preliminary order the requirement by the Secretary of Labor, a written response to the complaint and an opportunity to submit to the Secretary of Labor additional evidence of any nature in support of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person or persons under paragraph (2).

(2) INVESTIGATION; PRELIMINARY ORDER.—Not later than 90 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person or persons named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses of the person or persons alleged to have committed an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify in writing the complainant and the person or persons alleged to have committed a violation of subsection (a) of the Secretary of Labor’s findings. If any such order is issued under this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the person or persons alleged to have committed a violation, if a violation is found, the amount of all costs and expenses (including attorney’s and expert witness fees) reasonably incurred, as determined by the court, in connection with, the bringing the complaint upon which the order was issued.

(3) FINAL ORDER.—

(A) DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.—Not later than 90 days after the date of conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the relief requested. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person or persons alleged to have committed the violation.

(B) REMEDY.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) occurred, the Secretary of Labor shall order the person or persons who committed such violation to:

(i) take affirmative action to abate the violation;

(ii) reinstate the complainant to his or her former position together with the compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the person or persons alleged to have committed a violation, if a violation is found, the amount of all costs and expenses (including attorney’s and expert witness fees) reasonably incurred, as determined by the court, in connection with, the bringing the complaint upon which the order was issued.

(4) REVIEW.—

(A) APPEAL TO COURT OF APPEALS.—Any person aggrieved by a preliminary order of the Secretary of Labor may file a petition for review in the appropriate circuit court of appeals within 60 days after the date of issuance of the final order of the Secretary of Labor. The court, in issuing a writ of review, shall conform to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) ATTORNEY FEES.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award of costs is appropriate.

(5) MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(6) NONAPPLICABILITY TO DELIBERATE VIOLATIONS.—Subsection (a) shall not apply with respect to an action of an employee of an employer who, acting without direction from the employer (or such employer’s agent), deliberately causes a violation of any requirement relating to pipeline safety under this chapter or any other law of the United States.

(b) CIVIL PENALTIES.—

(1) CIVIL PENALTIES.—Section 6012(a) is amended by adding at the end the following:

“(2) PENALTY CONSIDERATIONS.—(A) by striking $1,000,000 and inserting $1,000,000; and

(B) by striking ‘‘$500,000’’ and inserting ‘‘$1,000,000.’’

(2) REFORMED PENALTIES.—Section 6012(b) is amended by striking ‘‘subsection (a)’’ and inserting ‘‘subsection (a)’’.

(3) ENFORCEMENT.—Section 6012(b) is amended by striking ‘‘under this section’’ and inserting ‘‘under this section’’.

(4) PENALTY CONSIDERATIONS.—Section 6012(b) is amended by striking ‘‘subsection (a)’’ and inserting ‘‘subsection (a)’’.

(5) ENFORCEMENT OF ORDER BY SECRETARY.—Section 6012(d) is amended by striking ‘‘$25,000’’ and inserting ‘‘$100,000’’; and

(b) by striking ‘‘$500,000’’ and inserting ‘‘$1,000,000’’.

(6) ENFORCEMENT OF ORDER BY SECRETARY.—

(A) COMMENCEMENT OF ACTION.—A person on whose behalf an order was issued under paragraph (3) may commence a civil action to enforce such order in any appropriate United States district court. Upon issuance of such an order, the appropriate United States district court shall have jurisdiction, without restrained the amount in controversy or the citizenship of the parties, to enforce such order.

(B) ATTORNEY FEES.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award of costs is appropriate.

(7) MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(8) NONAPPLICABILITY TO DELIBERATE VIOLATIONS.—Subsection (a) shall not apply with respect to an action of an employee of an employer who, acting without direction from the employer (or such employer’s agent), deliberately causes a violation of any requirement relating to pipeline safety under this chapter or any other law of the United States.

(c) CIVIL PENALTIES.

(1) CIVIL PENALTIES.—Section 6012(a) is amended by adding at the end the following:

“(5) ENFORCEMENT OF ORDER BY SECRETARY.—Section 6012(d) is amended by striking ‘‘$25,000’’ and inserting ‘‘$500,000’’; and

(b) by striking ‘‘$500,000’’ and inserting ‘‘$1,000,000’’.

(2) PENALTY CONSIDERATIONS.—Section 6012(b) is amended by striking ‘‘under this section’’ and all that follows through paragraph (4) and inserting ‘‘under this section’’.

(i) the Secretary shall consider—

(A) the nature, circumstances, and gravity of the violation, including adverse impact on the environment;
“(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on ability to continue doing business; and

(3) effect of the proposed penalty on the ability to pay, and any effect on ability to continue doing business.

(2) The Secretary may consider—

(A) the economic benefit gained from the violation without any reduction because of subsequent damage avoidance;

(B) other matters that justice requires.

(3) CIVIL ACTIONS.—Section 60129(a) is amended—

(A) by striking "(a) CIVIL ACTIONS.—(1)" and all that follows through "(2) At the request in the following:

(1) (1) CIVIL ACTIONS TO ENFORCE THIS CHAPTER.—At the request of the Secretary of Transportation, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter, including section 60112, or a regulation prescribed or order issued under this chapter. The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties, considering the same factors as prescribed for the Secretary in an administrative case under section 60122.

(2) CIVIL ACTIONS TO REQUIRE COMPLIANCE WITH SUBPOENAS OR ALLOW FOR INSPECTIONS.—At the request of the Secretary, and

(B) by aligning the remainder of the text of paragraph (2) with the text of paragraph (1).

(c) CRIMINAL PENALTIES FOR DAMAGING OR DESTROYING A FACILITY.—Section 60129(b) is amended—

(1) by striking "or" after "gas pipeline facility" and inserting "or";

(2) by inserting after "liquid pipeline facility" the following: "or, either an intrastate gas pipeline facility or intrastate hazardous liquid pipeline facility that is used in interstate or foreign commerce";

(d) COMPTROLLER GENERAL STUDY.—(1) IN GENERAL.—The Comptroller General shall conduct a study of the actions, policies, and procedures of the Secretary of Transportation for assessing and collecting fines and penalties on operators of hazardous liquid and gas transmission pipelines.

(2) ANALYSIS.—In conducting the study, the Comptroller General shall examine, at a minimum, the following:

(A) The changes in the amounts of fines recommended by safety inspectors, assessed by the Secretary, and actually collected.

(B) An evaluation of the overall effectiveness of the Secretary’s enforcement strategies.

(C) The extent to which the Secretary has complied with the report of the Government Accounting Office entitled “Pipeline Safety: The Office of Pipeline Safety is Changing How It Oversees the Pipeline Industry.”

(3) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall transmit to the Committees on Commerce, Science, and Transportation of the Senate and the Committees on Transportation and Infrastructure and Energy and Commerce of the House of Representatives a report on the results of the study.

SEC. 9. PIPELINE SAFETY INFORMATION GRANTS TO COMMUNITIES.

(a) In general.—Chapter 601 is further amended by adding at the end the following:

§60120. Pipeline safety information grants to communities

(1) GRANT AUTHORITY.—

(A) In general.—The Secretary of Transportation shall award grants to recipients for technical assistance to local communities and groups of individuals (not including for-profit entities) relating to the safety of pipeline facilities in local communities, other than facilities regulated under Public Law 93-153 (43 U.S.C. 1651 et seq.). The Secretary shall establish competitive procedures for awarding such grants, following such criteria as the Secretary determines are necessary to ensure the proper use of funds provided under this section.

(B) Technical assistance defined.—In this subsection, the term ‘technical assistance’ means engineering and other scientific analysis of pipeline safety issues, including the promotion of public participation in official proceedings conducted under this section.

(c) LIMITATION ON STATUTORY CONSTRUCTION.—Section 60118 is amended by adding at the end the following:

(f) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed to infringe upon the constitutional rights of an operator or its employees.

SEC. 11. POPULATION ENCROACHMENT AND RIGHTS-OF-WAY.

(a) IN GENERAL.—Section 60127 is amended to read as follows:

§60127. Population encroachment and rights-of-way

(1) STUDY.—The Secretary of Transportation, in conjunction with the Federal Energy Regulatory Commission, the Attorney General, and appropriate Federal agencies and State and local governments, shall undertake a study of land use practices, zoning ordinances, and preservation of environmental resources with regard to pipeline rights-of-way and their maintenance.

(2) PURPOSE OF STUDY.—The purpose of the study shall be to gather information on land use practices, zoning ordinances, and preservation of environmental resources.

(3) TO DETERMINE EFFECTIVE PRACTICES TO LIMIT ENCROACHMENT ON EXISTING PIPELINE RIGHTS-OF-WAY;

(4) TO ADDRESS THE HAZARDS AND RISKS TO THE PUBLIC, PIPELINE WORKERS, AND THE ENVIRONMENT ASSOCIATED WITH ENCROACHMENT ON PIPELINE RIGHTS-OF-WAY;

(5) TO RAISE THE AWARENESS OF THE HAZARDS AND ENCROACHMENT ON PIPELINE RIGHTS-OF-WAY;

AND

(6) TO ADDRESS HOW TO BEST PRESERVE ENVIRONMENTAL RESOURCES IN CONJUNCTION WITH MAINTAINING PIPELINE RIGHTS-OF-WAY, RECOGNIZING PIPELINE OPERATORS’ REGULATORY OBLIGATIONS TO MAINTAIN RIGHTS-OF-WAY AND TO PROTECT PUBLIC SAFETY.

(b) CONSIDERATIONS.—In conducting the study, the Secretary shall consider, at a minimum, the following:

(1) The legal authority of Federal agencies and State and local governments in controlling land use and the limitations on such authority.

(2) The current practices of Federal agencies and State and local governments in addressing land use issues involving a pipeline easement.

(3) The most effective way to encourage Federal agencies and State and local governments to monitor and reduce encroachment upon pipeline rights-of-way.

(c) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall publish a report identifying best practices, laws, and ordinances that are most successful in addressing issues of encroachment and maintenance on pipeline rights-of-way so as more effectively protect public safety, pipeline workers, and the environment.

(2) DISTRIBUTION OF REPORT.—The Secretary shall provide a copy of the report—

(A) Congress and appropriate Federal agencies; and

(B) States for further distribution to appropriate local authorities.

(d) ADOPTION OF PRACTICES, LAWS, AND ORDINANCES.—The Secretary shall encourage Federal agencies and State and local governments to adopt and implement appropriate practices, laws, and ordinances, as identified in the report, to address the risks and hazards associated
with encroachment upon pipeline rights-of-way and to address the potential methods of preserving environmental resources while maintaining pipeline rights-of-way, consistent with pipeline safety.

(b) CONFORMING AMENDMENT.—The analysis for chapter 601 is amended by striking the item relating to section 60127 and inserting the following:


SEC. 12. PIPELINE INTEGRITY, SAFETY, AND RELIABILITY RESEARCH AND DEVELOPMENT.

(a) IN GENERAL.—The heads of the participating agencies shall carry out a program of research, development, demonstration, and standardization to ensure the integrity of pipeline facilities.

(b) MEMORANDUM OF UNDERSTANDING.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the heads of the participating agencies shall enter into a memorandum of understanding detailing their respective responsibilities in the program authorized by subsection (a).

(2) AREAS OF EXPERTISE.—Under the memorandum of understanding, each of the participating agencies shall have the primary responsibility for the elements of the program within its expertise are implemented in accordance with this section. The Department of Transportation shall consult with and seek the advice of pipeline safety officials, labor organizations, environmental organizations, pipeline safety advocates, and other technical societies.

(c) PROGRAM ELEMENTS.—The program authorized by subsection (a) shall include research, development, demonstration, and standardization activities related to—

(1) materials inspection;
(2) stress and fracture analysis, detection of cracks, corrosion, abrasion, and other abnormality that lead to pipeline failure, and development of new equipment or technologies that are inserted into pipelines to detect anomalies;
(3) visual inspection and leak detection technologies, including detection of leaks at very low volumes;
(4) methods of analyzing content of pipeline throughput;
(5) pipeline security, including improving the real-time surveillance of pipeline rights-of-way, developing tools for evaluating and enhancing pipeline integrity, reducing risk, and protecting first response units and persons near an incident;
(6) risk assessment methodology, including vulnerability assessment and reduction of third-party damage;
(7) communication, control, and information systems security;
(8) fire safety of pipelines;
(9) improved excavation, construction, and repair technologies; and
(10) other pipeline elements.

(d) PROGRAM PLAN.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary of Energy and the Director of the National Institute of Standards and Technology shall prepare and transmit to Congress a 5-year program plan to guide activities under this section. Such program plan shall be submitted to the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee for review, and the report to Congress shall include the comments of the committees.

(2) CONSULTATION.—In preparing the program plan and selecting and prioritizing appropriate project proposals, the Secretary of Transportation shall consult with or seek the advice of appropriate representatives of the natural gas, crude oil, and petroleum product pipeline industries, utilities, manufacturers, institutions of higher learning, Federal agencies, pipeline regulatory agencies, State and local government agencies, pipeline safety officials, labor organizations, environmental organizations, pipeline safety advocates, and other technical societies.

(e) REPORTS TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the heads of the participating agencies shall transmit to Congress a report on the status and results to date of the implementation of the program plan prepared under subsection (d).

(1) AUTHORIZATION OF APPROPRIATIONS.—

(1) DEPARTMENT OF TRANSPORTATION.—There is authorized to be appropriated to the Secretary of Transportation for carrying out this section $100,000,000 for each of the fiscal years 2003 through 2006.

(2) DEPARTMENT OF ENERGY.—There is authorized to be appropriated to the Secretary of Energy for carrying out this section $100,000,000 for each of the fiscal years 2003 through 2006.

(3) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—There is authorized to be appropriated to the Director of the National Institute of Standards and Technology for carrying out this section $5,000,000 for each of the fiscal years 2003 through 2006.

(2) GENERAL REVENUE FUNDING.—Any sums appropriated under this subsection shall be derived from general revenues and may not be derived from amounts collected under section 60201 of title 49, United States Code.

(c) PIPELINE INTEGRITY PROGRAM.—

(1) IN GENERAL.—Chapter 601 is further amended by inserting the following:

"§60131. Verification of pipeline qualification programs

(a) IN GENERAL.—Subject to the requirements of this section, the Secretary of Transportation shall require the operator of a pipeline facility to develop and adopt a qualification program to ensure that the individuals who perform covered tasks are qualified to conduct such tasks.

(b) STANDARDS.—

(1) DEVELOPMENT.—Not later than 1 year after the date of enactment of this section, the Secretary shall ensure that the Department of Energy and the Secretary of Transportation shall require each pipeline operator to develop and adopt, not later than 2 years after the date of enactment of this section, a qualification program that complies with the standards and criteria described in subsection (b).

(c) ELEMENTS OF QUALIFICATION PROGRAMS.—A qualification program adopted by an operator shall include, at a minimum, the following:

(1) A method for examining or testing the qualifications of individuals described in subsection (a). The method may include written examination, oral examination, observation during on-the-job performance, on-the-job training, and other forms of assessment.

(2) A periodic requalification component that provides for examination or testing of individuals in accordance with paragraph (1).

(d) INTRASTATE PIPELINE FACILITIES.—In preparing the program plan to guide activities under this section, the Secretary shall ensure that the programs are documented in writing.

(e) REVIEW AND VERIFICATION OF PROGRAMS.—

(1) IN GENERAL.—The Secretary shall review the qualification program of each pipeline operator and verify its compliance with the standards and criteria described in subsection (b) and that it includes the elements described in subsection (d). The Secretary shall record the results of that review for use in the next review of an operator's program.

(f) DEADLINE FOR COMPLETION.—Reviews and verifications under this subsection shall be completed not later than 3 years after the date of the enactment of this section.

(g) INADEQUATE PROGRAM.—If the Secretary determines that a qualification program is inadequate for the safe operation of a pipeline facility, the Secretary shall act as under section 60108(a)(2) to require the operator to revise the qualification program.

(h) PROGRAM MODIFICATIONS.—If the operator of a pipeline facility significantly modifies a program that has been verified under this subsection, the operator shall notify the Secretary of the modifications. The Secretary shall review and verify any modifications in accordance with paragraph (1).

(i) WAIVERS AND MODIFICATIONS.—In accordance with section 6011(c), the Secretary may waive or modify any requirement of this section if the waiver or modification is not inconsistent with pipeline safety.

(j) SECTION BY THE SECRETARY.—Notwithstanding any failure of the Secretary to prescribe standards and criteria as described in subsection (b), an operator of a pipeline facility shall adopt a program that complies with the requirement of subsection (b)(2)(B) and includes the elements described in subsection (d) not later than 2 years after the date of enactment of this section.

(k) INTRASTATE PIPELINE FACILITIES.—In the case of an intrastate pipeline facility operator,
the duties and powers of the Secretary under this section with respect to the qualification program of the operator shall be vested in the appropriate State regulatory agency, consistent with this subsection.

"(g) COVERED TASK DEFINED.—In this section, the term ‘covered task’—

(1) with respect to a gas pipeline facility, has the meaning of section 192.801 of title 49, Code of Federal Regulations, including any subsequent modifications; and

(2) with respect to a hazardous liquid pipeline facility, has the meaning such term has under section 195.501 of such title, including any subsequent modifications.

(h) REPORT.—Not later than 4 years after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the status and results to date of the personnel qualification regulations issued under this chapter.

(2) CONFORMING AMENDMENT.—The analysis for chapter 601 is amended by adding at end the following:

“60131. Verification of pipeline qualification programs."

(b) PILOT PROGRAM FOR CERTIFICATION OF CERTAIN PIPELINE WORKERS.—

(1) IN GENERAL.—Not later than 36 months after the date of enactment of this Act, the Secretary shall—

(A) develop tests and other requirements for certifying the qualifications of individuals who operate computer-based systems for controlling the operations of pipelines; and

(B) establish and carry out a pilot program for 3 pipeline facilities under which the operators employing computer-based systems for controlling the operations of pipelines at such facilities are required to be certified under the process established under subparagraph (A).

(2) REPORT.—The Secretary shall include in the report required under section 60131(h), as added by subsection (a) of this section, the results of the pilot program. The report shall include—

(A) a description of the pilot program and implementation of the pilot program at each of the 3 pipeline facilities;

(B) an evaluation of the pilot program, including the effectiveness of the process for certifying individuals who operate computer-based systems for controlling the operations of pipelines;

(C) any recommendations of the Secretary for requiring the certification of all individuals who operate computer-based systems for controlling the operations of pipelines; and

(D) an assessment of the ramifications of requiring the certification of all individuals performing safety-sensitive functions for a pipeline facility.

(3) COMPUTER-BASED SYSTEMS DEFINED.—In this subsection, the term ‘computer-based systems’ means supervisory control and data acquisition systems.

SEC. 14. RISK ANALYSIS AND INTEGRITY MANAGEMENT PROGRAMS FOR GAS PIPELINES.

(a) IN GENERAL.—Section 60108 is amended by adding at end the following:

“(c) RISK ANALYSIS AND INTEGRITY MANAGEMENT PROGRAMS.—

“(1) REQUIREMENT.—Each operator of a gas pipeline facility shall conduct an analysis of the risks to each facility of the operator located in an area identified pursuant to subsection (a)(1) and defined in chapter 192 of title 49, Code of Federal Regulations, including any subsequent modifications, and shall adopt and implement a written integrity management program for such facility. The regulations are issued under section 192.801 standards to direct an operator’s conduct of a risk analysis and adoption and implementation of an integrity management program under this subsection. The regulations shall require an operator to conduct a risk analysis and adopt an integrity management program within a time period prescribed by the Secretary, ending not later than 24 months after such date of enactment. Not later than 18 months after such date of enactment, each operator of a gas pipeline facility shall conduct a baseline integrity assessment described in paragraph (3).

“(2) ADOPTION OF REQUIREMENTS.—The Secretary may satisfy the requirements of this paragraph through the issuance of regulations under this paragraph or under other authority of law.

“(3) MINIMUM REQUIREMENTS OF INTEGRITY MANAGEMENT PROGRAMS.—An integrity management program required under paragraph (1) shall include, at a minimum, the following requirements:

“(A) a baseline integrity assessment of each of the operator’s facilities in areas identified pursuant to subsection (a)(1) and defined in chapter 192 of title 49, Code of Federal Regulations, including any subsequent modifications, by internal inspection device, pressure testing, direct assessment, or an alternative method that the Secretary shall provide an equal or greater level of safety. The operator shall complete such assessment not later than 10 years after the date of enactment of this subsection. Leaks or facilities shall be assessed not later than 5 years after such date of enactment. The operator shall prioritize such facilities for assessment based on all risk factors, including previously discovered defects or anomalies and any history of leaks, repairs, or failures. The operator shall ensure that assessments of facilities with the highest environmental and safety risks, and shall that such assessments will be completed not later than 5 years after such date of enactment.

“(B) Subject to paragraph (5), periodic reassessment of the minimum of once every 5 years, using methods described in subparagraph (A).

“(C) Clearly defined criteria for evaluating the results of assessments conducted under subparagraphs (A) and (B) and for taking actions based on such results.

“(D) A method for conducting an analysis on a continuing basis that integrates all available information about the integrity of the facility and the consequences of releases from the facility.

“(E) A description of actions to be taken by the operator to promptly address any integrity issue raised by an evaluation conducted under subparagraph (A) or (B) and the analysis conducted under subparagraph (D).

“(F) A description of measures to prevent and mitigate the consequences of releases from the facility.

“(G) A method for monitoring cathodic protection systems throughout the pipeline system of the operator to the extent not addressed by other regulations.

“(H) If the Secretary raises a safety concern relating to the facility, a description of the actions to be taken by the operator to address the safety concern raised by the Secretary by States and local authorities under an agreement entered into under section 60106, the Secretary shall complete the assessment described in subparagraph (A) within 180 days after such date of issuance of regulations under this subsection, the Secretary shall accept the assessment as complete, and shall not require the operator to repeat any portion of the assessment program. Any determination that the assessment was conducted in accordance with the requirements of this subsection.

“(i) WAIVERS AND MODIFICATIONS.—In accordance with section 60111(c), the Secretary may waive or modify any requirement for reassessment of a facility under paragraph (3)(B) for reasons that may include the need to maintain local product supply or the lack of internal inspection devices if the Secretary determines that such waiver or modification is consistent with pipeline safety.

“(6) STANDARDS.—The standards prescribed by the Secretary under paragraph (2) shall add the following:

“(A) The minimum requirements described in paragraph (3).

“(B) The type or frequency of inspections or testing of pipeline facilities, in addition to the minimum requirements of paragraph (3)(B).

“(C) The manner in which the inspections or testing are conducted.

“(D) The criteria used in analyzing results of the inspections or testing.

“(E) Any information sources that must be integrated in assessing the integrity of a pipeline facility as well as the manner of integration.

“(F) The nature and timing of actions selected to address the integrity of a pipeline facility.

“(G) Such other factors as the Secretary determines appropriate to ensure that the integrity of a pipeline facility is addressed and that appropriate mitigative measures are adopted to protect areas identified under subsection (a)(1). In assessing those standards, the Secretary shall ensure that all inspections required are conducted in a manner that minimizes environmental and safety risks, and shall take into account applicable and applicable national consensus standards or guidelines.

“(7) ADDITIONAL OPTIONAL STANDARDS.—The Secretary may also prescribe standards requiring an operator of a pipeline facility to include in an integrity management program under this subsection—

“(A) changes to valves or the establishment or modification of systems that monitor pressure and detect leaks based on the operator’s risk assessment; and

“(B) the use of emergency flow restricting devices.

“(8) LACK OF REGULATIONS.—In the absence of regulations addressing the elements of an integrity management program described in this subsection, the operator of a pipeline facility shall conduct a risk analysis and adopt and implement an integrity management program described in this subsection not later than 24 months after the date of enactment of this subsection and shall complete the baseline integrity assessment described in paragraph (3) within 10 years after such date of enactment. At least 50 percent of such facilities shall be assessed not later than 5 years after such date of enactment. The operator of such facilities for assessment based on all risk factors, including previously discovered defects or anomalies and any history of leaks, repairs, or failures. The operator shall ensure that assessments of facilities with the highest environmental and safety risks, and shall that such assessments will be completed not later than 5 years after such date of enactment.

“(9) REVIEW OF INTEGRITY MANAGEMENT PROGRAMS.—

“(i) REVIEW OF PROGRAMS.—

“(ii) IN GENERAL.—The Secretary shall review a risk analysis and integrity management program under paragraph (1) and record the results of that review for use in the next review of an operator’s program.

“(iii) CONTEXT OF REVIEW.—The Secretary may consider the results of a risk analysis and integrity management program conducted under the requirements of this subsection or any regulations issued under section 60108(a) to require the operator to revise the risk analysis or integrity management program.
In General—Chapter 601 is further amended by adding at the end the following:

§60132. National pipeline mapping system.

(a) In General.—Chapter 601 is further amended by adding at the end the following:

SEC. 15. NATIONAL PIPELINE MAPPING SYSTEM.

(a) IN GENERAL.—Chapter 601 is further amended by adding at the end the following:

§60132. National pipeline mapping system.

(a) INFORMATION TO BE PROVIDED.—Not later than 6 months after the date of enactment of this section, the operator of a pipeline facility shall provide to the Secretary of Transportation the following information with respect to the facility:

(1) Geospatial data appropriate for use in the National Pipeline Mapping System or data in a format that can be readily converted to geospatial data.

(2) The name and address of the person with primary operational control to be identified as its operator for purposes of this chapter.

(b) AMENDMENTS TO PROGRAMS.—In order to facilitate reviews under this paragraph, an operator of a pipeline facility shall notify the Secretary of any amendment made to the operator's integrity management program by the operator or by any other person that provides the Secretary with any safety and integrity management program pursuant to paragraph (9), may provide the Secretary with a written assessment of the risk analysis and integrity management program, make recommendations, as appropriate, to address safety concerns not adequately addressed by the operator's risk analysis or integrity management program, and submit documentation explaining the State-proposed revisions. The Secretary shall consider carefully the State's proposals and work in consultation with the States and operators to address safety concerns.

(b) INTENSITY MANAGEMENT REGULATIONS.—Section 60108 is amended by adding at the end the following:

(c) EVALUATION OF INTEGRITY MANAGEMENT REGULATIONS.—Not later than 4 years after the date of enactment of this subsection, the Comptroller General shall conduct a study to evaluate the effects on safety and the environment of the requirements for the implementation of integrity management programs contained in the standards prescribed as described in subsection (c)(2).

(2) By striking “and” at the end of paragraph (2), and by striking the period at the end of paragraph (3) and inserting “; and”;

(3) by adding at the end the following:

(d) CONDUCT A RISK ANALYSIS, AND ADOPT AND IMPLEMENT A MANAGEMENT PROGRAM, FOR FACILITY PIPELINES AS REQUIRED UNDER SECTION 60109(c)(2).

(3) by adding at the end the following:

(c) CONFORMING AMENDMENT.—Section 60118(a) is amended—

(1) by striking “and” at the end of paragraph (2),

(2) by striking the period at the end of paragraph (3) and inserting “; and”;

and

(3) by adding at the end the following:

(d) IN GENERAL.—Chapter 601 is further amended by adding at the end the following:

§60133. Coordination of environmental reviews.

(1) INTERAGENCY COMMITTEE.—

(A) The Secretary of Transportation.

(B) The Administrator of the Environmental Protection Agency.

(C) The Director of the Bureau of Land Management.

(D) The Director of the Minerals Management Service.

(E) The Director of the National Oceanic and Atmospheric Administration.

(F) The Director of the Bureau of Reclamation.

(G) The Chairman of the Council on Environmental Quality.

(2) ANALYSIS AND REPORT.—The Interagency Committee shall evaluate the feasibility of establishing a cooperative national monitoring system of pipeline accidents, including the development of a pipeline accident database, and shall conduct a study to develop a compendium of best practices used by pipeline operators to minimize and mitigate the effects of pipeline accidents, including the development of best practices guidelines and model procedures for dealing with pipeline accidents.

(3) DETERMINATIONS.—The Secretary shall provide a copy of the memorandum of understanding required under subsection (a)(4), the analysis conducted under paragraph (1), and the compendium of best practices described in paragraph (2) to the Congress to facilitate reviews under this paragraph.

(4) CONFORMING AMENDMENT.—Section 60104(b) shall not apply to this section.

(5) STATE AND LOCAL PERMITTING PROCESSES.—The Secretary shall review any such requirements for the implementation of a coordinated environmental review program to ensure that the program is consistent with Federal laws, regulations, and policies.

(b) APPLICATION OF STANDARDS.—Nothing in this section shall be construed to prevent a person from implementing alternative requirements for the purposes of this section, including a request for a temporary exemption from any Federal law, regulation, or policy that would otherwise have been required under Federal law.

(c) IN GENERAL.—Not later than 30 days after the date of enactment of this section, the President shall establish an Interagency Committee to implement a streamlined process for conducting environmental reviews of pipeline projects.

(d) CONFORMING AMENDMENT.—Section 60104(b) shall not apply to this section.

(e) IN GENERAL.—The Secretary of Transportation shall, in consultation with the States and the pipeline industry, develop a compendium of best practices used by pipeline operators to minimize and mitigate the effects of pipeline accidents, including the development of best practices guidelines and model procedures for dealing with pipeline accidents.

(f) CONFORMING AMENDMENT.—The analysis conducted under paragraph (1), and the compendium of best practices described in paragraph (2) shall be provided to the Congress to facilitate reviews under this paragraph.

(g) CONFORMING AMENDMENT.—The analysis conducted under paragraph (1), and the compendium of best practices described in paragraph (2) shall be provided to the Congress to facilitate reviews under this paragraph.

(h) CONFORMING AMENDMENT.—The analysis conducted under paragraph (1), and the compendium of best practices described in paragraph (2) shall be provided to the Congress to facilitate reviews under this paragraph.

(i) IN GENERAL.—The Secretary shall encourage States and local governments to coordinate and expedite pipeline permit reviews under this section.

(j) IN GENERAL.—The Secretary shall seek to identify and resolve any inconsistencies among Federal, State, and local permitting agencies and the pipeline operator during agency review of any pipeline repair activity, consistent with protection of human health, public safety, and the environment.

(k) IN GENERAL.—The Secretary shall encourage States and local governments to coordinate and expedite pipeline permit reviews under this section.

(l) IN GENERAL.—The Secretary shall encourage States and local governments to coordinate and expedite pipeline permit reviews under this section.

(m) IN GENERAL.—The Secretary shall encourage States and local governments to coordinate and expedite pipeline permit reviews under this section.
“6013. Coordination of environmental reviews.”

SEC. 17. NATIONWIDE TOLL-FREE NUMBER SYSTEM.

Within 1 year after the date of enactment of this Act, the Secretary of Transportation shall, in conjunction with the Federal Communications Commission, facility operators, excavators, and one-call notification system operators, provide for the establishment of a 3-digit nationwide toll-free telephone number system to be used by State one-call notification systems.

SEC. 18. IMPROVEMENT OF INSPECTOR GENERAL RECOMMENDATIONS.

(a) IN GENERAL.—Except as otherwise required by this Act, the Secretary of Transportation shall ensure that all recommendations and safety improvement recommendations provided for in the Department of Transportation Inspector General’s Report (RT–2000–009).

(b) REPORTS BY THE SECRETARY.—Not later than 90 days after the date of enactment of this Act, and every 90 days thereafter until each of the recommendations referred to in subsection (a) has been implemented, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure and Energy and Commerce of the House of Representatives a report on the specific actions taken to implement such recommendations.

(c) REPORTS BY THE INSPECTOR GENERAL.—The Inspector General shall periodically transmit to the committees referred to in subsection (b) a report on the steps taken by the Secretary in implementing the recommendations referred to in subsection (a) and identifying options for the Secretary to consider in accelerating recognition and implementation.

SEC. 19. NTSB SAFETY RECOMMENDATIONS.

(a) IN GENERAL.—The Secretary of Transportation, the Administrator of Research and Special Programs, and the Director of the Office of Pipeline Safety shall fully comply with section 1135 of title 49, United States Code, to ensure timely responsiveness to National Transportation Safety Board recommendations about pipeline safety.

(b) PUBLIC AVAILABILITY.—The Secretary, Administrator, or Director, respectively, shall make a copy of each recommendation on pipeline safety and response, as described in subsections (a) and (b) of section 1135, title 49, United States Code.

(c) REPORTS TO CONGRESS.—The Secretary, Administrator, or Director, respectively, shall submit to Congress by January 1 of each year a report containing each recommendation on pipeline safety and response, as described in subsections (a) and (b) of section 1135, title 49, United States Code.

SEC. 20. MISCELLANEOUS AMENDMENTS.

(a) GENERAL AUTHORITY AND PURPOSE.—

(1) IN GENERAL.—Section 60102(a) is amended—

(A) by redesigning paragraph (2) as paragraph (3); and

(B) by striking “(a)(1)” and all that follows through “the Secretary of Transportation” and inserting “the following:

“(a) PURPOSE AND MINIMUM SAFETY STANDARDS.—

(1) PURPOSE.—The purpose of this chapter is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation.

(2) MINIMUM SAFETY STANDARDS.—The Secretary—

(i) by moving the remainder of the text of paragraph (2) as so redesignated, including subparagraphs (A) and (B) but excluding subparagraph (C), 2 ems to the right; and

(ii) as so redesignated by inserting “QUALIFICATIONS OF PIPELINE OPERATORS.—” before “the qualifications”;

(2) CONFORMING AMENDMENTS.—Chapter 601 is amended—

(A) by striking the heading for section 60102 and inserting the following:

“§60102. Purpose and general authority; and

(B) in the appendix for such chapter by striking the item relating to section 60102 and inserting the following:

“60102. Purpose and general authority.”;

(b) CONFLICTS OF INTEREST.—Section 60115(b) is amended by adding at the end the following:

“(D) None of the individuals selected for a committee under paragraph (3)(C) may have a significant financial interest in the pipeline, petroleum, or gas industry.”.

SEC. 21. TECHNICAL AMENDMENTS.

Chapter 601 is amended—

(1) in section 60110(b) by striking “circumstances” and all that follows through “operator” and inserting the following: “circumstances, if any, under which an operator”;

(2) in section 60114 by redesignating section (d) as subsection (c);

(3) in section 60122(a)(1) by striking “60114(c)” and inserting “60114(b)”;

(4) in section 60122(a)(2) by striking “60114(c)” and inserting “60114(b)”;

SEC. 22. AUTHORIZATION OF APPROPRIATIONS.

(a) GAS AND HAZARDOUS LIQUID.—Section 60125(a) is amended to read as follows:

“(a) GAS AND HAZARDOUS LIQUID.—To carry out this chapter (except for section 60107) relating to gas and hazardous liquid, the following appropriation Acts, to carry out programs authorized by this chapter (except for section 60107) relating to gas and hazardous liquid, the following:

(1) $45,800,000 for fiscal year 2003, of which $39,000,000 is to be derived from user fees for fiscal year 2003 collected under section 60301 of this title.

(2) $46,800,000 for fiscal year 2004, of which $35,700,000 is to be derived from user fees for fiscal year 2004 collected under section 60301 of this title.

(3) $47,100,000 for fiscal year 2005, of which $34,100,000 is to be derived from user fees for fiscal year 2005 collected under section 60301 of this title.

(4) $50,000,000 for fiscal year 2006, of which $45,000,000 is to be derived from user fees for fiscal year 2006 collected under section 60301 of this title.

(b) STATE GRANTS.—Section 60125 is amended—

(1) by striking subsections (b), (d), and (f) and redesignating subsection (c) as subsection (b); and

(2) in subsection (b)(1) (as so redesignated) by striking subparagraphs (A) through (H) and inserting the following:

“(A) $19,800,000 for fiscal year 2003, of which $14,800,000 is to be derived from user fees for fiscal year 2003 collected under section 60301 of this title.

(B) $21,700,000 for fiscal year 2004, of which $16,700,000 is to be derived from user fees for fiscal year 2004 collected under section 60301 of this title.

(C) $24,600,000 for fiscal year 2005, of which $19,600,000 is to be derived from user fees for fiscal year 2005 collected under section 60301 of this title.

(D) $26,500,000 for fiscal year 2006, of which $21,500,000 is to be derived from user fees for fiscal year 2006 collected under section 60301 of this title.

(c) OIL SPILL LIABILITY TRUST FUND.—Section 60102 is amended by striking “$26,500,000” and inserting “$27,000,000”.

SEC. 23. INSPECTIONS BY DIRECT ASSOCIATION.

Section 60102, as amended by this Act, is further amended by adding at the end the following:

“(m) INSPECTIONS BY DIRECT ASSOCIATION.—Not later than 1 year after the date of the enactment of this subsection, the Secretary shall issue regulations prescribing standards for inspection of a pipeline facility by direct association.”.

SEC. 24. STATE PIPELINE SAFETY ADVISORY COMMISSION.

Within 90 days after receiving recommendations for improvements to pipeline safety from any Advisory committee under the National Pipeline Regulatory Act, the Secretary shall provide notice of the advisory committee’s recommendations to the Governor of any State, the Secretary of Transportation shall respond in writing to the committee’s report on the committee’s findings and recommendations, and the Secretary’s reasons for accepting or declining any or all of its recommendations.

SEC. 25. PIPELINE BRIDGE RISK STUDY.

(a) IN GENERAL.—The Secretary of Transportation shall conduct a study to determine whether cable-suspension pipeline bridges pose structural or other risks warranting particularized attention. The study shall be conducted by operators risk assessment programs and whether particularized inspection standards need to be developed by the Department of Transportation to recognize the peculiar risks posed by such bridges.

(b) PUBLIC PARTICIPATION AND COMMENTS.—In conducting the study, the Secretary shall provide, to the maximum extent practicable, for public participation and comment and shall solicit views and comments from the public and interested persons, including participants in the pipeline industry with knowledge and experience in inspection of pipeline facilities.

(c) COMPLETION AND REPORT.—Within 2 years after the date of enactment of this Act, the Secretary shall complete the study and transmit to Congress a report detailing the results of the study.

(d) FUNDING.—The Secretary may carry out this section using only amounts that are specifically appropriated to carry out this section.

SEC. 26. STUDY AND REPORT ON NATURAL GAS PIPELINE AND STORAGE FACILITIES IN NEW ENGLAND.

(a) STUDY.—The Federal Energy Regulatory Commission, in consultation with the Department of Energy, shall conduct a study on the natural gas pipeline transmission network in New England and natural gas storage facilities associated with that network.

(b) CONSIDERATION.—In carrying out the study, the Commission shall consider the ability of the New England natural gas pipeline industry to meet current and projected demand by gas-fired power generation plants and other consumers.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Federal Energy Regulatory Commission shall prepare and submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report containing the results of the study conducted under subsection (a), including a report on potential natural gas transmission and storage capacity problems in New England.
Mr. DINGELL and I wanted to address one very important point: for the first time in a decade, we are on the verge of enacting pipeline safety legislation. The bill before us also adopts the language on operator qualifications based upon the House-passed legislation. As with the inspection language, the House provision on operator qualifications is much more stringent and detailed. It requires the development of gas pipeline computer control room operators. This bill authorizes far more money for pipeline safety than the original Senate language. It authorizes new technical assistance grants to communities and a new research program.

I am truly pleased to be here to mark a very important event: for the first time in a decade, we are on the verge of enacting pipeline safety legislation that was more about public relations than public safety. Because we need to do more than restate existing law and provide cover for main-cause that legislation did little more than restate existing law and provide cover for main-cause that legislation did little more than restate existing law and provide cover for main-cause that legislation did little more than restate existing law and provide cover for main-cause that legislation did little more than restate existing law and provide cover for main-cause that legislation did little more than restate existing law and provide cover for main-cause that legislation did little more than restate existing law and provide cover for main-cause that legislation did little more than restate existing law and provide cover for main-cause that legislation did little more than restate existing law and provide cover for main-cause that legislation did little more than restate existing law and provide cover for main-cause that legislation did little more than restate existing law and provide cover for 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main-cause that legislation did little more than restate existing law and provide cover for main-cause that legislation did little more than restate existing. This bill authorizes far more money for pipeline safety than the original Senate language. It authorizes new technical assistance grants to communities and a new research program.

Mr. Speaker, I urge passage of the bill. Mr. OBESTAR. Mr. Speaker, I rise in support of the Senate amendment to H.R. 3609, the Pipeline Safety and Improvement Act of 2002. This evening, the House finally will be able to enact pipeline safety legislation that is worthy of the name. It is has been a long and difficult journey, beginning with the Energy and Commerce Committee Ranking Member DINGELL and I introduced strong pipeline safety legislation in this and the last Congress, while at the same time we fought to forestall the passage of much weaker legislation. Although it has required two more years of difficult negotiations on pipeline safety, I am pleased to say that nearly all the areas that Congressman DINGELL and I wanted to address are covered in the bill.

Is this bill perfect? Of course not. But it has come a long way from the version that was introduced last December. My primary criticism of this compromise bill is that it does not go far enough in giving citizens information about the status of pipelines serving their communities— the basics that they say they need to know. However, in the current security-focused environment, we were unable to arrive at language that a majority of our colleagues could agree upon. Notwithstanding that limitation, this is a very good bill deserving of your support. Let me share with you some highlights of the Pipeline Safety Improvement Act of 2002.

First and foremost, this bill establishes specific timeframes for inspecting all natural gas transmission pipelines serving high consequence areas (e.g., high population areas). These pipelines must all be inspected within ten years of enactment of this legislation. Moreover, at least 50 percent of these pipelines must be inspected within the first five years.Pipeline operators must re-inspect their facilities based on risk factors and ensure that assessments with the highest risks are given priority and inspections are completed within this first five-year period. Subsequently, these pipelines must be re-inspected no less frequently than every seven years. Gas pipeline industry strenuously opposed any periodic inspection requirements. When it became apparent that they couldn’t win that position, they suggested inspection timeframes of up to 20 years and the Office of Pipeline Safety (OPS) appeared to agree with them. Fortunately, the interests of safety prevailed over the interests of the bottom line. The bill also includes a requirement that pipeline operators provide training to ensure that individuals have the necessary knowledge and skills to perform their tasks in a safe manner. The bill specifically requires observation of an employee’s on-the-job performance to determine whether or not he or she is qualified to perform the task to which he is assigned. The bill also requires OPS to establish a pilot program to certify pipeline employees who operate computer systems for controlling pipelines. This pilot program will help us determine whether we should require pipeline operators to certify all employees in safety-sensitive positions.

In addition, the bill raises the civil penalties for violations from $25,000 to $100,000, and the maximum civil penalty from $500,000 to $1 million. These penalties are significantly higher than the penalties included in H.R. 3609, as reported. The bill also contains meaningful protections for employees who provide information about violations of Federal law governing pipeline safety or refuse to participate in any illegal practices relating to pipeline safety.

The bill allows for the coordination of environmental reviews for pipeline repair projects. In those instances where any administrative environmental reviews might be minimized or eliminated to repair projects that would result in no more than minimal adverse effects on the environment and requires that an Interagency Committee of Federal agencies with responsibilities relating to pipeline repair projects unanimously agree that the environmental impact would be minimal. This bill contains a number of other provisions that also should greatly advance the goal of improving pipeline safety. However, I must offer a word of caution. Simply because we enact a strong, pipeline safety bill is no guarantee that its provisions will be vigorously carried out. In 1988 and 1992, Congress passed pipeline safety laws that required significant pipeline safety improvements, only to watch OPS basically ignore the law. Likewise, the Office of Pipeline Safety has been unresponsive, or slow to act, on safety recommendations made by the Department of Transportation’s Office of Inspector General, the General Accounting Office, and the National Transportation Safety Board. The current leadership at OPS and at its parent agency, the Research and Special Programs Administration, has promised to do a better job. Nevertheless, the Administration needs to...
know that we in the Congress are watching to make certain that the provisions of this pipeline safety act are being carried out faithfully.

Two years ago, I helped lead the effort in the House to defeat a Senate-passed pipeline safety bill. That bill was too weak, especially in light of tragic explosions in Billings, Washington and Carlsbad, New Mexico. We defeated that bill, believing that no bill was better than a weak one. That was the right thing to do. Now, we finally have a strong bill—one that will significantly improve pipeline safety and protect those who live near them or work with them so that it took so long to do the right thing for the American people.

I urge my colleagues to support the Senate amendment to H.R. 3609, the Pipeline Safety Improvement Act of 2002.

MR. YOUNG of Alaska. Mr. Speaker, I am pleased to submit the accompanying Joint Explanatory Statement of the Pipeline Safety Improvement Act of 2002.

To expedite enactment of the significant pipeline safety reforms included in this bill, the leadership of the House Transportation and Infrastructure and Energy and Commerce Committees has worked with the Senate Commerce, Science and Transportation Committee in developing this bill. The Joint Explanatory Statement therefore represents the views of the Chairmen and Ranking Members of the Transportation and Infrastructure Committee and the Energy and Commerce Committee, along with the Chairman and Ranking Member of the Senate Commerce Committee.

This Joint Explanatory Statement will provide legislative history for interpreting this important pipeline safety legislation.


November 14, 2002

section-by-section analysis of h.r. 3609 pipeline safety improvement act of 2002

Section 1. Short title; amendment of title 49, United States Code.

This section designates the act as the “Pipeline Safety Improvement Act of 2002.”

Section 2. One-call notification programs.

This section requires that state one-call notification programs provide for the participation of government operators and contact excavators. Section 2 also requires that state and local government enumerated items set forth in the statute. Additionally, the requirement that the Secretary of Transportation include certain information in reports submitted under section 60124 of Title 49 is made permanent. Authorizations for appropriations for fiscal years 2003 through 2006 are provided at $500,000 per year, but would not be derived from user fees collected under section 60101 of title 49.

Section 3. One-call notification of pipeline operators.

This section provides for the enforcement of one-call notification by a state authority if the state’s program meets the requirements set forth in the statute. The application of the term “person who in good faith takes action necessitating the use of the one-call system is expanded to include government employees or contractors.

This section amends section 60123(d) of Title 49 by rearranging the phrase “knowingly and willfully” to address the problem raised when a court interpreted ex-army to require engaging in an exca-vation activity, but also to subsequently damaging a pipeline facility. The con-struction in which makes it more difficult for the government to show the defendant knew subsequ-ent damages would result from exca-vation. Section 3 also states that if a previ-ous conviction made it more difficult for the government to show the defendant’s con-duct was willful. This section of the bill cor-rects the court’s interpretation by now re-quiring that the “knowingly and willfully” standard apply only to engaging in an exca-vation activity.

This section also provides that penalties under the criminal penalties section can be imposed on the violator promptly reports a violation.

Section 4. State oversight role.

This section amends section 6106 of Title 49 to allow the Secretary of Transportation to make an agreement with a state author-ity authorizing the state authority to part-take in the oversight of interstate pipeline transportation including incident inves-tigation and investigatory duties. However, the Secretary shall not delegate the enforcement of safety standards for interstate pipeline facili-ties without first obtaining written agreement from the state. However, the Secretary shall not delegate the enforcement of safety standards for interstate pipeline facilities without first obtaining written agreement from the state. This section further provides that the Secretary may termi-nate agreements with the State autho-rities if the State fails to meet requirements set forth in this section, or continued participation in the oversight of interstate pipeline transportation would not promote pipeline safety. Existing state agreements shall continue until a new agree-ment between the state and the DOT is exe-cuted or December 31, 2005, whichever is sooner.

Section 5. Public education programs.

This section amends section 6116 of Title 49 to include hazardous liquid pipeline facilities in the public education pro-gram to educate the public on the use of one-call notification systems, the possible haz-ards associated with unintended releases, and how to free if an unintended release oc-curred, what steps should be taken for public safety in the event of a pipeline release, and how to report such an event. This section also amends section 6105 of Title 49 by requiring the Secretary of Transportation to encourage the states, operators of one-call notification programs, operators of under-ground facilities, and excavators (including government and contract excavators) to use the practices set forth in the best practices report entitled “Common Ground,” as peri-
dodically updated, and requires the Secretary of Transportation to provide technical assis-tance to a non-profit organization specifically established for the purpose of reducing construction-related damage to underground facilities. Authorizations for appropriations for fiscal years 2003 through 2006 are provided at $500,000 per year, but would not be derived from user fees collected under section 60101 of title 49.

Previous versions of Senate-passed pipeline safety legislation also included a provision calling for the coordination of emergency preparedness between operators of pipeline facilities and state and local officials as well as to provide for public access to certain safety information. Agreement was not reached on how safety information could be disseminated to the public, from the provisions that would protect security-sensitive information from distribution. The managers agreed that this issue would be better dealt with in the context of the pending homeland security legislation.

Section 6. Protection of employees providing pipeline safety information.

This section adds provisions for the protec-tion of employees who are discharged or other-wise discriminated against with respect to compensation, terms, conditions, or privi-leges of employment for (1) providing infor-mation to the Federal government about al-leged violations of Federal law relating to pipeline safety; (2) refusing to participate in any practice made illegal by Federal law relating to pipeline safety; or (3) assisting or participating in any proceeding to carry out the purpose of pipeline safety legislation. This section establishes the procedural requirements in which complaints are handled by the Secretary of Labor and the remedies available to the prevailing party.

This section contains a provision that es-sentially says if a preliminary order provides that an employee must be allowed to return to work, the filing of any objection by the employer shall not operate to stay any reinstatement remedy contained in the pre-liminary order.” The intention of this lan-guage is to assure that the mere filing of an objection would not work as an automatic stay of preliminary proceedings from re-turning to work pending the outcome of the matter. However, this language would not preclude an employer from filing an inde-pendent motion for a stay if sufficient grounds exist for the filing of such a motion.

Section 7. Safety orders.

Section 7 adds a paragraph to section 6117 of Title 49 to give the Secretary of Transpor-tation the authority to take corrective action if the Sec-retary decides that a potential safety-related condition exists. The office of Pipeline Safe-ty and Hazardous Materials is requested that corrective action could be taken imme-diately rather than waiting until a facility is classified as “hazardous” prior to requiring corrective action.

Section 8. Penalties.

This section modifies the existing pen-alties provisions set forth in section 6112 of Title 49 to allow the Secretary of Transpor-tation to decide if the operation of a pipeline facility, is “or would be” hazardous to life, property, or the environment. The purpose of the modification is to give the Secretary au-thority to take action if a facility or the construction of the facility, or any com-ponent of the facility actually becoming haz-ardous, thereby establishing a framework of penalties and actions, rather than actions only in response to an imminent hazard.

In subsection (a)(1) of section 6122, the amounts of the penalties have been in-creased. The penalty for a first violation that has been increased from $25,000 to $100,000. The maximum civil penalty for a related se-ries of violations has been increased from $1,000,000 to $25,000,000. This section also provides that, in determining the amount of a civil penalty, the Secretary of Transportation shall consider as an addi-tional factor the seriousness of the violation. Title 49, the adverse impact on the environment. The Secretary of Transportation may
consider the economic benefit gained from the violation without reduction because of subsequent damages.

This section also modifies the enforcement section of Title 49 [section 60118(c) of Title 49] by specifically providing that the court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and costs in an action under civil penalties. The current statutory language specifying that the Attorney General may proceed only at the request of the Secretary remains intact.

Section 8 also requires that the Comptroller General conduct a study of the actions required by the Secretary of Transportation for assessing and collecting fines and penalties.

Section 9. Pipeline safety information grants to communities.

Section 9 requires the Secretary of Transportation to make grants for technical assistance to local communities and groups of individuals (not including for-profit entities) relating to the safety of pipeline facilities. The purpose of the provision is to provide grants to communities for technical assistance such as engineering or scientific services for pipeline safety issues. Applicants must compete for the grants in a procedure established by the Secretary of Transportation, who shall also establish the criteria for the award of grants. Additionally, the Secretary must establish procedures to ensure that the funds have been properly accounted for and spent in a manner consistent with the purpose of the grants. Any one-grant recipient may not receive more than $50,000. The grant funds cannot be used for lobbying or in direct support of litigation. This section authorizes the appropriation of $1,000,000 for each of the fiscal years 2003 through 2006.

Section 10. Operator assistance in investigation and remediation.

This section requires the operator of a pipeline facility to make available information and records to the Secretary of Transportation or the National Safety Transportation Board (NSTB) in the event of an accident, subject to constitutional protections for operators and employees. Actions taken by an operator pursuant to this section shall be done in a reasonable manner and consistent with the public interest. The Secretary must ensure that the results of any such investigation and remediation is documented in writing. The Secretary is required to certify that the investigation and remediation was conducted in accordance with the requirements of the Secretary of Transportation. This section authorizes the appropriation of $1,000,000 for each of the fiscal years 2003 through 2006.

Section 11. Population encroachment and risk analysis.

This section requires the Secretary of Transportation, along with the Federal Energy Regulatory Commission (FERC) and other federal agencies and state and local governments, to study land use practices and zoning ordinances, as well as the preservation of environmental resources, with regard to pipeline rights-of-way. Based upon the purpose stated in this section, a report is to be written that identifies successful practices, ordinances, and laws addressing population encroachment on pipeline rights-of-way. This report will assist in the development of practical solutions for pipeline safety, pipeline workers, and the environment. The report must be completed within one year from the date of enactment and provided to Congress, appropriate federal agencies, and the States for further distribution to the appropriate local authorities.

Section 12. Pipeline integrity, safety, and reliability development.

This section requires the heads of the participating agencies to carry out a program of research, development, demonstration, and standardization to ensure the integrity of pipeline facilities. The Secretary of Transportation, and the Director of the National Institute of Standards and Technology (NIST) each have defined roles. The Secretary of Transportation, in coordination with the Secretary of Energy and the Director of the National Institute of Standards and Technology, is required to submit to Congress a 5-year plan to guide the activities under this section. The plan shall also be submitted to the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee for review. The section authorizes appropriations for the fiscal years 2003 through 2006 in the following amounts: Secretary of Energy: $10,000,000; the Secretary of Transportation: $10,000,000; and the National Institute of Standards and Technology: $5,000,000. Any sums authorized pursuant to this section shall not be derived from user fees. In addition, $3,000,000 from the fiscal year 2002 appropriation is transferred to the Secretary of Transportation, as provided in appropriations Acts, to carry out programs for detection, prevention, and mitigation of oil spills for each of the fiscal years 2003 through 2006. Even though the Secretary of Transportation does not regulate gathering lines, the section requires programs to include such lines in their research, development, demonstration, and standardization efforts on the integrity of gathering lines.

This section requires the Secretary of Transportation to require operators of pipeline facilities to make available qualification programs for their personnel who perform covered tasks. Such method may include written examination, oral examination, on-the-job training, computer-based systems for controlling the operations. A pilot program is established for the certification of individuals who operate computer-based systems for controlling operations. The pilot program seeks the participation of 3 pipeline facilities.

Section 13. Pipeline qualification programs.

This section requires operators of pipeline facilities to make available qualification programs for their personnel who perform covered tasks. Such method may include written examination, oral examination, on-the-job training, computer-based systems for controlling the operations. A pilot program is established for the certification of individuals who operate computer-based systems for controlling operations. The pilot program seeks the participation of 3 pipeline facilities.

Section 14. Risk analysis and integrity management programs for gas pipelines.

This section requires operators of pipeline facilities to adopt and implement a written integrity management program to reduce risks to each facility. Within 12 months of the enactment of section 60109 of Title 49, the Secretary of Transportation is required to issue a rule on integrity management programs and for the rule regulating the same, which include a baseline integrity assessment of each of an operator’s pipeline facilities which must include at least 50 percent of the facilities within 10 years after the enactment of the section (at least 50 percent of such facilities shall be reassessed no later than 5 years after their initial assessment), and a reassessment of each facility at a minimum of once every 7 years, with prioritization being based on all relevant risk factors, including any previously discovered deficiencies or anomalies and any history of leaks, repairs, or failures.

The Secretary of Transportation is required to issue a rule on integrity management programs, and each operator of a pipeline facility subject to section 60109 of Title 49 is required to adopt and implement an integrity management program, even if the Secretary does not issue a rule. This section also applies to natural gas distribution lines because section 60109 of Title 49 does not, nor was it intended to, apply to natural gas distribution lines.

Section 14 authorizes the Secretary of Transportation to make grants for modifications pursuant to section 60118(c) of Title 49 for any requirement for reassessment of a facility for reasons that may include the need to maintain local product supply or the lack of internal inspection devices. The waivers or modifications shall not be inconsistent with pipeline safety.

This section also requires that the Comptroller General conduct a study to evaluate the 7-year reassessment interval required by this section. The study is to be completed and transmitted to Congress not later than 4 years from the date of enactment.

In this section, each operator of a gas pipeline facility is required to conduct a risk analysis, including a risk analysis for facilities located in high consequence areas and to adopt and implement an integrity management program for each such facility to reduce associated risks. This section requires each operator to prioritize facilities for integrity assessment based on all risk factors, including any history of leaks, repairs, or failures, and direct the operator to give priority to facilities with the highest risks.

The Department of Transportation’s Research and Special Programs Administration (RSPA) issued a final rule defining “high consequence areas” on August 6, 2002. The managers strongly support RSPA’s regulations defining high consequence areas, although recognizing that the definition could be subject to alteration by future regulatory action by RSPA.

Pipeline safety regulations have long required gas operators to survey and patrol their pipeline rights-of-way to classify areas of population. The new definition of high consequence areas builds on the existing classification of areas where the potential consequences of a gas pipeline accident may cause significant, or at times, unbearable harm to people and their property, and includes current class 3 and 4 locations, facilities with persons who are mobility impaired, confined, or hard to evacuate, and places where people gather for recreational and other purposes.

In the July 2002 Technical Pipeline Safety Standards Committee meeting to consider the proposed definition, RSPA made clear its intent to include in its definition known areas where people gather, such as the Pecos River, a location in New Mexico, which was commonly used by campers and fishermen and was the location of a pipeline rupture in August 2000 that resulted in fatalities. In the absence of any public notice, however, the definition is expressed for this new definition of high consequence areas and expect RSPA to further
clarify the application of the definition in the statute to be revised on interest management programs.

Section 15. National Pipeline Mapping System.

Section 15 requires operators of pipeline facilities, except distribution lines and gathering lines, covered by the Department of Transportation geospatial data appropriate for use in the National Mapping System, the name and address of the person with primary operational control, and a means for a member of the public to contact the operator for additional information about the facilities. There is a requirement to update the information in a timely manner.

Section 16. Coordination of environmental reviews.

Section 16 requires the President to establish an interagency committee for the purpose of developing and ensuring the implementation of a coordinated environmental review and permitting process in order for pipeline operators to complete all activities necessary to carry out pipeline repairs within any time periods specified by rule by the Secretary of Transportation.

The chairman of the Council on Environmental Quality shall chair the Intergovernment Committee, which shall consist of representatives of Federal agencies with responsibilities relating to pipeline repair projects. The Intergovernment Committee shall evaluate Federal permitting requirements and shall examine the access, excavation, and restoration practices of the pipeline industry for the purpose of developing a compendium of best practices used by the industry to access, excavate, and restore the site of a pipeline repair. Based on the evaluation conducted, the Intergovernment Committee shall enter into, by unanimous consent, a memorandum of understanding to provide for the coordinated and expedited pipeline repair permitting process so that pipeline operators may commence and complete pipeline repairs within any time periods imposed on the repair projects by rules promulgated by the Secretary of Transportation. Each agency represented on the Intergovernment Committee is required to revise its regulations to implement the provisions of the memorandum of understanding.

This section also provides for the implementation of alternative mitigation measures to be used by operators of pipeline facilities in lieu of duplicable permits that have been granted. To the extent necessary, the Secretary of Transportation is required to revise the regulations of the Department to accommodate such implementation. Nevertheless, such revisions shall not allow an operator of a pipeline facility to implement alternate mitigation measures unless to do so would be consistent with the protection of human health, public safety, and the environment; the operator has applied for and is diligently and in good faith pursuing all required Federal, state, and local permits necessary to carry out the repair project; and is compatible with pipeline safety.

The Secretary of Transportation is required to designate an ombudsman to assist in expediting pipeline repairs and resolving disagreements between Federal, state, and local permitting agencies and the operator of a pipeline facility. The actions of the ombudsman must be consistent with the protection of human health, public safety, and the environment.

The Ombudsman of Transportation is required to encourage states and local governments to consolidate their respective permitting processes for pipeline repair projects that are subject to any time periods for repairs specified by rule by the Secretary of Transportation.

Section 17. Nationwide toll-free number system.

Section 17 requires the Secretary of Transportation to work in conjunction with the Federal Communications Commission (FCC), facility operators, excavators, and one-call notification systems to establish a nationwide toll-free 3-digit telephone number system to be state one-call notification systems.


Section 18 requires the Secretary of Transportation to respond to each of the recommendations of the Department of Transportation Inspector General concerning coordination of environmental reviews. The department has applied for and is awaiting approval of environmental reviews of pipeline facilities, and is enforcing compliance with such studies in the event of noncompliance.

Section 19. NTSB safety recommendations.

Section 19 requires the National Transportation Safety Board (NTSB) to respond to recommendations received from the NTSB within 90 days from receipt of such recommendations. Such responses shall state the intentions of the NTSB with respect to the recommendations and shall state the timetable for completing the procedures and reasons for refusal to do so. The responses shall be submitted to the NTSB. The NTSB is required to submit an annual report describing each recommendation received and the NTSB response to each recommendation for the previous year.

Section 20. Miscellaneous amendments.

Section 20 amends section 60102(a) of Title 49 by adding language expressing that the purpose of the chapter is to provide adequate protection against risks to life and property posed by pipeline transportation facilities by improving the regulatory and enforcement authority of the Secretary of Transportation.

This section also modifies the qualifications of the individuals selected to serve on the Technical Safety Standards Committees pursuant to section 6115 of Title 49 so that none of the individuals selected for committee membership from the general public “may have a significant financial interest in the pipeline, petroleum, or gas industry.” The intent of this provision is to prevent industry employees and individuals with a sizable stake in the pipeline industry from serving as representatives from the general public, not prevent service from individuals who have pipeline, petroleum, or gas industry stock in the pipeline industry.

Section 21. Technical amendments.

Section 21 makes technical amendments to correct previous drafting errors in the existing legislation.

Section 22. Authorization of appropriations.

Section 22 authorizes appropriations for the Department of Transportation for grants for pipeline safety programs for the fiscal years 2003 through 2006.

Section 23. Inspections by direct assessment.

Section 23 requires the Secretary of Transportation to promulgate standards prescribing standards for inspections of a pipeline facility by direct assessment.

Section 24. Safe lane pipeline safety advisory committees.

Section 24 requires the Secretary of Transportation to respond within 90 days after receiving recommendations from advisory committees appointed by the Governor of any state.

Section 25. Pipeline bridge risk study.

Section 25 requires the Secretary of Transportation to conduct a study to determine whether cable-suspension pipeline bridges are structurally safe and to develop alternative mitigation measures that may only use funds specifically appropriated to carry this section.


Section 26 requires the Federal Energy Regulatory Commission, in consultation with the Department of Energy and the Department of Transportation, to conduct a study on the natural gas pipeline transmission network in New England and natural gas storage facilities associated with that network, and report to the relevant House and Senate Committees within a year of the date of enactment.

TAKEN FROM THE SPEAKER’S TABLE AND CONCURRED IN SENATE AMENDMENT

H.R. 5469, to amend title 17, United States Code, with respect to the statutory license for webcasting, and for other purposes.

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Webcaster Settlement Act of 2002.”

SEC. 2. FINDINGS.

Congress finds the following:

(1) Some small webcasters who did not participate in the copyright royalty panel proceeding leading to the July 8, 2002 order of the Librarian of Congress establishing rates and terms for certain digital performances and phonorecordings, as provided in part 261 of the Code of Federal Regulations (published in the Federal Register on July 8, 2002) (referred to in this section as “small webcasters”), have expressed reservations about the fee structure set forth in such order, and have expressed their desire for a fee based on a percentage of revenue.

(2) Congress has strongly encouraged representatives of copyright owners of sound recordings and representatives of the small webcasters to engage in negotiations to arrive at an agreement that would include a fee based on a percentage of revenue.

(3) The representatives have arrived at an agreement that they can accept in the ordinary and unique circumstances here presented, specifically as to the small webcasters, their belief in their inability to pay the fees due them by the small webcasters, their belief in their inability to pay the fees due them by the small webcasters on an expedited basis, and the strong encouragement of Congress to reach an accommodation with the small webcasters.

(4) The representatives have indicated that they do not believe the agreement provides for or in any way approximates fair or reasonable royalty rates and terms, or rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller.

(5) Congress has made no determination as to whether the agreement provides for or in any way approximates fair or reasonable royalty rates and terms, or rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller.

(6) Congress likewise has made no determination as to whether the July 8 order is reasonable or arbitrary, and nothing in this Act shall be taken into account by the United States Court of Appeals for the District of Columbia Circuit in its review of such order.

(7) It is, nevertheless, in the public interest for the parties to be able to enter into such an agreement without fear of liability for deviating from the fees and terms of the July 8 order, if it is clear that the agreement will not be admissible evidence or otherwise taken into account in any government proceeding involving the setting or adjustment of the royalties payable to copyright owners of sound recordings for public, non-commercial, non-profit webcastings of phonorecords or copies of such works, the determination of terms or conditions related thereto,
or the establishment of notice or recordkeeping requirements.

SEC. 3. SUSPENSION OF CERTAIN PAYMENTS.

(a) NONCOMMERCIAL WEBCASTERS.—

(1) IN GENERAL.—The payments to be made by noncommercial webcasters for the digital performance of sound recordings under section 114 of title 17, United States Code, and the making of ephemeral phonorecords under section 106(6) of title 17, United States Code, during the period beginning on October 28, 1998, and ending on May 31, 2003, which have not already been paid, shall not be collected prior to June 29, 2003.

(2) DEFINITION.—In this subsection, the term ‘‘noncommercial webcaster’’ has the meaning given that term in section 114(f)(5)(E)(ii) of title 17, United States Code, as added by section 4 of this Act.

(b) SMALL COMMERCIAL WEBCASTERS.—

(1) IN GENERAL.—The receiving agent may, in a writing signed by an authorized representative thereof, delay the obligation to pay any of 1 or more small commercial webcasters to make payments pursuant to sections 112 and 114 of title 17, United States Code, for a period determined by such entity to allow negotiations as permitted in section 4 of this Act, except that any such period shall not exceed 90 days.

(2) DEFINITIONS.—In this subsection—

(A) the term ‘‘webcaster’’ has the meaning given that term in sections 106(6) and 114 of title 17, United States Code, as added by section 4 of this Act; and

(B) the term ‘‘receiving agent’’ shall have the meaning given that term in section 262.12 of title 37, Code of Federal Regulations, as published in the Federal Register on July 8, 2002.

SEC. 4. AUTHORIZATION FOR SETTLEMENTS.

The payment to be made by any small commercial webcaster or noncommercial webcaster meeting the eligibility conditions of such agreement.

(‘‘C’’) Neither subparagraph (A) nor any provision of any agreement entered into pursuant to subparagraph (A) shall be enforceable as a rate structure, fees, terms, conditions, or notice and recordkeeping requirements set forth therein, shall be admissible as evidence in any administrative, judicial, or other proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in phonograph records or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements under this Act.

SEC. 5. DETERMINABILITY OF COSTS AND EXPENSES OF AGENTS AND DIRECT PAYMENT TO ARTISTS FOR ROYALTIES FOR DIGITAL TRANSMISSIONS OF SOUND RECORDINGS.

(a) FINDINGS.—Congress finds that—

(1) in the case of royalty payments from the licensing of digital transmissions of sound recordings under subsection (f) of section 114 of title 17, United States Code, the parties have voluntarily negotiated arrangements under which such payments shall be made directly to recording artists and the administrators of the accounts provided in subsection (g)(2) of this section;

(2) such voluntarily negotiated payment arrangements have been codified in regulations issued by the Librarian of Congress, and the fact that all of the interested parties have reached agreement, the voluntarily negotiated arrangements agreed to among the parties are being codified.

(b) DEDUCTIBILITY.—Section 114(g) of title 17, United States Code, is amended by adding after paragraph (2) the following:

(3) other regulations issued by the Librarian of Congress were inconsistent with the voluntarily negotiated arrangements by such parties concerning the deductibility of certain costs incurred in connection with such licensing and Congress is therefore restoring those terms as originally negotiated among the parties; and

(4) in light of the special circumstances described in this subsection, as duly created by the regulations issued by the Librarian of Congress, and the fact that all of the interested parties have reached agreement, the voluntarily negotiated arrangements agreed to among the parties are being codified.

(c) DIRECT PAYMENT TO ARTISTS.—Section 114(g)(2) of title 17, United States Code, is amended to read as follows:

(2) An agent designated to distribute receipts from the licensing of transmissions in accordance with subsection (f) may deduct from any of its receipts, prior to the distribution of such receipts to any person or entity entitled thereto other than copyright owners and performers who have elected to receive royalties from another designated agent and have notified such nonprofit agent in writing of such election, the reasonable costs of such agent incurred after November 1, 1995, in connection with the receipt, collection, distribution, and calculation of the royalties.

(3) Nothing in this subsection shall be deemed to create an obligation on the part of any agent designated to distribute receipts from the licensing of transmissions in accordance with subsection (f) to deduct from any of its receipts, prior to the distribution of such receipts to any person or entity entitled thereto other than copyright owners and performers who have elected to receive royalties from another designated agent and have notified such nonprofit agent in writing of such election, the reasonable costs of such agent incurred after November 1, 1995, in connection with the receipt, collection, distribution, and calculation of the royalties.

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artist or artists featured on such sound recording (or the persons conveying rights in the artists' performance in the sound recordings)."

SEC. 6. REPORT TO CONGRESS.

By late June 1, 2004, the Comptroller General of the United States, in consultation with the Register of Copyrights, shall conduct a study concerning the economic arrangements among small commercial webcasters covered by agreements entered into pursuant to section 114(f)(5)(A) of title 17, United States Code, as added by section 4 of this Act, and third parties, and the effect of those arrangements on royalty fees payable on a percentage of revenue or expense basis.

Mr. Berman. Mr. Speaker, I rise to support House adoption of the Senate substitute amendment to H.R. 5469. This legislation provides important assistance to noncommercial webcasters, small commercial webcasters, recording artists, and owners of sound recording copyrights.

Early last month, the House passed H.R. 5469 on voice vote under the suspension of the rules. The House, understanding that small commercial webcasters provided small commercial webcasters with a discount on the webcasting royalties they owed. The House-passed bill specifically stated that the rates and terms of the discount these webcasters would receive would not exceed the rate applicable to other small webcasters.

Unfortunately, H.R. 5469 was stalled in the Senate. Certain broadcasters expressed concern that the terms of the discount provided in H.R. 5469 would have a precedent-setting effect in future webcasting royalty-setting proceedings. Noncommercial webcasters expressed the concern that H.R. 5469 did not give them a discount on webcasting royalties, as it did for small commercial webcasters. The Senate decided to amend H.R. 5469 to address these concerns, and the bill before us today reflects those accommodations.

The Senate substitute delays the webcasting royalty obligations of noncommercial webcasters, which came due late last month, until June 20, 2003. The bill also allows the collecting agent to delay the royalty obligation owed by any 1 or more small commercial webcasters, the Senate substitute delegates the ability to establish an industry-wide discount to the collecting agent for copyright owners and recording artists. The underwriting of small webcasters and the Senate is that the collecting agent will not offer noncommercial and small commercial webcasters a royalty discount based on the terms and conditions set in the House-passed version.

In other words, the Congress expects that the collecting agent will offer noncommercial and small commercial webcasters the same deal represented by H.R. 5469.

There is no doubt that this approach is unusual. Unlike the typical statutory license rate-setting process, this approach does not involve any governmental entity in the rate-setting process, except for the Copyright Office's ministerial task of publishing those agreements in the Federal Register. This should not be considered a precedent or model for future legislative response to the unique circumstances surrounding the reaction to the rates set by the Librarian of Congress, the ensuing negotiations between copyright owners and webcasters, and the opposition H.R. 5469 generated in the Senate.

Again, I ask my colleagues to support the Senate substitute to H.R. 5469.

Mr. SENSENBRENNER. Mr. Speaker, on October 7, 2002, the House passed H.R. 5469, the "Small Webcaster Amendments Act of 2002." Under suspension of the Rules. Earlier this evening, the Senate passed a substitute version of the bill, which I urge the House to adopt by unanimous consent.

By way of background, H.R. 5469 as originally drafted was a result of the Librarian of Congress's decision regarding royalty rates that webcasters must pay to copyright owners for the performance of copyrighted works for six months beginning on October 20. At the time, the purpose of this delay was to ensure that all parties would receive the judicial process to which they are entitled under the law before the rate took effect.

H.R. 5469 placed a curb under the saddle of both the copyright holders and the small webcasters to conclude negotiations on these matters that began last summer. The parties negotiated around the clock, and we arrived at a deal that set new rates and payment terms, obviating the need for further legal or administrative intervention.

Following House passage of H.R. 5469, Senator HELMS expressed concerns regarding whether the actual agreement in the statute on future rate proceedings. As a result, and after further negotiations in the last two days, the parties developed the Helms substitute before us which makes the following changes:

(1) It contains findings section which explains the need for the legislation.

(2) It suspends the obligations of non-commercial webcasters, such as college radio stations, to pay copyright holders royalties owed until June 20, 2003. This will give both sides extra time to negotiate a new deal.

Under H.R. 5469 as originally passed by the House, SoundExchange, the non-profit entity which collects and distributes royalties owed copyright holders, is permitted to deduct its operating and legal expenses from collected fees. This is a move away from the actual agreement that set new rates and payment terms.

SoundExchange is authorized to negotiate an agreement on behalf of all copyright owners and performers with small webcasters. Affected small commercial webcasters will not pay royalties through December 15, 2002, which is intended to facilitate the implementation of a settlement identical to the terms set forth in the bill passed by the House.

The Comptroller General and the Register of Copyrights will develop a joint report for the House and Senate Committees on the Judiciary regarding the effect of "economic arrangements among small webcasters and third parties on royalties owed copyright holders."

Finally, Mr. Speaker, I would like to commend both the small webcasters and the copyright owners for their diligent efforts to reach an agreement. I understand that this is a complex and controversial issue and both sides met the challenge by continuing to negotiate in good faith.

H.R. 5469, as amended, is a good bill. It will ultimately accomplish the same goal as H.R. 5469 as passed by the House, only in a different way. I urge my colleagues to support the bill.

TAKEN FROM THE SPEAKER'S TABLE AND CONCURRED IN SENATE AMENDMENT

H.R. 3833, to facilitate the creation of a new, second-level Internet domain within the United States country code domain that will be used to develop material that promotes positive experiences for children and families using the Internet, provides a safe online environment for children, and helps prevent children from being exposed to harmful material on the Internet, and for other purposes.

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.
This act may be cited as the "Dot Kids Implementation and Efficiency Act of 2002".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the World Wide Web presents a stimulating and entertaining opportunity for children to learn, grow, and develop educationally and intellectually;

(2) Internet technology also makes available an enormous amount of material that is harmful to children, as studies indicate that a significant portion of all material available on the Internet is related to pornography;

(3) young children, if they use the World Wide Web for positive purposes, are often present—either mistakenly or intentionally—with material that is inappropriate for their age, which can be extremely frustrating for children, parents, and educators;

(4) exposure of children to material that is inappropriate to them, including pornography, can distort the education and development of the Nation's youth and represents a serious harm to American families that can lead to a host of other problems for children, including increased use of chat rooms, physical molestation, harassment, and legal and financial difficulties;

(5) young boys and girls, older teens, troubled youth, frequent Internet users, chat room participants, online risk takers, and those who communicate online with strangers are at greater risk for receiving unwanted sexual solicitation on the Internet;

(6) studies have shown that 19 percent of youth (ages 10 to 17) who used the Internet regularly were the targets of sexual solicitation, but less than 10 percent of the solicitations were reported to the police;

(7) children who come across illegal content should report it to the congressionally authorized CyberTipline, an online mechanism developed by the National Center for Missing and Exploited Children, for citizens to report sexual crimes against children;

(8) the CyberTipline has received more than 64,400 reports, including reports of child pornography, online enticement for sexual acts, child prostitution (outside the family), and child prostitution;

(9) although the computer software and hardware industries, and other related industries, have developed innovative ways to help parents and educators restrict material that is harmful to minors through parental control protections and self-regulation, to date such efforts have not been a national solution to the problem of minors accessing harmful material on the World Wide Web;

(10) the creation of a "green-light" area within the United States country code Internet domain, that will contain only content that is appropriate for children under the age of 13, is analogous to the creation of a children's section within a library and will promote the positive experiences of children and families in the United States; and
(ii) while custody, care, and nurture of the child reside first with the parent, the protection of the physical and psychological well-being of minors by shielding them from material that is harmful to them is a compelling governmental interest.

(b) PURPOSES.—The purposes of this Act are—

(1) to facilitate the creation of a second-level domain within the United States country code Internet domain for the location of material that is suitable for minors and not harmful to minors; and

(2) to ensure that the National Telecommunications and Information Administration oversees the creation of such a second-level domain and ensures the effective and efficient establishment and operation of the new domain.

SEC. 3. NTIA AUTHORITY.

Section 103(b)(3) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 902(b)(3)) is amended——

(1) in subparagraph (A), by striking “and” at the end;

(2) subparagraph (B), by striking the period at the end and inserting “; and”;

and

(3) by adding at the end the following new subparagraph:

“(C) shall assign to the NTIA responsibility for providing for the establishment, and overseeing operation, of a second-level Internet domain within the United States country code domain in accordance with, the requirements under the NTIA, during the 90-day period after selection of a successor registry or to prevent the initial registry of the new domain any content that is not in accordance with the standards and requirements of the registry.

(4) Rules and procedures for enforcement and oversight of the NTIA’s responsibility that the new domain provides access to content that is not in accordance with the standards and requirements of the registry.

(5) A process for removing from the new domain any content that is not in accordance with the standards and requirements of the registry.

(6) A process to provide registrants to the new domain with an opportunity for a prompt, expedient, and impartial dispute resolution process regarding any material of the registrant excluded from the new domain.

(7) Continuous and uninterrupted service for the new domain during any transition to a new registry selected to operate and maintain new domain or the United States country code domain.

(8) Procedures and mechanisms to promote the accuracy of contact information submitted by registrants and retained by registrars in the new domain.

(9) Operationality of the new domain not later than one year after the date of the enactment of the Dot Kids Implementation and Efficiency Act of 2002.

(10) Written agreements with registrars, which shall require registrars to enter into written agreements with registrants, to prohibit hyperlinks in the new domain that take new domain users outside of the new domain.

(12) Any other action that the NTIA considers necessary to establish, operate, or maintain the new domain in accordance with the purposes of this section.

(13) Written agreements with registrars, which shall require registrars to enter into written agreements with registrants, to prohibit two-way and multiuser interactive services in the new domain, unless the registrant certifies to the registrar that such service will be offered in compliance with the content standards established pursuant to paragraph (1) and is designed to reduce the risk of exploitation of minors using such two-way and multiuser interactive services.

(c) REGISTRY.

(1) Initial Registry.—The NTIA shall not enter into any contract for operating and maintaining the United States country code Internet domain unless the initial registry agrees, during the 90-day period beginning upon entry into force of the United States country code Internet domain unless the initial registry agrees, during the 90-day period beginning upon entry into force of the Dot Kids Implementation and Efficiency Act of 2002, to carry out, and to operate the new domain in accordance with the content standards established pursuant to subsection (c).

Nothing in this subsection shall be construed to prevent the initial registry of the United States country code Internet domain from participating in the NTIA’s process for selecting a successor registry or to prevent the NTIA from awarding, to the initial registry, the contract to be successor registry subject to the requirements of paragraph (2).

(2) Successor Registries.—The NTIA shall not enter into any contract for operating and maintaining the United States country code Internet domain with any successor registry unless such registry enters into an agreement with the NTIA, during the 90-day period after selection of such registry, that provides for the registry to carry out, and the new domain to operate in accordance with, the requirements under subsection (c).

(c) REQUIREMENTS OF NEW DOMAIN.

The registry selected to operate and maintain the new domain shall be subject to the following requirements:

(1) Written content standards for the new domain, except that the NTIA shall not have any authority with respect to provision of content standards for the new domain.

(2) Written agreements with each registrar for the new domain that require that use of the new domain is in accordance with the standards and requirements of the registry.

(3) Written agreements with registrars, which shall require registrars to enter into written agreements with registrants, to permit the new domain in accordance with the standards and requirements of the registry.

(4) Rules and procedures for enforcement and oversight of the NTIA’s responsibility that the new domain provides access to content that is not in accordance with the standards and requirements of the registry.

(5) A process for removing from the new domain any content that is not in accordance with the standards and requirements of the registry.

(6) A process to provide registrants to the new domain with an opportunity for a prompt, expedient, and impartial dispute resolution process regarding any material of the registrant excluded from the new domain.

(7) Continuous and uninterrupted service for the new domain during any transition to a new registry selected to operate and maintain new domain or the United States country code domain.

(8) Procedures and mechanisms to promote the accuracy of contact information submitted by registrants and retained by registrars in the new domain.

(9) Operationality of the new domain not later than one year after the date of the enactment of the Dot Kids Implementation and Efficiency Act of 2002.

(10) Written agreements with registrars, which shall require registrars to enter into written agreements with registrants, to prohibit hyperlinks in the new domain that take new domain users outside of the new domain.

(12) Any other action that the NTIA considers necessary to establish, operate, or maintain the new domain in accordance with the purposes of this section.

(d) OPTION PERIODS FOR INITIAL REGISTRY.

The NTIA shall not enter into the option periods available under the contract between the NTIA and the initial registry to operate and maintain the United States country code Internet domain unless the initial registry agrees, during the 90-day period beginning upon entry into force of the Dot Kids Implementation and Efficiency Act of 2002, to carry out, and to operate the new domain in accordance with the content standards established pursuant to subsection (c).

Nothing in this section shall preempt or alter the NTIA’s authority to terminate such contract for the operation of the United States country code Internet domain for cause or for convenience.

(e) TREATMENT OF REGISTRY AND OTHER ENTITIES.

(1) IN GENERAL.—Only to the extent that such entities carry out functions under this section, the following entities are deemed to be interactive computer services for purposes of section 230(c) of the Communications Act of 1934 (47 U.S.C. 230(c)):

(A) The registry that operates and maintains the new domain.

(B) Any entity that contracts with such registry to carry out functions to ensure that content accessed through the new domain complies with the limitations applicable to the new domain.

(C) Any registrar for the registry of the new domain that is operating in compliance with its agreement with the registry.

(2) SAVINGS PROVISION.—Nothing in paragraph (1) shall be construed to affect the applicability of any other provision of title II of the Communications Act of 1934 to the entities covered by subparagraph (A), (B), or (C) of paragraph (1).

(f) EDUCATION.—The NTIA shall carry out a program to publicize the availability of the new domain and to educate the parents of minors regarding the process for utilizing the new domain and for utilizing and overseeing the Internet and software technologies that provide for filtering or blocking. The program under this subsection shall be commenced not later than 30 days after the date that the new domain first becomes operational and accessible by the public.

(g) COORDINATION WITH FEDERAL GOVERNMENT.—The registry selected to operate and maintain the new domain shall—

(1) consult with appropriate agencies of the Federal Government regarding procedures and actions to prevent the new domain from being targeted by adults and other children for predatory behavior, exploitation, or illegal actions; and

(2) based upon the consultations conducted pursuant to paragraph (1), establish such procedures and take such actions as the registry may deem necessary to prevent such targeting.

The consultations, procedures, and actions required under this subsection shall be commenced not later than 30 days after the date that the new domain first becomes operational and accessible by the public.

(h) COMPLIANCE REPORT.—The registry shall prepare, on an annual basis, a report on the registry’s monitoring and enforcement procedures for the new domain. The registry shall submit each such report, setting forth the results of the review of its monitoring and enforcement procedures for the new domain, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(i) SUSPENSION OF NEW DOMAIN.—If the NTIA finds, pursuant to its own review or upon a petition filed with the NTIA, that the new domain is not serving its intended purpose, the NTIA shall instruct the registry to suspend operation of the new domain until such time as the NTIA determines that the new domain can be operated as intended.

(j) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) HARMFUL TO MINORS.—Any material that does not enter into any contract for operating and maintaining the United States country code Internet domain unless the initial registry agrees, during the 90-day period beginning upon entry into force of the Dot Kids Implementation and Efficiency Act of 2002, to carry out, and to operate the new domain in accordance with the content standards established pursuant to subsection (c).

(2) Minor.—The term ‘minor’ means any person under 13 years of age.

(3) Registry.—The term ‘registry’ means the registry selected to operate and maintain the United States country code Internet domain.

(4) Successor Registry.—The term ‘successor registry’ means any entity that enters into contract with the NTIA to operate and maintain the United States country code Internet domain, and any option periods under such contract, that was signed on October 26, 2001.

(5) SUITABLE FOR MINORS.—The term ‘suitable for minors’ means, with respect to material, that—

(A) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, that it is designed to appeal to, or is designed or intended to appeal to, minors; and

(B) the material depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and

(C) taken as a whole, the material lacks serious, literary, artistic, political, or scientific value for minors.
November 14, 2002

H8998

CONGRESSIONAL RECORD—HOUSE

Telecommunications Bill of Any Significance for

Mr. EWING. Mr. Speaker, it is with great pride that I rise today upon the passage of H.R. 3833, The “Dot Kids Implementation and Efficiency Act of 2002.” This bill creates a subdomain on the “.us” country-code that will store only child-friendly sites.

I would like to thank Senators ENgien and Dorgan and Congressmen Dingell and everyone involved for the excellence of this achievement. As many parents today know, the Internet often appears to be a veritable jungle of web sites. When a child logs on to search for games, entertainment benefits of the Internet, search engines often turn up pages for the kids laden with pornography, violence or other content that is simply not appropriate for young children. To give children their own playground on the Internet, and to facilitate the easier browsing and filtering of content that many parents desire, we are poised now to enact H.R. 3833, the “Dot Kids Implementation and Efficiency Act.”

This bill directs the Department of Commerce, through the National Telecommunications and Information Administration (NTIA) or another entity, to define the “.kids” domain by making it a secondary domain under our nation’s country code top level domain, which is “.us.” The Department of Commerce awarded a free contract last October to authorize private sector management and commercialization of the “.kids” domain.

I opposed the awarding of a free contract to a company to essentially manage and profit from a public asset. We only have one country code and the Department of Commerce should have ensured that the broader public interest was incorporated in any contract to manage the dot U.S. domain, or, as I indicated in a letter to the Department of Commerce in the summer of 2001, the contract should have been auctioned to the highest qualified bidder. We should be long past the time in this country of giving away public assets to private companies to profit from for free. Nevertheless, the DoC awarded the dot U.S. contract to NeuStar in October of 2001, and Congress must now subsequently ensure that future contract awards reflect the public interest.

The proposed “.kids” domain will be a cyberspace sanctuary for content that is suitable for kids and will be an area devoted of content that is harmful to such minors.

I want to address at this point, very briefly, some of the free speech concerns that any endeavor that any devisor of this type will inevitably raise. First let me emphasize how this approach departs from previous Congressional activity in this policy area. First, the proposed legislation will not subject all of the Internet communications to “harmful to minors” standard. If you’re in Tennessee, Taiwan, or Timbuktu you can publish or speak any content you want on the Internet. This proposal doesn’t affect you’re ability to do so on a “.com,” “.net,” “.org,” or anywhere else. This proposal now only addresses a subset of Internet commerce—the “.us” space.

Moreover, it doesn’t even curtail speech throughout the entirety of the “.us” country code domain. If you’re in Providence, Rhode Island or some other place, you are free to exercise your constitutional rights and this legislation contains no proposal that would subject anyone utilizing the “.us” space to a standard suitable only for kids. Speech more appropriately for adults or teenagers will not be affected by this bill and can appear elsewhere in the “.us” domain.

The bill solely stipulates that if you want to operate in the “.kids-dot US.” area—in other words, a mere subset of the “.us” country code domain—you have entered a kid-friendly zone—a green light district if you will—where the content is suitable for children 12 and under. The “.kids” proposal is not a censoring Internet content per se. Rather, it is crafted to help organize content more appropriate for kids in a safe and secure cyber-zone, where the risk of young children clicking on a link of that zone’s unsuitable content, or being preyed upon or exploited online by adults posing as kids, is vastly diminished. Organizing kid-friendly content in this manner will enhance the effectiveness of filtering software and may better enable parents to set their children’s browsers so that their kids only surf within the “.kids” domain.

And I also want to emphasize that use of the “.kids” domain is not compulsory. Signing up for a “.kids” domain—or parents sending their kids to websites in that location—remains completely voluntary and the free choice of both content speakers and parents. Finally, I want to note that this bill is not an attempt to diminish or thwart the many laudable private sector efforts to create new and alternative ways for kids to have a safe and educational online experience. Our efforts here today are meant to supplement, not supplant, initiatives underway elsewhere by ensuring that our “.us” country code reflects our public interest goals as a society in away that hopefully can harness the best of advance technology for kids across the country.

Thank you, Mr. Speaker, and I again want to thank Mr. Shimkus, Chairman Tauzin, Mr. Dingell, and Chairman Upton for their work on the bill.

TAKEN FROM THE SPEAKER’S TABLE AND AMENDED

S. 2337, to amend Title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education benefits, housing benefits, access for veterans, to improve the administration of benefits for veterans, and for other purposes.

STRIKE all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Veterans Benefits Act of 2002.”
TITLE I—COMPENSATION AND BENEFITS

Sec. 101. Retention of CHAMPVA for surviving spouses remarrying after age 55.

Sec. 102. Clarification of entitlement to special monthly compensation for women veterans who have service-connected loss of breast tissue.

Sec. 103. Specification of hearing loss required for compensation for hearing loss in paired organs.

Sec. 104. Assessment of acoustic trauma associated with military service from World War II to present.

TITLE II—MEMORIAL AFFAIRS

Sec. 201. Prohibition on certain additional benefits for persons committing capital crimes.

Sec. 202. Procedures for disqualification of persons committing capital crimes for interim or memorialization in national cemeteries.

Sec. 203. Application of Department of Veterans Affairs benefit for Government markers for marked graves of veterans at private cemeteries to veterans dying on or after September 11, 2001.

Sec. 204. Authorization of placement of a memorial in Arlington National Cemetery honoring World War II veterans who fought in the Battle of the Bulge.

TITLE III—OTHER MATTERS

Sec. 301. Increase in aggregate annual amount available for State approving agencies for administrative expenses for fiscal years 2003 through 2007.

Sec. 302. Authority for veterans’ mortgage Life Insurance to be carried beyond age 70.

Sec. 303. Authority to guarantee hybrid adjustable-rate mortgages.

Sec. 304. Increase in amount payable as Medal of Honor special pension.

Sec. 305. Exemptions from requirements under the Soldiers’ and Sailors’ Civil Relief Act of 1940 to National Guard members called to active duty under title 32, United States Code.

Sec. 306. Extension of income verification authority.

Sec. 307. Fee for loan assumption.

Sec. 308. Technical and clarifying amendments.

Sec. 309. Codification of cost-of-living adjustment provided in Public Law 107-247.

TITLE IV—JUDICIAL MATTERS

Sec. 401. Standard for reversal by Court of Appeals for Veterans Claims of erroneous finding of fact by Board of Veterans’ Appeals.

Sec. 402. Review by Court of Appeals for the Federal Circuit of decisions of law of Court of Appeals for Veterans Claims.

Sec. 403. Authority of Court of Appeals for Veterans Claims to award fees under Equal Access to Justice Act for non-attorney practitioners.

EXCEPT as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—COMPENSATION AND BENEFITS

SEC. 101. RETENTION OF CHAMPVA FOR SURVIVING SPOUSES REMARRYING AFTER AGE 55.

(a) EXCEPTION TO TERMINATION OF BENEFITS UPON REMARRIAGE.—Paragraph (2) of section 103(b) is amended—

(1) by inserting ‘‘(A) after ‘‘(2);’’ and

(2) by adding at the end the following:

(B) The remarriage after age 55 of the surviving spouse of a veteran shall not bar the furnishing of benefits under section 1781 of this title to such person as the surviving spouse of the veteran.

(b) APPLICATION FOR BENEFITS.—In the case of an individual who but for having remarried would be eligible for medical care under section 1781 of title 38, United States Code, and whose remarriage was before the date of the enactment of this Act and after the individual had attained age 55, the individual shall be eligible for such medical care by reason of subsection (a) only if an application for such medical care is received by the Secretary of Veterans Affairs during the one-year period ending on the effective date specified in subsection (c).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 60 days after the date of the enactment of this Act.

SEC. 102. CLARIFICATION OF ENTITLEMENT TO SPECIAL MONTHLY COMPENSATION FOR WOMEN VETERANS WHO HAVE SERVICE-CONNECTED LOSS OF BREAST TISSUE.

Section 1114 of title 38, United States Code, is amended by striking—

(1) by striking ‘‘or both breasts (including loss by mastectomy)’’ and inserting ‘‘25 percent or more of tissue from a single breast or both breasts in combination (including loss by mastectomy or partial mastectomy) or has received radiation treatment of breast tissue’’;

(2) by striking ‘‘10 percent or more’’ and inserting ‘‘a degree of 10 percent or more’’;

(3) by striking ‘‘obstructive disorder’’ and inserting ‘‘obstructive or restrictive disorder’’;

(4) by inserting at the end the following:

(5) by striking ‘‘or’’ and inserting ‘‘and’’;

SEC. 103. SPECIFICATION OF HEARING LOSS REQUIRING COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS.

Section 1160 of title 38, United States Code, is amended—

(1) by striking—

‘‘(2) by striking...

‘‘(3) by striking—

‘‘(2) by striking...

‘‘(4) by striking...

‘‘(5) by striking...

‘‘(6) by striking...

‘‘(7) by striking...

(2) by adding at the end the following:

‘‘(B) Of the decisions referred to in subparagraph (A)—

(i) the number in which compensation was awarded, and the number in which compensation was denied, set forth by fiscal year; and

(ii) the total amount of disability compensation paid on such claims during each such fiscal year.

(3) by adding at the end the following:

‘‘(C) The total cost to the Department of Veterans Affairs of adjudicating the claims referred to in subparagraph (A), set forth in terms of full-time employee equivalents (FTEs).

(4) by adding at the end the following:

‘‘(D) The total number of veterans who sought treatment in Department of Veterans Affairs health care facilities during fiscal years specified in subparagraph (A) for hearing-related disorders, set forth by the number of veterans furnished health care and the cost of furnishing such hearing aids.

TITLE II—MEMORIAL AFFAIRS

SEC. 201. PROHIBITION ON CERTAIN ADDITIONAL BENEFITS FOR PERSONS COMMITTING CAPITAL CRIMES.

(a) PRESIDENTIAL MEMORIAL CERTIFICATE.—Section 112 is amended by adding at the end the following new subsection—

‘‘(c) A certificate may not be furnished under the program under subsection (a) on
November 14, 2002

SEC. 304. INCREASE IN AMOUNT PAYABLE AS MEDAL OF HONOR SPECIAL PENSION.

(a) INCREASE IN AMOUNT.—Subsection (a) of section 1562 is amended by striking "$5000" and inserting "$1,000, as adjusted from time to time under subsection (b)"

(b) ANNUAL ADJUSTMENT.—That section is further amended by adding at the end the following new subsection:

"(5) As of December 1 each year, the Secretary shall increase the amount of monthly special pension payable under subsection (a) as of November 30 of such year by the percentage determined under section 1561 which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq) were increased for the first day of such year as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i))."

(c) PAYMENT OF LUMP SUM FOR PERIOD BETWEEN ACT OF VALOR AND COMMENCEMENT OF SPECIAL PENSION.—That section is further amended by adding after subsection (c), as added by subsection (b) of this section, the following new subsection:

"(5) The Secretary shall pay, in a lump sum, to each person who is in receipt of special pension payable under this section an amount equal to the total amount of special pension that the person would have received during the period beginning the first day of the first month beginning after the date of the act for which the person was awarded the Medal of Honor and ending the last day of the month preceding the month in which the person's special pension in fact commenced.

"(6) For each month of a period referred to in paragraph (5), the person's special pension payable under this section shall be payable only if the person would have been entitled to payment of special pension for such month under laws for eligibility for special pension (with the exception of the eligibility law requiring a person to have been awarded a Medal of Honor in effect at the beginning of such month).

(d) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall take effect on September 1, 2003.

(2) The Secretary of Veterans Affairs shall not make any adjustment under subsection (e) of section 1562 of title 38, United States Code, as added by subsection (c) of this section, before October 1, 2003.

SEC. 305. EXTENSION OF PROTECTIONS UNDER THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 TO NATIONAL GUARD MEMBERS CALLED TO ACTIVE DUTY UNDER TITLE 32, UNITED STATES CODE.

Section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 511(1)) is amended—

(1) in the first sentence—

(A) by striking "and all" and inserting "all"; and

(B) by inserting before the period the following:

"and, in the case of a member of the National Guard, shall include service under a call to active service authorized by the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of section 502(c)(1), and any period declared by the President and supported by Federal funds";
Section 3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry.

(b) The table of sections at the beginning of chapter 30 is amended by striking the item relating to section 3014A and inserting the following new item:

“§3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry.”.

(c) Source of Funds for Increased Usage of Montgomery GI Bill Entitlement Under Entitlement Transfer Authority.—(1) Section 3035(b) is amended—

(A) in paragraph (1), by striking “paragraphs (2) and (3) of this subsection, and inserting “paragraphs (2), (3), and (4),” and

(B) by adding at the end the following new paragraph:

“Payments attributable to the increased usage of benefits as a result of transfers of entitlement to basic educational assistance under section 3202 of this title shall be made from the Department of Defense Education Benefits Fund established under section 2006 of title 10 or from appropriations made to the Department of Transportation, as appropriate.”.

(2) The amendments made by this subsection shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107), to which such amendments relate.

(d) Licensing or Certification Tests.—Section 368(b)(1)(B) is amended by striking “the test” and inserting “such test, or a test to certify or license in a similar or related occupation.”.

(e) Eligibility of Certain Additional Vietnam Era Veterans for Benefits.—Section 3011(a)(1)(C)(i) is amended by striking “on or after clause (ix).” and inserting “after clause (ix) and inserting

“(9) by striking section 3018C(e)(2)(B) and inserting

“(3) by striking paragraph (4) and inserting “paragraph (4)” and

“(2) the amendments made by this subsection shall take effect on November 1, 2000.”

(f) Loan Fees.—(1) Section 3705(e)(2)(A) is amended by striking “§3729(b)(2)(I)” and inserting “§3729(b)(2)(I)”.

(2) The amendments made by paragraph (1) shall take effect as if included in the enactment of section 402 of the Veterans Benefits and Health Care Improvement Act of 2000 (Public Law 106–419; 114 Stat. 1861).

(g) Additional Miscellaneous Technical Amendments to Title 38, United States Code.—(1)(A) The tables of chapters preceding part I and at the beginning of part IV are each amended by striking “§501” in the item relating to chapter 51 and inserting “§501”.

(B) The tables of parts preceding part I is amended by striking “the date of the enactment of this section” and inserting “the date of the enactment of this paragraph” and inserting “§501”.

(2) Section 107(d)(2) is amended by striking “the date of the enactment of this subsection” and inserting “November 1, 2000.”.

(3) Section 1701(10)(A) is amended by striking “the dates of the enactment of the Veterans’ Millennium Health Care and Benefits Act” and inserting “November 14, 2002”.

(4) Section 1705(c)(1) is amended by striking “Effective on October 1, 1998, the Secretary and inserting “The Secretary”.

(5) Section 1707(a) is amended by inserting “§42 U.S.C. 14401 et seq.” before the period at the end.

(6) Section 1710(e)(1)(D) is amended by striking “the date of the enactment of this subparagraph” and inserting “November 11, 1998”.

(7) Section 1729(b)(2)(I)(b) is amended by striking “the date of the enactment of this section” and inserting “November 30, 1999.”.

(8) Section 1781(d) is amended—

(A) in paragraph (1)(B)(i), by striking “as of the date” and all that follows through “of May 2001” and inserting “as of June 5, 2001”; and

(B) in paragraph (4), by striking “paragraph” and inserting “subparagraph”.

(9) Section 3013(c)(2)(B) is amended by striking the comma after “April”.

(10) Section 3033(a)(3) is amended by striking “the date of the enactment of this paragraph” and inserting “December 27, 2001”.

(11) Section 3485(a)(4) is amended in subparagraphs (A), (C), and (F), by striking “the five-year period beginning the date of the enactment of the Veterans Education and Benefits Expansion Act of 2001” and inserting “the period preceding December 27, 2001”.

(12) Section 3753(b)(2)(B) is amended—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraphs (C), (D), (E), and (F) as subparagraphs (B) (C), (D), and (E), respectively.

(13) Section 7315(a) is amended by inserting “Veterans Health” in the first sentence after “in the”.

(14) Public Law 107–103.—Effective as of December 27, 2001, and as if included therein as originally enacted, section 103(c) of the Veterans Benefits and Health Care Improvement Act of 2001 (Public Law 107–103; 115 Stat. 979) is amended by inserting closing quotation marks at the end of the text inserted by the amendment made by paragraph (2).

(i) Public Law 102–86.—Section 403(c) of the Veterans’ Benefits Programs Improvement Act of 1991 (Public Law 102–424) is amended by striking “§321” and all that follows through “and 484)” and inserting “subchapter II of chapter 5 of title 40, United States Code, relating to chapter 51 of title 38, United States Code”.

Section 2906. Codification of Cost-of-Living Adjustments Provided in Public Law 107–107.—

(a) Veterans’ Disability Compensation.—Section 1114 is amended—

(1) by striking “$1041” in subsection (a) and inserting “$1040”;

(2) by striking “$199” in subsection (b) and inserting “$201”;

(3) by striking “$398” in subsection (c) and inserting “$400”;

(4) by striking “$439” in subsection (d) and inserting “$446”;

(5) by striking “$625” in subsection (e) and inserting “$623”;

(6) by striking “$790” in subsection (f) and inserting “$801”;

(7) by striking “$995” in subsection (g) and inserting “$1,008”;

(8) by striking “$1,155” in subsection (h) and inserting “$1,171”;

(9) by striking “$1,290” in subsection (i) and inserting “$1,317”;

(10) by striking “$2,163” in subsection (j) and inserting “$2,193”;

(11) by striking subsection (k)—

(A) by striking “§80” both places it appears and inserting “§81”; and

(B) by striking “$2,691” and “$3,775” and inserting “$2,728” and “$3,827”, respectively;

(12) by striking “$2,691” in subsection (l) and inserting “$2,728”;

(13) by striking “$2,960” in subsection (m) and inserting “$3,010”;

(14) by striking “$3,378” in subsection (n) and inserting “$3,425”;

(15) by striking “$3,775” each place it appears in subsections (o) and (p) and inserting “$3,827”;

(16) by striking “$1,621” and “$2,413” in subsection (r) and inserting “$1,643” and “$2,446”, respectively; and

(17) by striking “$2,422” in subsection (s) and inserting “$2,455”.

(b) Additional Compensation for Dependents.—Section 1115 is amended—

(1) by striking “§124” in subparagraph (A) and inserting “§125”;

(2) by striking “§213” in subparagraph (B) and inserting “§215”;

(3) by striking “§41” in subparagraph (C) and inserting “§85”;

(4) by striking “§100” in subparagraph (D) and inserting “§101”;

(5) by striking “§234” in subparagraph (E) and inserting “§237”;

(6) by striking “§196” in subparagraph (F) and inserting “§199”;

(c) Clothing Allowance for Certain Disabled Veterans.—Section 162 is amended by striking “§580” and inserting “§583”.

(d) Dependency and Indemnity Compensation for Surviving Spouses.—(1) Section 131(a) is amended—

(A) by striking “$935” in paragraph (1) and inserting “$946” and

(B) by striking “$202” in paragraph (2) and inserting “$204”.

(2) The table in section 131(a)(3) is amended to read as follows:

<table>
<thead>
<tr>
<th>Grade</th>
<th>Monthly rate</th>
<th>Pay grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>W-4</td>
<td>$948</td>
<td>E-1</td>
</tr>
<tr>
<td>O-1</td>
<td>$984</td>
<td>E-2</td>
</tr>
<tr>
<td>O-2</td>
<td>$984</td>
<td>E-3</td>
</tr>
<tr>
<td>O-3</td>
<td>$1,035</td>
<td>E-4</td>
</tr>
</tbody>
</table>
E-4 ..... 948 O-3 ..... 1,107
E-5 ..... 948 O-4 ..... 1,171
E-6 ..... 948 O-5 ..... 1,289
E-7 ..... 980 O-6 ..... 1,453
E-8 ..... 1,055 O-7 ..... 1,570
E-9 ..... 1,080 O-8 ..... 1,722
W-1 ..... 1,001 O-9 ..... 1,843
W-2 ..... 1,042 O-10 ..... 2,021

If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse’s rate shall be $1,165.

If the veteran served as Chairman or Vice-Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Chief of Staff of the Navy, or Commandant of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse’s rate shall be $2,168.

(3) Section 1311(b) is amended by striking "$334" and inserting "$374".

(4) Section 1311(c) is amended by striking "$334" and inserting "$374".

(5) Section 1311(d) is amended by striking "$112" and inserting "$131".

(e) DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.—(1) Section 1313(a) is amended—

(A) by striking "$397" in paragraph (1) and inserting "$402";

(B) by striking "$571" in paragraph (2) and inserting "$576";

(C) by striking "$742" in paragraph (3) and inserting "$752"; and

(D) by striking "$143" and "$145" in paragraphs (4) and (5) and inserting "$143" and "$145", respectively.

(2) Section 1314 is amended—

(A) by striking "$324" in subsection (a) and inserting "$327";

(B) by striking "$397" in subsection (b) and inserting "$402";

(C) by striking "$199" in subsection (c) and inserting "$201".

TITLE IV—JUDICIAL MATTERS

SEC. 401. STANDARD FOR REVERSAL BY COURT OF APPEALS FOR VETERANS CLAIMS OF ERRONEOUS FINDING OF FACT BY BOARD OF VETERANS’ APPEALS.

(a) STANDARD FOR REVERSAL.—Paragraph (4) of subsection (a) of section 7261 is amended—

(1) by inserting “adverse to the claimant” after “material fact”; and

(2) by inserting “or reverse” after “and set aside”.

(b) REQUIREMENTS FOR REVIEW.—Subsection (b) of that section is amended to read as follows:

“(b) In making the determinations under subsection (a), the Court shall review the record of the proceedings before the Secretary and the Board of Veterans’ Appeals pursuant to section 7252(b) of this title and shall—

“(1) take due account of the Secretary’s application of section 5107(b) of this title; and

“(2) take due account of the rule of prejudicial error.

(c) APPLICABILITY.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) The amendments made by this section shall apply with respect to any case pending for decision before the United States Court of Appeals for Veterans Claims other than a case in which a decision has been entered before the date of the enactment of this Act.

SEC. 402. REVIEW BY COURT OF APPEALS FOR VETERANS CLAIMS OF DECISIONS OF LAW OF COURT OF APPEALS FOR VETERANS CLAIMS.

(a) REVIEW.—Section 7292(a) is amended by inserting “for judicial review of veterans claims” before “of law or of” in the first sentence after “the validity of”.

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply with respect to any appeal—

(1) filed with the United States Court of Appeals for the Federal Circuit on or after the date of the enactment of this Act; or

(2) pending with the United States Court of Appeals for the Federal Circuit as of the date of the enactment of this Act.

The amendments made by this section shall take effect on the date of enactment of this Act.

Amendment to the title of S. 2237

Amend the title so as to read: “An Act to amend title 38, United States Code, to improve the administration of benefits for veterans, to improve the judicial review of veterans claims, to improve the administration of benefits for veterans, to make improvements in procedures relating to judicial review of veterans’ claims for benefits, and for other purposes.”

Mr. SIMPSON. Mr. Speaker, I rise in strong support for S. 2237, the Veterans Benefits Act of 2002. This sweeping measure encompasses enhancements to veterans’ compensation, pension, insurance and home loan benefits, among other matters.

The Veterans Benefits Act of 2002 compromises provisions included in S. 2237 and five House bills previously considered in this body. I will highlight a few of the provisions:

I am especially pleased that we are able to extend VA health care eligibility to surviving spouses who remarry after age 55. Under current law, a surviving spouse is not entitled to this benefit while married. As I explained to Ms. Blackwell following her testimony before our subcommittee, I wish we had the means at this time to be more generous to these deserving spouses. However, as the chairman has indicated, this is a first step in restoring entitlement to the host of benefits these women and men must give up when they remarry later in life. I thank Mike BILIRAKIS for his leadership on this issue.

The bill also includes modest increases in funding for State approving agencies given the additional statutory duties SAAEs now perform in maintaining the integrity of servicemembers and veterans’ education and training programs. These new funding levels are $14 million for fiscal year 2003, $18 million for fiscal year 2004, $18 million for fiscal year 2005, $19 million for fiscal year 2006, and $19 million for fiscal year 2007.

I especially look forward to an aggressive initiative by SAAEs seeking out and approving for veterans’ training programs based on job training, and apprenticeship opportunities across the country. Our veterans use VA educational assistance programs for OJT and apprenticeship is very limited. Lastly, I agree with Chairman SMITH; VA’s OJT apprentice program largely is still based on the original World War II model. Congress has some serious work to do in updating this program next year.

S. 2237, as amended, provides coverage under the Soldiers’ and Sailors’ Civil Relief Act to members of the National Guard who are called to active service for more than 30 consecutive days to respond to a national emergency. I recognize LANE EVANS for his work on this proposal.

The bill also increases the Medal of Honor special pension from $600 to $1,000 per month. I am pleased we are able to recognize, albeit in a small way, our nation’s real heroes.

S. 2237, as amended, authorizes the Secretary of the Army to place a new memorial at Arlington National Cemetery in honor of veterans who fought in the Battle of the Bulge of World War II, one of the greatest land battles of that war.

In addition, S. 2237 provides enhancements to existing authorities which provide compensation to women veterans and veterans with hearing loss.

Mr. Speaker, we have worked with the Senate on this bill for many months, and I’m proud of the outcome. Many veterans and their survivors will benefit.

I must give due recognition to the Chairman and Ranking Member, CHRIS SMITH and LANE EVANS, respectively, for their unwavering leadership. During the 107th Congress, this committee has brought to the floor 23 bills, all of which passed the House overwhelmingly. I must also thank my good friend, the Ranking Member of the Benefits Subcommittee, SILVESTRE REYES.

Mr. Speaker, I urge my colleagues to support S. 2237, this final veterans package of the 107th Congress.

Mr. EVANS. Mr. Speaker, I rise in strong support of the bill, S. 2237, as agreed to by both the House and the Senate. This bill improves compensation benefits for hearing disabled veterans and for women veterans, extends protection under the Soldiers’ and Sailors’ Civil Relief Act to the National Guard and provides improvements to the judicial review of claims for veterans benefits.

The agreement before the House is the result of the efforts of many people on both sides of the aisle. I thank our Chairman, CHRIS SMITH, for his determined and effective leadership. I also thank other Members of our House Committee; the leadership of the Veterans Affairs Committee in the other body and, of course, the staff of our House Committee who have worked long and hard on this legislation. In particular, I thank Mary Ellen McCarthy and Geoffrey Collier for their untiring efforts.

S. 2237 incorporates provisions from a number of bills passed by the House. The Veterans Benefits Act of 2002 will allow surviving spouses who remarry after age 55 to retain CHAMPVA health insurance benefits. Mr. Speaker, I was honored by the Gold Star Wives of America for my advocacy on behalf of surviving spouses of veterans. While I am pleased that these spouses, like civil service surviving spouses will be able to retain health insurance benefits, I am extremely disappointed that the provision allowing Dependability and Indemnity Compensation (DIC) recipients to remarry after age 65 and retain
In May of this year, the House considered and passed H.R. 4085, the Veterans and Survivors Benefits Expansion Act. There were three major provisions in that bill: (1) the annual cost-of-living adjustment for disabled veterans and the survivors eligible for dependency and indemnity compensation; (2) a revision to the burial benefits so that surviving spouses of veterans who died of service-related causes could retain their eligibility for veterans’ benefit even if they remarried after age 65; and (3) a reduction in the loan fees payable by reservists who use the VA home loan program.

The Senate stripped all but the COLA from H.R. 4085 at the end of September and returned it to the House. We agreed to the clean COLA bill, which was signed by President Bush and is Public Law 107–247.

The Senate also sent us a benefits bill, S. 2237, which has become the vehicle for the compromises worked out by the two committees for the provisions originally contained in H.R. 4085 and a number of provisions contained in the Senate bill passed last month.

Because of our current situation, the committees found themselves forced to offset virtually all of the PAYGO costs associated with the bill. The Senate bill had basically none of the provisions originally contained in H.R. 4085. Instead, it proposed to expand eligibility for serving veterans for survivors’ loss and allow veterans to obtain a “hybrid” adjustable rate mortgage using their VA home loan eligibility.

The compromise includes modified versions of these important Senate provisions. It does not include the DIC change proposed by the House, although it provides eligibility for CHAMPVA for surviving spouses who remarried after age 55. They must apply for this benefit within one year of the date the President signs this legislation. This and other changes were made in order to keep the bill within strict budget guidelines governing direct spending, or PAYGO.

The compromise includes a House-passed provision authorizing the placement of a memorial to veterans of the Battle of the Bulge. It includes as well a provision which originated in the House to raise the Medal of Honor pension to $1,000 monthly and to make retroactive payments for those who were awarded this medal.

A provision is also included to extend coverage under the Soldiers’ and Sailors’ Civil Relief Act to members of the National Guard who are called to active service for more than 30 consecutive days to respond to a national emergency. Many members expressed an interest in this particular provision, and I supported Mr. Evans for a similar proposal in H.R. 4017. Senator Wellstone was the author of a Senate proposal, and I am pleased that our compromise agreement on this is built upon their work.

For the benefit of my colleagues, I include at this point in the RECORD a joint explanatory statement describing the compromise agreement we have reached with the other body.

Mr. Speaker, I urge all Members to support this bipartisan measure for our Nation’s veterans.

EXPLANATORY STATEMENT ON HOUSE AMENDMENT TO SENATE BILL, S. 2237

S. 2237, as amended, the "Veterans Benefits Act of 2002," reflects a Compromise Agreement between the Senate and House Committees on Veterans’ Affairs have reached on the following bills considered in the House and Senate during the 107th Congress: S. 2237 ("Senate Bill"), H.R. 2561, H.R. 3423, H.R. 4085, H.R. 4940, and H.R. 5655 ("House Bills"). S. 2237, as amended, passed the Senate on September 26, 2002; H.R. 2561 and H.R. 3423, as amended, passed the House on December 20, 2001; H.R. 4085, as amended, passed the House on May 21, 2002; and H.R. 4940, as amended, and H.R. 5655 passed the House on July 22, 2002.

The Senate and House Committees on Veterans’ Affairs have prepared the following explanation of S. 2237, as amended, ("Compromise Agreement"). Differences between the provisions contained in the Compromise Agreement and the related provisions of S. 2237, H.R. 2561, H.R. 3423, H.R. 4085 ("House Bill"), and H.R. 5655 passed the House on July 22, 2002.

The Senate and House Committees on Veterans’ Affairs have prepared the following explanation of S. 2237, as amended, ("Compromise Agreement"). Differences between the provisions contained in the Compromise Agreement and the related provisions of S. 2237, H.R. 2561, H.R. 3423, H.R. 4085 ("House Bill"), and H.R. 5655 passed the House on July 22, 2002.

Current law

Section 103(d) of title 38, United States Code, prohibits a surviving spouse who has remarried from receiving dependency and indemnity compensation (DIC) for health insurance under the Civilian Health and Medical Program of the Department of Veterans Affairs (“CHAMPA”), home loan, and education benefits. Surviving spouses who remarried at age 55 or older after attaining age 65 to retain DIC, CHAMPA health insurance, home loan, and education benefits. These benefits may be reinstated in the event the subsequent remarriage is terminated.

House bill

Section 3 of H.R. 4085 would allow a surviving spouse who remarried after attaining age 65 to retain DIC, CHAMPA health insurance, home loan, and education benefits. Surviving spouses who remarried at age 55 or older after attaining age 65 to retain DIC, CHAMPA health insurance, home loan, and education benefits. Surviving spouses who remarried after attaining age 55 but prior to enactment of this Act would have one year from the date of enactment to apply for reinstatement of DIC and related benefits. The amount of DIC would be paid with no reduction of certain other benefits during which the surviving spouse might be entitled.

Senate bill

The Senate Bill contains no comparable provision.

Compromise agreement

Section 101 of the Compromise Agreement would provide that a surviving spouse, upon remarriage after attaining age 55, would retain CHAMPA eligibility. Surviving spouses who remarried after attaining age 55 but prior to enactment of this Act would have one year from the date of enactment to apply for reinstatement of this benefit. The Committee expects the Secretary to maintain data concerning the number of surviving spouses who become eligible or retain eligibility under this provision.

The Committees intend in the 108th Congress to consider full restoration of benefits for surviving spouses who remarried after attaining age 55.

Clarification of Entitlement to Special Monthly Compensation for Women Veterans Who Have Service-connected Loss of Breast Tissue

Current law

Section 1114(k) of title 38, United States Code, authorizes the Department of Veterans Affairs (“VA”) to provide special monthly compensation to any woman veteran who has suffered the anatomical loss of one or
both breasts (including loss by mastectomy) as a result of military service. Regulations published at section 4.116 of title 38, Code of Federal Regulations, have limited this compensation to “Anatomical loss of a breast exists when there is complete surgical removal of breast tissue (or the equivalent loss of breast tissue due to injury). As defined herein the section, radical mastectomy, modified radical mastectomy, and simple (or total) mastectomy result in anatomical loss of a breast, but wide local excision, or with significant alteration of size or form, does not.”

Senate bill
Section 101 of S. 2237 would amend section 1114(d) of title 38, United States Code to specify that women veterans who have suffered the anatomical loss of half of the tissue of one or both breasts in or as a result of military service may be eligible for special monthly compensation.

House bill
The House Bills contain no comparable provision.

Compromise agreement
Section 102 of the Compromise Agreement follows the Senate language, and would amend it to extend eligibility to women veterans who have suffered the anatomical loss of 25 percent or more of tissue from one or both breasts (including loss by mastectomy or partial mastectomy) or who received radiation treatment to the breast tissue as a result of military service. The compromise amendment limits that this change should extend eligibility for special monthly compensation to women veterans whose medical treatment for cancer (such as kidney, lung, breast, or skin) has limited their life expectancy to five years or less.

Section 103 of the Senate Bill and of the Senate Bill would require VA to identify forms of acoustic trauma likely to cause hearing damage in servicemembers, and, in section 103(c)(2)(C), to determine whether such damage would be immediate, cumulative, or delayed. Section 103(c)(2)(D) of the Senate Bill would require NAS to assess whether audiometric data collected by the military services became adequate to allow an objective assessment of individual exposure by VA, examining a representative sample of records from World War II and the Korean War service. Section 103(c)(2)(E) of the Senate Bill would require NAS to identify military occupational specialties in which servicemembers are likely to be exposed to sufficient acoustic trauma to cause hearing disorders.

Section 103(d) of S. 2237 would require VA to report on medical care provided to veterans for hearing disorders from fiscal years 1999-2001; on the number of disability compensation claims received and granted for hearing loss, tinnitus, or both during those years; and an estimate of the total cost of VA adjudicating those claims in full-time employee equivalents.

House bill
The House Bills contain no comparable provision.

Compromise agreement
Section 104 of the Compromise Agreement would strike sections 103(a) and 103(b) of the Senate Bill authorizing a presumption of service connection. The Compromise Agreement follows the Senate language requiring VA to enter into a contract with NAS, but would change the focus of the study to assessment of acoustic trauma associated with military service from World War II to present.

The Compromise Agreement would strike sections 103(c)(2)(B), 103(c)(2)(D), 103(c)(2)(C), and all references to military occupational specialties. The Compromise Agreement follows the Senate language requiring NAS to determine how much exposure to acoustic trauma during military service might cause or contribute to hearing loss, hearing threshold shift, or tinnitus, and whether this damage may be immediate- or delayed-onset, cumulative, progressive, or a combination of these.

The Compromise Agreement would preserve provisions requiring NAS to assess when compensation became adequate to assess individual hearing threshold shift reliably and when sufficiently protective hearing conservation measures became available. It would add a third provision requiring NAS to identify age, occupational history, and other factors which could contribute to an individual’s noise-induced hearing loss.

In assessing when audiometric data collected by the military became adequate for VA to evaluate if a veteran’s hearing threshold shift could be detected at or prior to separation, the Committee intends for NAS to review and report on a representative sample of medical records. This should reflect not only an appropriate distribution of individuals among the various Armed Forces, but within each military service branch so that the relative percentages of servicemembers who might reasonably be expected to have different levels of noise exposure in the course of their duties. The representative sample must also allow for the proportions of servicemembers discharged during or after distinct periods of war or conflict and consider the environment in which they served in order to gauge how adequate each branch collected audiometric data following World War II, the Korean conflict, the Vietnam era, and during and following the Persian Gulf War.

The Compromise Agreement would generally follow the Senate language requiring VA to include a third provision for VA grant funding. The Compromise Agreement would amend this language to refer to the number of decisions issued and not to claims submitted for fiscal years 2000, 2001, and 2002, and would remove references to military occupational specialties.

Title II—Memorial Affairs
Provisions Concerning Benefits For Persons Committing Capital Crimes

Current law
Sections 2411 and 2408(d) of title 38, United States Code, prohibit persons who are convicted of capital crimes from interment or memorialization in National Cemetery Administration cemeteries, Arlington National Cemetery (“ANC”), or a State cemetery that receives VA grant funding. Section 5313 of title 38, United States Code, further limits VA benefits available to veterans who die while fleeing prosecution or after being convicted of a capital crime.

Senate bill
Section 402 of S. 2237 would prohibit the issuance of Presidential Memorial Certificates, flags, and memorial headstones or grave markers to veterans convicted of or fleeing from prosecution for a State or Federal capital crime.

House bill
The House Bills contain no comparable provision.

Compromise agreement
Section 201 of the Compromise Agreement follows the Senate language.

Procedures for Disqualification of Persons Committing Capital Crimes For Interment Or Memorialization in National Cemeteries

Current law
Section 2411 of title 38, United States Code, prohibits interment or memorialization in National Cemetery Administration cemeteries or in Arlington National Cemetery (“ANC”) of any person convicted of a capital crime. This section further prohibits interment or memorialization of persons found by the Secretary of Veterans Affairs or the Secretary of the Army to have committed capital crimes but who avoided conviction of the crime through flight or otherwise escaping prosecution. In such cases, the Secretary of Veterans Affairs or the Secretary of the Army must receive notice from the Attorney General of the United States or the State official of the Secretary’s own finding before the prohibition shall apply.

Senate bill
Section 483 of S. 2237 would eliminate the requirement that the Secretary of Veterans Affairs or the Secretary of the Army be notified of a finding by the Attorney General or
the appropriate State official in cases of persons who are found to have committed capital crimes but who avoided conviction of the crime through flight or death preceding prosecution.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 202 of the Compromise Agreement follows the Senate language. Application of Department of Veterans Affairs Benefit for Government Markers for Marked Graves of Veterans at Private Cemeteries to Veterans Dying on or After September 11, 2001

Current law

Section 2306(d)(1) provides that the Secretary shall furnish a government marker to those families who request one for the marked grave of a veteran buried at a private cemetery, who died on or after December 27, 2001.

House Bill

Section 6 of H.R. 4940 would make section 2306(d)(1) retroactive to veterans who died on or after September 11, 2001.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise agreement

Section 203 of the Compromise Agreement follows the House language. Authorization of Placement of Memorial in Arlington National Cemetery Honoring World War II Veterans Who Fought in the Battle of the Bulge

Current law

Section 2409 of title 38, United States Code, authorizes the Secretary of Army to erect appropriate memorials or markers in Arlington National Cemetery to honor the memory of members of the Armed Forces.

House bill

H.R. 5055 would authorize the Secretary of the Army to place in ANC a new memorial marker honoring veterans who fought in the Battle of the Bulge during World War II. The Secretary of the Army would have exclusive authority to approve an appropriate design and site within ANC for the memorial.

Senate bill

The Senate Bill contains no comparable provision.

Compromise agreement

Section 204 of the Compromise Agreement would authorize the Secretary of the Army to place in ANC a new memorial marker honoring veterans who fought in the Battle of the Bulge.

TITLE III—OTHER MATTERS


Current law

Section 3674(a)(4) of title 38, United States Code, funds State approving agencies. From fiscal years 1995 to 2000, State approving agency ("SAA") funding was capped, with no annual increase, at $12 million. Public Law 106-419 increased SAA funding to $14 million for fiscal years 2001 and 2002. Under current law, the authorization amount was reduced to $12 million as of October 1, 2002. SAA and the agencies that determine which schools, courses, and training programs qualify as eligible for veterans seeking to use their GI Bill benefits.

Senate bill

Section 201 of S. 2237 would restore SAA funding to $14 million per year and would increase it to $18 million per year during fiscal years 2003, 2004, and 2005.

House bill

Section 6 of H.R. 4985 contains an identical provision.

Compromise agreement


Authority for Veterans’ Mortgage Life Insurance To Be Carried Beyond Age 70

Current law

Section 2106(i)(2) of title 38, United States Code, provides that Veterans’ Mortgage Life Insurance ("VMLI") be terminated on the veteran’s seventieth birthday. VMLI is designed to provide financial protection to cover eligible veterans’ home mortgages in the event of death. VMLI is issued only to those severely disabled veterans who have received grants for Specially Adapted Housing from the Department of Veterans Affairs.

House bill

Section 5(b) of H.R. 3085 would permit veterans eligible for specially-adapted housing grants to continue their VMLI coverage beyond age 70. No new policies would be issued after age 70.

Senate bill

The Senate Bill contains no comparable provision.

Compromise agreement

Section 202 of the Compromise Agreement follows the House language. Authority To Guarantee Hybrid Adjustable Rate Mortgages

Current law

There is no authorization in current law for VA to guarantee adjustable rate mortgages ("ARMs") and hybrid adjustable rate mortgages ("hybrid ARMs"). A hybrid ARM combines features of fixed rate mortgages and adjustable rate mortgages. A hybrid ARM has a fixed rate of interest for at least the first 3 years of the loan, with an annual interest rate adjustment after the fixed rate has expired.

Senate bill

Section 301 of S. 2237 would authorize VA to establish a three-year pilot program to guarantee hybrid ARMs and reauthorize a fiscal year-1993 to 1995 pilot program to guarantee conventional ARMs and reauthorize a fiscal year-1993 to 1995 pilot program to guarantee conventional ARMs. This authority would commence in fiscal year 2003 and expire at the end of fiscal year 2005.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 202 of the Compromise Agreement would authorize VA to establish a three-year pilot program to guarantee hybrid ARMs for a period of two years. The effective date of this provision would be October 1, 2003.

Increase in the Amount Payable as Medal of Honor Special Pension

Current law

Section 1562 of title 38, United States Code, provides a special pension of $600 per month to recipients of the Medal of Honor. Eligibility for the Medal of Honor is determined by the date that the recipient’s pension actually commenced.

House bill

H.R. 2561 would increase the special pension payable to Medal of Honor recipients from $600 to $1,000 per month, and provide a lump sum payment in the amount of special pension the recipient would have received between the date of the act of valor and the date that the recipient’s pension actually commenced.

Senate bill

The Senate Bill contains no comparable provision.

Compromise agreement

Section 304 of the Compromise Agreement follows the Senate language, but would modify the effective date of the provision to September 1, 2003. It is the Committee’s understanding that the first month a Medal of Honor recipient would receive special pension is October 2003.

It is the Committees’ intent that the lump sum payment of special pension be determined using the rate of special pension and the laws of eligibility in effect (including applicable age requirements) for months beginning after an individual’s act of gallantry. The law of eligibility requiring an individual to have been awarded a Medal of Honor.

Extension of Protections Under Soldiers’ and Sailors’ Civil Relief Act of 1940 to National Guard Members Called to Active Duty Under Title 32, United States Code

Current law

The Soldiers’ and Sailors’ Civil Relief Act of 1940 ("SSCRA"): Section 502(f) of title 38, United States Code Appendix, suspends enforcement of certain civil liabilities and provides certain rights and legal protections to servicemembers who have been called up to active duty under title 10, United States Code. However, these protections do not extend to National Guard members under the command of their state governors.

Senate bill

Section 401 of S. 2237 would expand SSCRA protections to include those National Guard members serving full-time, upon an order of the Governor of a State at the request of the head of a Federal law enforcement agency and with the concurrence of the Secretary of Defense, under Section 1(2), United States Code for homeland security purposes.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 305 of the Compromise Agreement would provide that when members of the National Guard are called to active service for


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more than 30 consecutive days under section 502(t) of title 32, United States Code, to respond to a national emergency declared by the President, coverage under the provisions of the SCAVA would be available. The Committees note that this provision is intended to extend protections of the SCAVA to members of the National Guard when called to duty in circumstances similar to those following the terrorist attacks of September 11, 2001.

EXTENSION OF INCOME VERIFICATION AUTHORITY

Current law
Section 6103(b)(7)(D) of the Internal Revenue Code gives the Internal Revenue Service (‘‘IRS’’) authority to furnish income information to the VA from IRS records so that VA may examine certain eligibility for VA need-based pension, parents dependency and indemnity compensation, and priority for VA health-care services. This provision currently expires on September 30, 2003, pursuant to Public Law 106–33.

Section 5317 of title 38, United States Code, provides parallel authority for VA to use IRS information and requires VA to notify applicants for needs-based benefits that income information furnished by the applicant may be compared with the information obtained from the Department of Health and Human Services and Treasury under section 6103(b)(7)(a). This parallel authority is scheduled to expire on September 30, 2008, pursuant to Public Law 106–499.

Senate bill
Section 106(a) of S. 2237 would extend section 6103(b)(7)(D) of the Internal Revenue Code through September 30, 2011. Section 106(b) would extend section 5317 of title 38, United States Code, through September 30, 2011.

House bill
The House Bills contain no comparable provision.

Compromise agreement
Section 306 of the Compromise Agreement would extend section 6103(b)(7)(D) of the Internal Revenue Code through September 30, 2008.

Fee for Loan Assumption
Current law
Section 3728(b)(2)(1) of title 38, United States Code, requires a 0.50 percent loan fee for active-duty servicemembers, veterans, Reserve component members participating in loan assumptions under section 3714.

Senate bill
Section 501(b) of title 38, United States Code, provides that VA must find the amount of the fee to be charged, which is defined as the evidence of record, there is an approximate balance of positive and negative evidence regarding any material issue including the ultimate merits of the claim. The House bill would require the fee to be charged and the standard applicable to proceedings before VA is unique in administrative law. Under the benefit of the doubt rule, unless the preponderance of the evidence is against the claimant, the claim is granted. Gilbert v. Derwinski, 1 Vet. App. 49 (1990) and Forshey v. Principi, 284 F.3d 1335 (Fed. Cir. 2002).

House bill
The House Bills contain no comparable language.

Compromise agreement
Section 307 of the Compromise Agreement would increase the loan fee for assumptions for loans closed more than 7 days after enactment of this provision to 1.0 percent. The Committees intend this fee increase to expire at the end of fiscal year 2008.

TITLE IV—JUDICIAL MATTERS

The U.S. Court of Appeals for Veterans Claims (‘‘CAVC’’) is an Article I Court of limited jurisdiction. It has come to the Committees’ attention that the Administration has disregarded Congressional intent in interpreting the CAVC to be part of the Executive Branch and subject to rescissions of Executive Branch agency budgets, pursuant to section 505 of Public Law 107–206. The Committees note that while the budget for the Court is included in the President’s budget, the Executive Branch has no authority to review it. Public Law 100–687, section 4062(a). It is the Committees’ intent to clarify that the CAVC is not part of the Executive Branch. The Committees have stated on other occasions, e.g., ‘‘The Court, established by the Congress under Article I of the Constitution to exercise judicial power, has unusual status pursuant to section 5107(b) as it is not subject to the control of the President or the executive branch.’’ House of Representatives Report 107–156, July 29, 2001, and Senate Report 107–96, October 16, 2001.

New subsection (b) would increase the loan fee for assumptions more than 7 days after enactment of this provision to 1.0 percent. The Committees intend this fee increase to expire at the end of fiscal year 2008.

Current law
Under section 7261(a)(4) of title 38, United States Code, the Court of Appeals for Veterans Claims applies a ‘‘clearly erroneous’’ standard of review to findings of fact made by the Board of Veterans’ Appeals (‘‘BVA’’). The ‘‘clearly erroneous’’ standard has been defined as requiring CAVC to uphold BVA findings of fact if the findings are supported by ‘‘a plausible basis in the record . . . even though the CAVC may have reached the same or a different result from a factual determination’’. Wensch v. Principi, 15 Vet. App. 362, 366–68 (2001). The recent U.S. Court of Appeals for the Federal Circuit decision in Wensch v. Principi, 15 Vet. App. 362, 366–68 (2001) emphasized that CAVC should perform only limited, deferential review of BVA decisions, and stated that BVA fact-finding ‘‘is entitled to a review to substantial deference.’’ Id. at 1263.

Section 5107(b) of title 38, United States Code, provides that VA must find the amount of the fee to be charged, which is defined as the evidence of record, there is an approximate balance of positive and negative evidence regarding any material issue including the ultimate merits of the claim. The House bill would require the fee to be charged and the standard applicable to proceedings before VA is unique in administrative law. Under the benefit of the doubt rule, unless the preponderance of the evidence is against the claimant, the claim is granted. Gilbert v. Derwinski, 1 Vet. App. 49 (1990) and Forshey v. Principi, 284 F.3d 1335 (Fed. Cir. 2002).

House bill
The House Bills contain no comparable provision.

Compromise agreement
Section 401 of the Compromise Agreement follows the Senate language with the following amendments.

The Compromise Agreement would modify the standard of review in the Senate bill in subsection (a) to change it to a ‘‘substantial evidence’’ standard. It would modify the requirements of the review the Court must perform when it is making determinations under the law of title 38, United States Code. Since the Secretary is precluded from seeking judicial review of decisions of the Board of Veterans Appeals, the audit of the law of title 38 is an interpretation of the words ‘‘reverse’’ in subsection (a) is intended to clarify that findings of fact favorable to the claimant may not be reviewed by the Court. Further, the word ‘‘reverse’’ in subsection (a) and ‘‘set aside’’ is intended to emphasize that the Committees expect the Court to reverse clearly erroneous findings when appropriate, rather than remand the case.

New subsection (b) would maintain language from the Senate bill that would require the Court to examine the record of proceedings before the Secretary and BVA and the special emphasis during the judicial process on the benefit of the doubt provision under section 5107(b) as it makes findings of fact in reviewing BVA decisions. This would not alter the formula of the standard of review on the Court, with the uncertainty of interpretation of its application that would accompany such a change. The combination of these changes is intended to provide for more searching appellate review of BVA decisions, and the ‘‘benefit of the doubt’’ provision.

The Compromise Agreement would also modify the effective date of this provision to apply to cases that have not been decided prior to the enactment of this Act. This provision would not apply to cases in which a decision has been made, but are not final before the time to request panel review or to appeal to the U.S. Court of Appeals for the Federal Circuit (‘‘Federal Circuit’’) has not expired.

Review by Court of Appeals for the Federal Circuit of Decisions of Law
Current law
Under section 7292(a) of title 38, United States Code, the Federal Circuit may only review CAVC decisions involving questions of law with respect to the validity of any statute or regulation. It does not explicitly have the authority to hear appeals of CAVC decisions that are not clearly legal interpretations of statutes or regulations.

Senate bill
Section 502 of S. 2237 would amend sections 7292(a) and (c) of title 38, United States Code, to specifically provide for appellate review of a CAVC decision on any rule of law.

House bill
The House Bills contain no comparable provision.

Compromise agreement
Section 402 of the Compromise Agreement follows the Senate language.

Authority of Court of Appeals for Veterans Claims to Award Fees Under Equal Access to Justice Act to Non-Attorney Practitioners

Current law
Currently, section 2412(d) of title 28, United States Code, the Equal Access to Justice Act (‘‘EAJA’’), shifts the burden of attorney fees from the citizen to the government in cases where the government’s litigation position is not substantially justified and the citizen qualifies under certain income and asset criteria. Qualified non-attorneys admitted to practice before the CAVC may only receive fees if the EAJA application is signed by an attorney.

Senate bill
Section 503 of S. 2237 would allow qualified non-attorneys admitted to practice before the CAVC to be awarded fees under EAJA for representation provided to VA claimants without the requirement that an attorney sign the EAJA application.

House bill
The House Bills contain no comparable provision.

Compromise agreement
Section 403 of the Compromise Agreement follows the Senate language.

The Committees expect that in determining the amount of reasonable fees payable to non-attorney practitioners, the Court will apply the usual rules applicable to fees

LEGISLATIVE PROVISIONS NOT ADOPTED
ARLINGTON NATIONAL CEMETERY

Current law
Eligibility for burial at Arlington National Cemetery is governed by federal regulations at section 353.15 of title 32, Code of Federal Regulations. The following categories of persons are eligible for in-ground burial: active duty members of the Armed Forces, except those members serving on active duty for training; retired members of the Armed Forces who have served on active duty, are on a retired list and are entitled to receive a retirement pay; former members of the Armed Forces discharged for disability before October 1, 1949, who served on active duty for training; members of the Guard or Reserves who would have been eligible for retired pay; members of a reserve component who, but for age, would have been eligible for retirement pay; pay; members of a reserve component who, but for age, would have been eligible for retirement; members of the Guard or Reserves who have served on active duty, are on a retired list and are entitled to receive a retirement pay; former members of the Armed Forces who served on active duty for training; retired members of the Armed Forces, including reservists who served and Active Duty Veterans

Senate bill
The Senate Bill contains no comparable provision.

Increase of Veterans’ Mortgage Life Insurance Coverage

Current law
Section 2106(b) of title 38, United States Code, provides that VMLI may not exceed $150,000.

House bill
Section 3(a) of H.R. 4085 would increase the maximum amount of coverage available under Veterans’ Mortgage Life Insurance from $90,000 to $150,000. This would increase the amount of the outstanding mortgage, which would be payable if the veteran were to die before the mortgage is paid in full.

Senate bill
The Senate Bill contains no comparable provision.

Uniform Home Loan Guaranty Fees for Qualifying Members of the Selected Reserve and Active Duty Veterans

Current law
Section 372(b) of title 38, United States Code, provides the amounts in fees to be collected from each person participating in VA’s Home Loan Guaranty Program. Currently, members of the Selected Reserve pay a 0.75 percent higher funding fee under the home loan program than other eligible veterans.

House bill
Section 4 of H.R. 4085 would amend the Loan Fee Table in section 372(b) of title 38, United States Code, to provide uniformity in the funding fees charged to members of the Selected Reserve and active duty veterans for VA home loans. The fee would be reduced for the period beginning on October 1, 2002, and ending on September 30, 2005.

Senate bill
The Senate Bill contains no comparable provision.

Prohibit Assignment of Monthly Veterans Benefits and Create an Education and Outreach Campaign About Financial Services Available to Veterans

Current law
Section 5301 of title 38, United States Code, currently prohibits the assignment or attachment of a veteran’s disability compensation or pension benefits. In recent years, private companies have offered contracts to veterans that exchange up-front lump sums for future benefits.

Senate bill
Section 105 of S. 2237 would clarify the applicability of the prohibition on assignment of veterans benefits through agreements regarding future receipt of compensation, pension, or dependency and indemnity compensation. This provision would make violation of this prohibition punishable by a fine and up to one year in jail.

This provision would also require VA to create a five-year education and outreach campaign to inform veterans about available financial services.

House bill
The House Bills contain no comparable provision.

Clarification of Retroactive Application of Provisions of the Veterans Claims Assistance Act

Current law
Public Law 106-475, the Veterans Claims Assistance Act of 2000 ("VCAA"), restored and enhanced VA’s duty to assist claimants in developing their claims for veterans benefits. Specifically, section 3(a) of the VCAA requires VA to take certain steps to assist claimants.

Two recent decisions by the U.S. Court of Appeals for the Federal Circuit have found that the provisions in the VCAA pertaining to VA’s duty to assist cannot be applied retroactively to claims pending at the time of its enactment. In Dymtent v. Principi, 267 F.3d 1377 (Fed. Cir. 2001), the Federal Circuit stated: “The Supreme Court has held that a federal statute will not be given retroactive effect unless Congress has made its contrary intent clear. There is nothing in the VCAA to suggest that section 3(a) was intended to apply [sic] retroactively.” In Berkklau v. Principi, 291 F.3d 785, 806 (Fed. Cir. 2002), the Court again concluded: “[S]ection 3(a) of the VCAA does not apply retroactively to require that proceedings that were complete before the Department of Veterans Affairs and were on appeal to the Court of Appeals for Veterans Claims or this court be remanded for readjudication under the new statute.

Senate bill
Section 504 of S. 2237 would apply section 3 of VCAA retroactively to cases that were ongoing either at various adjudication levels within VA or pending at the applicable Federal courts prior to the date of VCAA’s enactment. Section 505 of the Senate Bill would provide for claims decided between the enactment of the legislation and enactment of this provision to receive the full notice, assistance, and protection afforded under the VCAA.

House bill
The House Bills contain no comparable provision.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Without objection, the various titles are amended.

There was no objection.

AUTHORIZED THE CLERK TO MAKE CORRECTIONS IN THE ENGROSSMENT OF VARIOUS LEGISLATIVE MEASURES

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that, in the engrossment of the measures just passed, the Clerk be authorized to correct spelling, punctuation, numbering, and cross references, and to make such other changes as may be necessary to reflect the actions of the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

GENERAL LEAVE

Mr. ARMY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the measures just passed and to insert extraneous material thereon.
The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed without amendment bills and concurrent resolution of the House of the following titles:

H.R. 3738. An act for the relief of So Hyun June.

H.R. 3988. An act to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion.

H.R. 4727. An act to reauthorize the national dam safety program, and for other purposes.

H.R. 5580. An act to amend title 10, United States Code, to provide for the enforcement and effectiveness of civilian orders of protection on military installations.

H. Con. Res. 487. Concurrent resolution authorizing the printing as a House document of a volume consisting of the transcripts of the proceedings of the joint session of Congress on September 6, 2002, and a collection of statements by Members of the Senate and the House of Representatives and Senate from the Congressional Record on the terrorist attacks of September 11, 2001.

The message also announced that the Senate has passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 3908. An act to reauthorize the North American Wetlands Conservation Act, and for other purposes.

H.R. 5557. An act to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services and foreign service in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, and for other purposes.

The message also announced that the Senate has passed bills and joint resolution and a concurrent resolution of the following titles in which the concurrence of the House is requested:

S. 2320. An act to amend title 18, United States Code, with respect to the sexual exploitation of children.

S. 2394. An act to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion.

S. J. Res. 42. Joint resolution commending Sail Boston for its continuing advancement of the maritime heritage of nations, its commemoration of the nautical history of the United States, and its promotion, encouragement, and support of young cadets through training.

S. Con. Res. 155. Concurrent resolution affirming the importance of a national day of prayer and fasting, and expressing the sense of Congress that November 27, 2002, should be designated as a national day of prayer and fasting.

PROVIDING FOR PRINTING AND BINDING OF REVISED EDITION OF RULES AND MANUAL OF HOUSE OF REPRESENTATIVES

Mr. ARMEY. Mr. Speaker, I offer a resolution (H. Res. 614) and ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 614

Resolved, That a revised edition of the Rules and Manual of the House of Representatives for the One Hundred Eighth Congress be printed as a House document, and that three thousand additional copies shall be printed and bound for the use of the House of Representatives, of which nine hundred copies shall be bound in leather with thumb index and delivered as may be directed by the Parliamentarian of the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

APPOINTMENT OF COMMITTEE OF TWO MEMBERS TO INFORM THE PRESIDENT THAT THE TWO HOUSES HAVE COMPLETED THEIR BUSINESS OF THE SESSION

Mr. ARMEY. Mr. Speaker, I offer a privileged resolution (H. Res. 615) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 615

Resolved, that a committee of two Members be appointed by the House to join a similar committee appointed by the Senate, to wait upon the President of the United States and inform him that the two Houses have completed their business of the session and are ready to adjourn, unless the President has some other communication to make to them.

The resolution was agreed to.

A motion to reconsider was laid on the table.

APPOINTMENT AS MEMBERS OF THE COMMITTEE TO INFORM THE PRESIDENT THAT THE TWO HOUSES HAVE COMPLETED THEIR BUSINESS OF THE SESSION AND ARE READY TO ADJOURN

The SPEAKER pro tempore. Pursuant to House Resolution 615, the Chair appoints the following Members of the House to the Committee to notify the President:

The gentleman from Texas, Mr. ARMEY; the gentleman from Missouri, Mr. GEPHARDT.

AUTHORIZING SPEAKER, MAJORITY LEADER, AND MINORITY LEADER TO ACCEPT RESIGNATIONS AND TO MAKE APPOINTMENTS AUTHORIZED BY LAW OR RULE OF THE HOUSE NOT WITHSTANDING SINE DIE ADJOURNMENT

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that notwithstanding the adjournment of the second session of the 107th Congress, the Speaker, the majority leader, and the minority leader be authorized to accept resignations and to make appointments authorized by law or by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

APPROPRIATING CHAIRMAN AND RANKING MINORITY MEMBER OF EACH STANDING COMMITTEE AND SUBCOMMITTEE TO EXTEND REMARKS IN RECORD

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that the chairman and ranking minority member of each standing committee and each subcommittee be permitted to extend their remarks in the Record, up to and including the Record’s last publication, and to include a summary of the work of that committee or subcommittee.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

GRANTING MEMBERS OF THE HOUSE PRIVILEGE TO REVISE AND EXTEND REMARKS IN CONGRESSIONAL RECORD UP TO LAST EDITION IS PUBLISHED

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that Members may have until publication of the last edition of the Congressional Record authorized for the second session of the 107th Congress by the Joint Committee on Printing to revise and extend their remarks and to include brief, related extraneous material on any matter occurring before the adjournment of the second session sine die.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

CONVENING OF FIRST SESSION OF THE 109TH CONGRESS

Mr. ARMEY. Mr. Speaker, I ask unanimous consent to take from the Speaker’s table the Senate joint resolution (S.J. Res. 53) and ask for its immediate consideration in the House.

The Clerk read the Senate joint resolution, as follows:

S.J. Res. 53

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first regular session of the One Hundred Eighth Congress begin at noon on Tuesday, January 7, 2003.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.
CONGRESSIONAL RECORD — HOUSE
H9009

HOUR OF MEETING ON TUESDAY, NOVEMBER 19, 2002

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at noon on Tuesday, November 19, 2002.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

APPOINTMENT OF HONORABLE WAYNE T. GILCHREST TO ACT AS SPEAKER PRO TEMPORE TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS THROUGH REMAINDER OF THE SECOND SESSION OF 107TH CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC, November 14, 2002.

I hereby appoint the Honorable Wayne T. Gilchrest to act as Speaker pro tempore to sign enrolled bills and joint resolutions through the remainder of the second session of the One Hundred Seventh Congress.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

The SPEAKER pro tempore. Without objection, the appointment is approved.

There was no objection.

INVESTING IN AMERICA’S FUTURE ACT OF 2002

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that the bill (H.R. 4664) to authorize appropriations for fiscal years 2003, 2004, and 2005 for the National Science Foundation, and for other purposes, be considered to have been taken from the Speaker’s table and the Senate amendments concurred in.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.
This Act may be cited as the “National Science Foundation Authorization Act of 2002”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The National Science Foundation has made major contributions for more than 50 years to strengthen and sustain the Nation’s academic enterprise and to provide the Nation’s scientific and technological capabilities.

(2) The economic strength and national security of the United States and the quality of life of all Americans are founded on the Nation’s scientific and technological capabilities.

(3) The National Science Foundation carries out important functions in supporting basic research in all science and engineering disciplines and in supporting science, mathematics, engineering, and technology education at all levels.

(4) The research and education activities of the National Science Foundation promote the discovery, integration, dissemination, and application of new knowledge in service to society and prepare future generations of scientists, mathematicians, and engineers who will be necessary to ensure America’s leadership in the global marketplace.

(5) The National Science Foundation must be provided with sufficient resources to enable it to carry out its responsibilities to develop intellectual capital, strengthen the scientific infrastructure, improve research and education, enhance the delivery of mathematics and science education in the United States, and improve the technological literacy of all people in the United States.

(6) The emerging global economic, scientific, and technical environment challenges long-standing assumptions about national policy, requiring the National Science Foundation to play a more proactive role in sustaining the competitive advantage of the United States through superior research capabilities.

(7) Commercial application of the results of Federal investment in basic and computing science is consistent with longstanding United States science technology policy and is a critical national priority, particularly with regard to cybersecurity and other homeland security applications, because of the urgent needs of commercial, academic, and individual users as well as the Federal and State Governments.

SEC. 3. POLICY OBJECTIVES.

In allocating resources made available under section 5, the Commission shall have the following policy objectives:

(1) To strengthen the Nation’s lead in science and technology by—

(A) increasing the national investment in general scientific research and increasing investment in strategic areas;

(B) balancing the Nation’s research portfolio among the life sciences, mathematics, the physical sciences, computer and information science, geoscience, engineering, and social, behavioral, and economic sciences, all of which are important for the continued development of enabling technologies necessary for sustained international competitiveness;

(C) expanding the pool of scientists and engineers in the United States;

(D) modernizing the Nation’s research infrastructure; and

(E) establishing and maintaining cooperative international relationships with premier research institutions, with the goal of such relationships being the exchange of personnel, data, and information to assist in alleviating problems common to the global community.

(2) To increase overall workforce skills by—

(A) improving the quality of mathematics and science education, particularly in kindergarten through grade 12;

(B) promoting access to information technology for all students;

(C) raising postsecondary enrollment rates in science, mathematics, engineering, and technology curricula; and

(D) expanding access to higher education in science, mathematics, engineering, and technology fields for students from low-income households;

(E) increasing access to higher education in science, mathematics, engineering, and technology disciplines for individuals identified in section 33 or 34 of the Science and Engineering Workforce Development Act of 1990 (20 U.S.C. 1885b); and

(F) increasing postsecondary enrollment rates in science, mathematics, engineering, or technology for all students;

(G) coordinating and assisting teachers in the use of hands-on inquiry materials, equipment, and supplies, and when appropriate, supervising acquisition and repair of such materials; and

(H) providing in-classroom teaching assistance to mathematics or science teachers; and

(I) increasing access to higher education in science, mathematics, engineering, or technology for individuals identified in section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

(3) COMMUNITY COLLEGE.—The term “community college” has the meaning given such term in section 3201(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 725).

(4) DIRECTOR.—The term “Director” means the Director of the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

(5) ELEMENTARY SCHOOL.—The term “elementary school” has the meaning given that term by section 2 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(6) ELIGIBLE NONPROFIT ORGANIZATION.—The term “eligible nonprofit organization” means an eligible nonprofit research institute, or a nonprofit professional association, with demonstrated experience and effectiveness in mathematics or science education as determined by the Director.

(7) FOUNDATION.—The term “Foundation” means the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

(8) HIGH-NEED LOCAL EDUCATIONAL AGENCY.—The term “high-need local educational agency” means a local educational agency that meets one or more of the following criteria:

(A) It has at least one school in which 50 percent or more of the enrolled students are eligible for participation in the free and reduced price lunch program established by the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

(B) It has at least one school in which—

(i) more than 34 percent of the academic classroom teachers at the secondary level (across all academic subjects) do not have an undergraduate degree with a major or minor in, or a graduate degree in, the academic field in which they teach the largest percentage of their classes; or

(ii) more than 34 percent of the teachers in tuition of the academic departments do not have an undergraduate degree with a major or minor in, or a graduate degree in, the academic field in which they teach the largest percentage of their classes.

(C) It has at least one school whose teacher attrition rate has been 15 percent or more over the last three school years.

(9) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher education” has the meaning given such term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001).

(10) LOCAL EDUCATIONAL AGENCY.—The term “local educational agency” has the meaning given such term by section 2 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(11) MASTER TEACHER.—The term “master teacher” means a mathematics or science teacher who works to improve the instruction of mathematics or science in kindergarten through grade 12 through—

(A) participating in the development or revision of science, mathematics, engineering, or technology curricula;

(B) serving as a mentor to mathematics or science teachers;

(C) coordinating and assisting teachers in the use of hands-on inquiry materials, equipment, and supplies, and when appropriate, supervising acquisition and repair of such materials;

(D) providing in-classroom teaching assistance to mathematics or science teachers; and

(E) providing professional development, including for the purposes of training other master teachers, to mathematics and science teachers.

(12) NATIONAL RESEARCH FACILITY.—The term “national research facility” means a research facility funded by the Foundation which is available, subject to appropriate policies allocated by all scientists and engineers affiliated with research institutions located in the United States.
(13) SECONDARY SCHOOL.—The term “secondary school” has the meaning given that term by section 9101(38) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(38)).

(14) STATE.—Except with respect to the Experimental Program to Stimulate Competitive Research, the term “State” means one of the several States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

(15) STATE EDUCATIONAL AGENCY.—The term “State educational agency” has the meaning given such term by section 9101(41) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(41)).

(16) UNITED STATES.—The term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(a) FISCAL YEAR 2003.—

(1) In general.—There are authorized to be appropriated to the Foundation $5,536,390,000 for fiscal year 2003.

(2) Specific allocations.—Of the amount authorized under paragraph (1)—

(A) $4,155,690,000 shall be made available to carry out research and related activities, of which $704,000,000 shall be for information technology research described in paragraph (1) of section 8 and $301,000,000 shall be for nanoscale science and engineering described in paragraph (2) of section 8;

(B) $1,066,250,000 shall be made available for education and human resources, of which—

(i) $200,000,000 shall be for mathematics and science education partnerships described in section 9;

(ii) $20,000,000 shall be for the Robert Noyce Scholarship Program described in section 10; and

(iii) $25,000,000 shall be for the science, mathematics, engineering, and technology talent expansion program described in paragraph (7) of section 8;

(C) $172,050,000 shall be made available for major research equipment and facilities construction;

(D) $941,200,000 shall be made available for salaries and expenses; and

(E) $3,500,000 shall be made available for the Office of the National Science Board for the purposes described in subsection (a)(2)(E); and

(F) $8,470,000 shall be made available for the Office of Inspector General.

(b) FISCAL YEAR 2004.—

(1) In general.—There are authorized to be appropriated to the Foundation $6,390,822,000 for fiscal year 2004.

(2) Specific allocations.—Of the amount authorized under paragraph (1)—

(A) $4,799,822,000 shall be made available to carry out research and related activities, of which $774,000,000 shall be for information technology research described in paragraph (1) of section 8 and $350,000,000 shall be for nanoscale science and engineering described in paragraph (2) of section 8;

(B) $1,157,188,000 shall be made available for education and human resources, of which—

(i) $20,000,000 shall be for the Robert Noyce Scholarship Program described in section 10; and

(ii) $30,000,000 shall be for the science, mathematics, and technology talent expansion program described in paragraph (7) of section 8;

(C) $321,142,000 shall be made available for major research equipment and facilities construction;

(D) $210,320,000 shall be made available for salaries and expenses; and

(E) $3,650,000 shall be made available for the Office of the National Science Board for the purposes described in subsection (a)(2)(E); and

(F) $8,470,000 shall be made available for the Office of Inspector General.

(c) FISCAL YEAR 2005.—

(1) In general.—There are authorized to be appropriated to the Foundation $7,378,343,000 for fiscal year 2005.

(2) Specific allocations.—Of the amount authorized under paragraph (1)—

(A) $5,543,794,000 shall be made available to carry out research and related activities;

(B) $1,330,766,000 shall be made available to carry out education and human resources, of which—

(i) $400,000,000 shall be for mathematics and science education partnerships described in section 9;

(ii) $20,000,000 shall be for the Robert Noyce Scholarship Program described in section 10; and

(iii) $35,000,000 shall be for the science, mathematics, engineering, and technology talent expansion program described in paragraph (7) of section 8;

(C) $358,879,000 shall be made available for major research equipment and facilities construction;

(D) $331,337,000 shall be made available for salaries and expenses;

(E) $4,250,000 shall be made available for the Office of the National Science Board for the purposes described in subsection (a)(2)(E); and

(F) $9,317,000 shall be made available for the Office of Inspector General.

(d) FISCAL YEAR 2006.—None of the funds authorized under section 5(d) may be obligated for major research equipment and facilities construction until 30 days after the report required by section 14(a)(2) is transmitted to the Congress.

(e) FISCAL YEAR 2007.—None of the funds authorized under section 5(e) may be obligated for major research equipment and facilities construction until 30 days after the report required by June 15, 2006, under section 14(a)(2) is transmitted to the Congress.

SEC. 7. ANNUAL PLAN FOR ALLOCATION OF FUNDING.

Not later than 60 days after the date of enactment of legislation providing for the annual appropriation of funds for the Foundation, the Director shall submit to the Committee on Science and the Committee on Appropriations of the House of Representatives, and to the Committee on Commerce, Science, and Transportation, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate, a plan for the allocation of funds authorized by this Act for the corresponding fiscal year. The portion of the plan pertaining to Research and Related Activities shall include a description of how the allocation of funding—

(1) will affect the average size and duration of research grants supporting work in the fields of science, mathematics, and engineering;

(2) will affect trends in research support for major fields and subfields of science, mathematics, and engineering, including for emerging and interdisciplinary research areas; and

(3) is designed to achieve an appropriate balance among major fields and subfields of science, mathematics, and engineering.

SEC. 8. SPECIFIC PROGRAM AUTHORIZATIONS.

From amounts authorized to be appropriated under section 5, the Director shall carry out the Foundation’s research and education programs, including the following initiatives in accordance with this section:

(1) INFORMATION TECHNOLOGY.—An information technology research program to support competitive, merit-reviewed proposals for research, education, and infrastructure support in areas related to cybersecurity, terascale computing systems, software, networking, scalability, communications, data management, and remote sensing and geospatial information technologies.

(2) NANOSCALE SCIENCE AND ENGINEERING.—A nanoscale science and engineering research and education program to support competitive, merit-reviewed proposals for research and education in areas related to the following:

(A) research aimed at discovering novel phenomena, processes, materials, and tools that address grand challenges in materials, electronics, optoelectronics and magnetics, manufacturing, the environment, and health care; and

(B) supporting new research and interdisciplinary centers and networks of excellence, including shared national user facilities, infrastructure research, and research to enhance the societal implications of advances in nanoscale science and engineering.

(3) PLANT GENOME RESEARCH.—A plant genome research program to support competitive, merit-reviewed proposals—

(i) that advance the understanding of the structure, organization, and function of plant genomes; and

(ii) that accelerate the use of new knowledge and innovative technologies toward a more complete understanding of basic biological processes in plants, especially in agriculturally important plants such as corn and soybeans.

(B) Regional plant genome and gene expression research centers to conduct research and dissemination activities that may include—

(i) regional plant genome and genomics applications, including those related to cultivation of crops in extreme environments
and to cultivation of crops with reduced reliance on fertilizer, herbicides, and pesticides;
(ii) basic research that will contribute to the development or use of innovative plant-derived products;
(iii) basic research on alternative uses for plants and plant materials, including the use of plants as renewable feedstock for alternative energy production, industrial biotechnology, and other cellulosic-based industrial chemical and precursors; and
(iv) basic research and dissemination of information on the ecological and other consequences of genetically modified plants.

Competitive, merit-based awards for centers under this subparagraph shall be to consortia of institutions of higher education or nonprofit organizations, or consortia of such entities that enter into a partnership that shall include one or more research institutions in one or more developing nations, and that may also include profit-seeking companies involved in plant biotechnology. The Director, by means of outreach, shall encourage inclusion of historically Black colleges and universities, Hispanic-serving institutions, Native-serving institutions, Alaska Native-serving institutions, and Native Hawaiian-serving institutions in consortia that enter into such partnerships.

(4) PARTNERSHIPS.—An innovation partnerships program to support competitive, merit-reviewed proposals that seek to stimulate innovation at the regional level through new partnerships among States, regional governmental entities, local governmental entities, industry, academic institutions, and other related organizations in strategically important fields of science and technology.

(5) MATHEMATICS AND SCIENCE EDUCATION PARTNERSHIPS.—The mathematics and science education partnerships program described in section 33.

(6) ROBERT NOYCE SCHOLARSHIP PROGRAM.—The Robert Noyce Scholarship Program described in section 33.

(7) SCIENCE, MATHEMATICS, ENGINEERING, AND TECHNOLOGY TALENT EXPANSION PROGRAM.—(A) A program of competitive, merit-based, multi-year grants for eligible applicants to increase the number of students studying toward and completing associate’s or bachelor’s degrees in science, mathematics, engineering, and technology, particularly in fields that have faced declining enrollment in recent years.

(B) In selecting projects under this paragraph, the Director shall strive to increase the number of students studying toward and completing baccalaureate degrees in the exact fields of science, mathematics, engineering, or technology who are individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b).

(C) The types of projects the Foundation may support under this paragraph include those that promote high quality—
(i) interdisciplinary teaching;
(ii) undergraduate research;
(iii) mentor relationships for students;
(iv) bridge programs that enable students at community colleges to complete directly into baccalaureate science, mathematics, engineering, or technology programs;
(v) internships carried out in partnership with industry; and
(vi) innovative uses of digital technologies, particularly in institutions of higher education that serve large populations of economically disadvantaged students.

(D) In order to receive a grant under this paragraph, an eligible applicant shall establish that the number of students studying toward and completing associate’s or bachelor’s degrees in science, mathematics, engineering, or technology, in a program of the institution, has been increased by the grantee toward meeting the targets established under clause (i).

(E) For each grant awarded under this paragraph to an institution of higher education, the Director shall require that one or more principal investigators be faculty members from academic departments included in the work of the project. For each grant awarded to a consortium or partnership, at each institution of higher education participating in the consortium or partnership, at least one of the individuals responsible for carrying out activities authorized under this paragraph at that institution shall be a faculty member from an academic department included in the work of the project at that institution.

(F) In this paragraph, the term "eligible applicant" means—
(i) an institution of higher education;
(ii) a consortium of institutions of higher education; or
(iii) a partnership between—
(A) an institution of higher education or a consortium of such institutions; and
(B) a nonprofit organization, a State or local government, or a private company, with demonstrated experience and effectiveness in science, mathematics, engineering, or technology education.

(G) SECONDARY SCHOOL SYSTEMIC INITIATIVE.—A program of competitive, merit-based grants for secondary education grants that support the planning and implementation of secondary school reform initiatives designed to improve the quality of secondary education in the United States, and that may also include grants to State educational agencies to support the implementation of science, mathematics, and reading as it relates to technical and specialized texts;

(H) laboratory improvement and provision of instrumentation as part of a comprehensive program to enhance the quality of mathematics, science, engineering, and technology instruction.

(I) Other secondary school systemic initiatives that enable grantees to leverage private sector funding for mathematics, science, engineering, and technology scholarships.

(8) ASTRONOMICAL RESEARCH AND INSTRUMENTATION.—An astronomical research program to support competitive, merit-reviewed proposals that—
(A) advance understanding of—
(i) the origins and characteristics of planets, the Sun, other stars, the Milky Way Galaxy, and extragalactic objects (such as clusters of galaxies and quasars); and
(ii) the structure and origin of the universe; and
(B) support related activities such as developing advanced technologies and instrumentation, funding undergraduate and graduate students, and satisfying other instrumentation and research needs.

SEC. 9. MATHEMATICS AND SCIENCE EDUCATION PARTNERSHIPS.

(a) PROGRAM AUTHORIZED.—(1) IN GENERAL.—(A) The Director shall carry out a program to award grants to institutions of higher education or eligible nonprofit organizations (or consortia of such institutions or organizations) to establish mathematics and science education partnerships programs to improve elementary and secondary mathematics and science instruction.

(B) Grants shall be awarded under this subsection on a competitive, merit-reviewed basis.

(2) PARTNERSHIPS.—(A) In order to be eligible to receive a grant under this subsection, an institution of higher education or eligible nonprofit organization (or consortium of such institutions or organizations) shall enter into a partnership with one or more local educational agencies that may also include a State educational agency or one or more businesses.

(B) A participating institution of higher education shall include mathematics, science, and engineering departments in the programs carried out through a partnership under this paragraph.
(3) USES OF FUNDS.—Grants awarded under this subsection shall be used for activities that draw upon the expertise of the partners to improve elementary or secondary education in mathematics and science, and that are consistent with State mathematics and science student academic achievement standards, including—

(A) recruiting and preparing students for careers in elementary or secondary mathematics or science education;

(B) offering professional development programs, including summer or academic year institutes or workshops, designed to strengthen the capabilities of mathematics and science teachers;

(C) offering innovative preserve and inservice programs that instruct teachers on using technology more effectively in teaching mathematics and science, including programs that recruit and train undergraduate and graduate students to provide technical support to teachers;

(D) developing distance learning programs for teachers or students, including developing courses, curricular materials, and other resources for the in-service professional development of teachers that are made available to teachers through the Internet;

(E) developing a cadre of master teachers who will promote reform and improve in schools;

(F) offering teacher preparation and certification programs in science, mathematics, engineering, and technology for teachers or students and the reasons such stipends will be provided to students or teachers and the reasons such stipends will be provided to students.

(4) MASTER TEACHERS.—Activities carried out in accordance with paragraph (3)(E) shall—

(A) emphasize the training of master teachers who will improve the instruction of mathematics or science in kindergarten through grade 12;

(B) include training in both content and pedagogy; and

(C) provide training only to teachers who will be granted classroom time to serve as master teachers, as demonstrated by assurances their employing school has provided to the Director, in such time and such manner as the Director may determine.

(5) SCIENCE ENRICHMENT PROGRAMS FOR GIRLS.—Activities carried out in accordance with paragraph (3)(K) and (L) shall include elementary school and secondary school programs to encourage the ongoing interest of girls in science, mathematics, engineering, and technology and to prepare girls to pursue undergraduate and graduate degrees in careers in science, mathematics, engineering, or technology. Funds made available through awards to partnerships for purposes of this paragraph may include—

(A) training secondary school mathematics and science teachers in the design of research projects for students;

(B) establishing a system for students and teachers to participate in research projects funded under this subsection to exchange information about their projects and research results; and

(C) assessing the educational value of the student research projects by such means as tracking the academic performance and choice of academic majors of students conducting research.

(6) INSTITUTION OF HIGHER EDUCATION.—Grants awarded under this subsection may be used to provide stipends for teachers or students participating in training or research activities that would not be part of their typical classroom activities.

(7) ADMINISTRATION.—The Director, in consultation with the Secretary of Education, shall—

(A) notify the public of the establishment and results of the evaluation required under paragraph (3) and shall be provided to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate;

(B) adopt regulations for the purposes of this section to foster greater national collaboration.

(8) FUNDINGS AVAILABLE.—The Director, in consultation with the Secretary of Education, shall provide annual reports to the Committee on Science of the House of Representatives, the Committee on Education and the Workforce of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate describing how the program authorized by this act will be implemented.
under this section has been and will be coordinated with the program authorized under part B of title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.). The requirements of this paragraph shall be submitted along with the President's annual budget request.

(5) TECHNICAL ASSISTANCE.—At the request of an eligible partnership or a State educational agency, the Director shall provide the partnership or agency with technical assistance in meeting any requirements of this section, including providing advice from experts on how to develop—

(A) a quality application for a grant; and

(B) a plan for the use of funds received from a grant under this section.

SEC. 10. ROBERT NOYCE SCHOLARSHIP PROGRAM.

(a) SCHOLARSHIP PROGRAM.—

(1) IN GENERAL.—The Director shall carry out a program to award grants to institutions of higher education (or consortia of such institutions) to provide scholarships, stipends, and programming designed to recruit and train mathematics and science teachers. Such program shall be known as the “Robert Noyce Scholarship Program.”

(2) MERIT REVIEW.—Grants shall be provided under this subsection on a competitive, merit-reviewed basis.

(3) USE OF GRANTS.—Grants provided under this section shall be used by institutions of higher education or consortia—

(A) to develop and implement a program to encourage and support students majoring in mathematics, science, and engineering at the grantee's institution to become mathematics and science teachers, through—

(i) administering scholarships in accordance with subsection (c);

(ii) offering programs to help scholarship recipients to school improvements in secondary schools, including programs that will result in teacher certification or licensing; and

(iii) offering programs to scholarship recipients, both before and after they receive their baccalaureate degree, to enable the recipients to become better mathematics and science teachers, to fulfill the service requirements of this section, and to exchange ideas with others in their fields; or

(B) to develop and implement a program to encourage science, mathematics, or engineering professionals to become mathematics and science teachers, through—

(i) administering stipends in accordance with subsection (d);

(ii) offering programs to help stipend recipients obtain teacher certification or licensing; and

(iii) offering programs to stipend recipients, both during and after matriculation in the program for which the stipend is received, to enable recipients to become better mathematics and science teachers, to fulfill the service requirements of this section, and to exchange ideas with others in their fields.

(b) SELECTION.—

(1) IN GENERAL.—Scholarships under this section shall be awarded on the basis of academic merit, with consideration given to financial need and to the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1865a or 1865b).

(2) REVIEW OF APPLICATIONS.—In evaluating the applications submitted under paragraph (1), the Director shall consider, at a minimum—

(A) the ability of the applicant to effectively carry out the program;

(B) the extent to which the applicant is committed to making the program a central organizational focus;

(C) the degree to which the proposed programming will enable scholarship or stipend recipients to become successful mathematics and science teachers;

(D) the number and quality of the students that will be served by the program; and

(E) the ability of the applicant to recruit students who would otherwise not pursue a career in teaching.

(3) SCHOLARSHIP REQUIREMENTS.—Scholarships under this section shall be available only to students who are—

(A) majoring in science, mathematics, or engineering; and

(B) in the last 2 years of a baccalaureate degree program.

(4) SERVICE OBLIGATION.—If an individual receives a scholarship, that individual shall be required to complete, within 6 years after graduation from the baccalaureate degree program for which the scholarship was awarded, 2 years of service as a mathematics or science teacher for each year a scholarship was received. Service required under this paragraph shall be performed in a high-need local educational agency.

(c) STIPENDS.—

(1) IN GENERAL.—Stipends under this section shall be awarded on the basis of academic merit, with consideration given to financial need and to the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1865a or 1865b).

(2) SELECTION.—Stipends under this section shall be awarded on the basis of academic merit, with consideration given to financial need and to the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1865a or 1865b).

(3) DURATION.—Individuals may receive a maximum of 1 year of stipend support.

(d) SERVICE OBLIGATION.—If an individual receives a stipend under this section, that individual shall be required to complete, within 6 years after graduation from the baccalaureate degree program for which the award was made, a minimum of 2 years of service as a mathematics or science teacher.

(e) CONDITIONS OF SUPPORT.—As a condition of acceptance of a scholarship or stipend under this section, a recipient shall enter into an agreement with the institution of higher education—

(1) accepting the terms of the scholarship or stipend pursuant to subsections (c) and (g), or subsection (d);

(2) agreeing to provide the awarding institution of higher education with annual certification of employment and up-to-date contact information and to participate in surveys provided by the institution of higher education as part of an ongoing assessment program; and

(3) establishing that any scholarship recipient shall provide the United States for any amount that is required to be repaid in accordance with the provisions of subsection (g).

(f) COLLECTION FOR NONCOMPLIANCE.—(1) MONITORING COMPLIANCE.—The institution of higher education (or consortium thereof) receiving a grant under this section shall, as a condition of participating in the program, enter into an agreement with the Director to monitor the compliance of scholarship and stipend recipients with their respective service requirements.

(2) COLLECTION OF REPAYMENT.—(A) In the event that a scholarship recipient is required to repay the scholarship under subsection (g), the institution shall be responsible for collecting the repayment amounts.

(B) Except as provided in subparagraph (C), any such repayment shall be returned to the Treasury of the United States.

(C) A grantee may retain a percentage of any repayment it collects to defray administrative costs associated with the collection, the Director shall establish a single, fixed percentage that applies to all grantees.

(g) FAILURE TO COMPLETE SERVICE OBLIGATION.—(1) GENERAL RULE.—If an individual who has received a scholarship under this section—

(A) fails to maintain an acceptable level of academic standing in the educational institution at which the individual is enrolled, as determined by the Director;

(B) is dismissed from such educational institution for disciplinary reasons; or

(C) ceases to pursue the baccalaureate degree program for which the award was made before the completion of such program;

(D) declares that the individual does not intend to fulfill the service obligation under this section; or

(E) fails to fulfill the service obligation of the individual under this section, such individual shall be liable to the United States as provided in paragraph (2).

(2) AMOUNT OF REPAYMENT.—(A) If a circumstance described in paragraph (1) occurs before the completion of one year of a service obligation under this section, the United States shall be entitled to recover from the individual, within one year after the occurrence of such circumstance, an amount equal to—

(i) the total amount of scholarships or stipends received by such individual under this section plus

(ii) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States, multiplied by 2.

(B) If a circumstance described in paragraph (1)(D) or (E) occurs after the completion of one year of a service obligation under this section, the United States shall be entitled to recover, from the individual, within one year after the date of the occurrence of such circumstance, an amount equal to the total amount of awards received by such individual under this section minus 1 ½ of the amount of the award received per year for each full year of service completed, plus the interest on such amounts which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

(C) EXCEPTIONS.—An institution of higher education may provide for the partial or total waiver or suspension of any service or payment obligation by an individual under this section whenever compliance with such obligation would be impossible or would involve extreme hardship to the individual, or if enforcement of such obligation...
with respect to the individual would be unscionable.

(b) DATA COLLECTION.—Institutions or consortia receiving grants under this section shall supply to the Director any relevant statistical and demographic data on scholarship recipients and stipend recipients the Director may request, including information on employment required by subsection (a).

(1) DEFINITIONS.—In this section—

(A) the term ‘‘cost of attendance’’ has the meaning given such term in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087l);

(B) the term ‘‘mathematics and science teachers’’ means a mathematics, science, or technology teacher at the elementary school or secondary school level;

(C) the term ‘‘mathematics, science, or engineering professional’’ means a person who holds a bachelor’s, master’s, or doctoral degree in science, mathematics, or engineering and is working in that field or a related area;

(D) the term ‘‘stipend’’ means an award under subsection (c); and

(E) the term ‘‘stipend recipient’’ means a person receiving such an award.

SEC. 11. ESTABLISHMENT OF CENTERS FOR RESEARCH ON MATHEMATICS AND SCIENCE LEARNING AND EDUCATION IMPROVEMENT.

(a) ESTABLISHMENT.—(1) IN GENERAL.—(A) The Director shall award grants to institutions of higher education (or consortia or a consortium of such institutions) to establish multiple Mathematics and Science Centers for Research on Learning and Education Improvement.

(B) Grants shall be awarded under this paragraph on a competitive, merit-reviewed basis.

(2) PURPOSE.—The purpose of the Centers shall be to conduct and evaluate research in cognitive development, learning, and related fields and to develop ways in which the results of such research can be applied in elementary school and secondary school classrooms to improve the teaching of mathematics and science.

(c) ANNUAL CONFERENCE.—The Director shall convene an annual meeting of the Centers to foster collaboration among the Centers and to further disseminate the results of the Centers’ activities.

(d) COORDINATION.—(1) The Director shall coordinate with the Secretary of Education in—

(A) disseminating the results of the research conducted pursuant to grants awarded under this section to elementary school teachers and secondary school teachers; and

(B) providing programming, guidance, and support to ensure that such teachers—

(i) understand the implications of the research disseminated under this paragraph for classroom practice; and

(ii) use the research to improve such teachers’ performance in the classroom.

SEC. 12. DUPLICATION OF PROGRAMS.

(a) IN GENERAL.—(1) The Director shall review the education programs of the Foundation that are in operation as of the date of enactment of this Act to determine whether any of such programs duplicate the programs authorized under this Act.

(b) IMPLEMENTATION.—As programs authorized under this Act are implemented, the Director shall—

(i) terminate any duplicative program being carried out by the Foundation or merge the duplicative program into a program authorized under this Act; and

(ii) not establish any new program that duplicates a program that has been implemented pursuant to this Act.

SEC. 13. MAJOR RESEARCH INSTRUMENTATION.

(a) PRIORITIZATION OF PROPOSED MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION PROJECTS.

(i) DEVELOPMENT OF PRIORITIES.—(A) The Director shall—

(I) develop a list indicating by number the relative priority for funding under the major research equipment and facilities construction account that the Director assigns to each project the Board has approved for inclusion in a future budget request; and

(II) submit the list described in clause (I) to the Board for approval.

(B) The Director shall update the list prepared under subparagraph (A) each time the Board approves a new project that would receive funding under the major research equipment and facilities construction account, as necessary to prepare reports under paragraph (2), and from time to time, submit any updated list to the Board for approval.

(2) ANNUAL REPORT.—Not later than 90 days after the date of enactment of this Act, and annually thereafter as part of the annual Office of Science and Technology Policy budget submission to Congress, the Director of the Office of Science and Technology Policy shall complete a report on the extent to which the Board of Directors of the Foundation has appropriated funds for construction projects pursuant to this section.

SEC. 14. MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION PROJECTS.

(a) FUNDING REQUIREMENTS.

(1) FEDERAL FUNDING.—(A) The Director shall ensure that the Foundation—

(i) develops a list indicating by number the relative priority for funding under the major research equipment and facilities construction account that the Director assigns to each project the Board has approved for inclusion in a future budget request; and

(ii) submits the list described in clause (I) to the Board for approval.

(B) The Director shall update the list prepared under subparagraph (A) each time the Board approves a new project that would receive funding under the major research equipment and facilities construction account, as necessary to prepare reports under paragraph (2), and from time to time, submit any updated list to the Board for approval.

(b) ANNUAL REPORT.—Not later than 90 days after the date of enactment of this Act, and annually thereafter, the Director shall submit a report on the results of the research instrumentation that are eligible for acquisition under the guidelines of the major research instrumentation program.

(c) A description of the distribution of awards and funding levels by year, by major field of science and engineering and by type of institution of higher education for the program, since the inception of the major research instrumentation program.

(d) An analysis of the impact of the major research instrumentation program on the research instrumentation needs that were documented in the Foundation’s 1994 survey of academic research instrumentation.

(e) A report to the Senate and House Committees on Science, the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Science, Education, Labor, and Pensions of the Senate, and the Committee on Science, Commerce, and Transportation of the House, the Committee on Science, Education, Labor, and Pensions of the Senate, and the Committee on Appropriations of the Senate.
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(A) the most recent Board-approved priority list developed under paragraph (1)(A); (B) a description of the criteria used to develop such list; and (C) an analysis of the major factors for each project that determined the ranking of such project on the list, based on the application of the criteria described pursuant to subparagraph (B).

(3) CRITERIA.—The criteria described pursuant to paragraph (2)(B) shall include, at a minimum—

(A) scientific merit; 
(B) broad societal need and probable impact; 
(C) consideration of the results of formal prioritization efforts by the scientific community; 
(D) readiness of plans for construction and operation; 
(E) the applicant’s management and administrative capacity of large research facilities; 
(F) international and interagency commitments; and 
(G) the order in which projects were approved by the Board for inclusion in a future budget request.

(4) FACILITIES PLAN.—

(1) IN GENERAL.—Section 201(a)(1) of the National Science Foundation Authorization Act of 1998 (42 U.S.C. 1862a(a)(1)) is amended to read as follows:

“(1) IN GENERAL.—The Director shall prepare, and include as part of the Foundation’s annual budget request to Congress, a plan for the proposed construction of, and repair and upgrades to, national research facilities, including full life-cycle cost information.”

(2) CONTENTS OF PLAN.—Section 201(a)(2) of the National Science Foundation Authorization Act of 1998 (42 U.S.C. 1862a(2)) is amended—

(A) by redesignating paragraphs (3) through (5) as paragraphs (4) through (6), respectively; and

(B) by inserting after paragraph (5) the following:

“(5) FULL LIFE-CYCLE COST.—The term ‘full life-cycle cost’ means all costs of planning, development, laboratory, construction, operations and support, and shut-down costs, without regard to funding source and without regard to what entity manages the project or facility involved.”

(3) DEFINITION.—Section 2 of the National Science Foundation Authorization Act of 1998 (42 U.S.C. 1862c(a)) is amended—

(A) by redesignating paragraphs (3) through (5) as paragraphs (4) through (6), respectively; and

(B) by inserting after paragraph (4) the following:

“(6) PROJECT MANAGEMENT.—No national research facility project funded under the major research equipment and facilities construction account may be conducted by an individual whose appointment to the Foundation is temporary.

(d) BOARD APPROVAL OF MAJOR RESEARCH EQUIPMENT AND FACILITIES PROJECTS.—

(1) IN GENERAL.—The Board shall explicitly approve any project to be funded out of the major research equipment and facilities construction account before any funds may be obligated from such account for such project.

(2) REPORT.—Not later than September 15 of each fiscal year, the Director shall report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee of Representatives of the conditions on any delegation of authority under section 4 of the National Science Foundation Act of 1950 (42 U.S.C. 1863) that relieves the Foundation of any responsibility for the proposed construction of, and repair and upgrades to, national research facilities, including full life-cycle cost information.

(e) NATIONAL ACADEMY OF SCIENCES STUDY ON MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION.—

(1) STUDY.—Not later than 3 months after the date of enactment of this Act, the Director shall enter into an arrangement with the National Academy of Sciences to perform a study on setting priorities for a diverse array of disciplinary and interdisciplinary Foundation-sponsored large research facility projects.

(2) TRANSMITTAL TO CONGRESS.—Not later than 15 months after the date of the enactment of this Act, the Director shall transmit to the Committee on Commerce, Science, and Transportation, the Committee on Health, Education, Labor, and Pensions, and the Committee of Representatives, the study conducted by the National Academy of Sciences together with the Foundation’s reaction to the study authorized under paragraph (1).

SEC. 15. ADMINISTRATIVE AMENDMENTS.

(a) BOARD MEETINGS.—

(1) IN GENERAL.—Section 4(a)(3) of the National Science Foundation Act of 1950 (42 U.S.C. 1863) is amended by adding at the end the following:

“(d) B OARD APPROVAL OF MAJOR RESEARCH EQUIPMENT AND FACILITIES PROJECTS.—

(1) IN GENERAL.—The Board shall explicitly approve any project to be funded out of the major research equipment and facilities construction account before any funds may be obligated from such account for such project.

(2) REPORT.—Not later than September 15 of each fiscal year, the Director shall report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee of Representatives of the conditions on any delegation of authority under section 4 of the National Science Foundation Act of 1950 (42 U.S.C. 1863) that relieves the Foundation of any responsibility for the proposed construction of, and repair and upgrades to, national research facilities, including full life-cycle cost information.

(e) NATIONAL ACADEMY OF SCIENCES STUDY ON MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION.—

(1) STUDY.—Not later than 3 months after the date of enactment of this Act, the Director shall enter into an arrangement with the National Academy of Sciences to perform a study on setting priorities for a diverse array of disciplinary and interdisciplinary Foundation-sponsored large research facility projects.

(2) TRANSMITTAL TO CONGRESS.—Not later than 15 months after the date of the enactment of this Act, the Director shall transmit to the Committee on Commerce, Science, and Transportation, the Committee on Health, Education, Labor, and Pensions, and the Committee of Representatives, the study conducted by the National Academy of Sciences together with the Foundation’s reaction to the study authorized under paragraph (1).

SEC. 17. UNDERGRADUATE EDUCATION REFORM.

(a) IN GENERAL.—The Director shall award grants, on a competitive, merit-reviewed basis, to institutions of higher education to expand previously implemented reforms of undergraduate science, mathematics, engineering, or technology education that have been demonstrated to have been successful in increasing the number and quality of students studying toward and completing associate’s or baccalaureate degrees in science, mathematics, engineering, or technology.

(b) USES OF FUNDS.—Activities supported by grants under this section may include—

(i) participation of students, faculty, and institutions in projects beyond a single course or group of courses to achieve reform within an entire academic unit;
(2) expansion of successful reform efforts be-
yond a single academic unit to other science, mat-
ematics, engineering, or technology aca-
demic units within an institution;
(3) implementation of multidisciplinary courses or programs that formalize collaborations for the purpose of improved student instruction and re-
search in science, mathematics, engineering, and technology;
(4) expansion of undergraduate research op-
portunities beyond a particular laboratory, course, or academic unit to engage multiple aca-
demic units in providing multidisciplinary re-
search opportunities for undergraduate stu-
dents;
(5) expansion of innovative tutoring or mentor-
ing programs to enhance student recruitment or persistence to degree completion in science, mathematics, engineering, or tech-
nology;
(6) improvement of undergraduate science, mat-
ematics, engineering, and technology edu-
cation for nonmajors, including education ma-
jors; and
(7) implementation of technology-driven re-
form efforts, including the installation of tech-
nology to facilitate such reform, that directly impact undergraduate science, mathematics, en-
gineering, and technology instruction or research experiences.
(c) SELECTION PROCESS.—
(1) APPLICATIONS.—An institution of higher ed-
aucation seeking a grant under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—
(A) a description of the proposed reform ef-
f ort;
(B) a description of the previously imple-
mented reform effort that will serve as the basis for the proposed reform effort and evidence of success of that previous effort, including data on student recruitment, persistence to degree completion, and achievement;
(C) evidence of active participation in the pro-
posed project by individuals who were central to the success of the previously implemented reform effort; and
(D) evidence of institutional support for, and commitment to, the proposed reform effort, including a description of existing or planned in-
stitutional practices regarding faculty hiring, promotion, tenure, and teaching as-
signment that reward faculty contributions to undergraduate education equal to, or greater than, scholarly scientific research.
(2) REVIEW OF APPLICATIONS.—In evaluating applications submitted under paragraph (1), the Director shall consider at a minimum—
(a) the evidence of past success in imple-
menting undergraduate education reform and the likelihood of success in undertaking the pro-
posed expanded effort;
(b) the extent to which the faculty, staff, and administrators of the institution are committed to making the proposed institutional reform a priority of the participating academic unit;
(C) the degree to which the proposed reform will contribute to change in institutional culture and policy such that a greater value is placed on faculty engagement in undergraduate edu-
cation, as evidenced through promotion and tenure policies; and
(D) the likelihood that the institution will sus-
tain the benefits realized beyond the period of the grant.
(3) GRANT DISTRIBUTION.—The Director shall ensure, to the extent practicable, that grants awarded under this section are made to a vari-
ety of types of institutions of higher education.
SECT. 18. REPORTS.
(a) GRANT SIZE AND DURATION.—Not later than 6 months after the date of enactment of this Act, the Director shall submit an annual report to the Committee on Science of the House of Representa-
tives, the Committee on Commerce, Science, and Transportation of the Senate, and the Com-
mittee on Health, Education, Labor, and Pen-
sions of the Senate a report describing the im-
portant that increasing the average grant size and the number and quality of students, including individuals identified in section 33 or 34 of the Science and Engineering Equal Oppor-
tunity Act of 1988 (42 U.S.C. 6055b and 6055b) studying toward and completing associate’s or baccalaureate degrees in science, mathematics, engineering, and technology. In conducting the evaluation, the Director shall consider information on—

(A) the number of students enrolled in under-
graduate science, mathematics, engineering, and technology programs;
(B) student academic achievement, including quantifiable measurements of students’ mastery of content and skills;
(C) persistence to degree completion, including students who transfer from science, mat-
ematics, engineering, and technology programs to programs in a different discipline;
(D) placement during the first year after de-
gree completion in post-graduate education or career pathways.
(b) ASSESSMENT BENCHMARKS AND TOOLS.—The Director, through the Research, Evaluation and Communication Division of the Human Resources Directorate of the Founda-
tion, shall establish a common set of assessment benchmarks and tools, and shall enable every Foundation-sponsored project to incorporate the use of these benchmarks and tools in their project-based assessment activities.
(3) REPORTS TO CONGRESS.—Not later than 3 years after the date of the enactment of this Act, and once every 3 years thereafter, the Di-
rector shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transpor-
tation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report containing the results of evalua-
tion activities supported by the Foundations;
(b) AWARES.—Notwithstanding any other pro-
vision of this Act, the Director shall annually evaluate a random sample of grants, contracts, or other awards made pursuant to this Act.
(c) DISSEMINATION.—The Director shall—
(1) provide for the dissemination of the results of the evaluations conducted pursuant to this section to the public; and
(2) provide notice to the public that such evalua-
tions are available.
SEC. 20. REPORT BY COMMITTEE ON EQUAL OPPORTUNITIES IN SCIENCE AND ENGINEERING.

As part of the first report required by section 36(e) of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1862(e)) transmitted to Congress after the date of enactment of this Act, the Equal Opportunity Committees in Science and Engineering shall include—

(1) a summary of its findings over the previous 10 years;
(2) a description of past and present policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities in science, mathematics, and engineering, including activities in support of minority-serving institutions; and
(3) an assessment of the trends in participation in Foundation activities, and an assessment of the effectiveness of Foundation policies and activities, along with proposals for new strategies or the broadening of existing successful strategies toward facilitating the goals of that Act.

SEC. 21. ADVANCED TECHNOLOGICAL EDUCATION PROGRAM.

(a) CORE SCIENCE AND MATHEMATICS COURSES.—Section 3(a) of the Scientific and Advanced-Technology Education Act of 1992 (42 U.S.C. 1862(a)) is amended—

(1) by inserting “,” and to improve the quality of their core education courses in science and mathematics after “education in advanced-technology fields”;
(2) in paragraph (1) by inserting “and in core sciencearten of aclusions” after “advanced-technology fields”;
and
(3) in paragraph (2) by striking “in advanced-technology fields” and inserting “who provide instruction in science, mathematics, and advanced-technology fields”.

(b) ARTICULATION PARTNERSHIPS.—Section 3(c)(1)(B) of the Scientific and Advanced-Technology Education Act of 1992 (42 U.S.C. 1862(c)(1)(B)) is amended—

(1) by striking “and” at the end of clause (i);
(2) by striking the period at the end of clause (ii) and inserting a semicolon; and
(3) by adding after clause (ii) the following new clauses:

"(iii) provide students with research experiences at bachelor’s-degree-granting institutions participating in the partnership, including stipend support for students participating in summer programs; and

(iv) provide faculty mentors for students participating in activities under clause (iii), including summer salary support for faculty members who provide instruction in science, mathematics, and technology education;"

(c) NATIONAL SCIENCE FOUNDATION REPORT.—Within 6 months after the date of the enactment of this Act, the Director shall transmit a report to the Secretary of Commerce, the Secretary of Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate, and to the Committee on Science, Space, and Technology of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate, and to the Committee on Science, Space, and Technology of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate containing—

(1) a summary of the previous year’s data on—

(a) the performance of Federal research and development programs; and

(b) the effectiveness of the foundation’s science education programs;

(2) a description of the projected impact that the budgetary increases will have on the Nation’s scientific and technological workforces; and

(3) an estimate of the national scientific and technological research infrastructure needed to adequately support the Foundation’s increased funding and additional programs;

and

(4) a description of the impact that the budgetary increases provided under this Act will have on the size and duration of grants awarded by the Foundation.

SEC. 22. REPORT ON FOUNDATION BUDGETARY AND PROGRAMMATIC EXPANSION.

The Board shall prepare a report to address and evaluate the Foundation’s budgetary and programmatic growth provided for by this Act. The report shall be submitted to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate within one year after the date of enactment of this Act and shall include—

(1) recommendations on how the increased funding should be utilized;
(2) an examination of the projected impact that the budgetary increases will have on the Nation’s scientific and technological workforces; and
(3) an estimate of the national scientific and technological research infrastructure needed to adequately support the Foundation’s increased funding and additional programs; and

(4) a description of the impact that the budgetary increases provided under this Act will have on the size and duration of grants awarded by the Foundation.

SEC. 23. ASTRONOMY AND ASTROPHYSICS ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Foundation and the National Aeronautics and Space Administration shall jointly establish an Astronomy and Astrophysics Advisory Committee (in this section referred to as the “Advisory Committee”).

(b) DUTIES.—The Advisory Committee shall—

(1) assess, and make recommendations regarding, the coordination of astronomy and astrophysics programs of the Foundation and the National Aeronautics and Space Administration;

(2) assess, and make recommendations regarding, the status of the activities of the Foundation and the National Aeronautics and Space Administration as they relate to the recommendations contained in the National Research Council’s 2001 report entitled “Astronomy and Astrophysics in the New Millennium”; and

the recommendations contained in subsequent National Research Council reports of a similar nature;

(3) not later than March 15 of each year, transmit a report to the Director, the Administrator of the National Aeronautics and Space Administration, and the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate on the Advisory Committee’s findings and recommendations under paragraphs (1) and (2).

(c) MEMBERSHIP.—The Advisory Committee shall consist of—

(1) 5 members selected by the Director;

(2) 5 members selected by the Administrator of the National Aeronautics and Space Administration; and

(3) 3 members selected by the Director of the Office of Science and Technology Policy.

(d) SELECTION PROCESS.—Initial selections under subsection (c) shall be made within 3 months after the date of enactment of this Act.

(e) QUORUM.—A majority of the members serving on the Advisory Committee shall constitute a quorum for purposes of conducting the business of the Advisory Committee.

(f) DURATION.—Section 14 of the Advisory Committee Act shall not apply to the Advisory Committee.

SEC. 24. MINORITY-SERVING INSTITUTIONS UNDERGRADUATE PROGRAM.

(a) IN GENERAL.—The Director is authorized to establish a new program to award grants to historically black colleges and universities to support the undergraduate programs of historically black colleges and universities.

(b) PROGRAM COMPONENTS.—Grants awarded under this section shall—

(1) activities to improve courses and curriculum in science, mathematics, and engineering;

(2) faculty development;

(3) stipends for undergraduate students participating in research; and

(4) other activities consistent with subsection (a) that are determined by the Director.

(c) COORDINATION.—The program shall be coordinated with and in addition to the historically black colleges and universities that are participating in the Undergraduate Program and the Tribal Colleges and Universities Program.

(d) INSTRUMENTATION.—Funding for instrumentation is an allowed use of grants awarded under this section and the ongoing Historically Black Colleges and Universities Undergraduate Program and the Tribal Colleges and Universities Program.

SEC. 25. STUDY ON RESEARCH AND DEVELOPMENT FUNDING DATA DISCREDITS.

(a) STUDY.—The Director, in consultation with the Director of the Office of Management and Budget and the heads of the other Federal agencies, shall enter into agreement with the National Academy of Sciences to conduct a comprehensive study to determine the source of discrepancies in Federal reports on obligations and actual expenditures of Federal research and development funding.

(b) CONTENTS.—The study shall—

(1) examine the reliability and accuracy of reporting classifications and definitions used in the reports described in subsection (a);

(2) examine whether the classifications and definitions are used consistently across Federal agencies for data gathering;

(3) examine whether and how Federal agencies use reports described in subsection (a), and describe any other sources of similar data used by those agencies;

(4) recommend alternatives for modifications to the current reporting process and system that would—

(A) accommodate emerging fields of science and changing practices in the conduct of research and development;

(B) minimize, to the extent possible, the burden imposed on the reporters of these data;

(C) increase the consistency of application of the system across the Federal agencies including the Office of Management and Budget and the Foundation;

(D) encourage the use of new technologies to increase accuracy, timeliness, and consistency of the reported data between the agencies and the Federal performers; and

(E) overcome systemic shortfalls; and

(5) recommend an implementation timeline for the modifications recommended under paragraphs (1) and (2).
changes to the current computer systems and processes used by the agencies.

(c) SUBMISSION.—The Director shall submit a report on the results of the study to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate within one year after the date of enactment of this Act.

(d) IMPLEMENTATION.—Within 6 months after the completion of the study required by subsection (a), the Director of the Office of Science and Technology Policy shall submit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a plan for implementation of the recommendations of the study.

SEC. 26. PLANNING GRANTS.

The Director is authorized to accept planning proposals from applicants who are within .657 percentage points of the current eligibility level for the Experimental Program to Stimulate Competitive Research. Such proposals shall be reviewed by the Foundation to determine their merit for support under the Experimental Program to Stimulate Competitive Research or any other appropriate program.

Amend the title so as to read: “An Act to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes.”

Mr. ARMY (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the Record.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Is there objection to the request of Mr. SIMPSON. There was no objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

A motion to reconsider was laid on the table.

NORTH AMERICAN WETLANDS CONSERVATION REAUTHORIZATION ACT

Mr. ARMY. Mr. Speaker, I ask unanimous consent to take from the Speaker’s table the bill (H.R. 3908) to reauthorize the North American Wetlands Conservation Act, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 2, line 19, strike out “amending ‘‘birds’’ in line 25 and insert: ‘‘and habitats associated with wetland ecosystems’’

Page 2, lines 22 and 23, strike out [dependent] and insert: [associated]

Page 2, line 25, strike out [dependent] and insert: [associated]

Page 4, line 3, strike out all after “inserting ‘‘down to and including ‘‘thereof’’ in line 4 and insert: ‘‘(but at least 30 percent and not more than 60 percent)’’

Page 4, line 4, strike out all after “inserting ‘‘down to and including ‘‘thereof’’ in line 10 and insert: ‘‘(but at least 40 percent and not more than 70 percent)’’

Page 5, line 11, insert:

In section 360 (16 U.S.C. 4404(b)), by inserting ‘‘and in 1994 by the Secretary of Sedesol for Mexico after ‘‘United States’’.”

Page 5, line 12, strike out [insert] and insert:

Page 5, line 17, strike out [insert] and insert:

Page 5, after line 18, insert:

In section 360 (16 U.S.C. 4404(b)), by inserting after ‘‘1986’’ the following: ‘‘, and by the Secretary of Sedesol for Mexico in 1994, and subsequent dates’’

Page 5, line 19, strike out [insert] and insert:

Page 5, line 22, strike out [insert] and insert:

Page 6, line 1, strike out [insert] and insert:

Page 6, after line 2, insert:

In section 360 (16 U.S.C. 4404(b)), by striking ‘‘by January 1 of each year,’’ and inserting ‘‘each year’’.

Page 6, after line 4, insert:

In section 5(b) (16 U.S.C. 4404(b)), by striking ‘‘one Council member’’ and inserting ‘‘2 Council members’’

Page 6, line 3, strike out [insert] and insert:

Page 6, line 6, strike out [insert] and insert:

Page 6, line 10, strike out [insert] and insert:

Page 6, line 13, strike out [insert] and insert:

Page 7, after line 3, insert:

SEC. 8. CHESAPEAKE BAY INITIATIVE.

Section 502(c) of the Chesapeake Bay Initiative Act of 1998 (16 U.S.C. 461 note; Public Law 105-312) is amended by striking ‘‘2003’’ and inserting ‘‘2008’’.

Mr. ARMY (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the Record.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from Texas?

There was no objection.

A motion to reconsider was laid on the table.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. Boyd (at the request of Mr. GEPHARDT) for today on account of family business.

Mr. Sawyer (at the request of Mr. GEPHARDT) for today after 8:35 p.m. on account of an official congressional delegation event.

Mr. Wynn (at the request of Mr. GEPHARDT) for today after 8:35 p.m. on account of an official congressional delegation event.

Mr. Young of Florida (at the request of Mr. ARMY) for today after 7:30 p.m. on account of illness in the family.

Mr. Diaz-Balart (at the request of Mr. ARMY) for today and the balance of the week on account of a family emergency.

Mr. Gilman (at the request of Mr. ARMY) for today after 8:35 p.m. and the balance of the week on account of attending the Trans-Atlantic Legislators Dialogue Conference.

Mr. Hyde (at the request of Mr. ARMY) for today after 8:35 p.m. and the balance of the week on account of attending the Trans-Atlantic Legislators Dialogue Conference.

Mr. Issa (at the request of Mr. ARMY) for today after 8:35 p.m. and the balance of the week on account of attending the Trans-Atlantic Legislators Dialogue Conference.

Mr. Toomey (at the request of Mr. ARMY) for today on account of a death in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders herefore entered, was granted to:

The following Members (at the request of Mr. TURNER) to revise and extend their remarks and include extraneous material:

Mr. Hoey, for 5 minutes, today.

Mr. Filner, for 5 minutes, today.

Mr. Kaptur, for 5 minutes, today.

Ms. Norton, for 5 minutes, today.

Mr. Sherman, for 5 minutes, today.

Mr. Cummings, for 5 minutes, today.

Mr. Visclosky, for 5 minutes, today.

Mr. Hill, for 5 minutes, today.

Ms. Carson of Indiana, for 5 minutes, today.

Mr. McGovern, for 5 minutes, today.

Mr. Skelton, for 5 minutes, today.

Mr. McDermott, for 5 minutes, today.

Mr. Gordon, for 5 minutes, today.

Mr. Davis of Illinois, for 5 minutes, today.

The following Members (at the request of Mr. ARMY) to revise and extend their remarks and include extraneous material:

Mr. Jones of North Carolina, for 5 minutes, today.

Mr. Kirk, for 5 minutes, today.

Mr. Burton of Indiana, for 5 minutes, today.

Mr. Bilirakis, for 5 minutes, today.

Mr. Smith of Michigan, for 5 minutes, today.

Mr. Cox, for 5 minutes, today.

Mr. Cannon, for 5 minutes, today.

Mr. Gutknecht, for 5 minutes, today.

Mr. Shaw, for 5 minutes, today.

Mr. Dreier, for 5 minutes, today.

Mr. LaTourette, for 5 minutes, today.

Mr. Royce, for 5 minutes, today.

SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker’s table and, under the rule, referred as follows:

S. 958. An act to provide for the use and distribution of the funds awarded to the Western Shoshone identifiable group under Indian Claims Committee Docket Numbers 326–A–1, 326–A–3, 326–K, and for other purposes; to the Committee on Resources.

S. 1742. An act to prevent the crime of identity theft, mitigate the harm to individuals victimized by identity theft, and for
other purposes; to the Committee on the Judiciary in addition to the Committee on Financial Services for a period to be subsequently determined by the Speaker, in each case for such provision as fall within the jurisdiction of the committee concerned.

S. 2845. An act to extend for one year procedural relief provided under the USA PATRIOT Act for individuals who were or are victims or survivors of victims of a terrorist attack on the United States on September 11, 2001, and terrorist attacks on the Judiciary. 3. 3067. An act to amend title 41, United States Code, to extend certain Government information security relief for one year, and for other purposes; to the Committee on Government Reform.

S. J. Res. 42. Joint resolution commending Sailors and continuing advancement of the maritime heritage of nations, its commemoration of the nautical history of the United States, and its promotion, encouragement, and support of young cadets through training; to the Committee on Transportation and Infrastructure in addition to the Committee on International Relations for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

ENROLLED BILLS SIGNED

Mr. Trandahl, Clerk of the House, reported and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H. R. 1070. An act to amend the Federal Water Pollution Control Act to authorize the Administrator of the Environmental Protection Agency to carry out projects and conduct research concerning the prevention of accidental contamination in areas of concern in the Great Lakes, and for other purposes.

H. R. 2546. An act to amend title 49, United States Code, to prohibit States from requiring a license or fee on account of the fact that a motor vehicle is providing interstate pre-arranged ground transportation service, and for other purposes.

H. R. 3340. An act to amend title 5, United States Code, to allow certain catch-up contributions to the Thrift Savings Plan to be made by participants age 50 or over; to reauthorize the Merit Systems Protection Board and the Office of Special Counsel; and for other purposes.

H. R. 3589. An act to reauthorize the National Sea Grant College Program Act, and for other purposes.

H. R. 3594. An act to authorize funding for computer and network security research and development and research fellowship programs, and for other purposes.

H. R. 3999. An act to provide for estimates and reports of improper payments by Federal agencies.

H. R. 4049. An act to facilitate the use of a portion of the former O'Reilly General Hospital in Springfield, Missouri, by the local Boys and Girls Club through the release of the reversionary interest and other interest retained by the United States in 1955 when the land was conveyed to the State of Missouri.

ADJOURNMENT

Mr. ARMY, Mr. Speaker, I promised myself I would stay until the last dog died, and it turns out I am the last dog.

Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 3 o'clock and 5 minutes a.m.), under its previous order, the House adjourned until Tuesday, November 19, 2002, at noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

9973. A letter from the Congressional Review Coordinator, Department of Agriculture, transmitting the Department's final rule — Gypsy Moth Generally Infested Areas [Docket No. 02-063-2] received November 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9974. A letter from the Congressional Review Coordinator, Department of Agriculture, transmitting the Department's final rule — Mediterranean Fruit Fly; Removal of Quarantined Area [Docket No. 01-138-3] received November 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9975. A letter from the Congressional Review Coordinator, Department of Agriculture, transmitting the Department's final rule — Change in Disease Status of Israel Because of BSE [Docket No. 02-048-I] (RIN: 0579-AB46) received November 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9977. A letter from the Congressional Review Coordinator, Department of Agriculture, transmitting the Department's final rule — Low Pathogenic Avian Influenza; Payment of Indemnity [Docket No. 02-048-1] (RIN: 0579-AB46) received November 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9978. A communication from the President to the United States Senate, requesting his request for FY 2003 budget amendments for the Department of Justice and the National Aeronautics and Space Administration; (H. R. 3250) received November 12, 2002; pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Appropriations and ordered to be printed.


9979. A letter from the Comptroller, Department of Defense, transmitting the Department's final rule — Change in Disease Status of Israel Because of BSE [Docket No. 02-048-I] (RIN: 0579-AB46) received November 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9979. A letter from the Comptroller, Department of Defense, transmitting the Department's final rule — Change in Disease Status of Israel Because of BSE [Docket No. 02-048-I] (RIN: 0579-AB46) received November 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9979. A letter from the Comptroller, Department of Defense, transmitting the Department's final rule — Change in Disease Status of Israel Because of BSE [Docket No. 02-048-I] (RIN: 0579-AB46) received November 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9979. A letter from the Comptroller, Department of Defense, transmitting the Department's final rule — Change in Disease Status of Israel Because of BSE [Docket No. 02-048-I] (RIN: 0579-AB46) received November 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

Changes in Flood Elevation Determinations [Docket No. FEMA-P-7612] received November 6, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

9981. A letter from the Assistant General Counsel for Regulations, Department of Agriculture, transmitting the Department's final rule — Special Supplemental Nutrition Program for Women, Infants and Children: Exclusion of Military Housing Payments (RIN: 0584-AD94) received November 5, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

9982. A letter from the Acting Assistant General Counsel for Regulations, Office of the General Counsel, Department of Education, transmitting the Department's final rule — Student Assistance General Provisions — received November 8, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

9985. A letter from the Acting Assistant General Counsel for Regulations, Office of the General Counsel, Department of Education, transmitting the Department's final rule — Student Assistance General Provisions — received November 8, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

9986. A letter from the Acting Assistant General Counsel for Regulations, Office of the General Counsel, Department of Education, transmitting the Department's final rule — Student Assistance General Provisions — received November 8, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

9987. A letter from the Assistant General Counsel for Regulations, Department of Agriculture, transmitting the Department's final rule — Low Pathogenic Avian Influenza; Payment of Indemnity [Docket No. 02-048-1] (RIN: 0579-AB46) received November 8, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.


9989. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Notice of Halting the Sanctions Clocks for the Commonwealth of Virgin Islands pursuant to the Clean Air Act; FRL-7249-5) received October 29, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.


9992. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Revisions to the California State Implementation Plan, Imperial County Air Quality District [CA242-0373a; FRL-395-8] received November 7, 2002, pursuant to 5 U.S.C.
rule — Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action 14—Adjustment of the Recreational Fishery from Leadbetter Point, WA (Westport) [Docket No. 20020430101-2101-01; I.D. 101102C] received November 5, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10021. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration’s final rule — Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action 17—Adjustment of the Ceremonial and Subsistence Harvest Regulations for the Ocean Salmon Fisheries of the Quilleute Tribe [Docket No. 020430101-2101-01; I.D. 101102C] received November 5, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10022. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration’s final rule — Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Adjustments; Correction [Docket No. 01123109-2000-03; I.D. 092602B] received October 29, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10029. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department’s final rule — Security Zones; Captain of the Port, Detroit, Zone, Selfridge Air National Guard Base, Lake St Clair [CGD09-02-009] received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10039. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule — Airworthiness Directives; Agusta S.p.A. Model A119 Helicopters [Docket No. 2002-SW-46-AD] received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10042. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule — Airworthiness Directives; Cirrus Design Corp. Airplanes [Docket No. 2002-CE-19-AD; Amendment 39-12906; AD 2002-20-09] received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10059. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule — Airworthiness Directives; Bell Helicopter Textron Canada Limited Canada Limited Airworthiness Directives; Bell Helicopter Textron Canada Limited Canada Limited Airworthiness Directives; Agusta S.p.A. Model A119 Helicopters [Docket No. 2002-SW-46-AD; Amendment 39-12906; AD 2002-20-09] received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10066. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule — Airworthiness Directives; Bell Helicopter Textron Canada Limited Canada Limited Airworthiness Directives; Agusta S.p.A. Model A119 Helicopters [Docket No. 2002-SW-46-AD; Amendment 39-12906; AD 2002-20-09] received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10073. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule — Amendments of Class E5 Airspace; Bangalore, India [Airspace Docket No. 02-AER-741] received October 29, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10076. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule — Amendments of Class E5 Airspace; Bangalore, India [Airspace Docket No. 02-AER-741] received October 29, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10079. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule — Amendments of Class E5 Airspace; Buenos Aires, Argentina [Airspace Docket No. 02-ASE-22-10] received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10082. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule — Amendments of Class E5 Airspace; Frankfort, KY [Airspace Docket No. 02-AER-741] received October 29, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10085. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule — Amendments of Class E5 Airspace; Prague, Czech Republic [Airspace Docket No. 02-AER-741] received October 29, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10088. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule — Amendments of Class E5 Airspace; Prague, Czech Republic [Airspace Docket No. 02-AER-741] received October 29, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.
pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10047. A letter from the Paralegal Specialist, FmC, Department of Transportation, transmitting the Department’s final rule — Commerce Policy: Tax Accounting of Fossil Fuel and Fossil Fuel Related Emissions; Petrolia Field, TX (RIN: 2130-AD5) received November 8, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10049. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department’s final rule — Airworthiness Directives: Eurocopter AS352C1, L, and L1 Helicopters (Docket No. 2002-SW-36-AD; Amendment 39-12934; AD 2002-22-09) (RIN: 2120-AA64) received November 8, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10050. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department’s final rule — Aircraft Registration: Boeing Model 737 Series Airplanes (Docket No. 2001-NM-251-AD; Amendment 39-12940; AD 2002-20-07 R1) (RIN: 2120-AA69) received November 8, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.


10052. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department’s final rule — Drawbridge Operation Regulations: Illinois Waterway, Joliet, IL (CGD01-02-02) (RIN: 2115-AE47) received November 8, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10053. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department’s final rule — Drawbridge Operation Regulations: Shrewsbury River, NJ (CGD01-02-12) (RIN: 2115-AE47) received November 8, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10056. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department’s final rule — Drawbridge Operation Regulations: Waterway - Waycross, GA (CGD08-02-024) (RIN: 2115-AE47) received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10057. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department’s final rule — Drawbridge Operation Regulations: Connecticut River, CT (CGD01-02-100) (RIN: 2115-AE47) received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10058. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department’s final rule — Drawbridge Operation Regulations: Danvers River, MA (CGD01-02-118) received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10059. A letter from the Acting Principal Deputy Administrator, Environmental Protection Agency, transmitting the Agency’s final rule — Notice of Request for Initial Proposals (IPs) for Projects to Be Funded in the Water Quality Cooperative Agreement Allocation (CFDA 66.463 — Water Quality Cooperative Agreements) (FR-L-7402-9) received November 5, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10060. A letter from the Acting Deputy General Counsel, Small Business Administration, transmitting the Administration’s final rule — Small Business Investment Companies (RIN: 3345-AE36) received November 2, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Small Business.

10061. A letter from the Acting Deputy General Counsel, Small Business Administration, transmitting the Administration’s final rule — Small Business Size Standards; Inflation Adjustment to Size Standards (RIN: 3345-AE56) received November 8, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Small Business.

10062. A letter from the Regulations Branch, Department of the Treasury, transmitting the Department’s final rule — General Order Warehouse[s] [T.D. 02-06-55] (RIN: 1515-AK37) received November 8, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10063. A letter from the Chief Counsel, Bureau of the Public Debt, Department of the Treasury, transmitting the Department’s final rule — Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Rev. Rul. 2002-48) received November 8, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10064. A letter from the Chief Counsel, Bureau of the Public Debt, Department of the Treasury, transmitting the Department’s final rule — Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Rev. Rul. 2002-65) received November 8, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10065. A letter from the Department of Energy, transmitting a report regarding programs for the protection, control and accounting of fissile materials in the countries of the former Soviet Union, second half of FY 2002, pursuant to 5 U.S.C. 801(a)(1)(A); jointly to the Committees on Armed Services and International Relations.

10067. A letter from the Regulations Coordinator, CMM, Department of Health and Human Services, transmitting the Department’s final rule — Medicare Program; Correction of Certain Calendar Year 2002 Payment Rates Under the Hospital Outpatient Prospective Payment System and the Pro Rata Reduction on Transitional Pass-Through Payments; Correction of Technical and Typographical Errors [CMS-1159-F4] (RIN: 0938-AK54) received October 21, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.


10069. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service’s final rule — Eligible basis reduced by federal grants (Rev. Rul. 2002-65) received October 30, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10070. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service’s final rule — Low-Income Housing Credit (Rev. Rul. 2002-72) received November 7, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10071. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service’s final rule — Charitable, etc., contributions and gifts; allowance of deduction (Rev. Rul. 2002-62) received November 7, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10072. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service’s final rule — Inclusion of Real Estate Investment Trust (Rev. Rul. 2002-38) received November 7, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10073. A letter from the Secretary, Department of Energy, transmitting a report regarding programs for the protection, control and accounting of fissile materials in the countries of the former Soviet Union, second half of FY 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10074. A letter from the Regulations Coordinator, CMM, Department of Health and Human Services, transmitting the Department’s final rule — Medicare Program; Correction of Certain Calendar Year 2002 Payment Rates Under the Hospital Outpatient Prospective Payment System and the Pro Rata Reduction on Transitional Pass-Through Payments; Correction of Technical and Typographical Errors [CMS-1159-F4] (RIN: 0938-AK54) received October 21, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); jointly to the Committees on Armed Services and International Relations.

10075. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of the Presidential Determination No. 2003-03 regarding international agreements and certification standards provisions regarding the Palestine Liberation Organization; jointly to the Committees on International Relations and Appropriations.

10076. A letter from the United States Trade Representative, Executive Office of the President, transmitting notification that the President intends to initiate negotiations for a free trade agreement with the five members countries of the Southern African Customs Union; to the Committee on Ways and Means.

10077. A letter from the United States Trade Representative, Executive Office of the President, transmitting notification that the President intends to initiate negotiations to strengthen, and extend, as well as establish new alliances and agreements with the World Trade Organizations; to the Committee on Ways and Means.

10078. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service’s final rule — Weighted Average Interest Rate Update [Notice 2002-74] received November 12, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.
REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. SENSENBRENNER: Committee on the Judiciary. H.R. 1432. A bill to amend the Immigration Act to permit certain long-term resident aliens to seek cancellation of removal under such Act, and for other purposes; with an amendment (Rept. 107-785). Referred to the Committee of the Whole House on the State of the Union.

Mr. SENSENBRENNER: Committee on the Judiciary. H.R. 5334. A bill to ensure that a public safety officer who suffers a heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits (Rept. 107-786). Referred to the Committee of the Whole House on the state of the Union.

Mr. SAXTON: Joint Economic Committee. Report of the Joint Economic Committee on the 2002 Economic Report of the President (Rept. 107-788). Referred to the Committee of the Whole House on the State of the Union.

Mr. WAXMAN: Committee of Conference. Conference report on H.R. 4628 and H.R. 5859. A bill to authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes (Rept. 107-789). Ordered to be printed.

REPORTED BILL SEQUENTIALLY REFERRED

Under clause 2 of rule XII, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. BURTON: Committee on Government Reform. H.R. 2438. A bill to enhance the management and promotion of electronic Government services and processes by establishing a Federal Chief Information Officer within the Office of Management and Budget, and by reestablishing a broadband framework of measures to promote broadband access and adoption of Internet-based information technology to enhance citizen access to Government information and services, and for other purposes, with an amendment (Rept. 107-787). Referred to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee pursuant to clause 1(k), rule X (Rept. 107-787, Pt. 1).

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. THOMAS:
H.R. 5720. A bill to amend the Internal Revenue Code of 1986 to provide fairness in tax collection procedures and improve administrative efficiency and confidentiality and to reform the interest provisions of the Internal Revenue Code of 1986; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. YOUNG of Alaska:
H.R. 5739. A bill to relocate the drydock vessel EX-COMPETENT; to the Committee on Natural Resources; to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WU:
H.R. 5731. A bill to provide for additional benefits under the Temporary Extended Unemployment Compensation Act of 2002; to the Committee on Ways and Means.

By Mr. BRADY of Texas:
H.R. 5732. A bill to amend the Clean Air Act regarding the conformity of transportation projects to implementation plans; to the Committee on Energy and Commerce.

By Mr. SCHIFF:
H.R. 5733. A bill to amend the Foreign Assistance Act of 1961 to ensure that projects and activities carried out with United States assistance are appropriately identified overseas as "American Aid", and for other purposes; to the Committee on International Relations.

By Mr. SMITH of Michigan:
H.R. 5734. A bill to improve title II of the Social Security Act and the Internal Revenue Code of 1986 to provide prospectively for personalized retirement security through personsirradiated retirement accounts to allow for more control by individuals over their Social Security retirement income, to amend such title and the Balanced Budget and Emergency Deficit Control Act of 1985 to protect social security surpluses, and to provide other reforms relating to benefits under such title II; to the Committee on Ways and Means.

By Mr. HINCHEY:
H.R. 5735. A bill to amend the Internal Revenue Code of 1986 to provide a refundable credit against income tax for Social Security taxes paid on up to $25,000 of wages; to the Committee on Ways and Means.

By Ms. ROS-LIPITEN (for herself and Mr. DEUTSCH):
H.R. 5736. A bill to provide for the conveyance of certain real property by the Administrator of General Services to the Committee on Government Reform.

By Ms. HASTERT of Illinois:
H.R. 5737. A bill to posthumously revitalize the naturalization of Erberto Mederos; to the Committee on the Judiciary.

By Mr. TAUZIN (for himself, Mr. BURTON of Louisiana, and Mr. ENGEL):
H.R. 5738. A bill to provide that the State of Idaho may not impose a discriminatory commuter tax on a State resident who is employed in the District of Columbia and uses a public transportation system to commute; to the Committee on Energy and Commerce.

By Mr. HONDA (for himself, Mr. PAYNE, Mr. CLAYTON, Mr. PALLONE, Mr. STARK, Mr. KENNEDY of Rhode Island, Mr. CONVEY, Mr. WEINER, Mr. VEGA, Mr. CHRISTENSEN, Mr. WYNN, and Mr. POMBO):
H.R. 5739. A bill to protect children from foods that pose a significant choking hazard; to the Committee on Energy and Commerce.

By Mr. TAUSIN (for himself, Mr. DINGELL, Mr. BILIRAKIS, and Mr. BROWN of Ohio):
H.R. 5740. A bill to amend title XXI of the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Programs; to the Committee on Energy and Commerce.

By Mrs. WILSON of New Mexico:
H.R. 5741. A bill to establish the T'uf Shur Bien Preservation Service Area in the Jemez National Forest, and for other purposes; to the Committee on Resources.

By Mr. FRELINGHUYSEN (for himself, Mr. PEELO, Mr. PALLONE, and Mr. HOLT):
H.R. 5742. A bill to prohibit a State from imposing a discriminatory commuter tax on nonresidents, and for other purposes; to the Committee on the Judiciary.

By Mr. FOLEY:
H.R. 5743. A bill to improve funeral home, cemetery, and crematory inspection systems, to establish consumer protections relating to funeral service contracts, and for other purposes; to the Committee on Energy and Commerce.

By Mr. GEKAS:
H.R. 5744. A bill to amend title 11 of the United States Code, and for other purposes; to the Committee on the Judiciary, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. GEKAS:
H.R. 5745. A bill to amend title 11 of the United States Code, and for other purposes; to the Committee on the Judiciary, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LAMPSON:
H.R. 5746. A bill to provide that the State and local income tax withholding provisions of section 11602 of title 49, United States Code, shall not apply to the Metro-North Railroad or its employees; to the Committee on Transportation and Infrastructure, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. LOWEY (for herself, Mr. WAXMAN, Mr. BROWN of Ohio, Ms. DELAUBER, Mr. SMITH of Washington, Ms. LEE, Mr. HOLT, Mr. HENRY, Mr. DeFazio, Ms. ROYAL-ALLARD, Mr. LANGKEVIN, Ms. RIVERS, Ms. LEVIN, Ms. NORTON, Mr. PRICE of North Carolina, Mr. NABLER, Mr. HYSLOP, Mr. FALLONE, Mr. ROTHMAN, Mr. RANGEL, and Mr. GEORGE MILLER of California):
H.R. 5747. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish labeling requirements regarding allergenic substances in food, and for other purposes; to the Committee on Energy and Commerce.

By Ms. MCKINNEY:
H.R. 5748. A bill to protect public assets, natural heritage, and biodiversity on Federal public lands by banning all further degradation, development, and extraction on such lands, and for other purposes; to the Committees on Agriculture, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
would constitute a violation of the obligations of the United States under the United Nations Charter and a violation of the United States Constitution, respectively; to the Committee on International Relations.

By Mr. CHABOT (for himself and Mr. PORTMAN):

H. Con. Res. 519, Concurrent resolution recognizing and honoring America’s Jewish community on the occasion of its 3500th anniversary, supporting the designation of an “American Jewish History Month”, and for other purposes; to the Committee on Government Reform.

By Mr. GRAVES:

H. Con. Res. 520, Concurrent resolution expressing the sense of the Congress that the Secretary of Agriculture should reexamine the authorities governing the Conservation Reserve Program and adjust the program to the maximum extent practicable to assist agricultural producers adversely affected by severe drought conditions; to the Committee on Agriculture.

By Mr. HONDA (for himself, Mr. SHERMAN, Mr. Matsu, Mr. WU, Mr. SCHIEFF, Ms. LEE, Ms. LOFUGREN, Mr. STARK, Mr. FILNER, Mr. WAXMAN, and Mrs. MUSGRAVE):

H. Res. 613, A resolution honoring the life of Dr. Chang-Lin Tien, model educator, diplomat, and vision to the Committee on Government Reform.

By Mr. ARMLEY:

H. Res. 614, A resolution providing for the printing of the Annual Rulings and Manual of the House of Representatives for the One Hundred Eighth Congress; considered and agreed to.

By Mr. ARMLEY:

H. Res. 615, A resolution providing for a committee of two Members to be appointed by the House to inform the President; considered and agreed to.

By Mr. ROEMER (for himself, Mr. WYNN, Mr. HONDA, and Mr. BUYER):

H. Res. 616, A resolution recognizing the 2002 United States Professors of the Year; to the Committee on Education and the Workforce.

MEMORIALS

Under clause 3 of rule XII, memorials were presented and referred as follows:

222. The SPEAKER presented a memorial of the House of Representatives of the State of California, relative to Assembly Joint Resolution No. 47 memorializing the President and Congress of the United States to stand firm in their resolve to uphold the intent and substance of the current provision of Title IX of the Education Amendments of 1972; to the Committee on Education and the Workforce.

223. Also, a memorial of the Senate of the State of New Jersey, relative to Senate Resolution No. 62 memorializing the Congress of the United States to reconsider the deregulation of the cable industry and permit the states to fully regulate the cable television industry; to the Committee on Energy and Commerce.

224. Also, a memorial of the Legislature of the State of California, relative to Assembly Joint Resolution No. 63 memorializing the Congress of the United States that the extra- dition from Mexico of all criminals who face life sentences is a matter of urgent and enduring importance to the State of California; to the Committee on International Relations.

225. Also, a memorial of the Legislature of the State of California, relative to Assembly Joint Resolution No. 48 memorializing the Congress of the United States to support the President of the United States to increase the administration’s efforts to encourage initia-
citizens of California; jointly to the Committees on Resources and Agriculture.

44. Also, a memorial of the Senate of the State of Delaware, relative to Senate Resolution No. 668 memorializing the Congress of the United States to adopt legislation extending coverage under the Medicare program for oral as well as injected anticancer drugs; jointly to the Committee on Ways and Means and Energy and Commerce.

45. Also, a memorial of the House of Representatives of the Commonwealth of Pennsylvania, relative to House Resolution No. 668 memorializing the Congress of the United States to adopt legislation requiring the Medicare program to cover all oral anticancer drugs; jointly to the Committees on Ways and Means and Energy and Commerce.

46. Also, a memorial of the Senate of the State of New Jersey, relative to Senate Resolution No. 65 memorializing the Congress of the United States to adopt legislation requiring the Medicare program to cover all oral anti-cancer drugs; jointly to the Committees on Ways and Means and Energy and Commerce.

47. Also, a memorial of the Legislature of the State of California, relative to Assembly Joint Resolution No. 59 memorializing the President and the Congress of the United States to suspend or eliminate the requirement that security screeners be citizens of the United States, and instead provide that those individuals shall meet the same immigration requirements as persons who serve in the National Guard; to the Committee on Transportation and Infrastructure.

48. Also, a memorial of the Legislature of the State of California, relative to Assembly Joint Resolution No. 50 memorializing the Congress of the United States and the President to support and enact legislation that would establish a federal/state partnership to eliminate the veterans claims processing backlog in order that America’s veterans can take advantage of the benefits that the United States has authorized for them for their faithful and loyal service to a grateful nation; to the Committee on Veterans’ Affairs.

49. Also, a memorial of the Legislature of the State of California, relative to Assembly Joint Resolution No. 54 memorializing the Congress of the United States and the President to fund the National Defense Authorization Act for Fiscal Year of 2002, to eliminate the penalty imposed against disabled military retirees for concurrent receipt of retirement and disability compensation; jointly to the Committees on Armed Services and Veterans’ Affairs.

50. Also, a memorial of the Legislature of the State of California, relative to Assembly Joint Resolution No. 37 memorializing the Congress of the Senate and the Legislature of California opposes any action by the President and the administration that would impose a Taft-Hartley injunction against waterfront unions, would remove union workers from coverage by the National Labor Relations Act, or would send military personnel to the West Coast docks to assist in a lockout of waterfront union workers; jointly to the Committees on Education and the Workforce and Armed Services.

51. Also, a memorial of the Legislature of the State of Delaware, relative to Assembly Joint Resolution No. 25 memorializing the Congress of the United States that the Legislature of the State of California recognizes the importance of sustaining managed forests and products from those forests will continue to play in meeting the needs of the
PETITIONS, ETC.

Under clause 3 of rule XII, petitions and papers were laid on the clerk's desk and referred as follows:

82. The SPEAKER presented a petition of the Faichuk Commission for Statehood, Faichuk Islands, relative to FCR No. 77 petitioning the United States Congress that the Faichuk region is an ideal military provisioning site and now open for United States Armed Forces use open completion of a feasibility study; to the Committee on Armed Services.

83. Also, a petition of the Legislature of Rockland County, New York, relative to Resolution No. 650 petitioning the United States Congress to enact the Younger Americans Act; to the Committee on Education and the Workforce.

84. Also, a petition of the Board of Trustees of the Utah School and Trust Lands, relative to a Resolution petitioning the United States Congress that the Board endorses and supports the Action Plan for Public Lands and Education; to the Committee on Education and the Workforce.

85. Also, a petition of the Wyoming County Board of Supervisors, New York, relative to Resolution No. 02-298 petitioning the United States Congress to support an increase in the federal medical assistance percentage (FMAP); to the Committee on Energy and Commerce.

86. Also, a petition of the Legislature of Rockland County, New York, relative to Resolution No. 652 petitioning the United States Congress that the legislature expresses its support for a joint resolution authorizing the use of force by the United States Armed Forces against Iraq before such force is deployed against Iraq; to the Committee on International Relations.

87. Also, a petition of the Legislature of Rockland County, New York, relative to Resolution No. 651 petitioning the United States Congress to support ratification of the United Nations Convention on the Rights of the Child; to the Committee on International Relations.

88. Also, a petition of the City of Miami Commission, Florida, relative to Resolution No. 02-860 petitioning the United States Congress to review the “Position Statement/Paper” of the City of Miami Commission on the status of women and children in Afghanistan and Pakistan; to the Committee on International Relations.

89. Also, a petition of the City Commission of the City of Hollywood, Florida, relative to Resolution No. R-2002-366 petitioning the United States Congress to finalize immediately 2003 funding for homeland security; to the Committee on Government Reform.

90. Also, a petition of the City Council of Douglasville, Georgia, relative to Resolution No. 02-130 petitioning the United States Congress that the Mayor and City Council stand firm in support of the Pledge of Allegiance we have known, recited, and affirmed; to the Committee on the Judiciary.

91. Also, a petition of the Legislature of Rockland County, New York, relative to Resolution No. 594 petitioning the United States Congress to enact the Education Works Act of 2002; jointly to the Committees on Ways and Means and Education and the Workforce.
HOMELAND SECURITY ACT OF 2002—Continued

Mr. BYRD [continuing]. We have done the same thing right here. This was concocted in secrecy in the darkness of the night. It didn’t see the light of day until yesterday—484 pages. We are expected to pass this. We are expected to invoke cloture on it tomorrow and pass it and tell the American people they are safer after the passage of that monstrosity.

No doubt there are some good things about that bill. There are some good things in it. Some of the provisions in this 484-page bill have come out of Senator LIEBERMAN’s committee’s deliberations, and it passed. Some of these have been discussed before, but not all of them. There are a lot of provisions in this bill that had not seen the light of day until yesterday.

The press has been kept in the dark. The press is going to realize all too late what has happened to the people’s right to know that we were going to pass right here in this bill. I am going to address those provisions briefly in a few minutes. I hope the press will stay tuned because I want to point out to the press what is about to happen to the people’s right to know.

I have often had my differences with reporters, but I am a firm believer in the freedom of the press and in the responsibilities of the fourth estate. If the Congress is going to so willingly blindfold itself to the inner workings of this administration and this new bureaucracy, I hope the press will not be so compliant. Hear me, those in the fourth estate. You stay tuned. I will point out part of this bill in a few minutes. But if you haven’t read it as yet, it is going to turn your stomach because you believe in the people’s right to know. I hope it will keep a watchful eye. I am talking about the media. I hope the media will keep a watchful eye on this new agency. Unfortunately, provisions contained in this bill will make it harder for the fourth estate—harder for you in the press—and harder for the people to do so.

I still find it difficult to believe that the American war on terrorism hinges on the building of a new, huge bureaucracy. Our plan to eradicate a vicious, cunning nest of vipers is to reorganize the Government.

NOTICE

If the 107th Congress, 2d Session, adjourns sine die on or before November 22, 2002, a final issue of the Congressional Record for the 107th Congress, 2d Session, will be published on Monday, December 16, 2002, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Friday, December 13. The final issue will be dated Monday, December 16, 2002, and will be delivered on Tuesday, December 17, 2002.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

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By order of the Joint Committee on Printing.

MARK DAYTON, Chairman.
I have read much about Senator Byrd and whether or not he would filibuster this bill. If I thought for a moment I could kill this bill here tonight by filibustering it, I would do it. But there are a lot of Senators here who would not filibuster—lots of people who wouldn’t know a filibuster—if they met one on the way home. There are a lot of people who wouldn’t know it if they met it in the middle of the road.

I intend to stand on my feet and try to expose some of the things in this bill that are not going to be good for the American people and which will not contribute to their safety.

Our plan to eradicate a vicious, cunning nest of vipers is to reorganize the Government. This is a massive reorganization. This is our battle plan—talking about the administration. This is its priority. This is our ammunition against the terrorist threat to our homeland.

A certain Senator here a few days ago talked about killing snakes. He talked about snakes in his State. He knew snakes when he saw them. Well, there are snakes in West Virginia too. I knew about snakes when I walked the red clay hills of southern West Virginia in Mercer County. We had copperheads back in those hills in those days and a few rattlesnakes. There are snakes. I know a snake when I see it. I saw a snake in this bill. This bill is a snake. If I could chop off its head, kill it dead, dead, dead, I would do it.

This 484 pages right here is what I am talking about. This is our initiative—this is the administration’s ammunition. They know better than that. They know that is not going to make this homeland one whit safer.

I have listened very hard. I do not hear the American people clamoring for us to build a new, cumbersome, bureaucratic leviathan.

The midterm elections—despite what many of the critics may believe—had little to do with the creation of this new Department. The American people weren’t clamoring for this new bureaucracy. While Americans cast their ballots, they may have had hopes for safer communities than protection from terrorism, but I sincerely doubt that they were voting to create a huge, new bureaucracy.

Surely nobody believes that building a giant bureaucracy has suddenly become the nemesis to the threat of the acts of madmen on our people here at home.

With a battle plan such as the Bush administration is proposing, instead of crossing the Delaware River to capture the British on Christmas Day, George Washington would have stayed on his side of the river and built a bureaucracy.

During the Civil War, President Lincoln would dismiss one general after another until he found one capable of building a better bureaucracy.

Perhaps what we are lacking to make this new idea really resonate with the American people is a powerful, stimulating slogan—a dramatic slogan such as the kind of slogan that we politicians slap on bumper stickers, one that would serve to inspire and unite our soldiers and our citizens.

Many of us could draw from history to see how our nation for a huge bureaucracy would fare.

I can picture Nathan Hale saying: I regret that I have but one bureaucracy to lose. I regret that I have but one life to give for my bureaucracy.

I can hear Captain John Paul Jones on September—I believe it was September 23, 1779—shouting: I have not yet begun to fight for my bureaucracy.

I can think of Commodore Oliver Perry hoisting his famous flag upon his ship with the motto: Don’t give up the bureaucracy.

I can just imagine Commodore Stephen Decatur returning from the war on the Barbary Coast, offering his famous toast: My bureaucracy, right or wrong.

It just gives me chills to think of the people of Texas remembering the Alamo and being inspired to fight with the restoring battle cry: Remember the bureaucracy.

What about the professorial President Woodrow Wilson taking us into World War I with the proclamation: The world must be made safe for bureaucracy.

I was born during his administration. Nonsense, of course. But it has been said that necessity is the mother of invention. I guess then that political expediency has now become the mother of bureaucracy.

I don’t think there is much doubt that the Senate will pass this legislation to restructure our homeland defense agencies. But my point is that the administration’s plan is a sham. It is a sham. It is a political ploy. It worked well during the campaign. It was work for up in haste and for the wrong reasons.

Homeland security is a serious and dangerous matter involving the lives and the livelihoods of millions of Americans. We ought to be ashamed of ourselves to offer our people a quick bureaucratic pacifier instead of taking our time and working thoughtfully and carefully on an effective and lasting plan for the protection of the American people.

What we ought to be even more ashamed of, however, is the manner in which we are passing this bill. Prior to our recessing, hundreds of amendments were filed to make changes to the pending bill that had been reported by the Governmental Affairs Committee.

There were hundreds of amendments up at that desk. Yet Senators are choosing not to call up amendments. We are told that any amendments to this bill would force a conference with the House.

Now get this. We are told that if we amend this bill, it will force a conference with the House of Representatives and could delay or even kill this bill. So Senators are being urged not to call up their amendments. And in many instances, they are choosing not to call up their amendments.

Is the Senate afraid of its own shadow? Are we afraid to think, to debate, to question something? Are we afraid to stand for something? Are we afraid to stand against a President of the United States? Is the Senate afraid to stand up against an administration, a political administration? Is the Senate afraid? Are Senators afraid to stand up against the President, to be the loyal opposition at this time of great distress?

It is a dangerous thing when a President believes that he is so right that he should be given any and all powers he deems necessary to achieve his ends. That is a dangerous thing. It is dangerous when a President believes that he possesses the people’s consent to freely tamper with their rights and their liberties.

But it is considerably more dangerous when the elected officials such as ourselves, whose duty it is to protect the people’s liberties against the excesses of an overreaching Executive, an overreaching White House, accede to the President’s every request. Shame on us. Shame on us.

And it is even worse when we not only fail to impose restraint but actually aid and abet the Executive in a brazen power grab. That is exactly what this is.

The American people feel unsettled. They are nervous. They are jittery. They are scared. And they have every right to be. Their President has spent months and loads of taxpayers’ dollars frightening them. Their Government has issued an unceasing proliferation of warnings about potential violence.

But the threats to our homeland go well beyond terrorist attacks. Our Nation is threatened, perhaps most seriously threatened, by a mentality that says that Presidents should have a free hand to do whatever they deem necessary whenever they deem to do it as necessary.

Our President has been speaking a great deal in recent months about our enemies and how they hate our freedoms. Mr. President, I doubt that they hate our freedoms. They hate our arrogance. They do not hate our freedoms. They hate our arrogance.

Our President has made protecting our freedoms a rallying cry. I have been working at protecting our freedoms for 50 years in this Congress. Fifty years come January 3 I have been working at protecting our freedoms. I have been helping to appropriate the money for our men and our women who serve in our military services.

The President has touched a raw nerve with the public, in speech after speech after speech about foreign terrorists who are attacking their liberties, and yet, in many ways, it is this President’s proposals that are the most serious threats to the liberties of Americans.
We should be standing up and fighting for what is right in this legislation. That is the place to start to fight. That is where we start to fight to protect this land of ours, these people of ours, its institutions, the institutions of our country.

We should be standing up and fighting for what is right in this legislation. We talk about justice. Justice is fine. But what is right? We should be debating, offering amendments, and telling the American people like it is. We should be honest enough to admit that this new Department is a massive undertaking that is far more likely to provide political security for its proponents than to provide domestic security for the American people out there, at least for the foreseeable future.

I do not believe this is a time for us or for the American people to cower in a corner. I do not believe this is a time for the elected representatives of the American people to run like whipped dogs and vote for cloture and oppose this bill, unless it is amended—unlike our friends on the opposite side of the aisle. I do not believe this is a time for us to tuck our tails between our legs and run for the corner. I do not believe this is a time for us to cower in a corner. I do not believe this is a time for us to give in and to give up on the ideals that led to the creation of our country. Far too many felt that the American people did not have an opportunity to stand before a committee and oppose this bill. That is no way to legislate. Yet we are going to pass one of the most far-reaching pieces of legislation that we have seen in many years in this Congress.

The purpose of making this information available to the public is to allow the Congress, the media, and groups outside of Government to know how the executive branch is making important policy decisions. The role of the Congress, the media, and the American people in the ultimate judges of the wisdom of the policies of the Federal Government is central to upholding the principles of our government, of our constitutional system. It ensures that the power—that the people—will be the ultimate judges of the wisdom of the policies of the Federal Government.

I understand this new Homeland Security Department will be wrestling with many issues of national security that should not be subjected to public disclosure rules. Sometimes these advisory committees will be dealing with classified intelligence information or with sensitive security policy, and making this information available to the public might compromise national security and the fight against terrorism. I understand that. But that is exactly why existing law allows the President of the United States, be he a Democrat or a Republican, to waive these public disclosure rules for any advisory committee for national security reasons.

The President can do that on a case-by-case basis in the current law. So the President has this authority today. He
will have it tomorrow. And he will be able to use it to protect any advisory committee in the Homeland Security Department from having to disclose information when national security information is involved. But he will be accountable for that. He will be responsible.

So why do we see an expansion of this authority given to the Secretary in this bill? Why do we see an expansion of this authority given to the Secretary of the Department of Homeland Security?

Advisory committees can already be exempted from public disclosure rules for national security reasons by the President on a case-by-case basis. So why does this bill, then, allow the Secretary of Homeland Security to exempt any committee, regardless of whether national security is pertinent?

Why is it in there? Why do we see this new blanket authority in this bill? I will tell you why. It is because this administration wants to shield itself from any scrutiny of the public. This administration wants to be able to operate in secret.

This substitute language that we have been given actually provides the same blanket exemption from disclosure rules for the Justice Department’s new Office of Science and Technology. This new exemption will allow John Ashcroft, the Attorney General, to conceal his actions in secret, even after the courts and the press have recently rebuked the Justice Department for secrecy abuses. This Senator is being asked to authorize the Attorney General to cloak even more of the Justice Department’s activities in secrecy.

I am worried that exempting this new Science and Technology Office will allow the Justice Department to provide special treatment for corporate campaign contributors who are pushing new technologies. These exemptions are unnecessary and they are a danger to our people’s liberty.

I believe that I have a duty to the people I represent to do what I can to improve this legislation. So I hope to offer an amendment to strike these exemptions from the bill. I will do whatever I can do to improve the legislation and keep the people and the press from being locked out of the process. The people have a right to know.

I am not among those who are willing to let this Senate be beaten into rubber stamping more security for the White House. It is our job as legislators to see that the Senate protects the interests of the people who sent us here and who will foot the bill for this behemoth department.

The public disclosure exemptions in this bill are a license for abuse. I do not believe that they are worthy of the Senate’s approval. So I am doing everything I can to see that this Senate does not roll over at the command of any President—whether he is a Democrat or a Republican or an Independent—when there are dangerous provisions remaining in this bill that ought not be put into law.

These issues are too fundamental to let slide with the vain hope that we will get a chance to revisit them next year. Don’t forget, it is easier to pass a law than it is to repeal that law. We only need a majority in each body to pass a law and have the President sign it. Once that law is on the books, in order to repeal it, a President can veto the repeal. But if the White House has one-third plus one in either body uphold that President’s veto, that is the end of it. There won’t be any repeal.

The Senate must act, and act responsibly, and we ought not to be in all that hurry to pass this legislation.

Having been up until almost 2 o’clock this morning, I am tired. I want to speak a little longer. I won’t be able to speak tomorrow. Today the Senate is going to vote on cloture in the morning. And as I wet my finger and hold it to the wind, I sense that the pressure is going to be on tomorrow to invoke cloture on this bill.

Here it is. It is 484 pages. It has only seen the light of 2 days—yesterday and today. It has not been before a committee; there has not been a single hearing on this bill; not a single witness has appeared before any committee in support of this 484-page bill. I doubt that any Senator in this body knows everything there is to know about this bill. I do believe that the great majority of Senators know very little about this bill, and what little most Senators know about this bill consists of all of the provisions in the bill that have been lifted out of the legislation that was reported out of Senator LIEBERMAN’s committee when the bill was reported earlier this year.

My President, the pressure is on. We are going to be asked to vote for cloture tomorrow. I will be surprised if the Senate does not vote for cloture. But I appeal to Senators on both sides of the aisle not to vote for cloture. Rather, I urge them to support the many Senators who will make us all safer. I do not have to tell other Senators what their duties are to their constituents. They have a responsibility to stay until they know what is in this bill, and not to invoke cloture on it until they know what is in it, until their staffs know what is in it, and until they, Senators, have had an opportunity to offer amendments to make corrections in the bill.

With the President’s support, top officials in this administration have stonewalled Congress—stonewalled the Congress. Tom Ridge stonewalled the Appropriations Committee of the U.S. Senate. I know; I am the chairman of that committee. This legislation after invitation was extended by my colleague, Senator STEVENS, and myself for him to appear before the Appropriations Committee to testify. The answer was no. With the President’s support, top officials in the administration have stonewalled Congress, stonewalled the media, and they have stonewalled the American public. Now they are hoping to expand their ability to operate in secret, to allow even less public scrutiny.

There it is. It is in the bill.

The provisions in the bill allow the Secretary to use ad hoc advisory committees to craft policy in secret, without making specific findings that such secrecy is necessary in any particular instance. This unnecessary new blanket authority will give the President carte blanche to expand the culture of secrecy that now permeates this White House.

There won’t be any repeat.
They are out there on the borders—the northern border, the southern border—the Atlantic coastline, the Pacific coastline, the gulf coastline, the ports of this country, the ports of entry. They are out there tonight protecting the ports of entry all over this country. They are protecting the nuclear facilities, the nuclear plants. They are standing at their stations in the law enforcement agencies. They are standing at their stations in the fire departments, are standing at their stations in the health departments. They are out there now. They are out there tonight. When I go home to sleep tonight and pray the Lord my soul to keep, they will be out there. I will be asleep; they will be there.

This bill is not what is putting them there. They are already there, and they are being put there by the taxpayers’ money that flows through the Appropriations Committee in this Senate. So they are not going to get any thanks for a moment that this country has to have this bill creating this massive bureaucracy in which there will be at least 28 agencies that will be crammed into a new Department—170,000 people employed. Many of the people sitting back here on the benches—I am talking to these staff people right back here—pay attention here—170,000 people employed in this new agency. They are not employed by virtue of these 484 pages in this bill.

The Senate apparently is on a path to rush to consider this legislation, and we can all say: Whoopee, let’s go home now. We have created a Department of Homeland Security. Everybody is safer now. But don’t you believe it.

The Senate’s legislative counsel did not finish drafting this behemoth bill until the wee hours of yesterday morning, and now Senators are being pressured to vote without question and without comment. What a shabby way to treat the security and safety of the American people, those people who are looking right at us through those electronic lenses.

As I have said all along, this new Department likely will take many years to become effective. We should not simply put a new name on a hodgepodge of agencies and claim that the Nation is, ipso facto, instantly safer. What a sham. A majority of Senators who vote for this are going to come to realize that when it is too late to change their votes. What a sham. Yet this legislation is being bull-rushed through Congress and is being hailed as the great homeland security panacea.

This new bill is 484 pages long. Here it is. I have not weighed it, but it weighs as heavy as 484 pages. Yet we will not be one whit closer to homeland security if it passes.

If the House and Senate wanted to provide true protections, we would be working to complete action on the appropriations bills instead of playing this gargantuan shell game. If the President wanted to do more than score political points in a rehashed re-tread of a stump speech, he would lose the bonds, he would cut the hand cuffs from the House leadership and urge them to pass appropriations bills which contain critical homeland security funds that will keep us safe. We need the real protection for our people, and provide it quickly.

Those dollars could make a difference today. Those dollars and the protections they would fund could save people’s lives. What is the point for a new Department to set up yet another huge bureaucracy. Instead, the House leadership is stuck in concrete. The appropriations bills may never see the light of day. There are 11 of them—that have been reported from the Senate Appropriations Committee. They may never see the light of day, and the security of American people continues to be at risk.

How many tape recordings of Osama bin Laden have we to listen to before we start to take immediate action to protect ourselves in a meaningful way, not in a sham, sham legislative procedure that will produce another massive bill, massive shift of power, in a massive new bureaucracy? How many more threats do we need to hear? How many more threats need to be made?

Just in recent times, in recent hours the newspapers are reporting that U.S. intelligence officials believe that terrorist groups may be planning a new wave of attacks on Western targets. According to these reports, our intelligence agencies have detected a significant spike in intelligence chatter during the last 10 days that strongly indicate new assaults are being planned.

What more warning do we need? Do we have to wait until the chatter turns into screams of terror? Do we really believe this new Department of Homeland Security will provide the immediate protections that are desperately needed? We are not only fooling ourselves, we are also jeopardizing the lives of the American people.

The new Department of Homeland Security will provide no immediate security—none. The legislation gives the President another year in which to put the pieces of this Department together. That is a year without any significant improvements to our Nation’s protections. Maybe we should rename this the Department of Homeland Security Delay.

The appropriations bills, on the other hand, that are languishing in the other body controlled by the President’s party would provide real security right now. All we have to do is just enact them.

The Senate Appropriations Committee reported appropriations bills for fiscal year 2003 that contained a total of $25.6 billion for homeland defense funding. That is a lot of money, $25.6 billion for homeland defense. That is real money for the real defense of our homeland that could be available now, under our committee-reported bill, if the House Republican leadership on the other side of the Capitol could get White House permission to complete action on those appropriations bills. It could be done now.

The House is getting ready to leave town. They do not have to leave town. They could stay in town. We ought to pass those appropriations bills. That is money available now to save lives and prevent future attacks. But under this constant stream of continuing resolutions, many homeland defense investments cannot take place.

The Commerce Justice State appropriations bill, the VA/HUD appropriations bill, the Agriculture appropriations bill, the Labor, Health and Human Services appropriations bill, these are fancy names that probably do not mean much to the American people, these bills mean a whole lot more than a new letterhead on the same old Government stationery, which will come about as a result of the passage of this 484-page bill.

Instead, we are being told to create this new bureaucracy and put funding for homeland security on autopilot with a constant stream of continuing resolutions. It is an irresponsible path, but to the security and safety of the American people, these bills mean a whole lot more than a new letterhead on the same old Government stationery, which will come about as a result of the passage of this bill.

What is the administration’s response? The administration says we are spending too much money on the security of the American people. Mr. President, you cannot place a price tag on homeland security. You cannot protect lives on the cheap.

The Senate Labor, Health and Human Services appropriations bill provides $3.5 billion for police officers, for firefighters, and for other responders. That is $3.5 billion that could be made available next week. All that has to be done is for the House to get the signal from the executive branch which controls the Republican leadership in this Senate to support that appropriations bill. All that is needed is for the White House to unloose the shackles that are on the House leadership and say, pass that appropriations bill. We restored over $1 billion of cuts the President proposed for State and local law enforcement programs. That is real stuff, without any delay.

What is the administration’s response? The administration says we are spending too much money on the security of the American people.
Mr. President—I am talking to the President at the other end of the avenue—you cannot place a price tag on homeland security. You cannot protect lives on the cheap.

The Senate Agriculture appropriations bills approved unanimously by the Senate Appropriations Committee, made up of 15 Democrats and 14 Republicans. If the President were serious about homeland security, we would do far more than find $9.9 billion worth of money in a 484-page appropriations bill that creates a new department. We would pass these appropriations bills.

We would allocate funds to the Department of Homeland Security to deal with threats from terrorism and natural disasters. With this administration, there has never been a dispute that threatens the security of the American people. This administration would not invest in immediate homeland security initiatives and not rely on a campaign slogan to protect us 6 months or 1 year or even 5 years from now.

I hope we will not try to sell the American people this bill of goods on homeland security. It is nothing but snake oil. A new department would welcome, but it will not be enough. We need to do more and we need to do it quickly.

The Senate Appropriations Committee reported appropriations bills for fiscal year 2003 that contained a total of $25.6 billion for non-DOD homeland defense funding, an increase of $3 billion over the levels approved last year. That is real money for the defense of our homeland that could be available now, under our committee-reported bills for fiscal year 2003, if the White House did not impose more restrictions on the appropriations bill. What a difference.

This authorizing bill we are debating right now provides nothing immediately for homeland defense. It has a real headline. It sounds good. It will make a good slogan. But it does nothing immediately. Right now, all we have to do is enact. That is real money for real protection.

Under the continuing resolution we are operating under now, the significant increases for homeland defense are not funded. We would not be able to provide new appropriations under the continuing resolution for the Labor-HHS bill which would provide only $1.8 billion for bioterrorism preparedness in fiscal year 2003.

The continuing resolution for the Labor-HHS bill would contain only $540 million to be available to local fire departments, from FEMA, for training and equipping firefighters for weapons of mass destruction. For fiscal year 2003, the Senate committee VA-HUD appropriations bills would provide only $180 million in the committee bill for grants for interoperable communications equipment for firefighters, none of which would be available under the continuing resolution.
Under the continuing resolution—that is what we will be operating under—the Coast Guard will have to start delaying the procurement of long-range aircraft as soon as December. In fact, due to the absence of adequate funding for the Coast Guard’s port security, start paying contract penalties totaling $500,000 per month.

So at the same time as the Coast Guard is being merged into the new homeland security agency, the inadequately funded Department of Homeland Security will start paying contract penalties totaling $500,000 per month. The President’s plan to block investment in massive Government reorganization will delay the procurement of critical homeland security aircraft while simultaneously wasting half a million of the taxpayers’ dollars every month on contract penalties.

The Senate committee Treasury-general government bill added $18 million to the Customs Service for container security administration. This funding allows for President’s priority—telling the American people is that in the new homeland security agency, the inadequately funded Department of Homeland Security will start paying contract penalties totaling $500,000 per month. The President’s plan to block investment in massive Government reorganization will delay the procurement of critical homeland security aircraft while simultaneously wasting half a million of the taxpayers’ dollars every month on contract penalties.

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this bill as it is. And yet we are being asked to invoke cloture tomorrow, in-voke cloture so that we limit ourselves in future debate to 30 hours, a total of 30 hours on this bill.

The American people out there don’t know if we are being told that this is a good bill, this is a good bill, we are about to create a Department of Homeland Security and you will all be safer, ladies and gentle-men, out there in the hills and the prairies and the valleys and the moun-tains, you will all be safer.

The American people are being hood-winked. We are complicitous in going along with the idea—going along with this sham. We are all guilty of going along with this. Yet we are going to in-voke cloture on ourselves. We are going to invoke the gag rule.

We hear that this Senate is the greatest deliberative body in the world—greatest deliberative body in the world—greatest deliberative body and the people of the United States. Yet we have been on this bill now parts of 2 days—just parts—and to-morrow morning we are going to put the gag rule on. We are going to invoke cloture so that we will deprive our-selves of the opportunity and we will deprive ourselves of the opportunity to expose the weaknesses of this bill—to expose to the people who send us here, the judges of our political fortunes. We are going to say no to the people who send us here when we put this gag rule in effect and say to ours elves that we are not going to be in terested in debating this longer than 30 hours, if that much time is used. We are saying to the American people who send us here we are putting the gag rule on you. We are putting the blindfolder on you.

How many of us would like to go to the American people in the next cam-paign for reelection and tell them that we believe in blindfolding them, and we don’t believe they should know what is in this bill. It has some good provi-sions, I am sure, but we are willing to shut ourselves off here.

This is a bad bill—bad because there are some provisions in it that are bad—not all but some provisions in it are bad. Some provisions we don’t even know about. We intend to vote on it—pig in a poke, blindfold ourselves, gag ourselves. We are willing to do that.

Are we willing to draw our moneys, our salaries? The American people pay our salaries? The American people pay our salaries? The American people pay our salaries? The American people pay our salaries? The American people pay our salaries? The American people pay our salaries? They work hard; they work long hours; they work in West Virginia. Call it dinner, if you wish. We have kept you waiting, and I apologize for my part. Who else has done it? I am the one rascal here who has kept you waiting. I apologize for that.

Had we not been faced with a cloture vote tomorrow, I could have waited until tomorrow and said these things. But when else am I supposed to say it? If the gag rule is invoked tomorrow, I will have no opportunity to say it. Then we only have 30 hours—all of us, 100 Sen-ators have 30 hours—and I suppose that is an hour each at most.

There is a record standing. There is a record that stands with him who holds the waters in his hands; there is a record that will be written, and it will be there for the next thousand years for all who want to read it.

I believe the American people expect us to oppose this way of legislating. It is not as our children are being told the way to make laws.

Mr. President, I end my remarks, as I began them earlier today, by reading from 1st Corinthians, chapter 14, verse 8 and verse 9:

For if the trumpet give an uncertain sound, who shall prepare himself to the battle? So likewise ye, except ye utter with the tongue words easy to be understood, how shall it be known what is spoken? For ye shall speak into the air.

Mr. President, that is the way I began my remarks. If we pass this bill, we are going to be the trumpet that gives forth an uncertain sound. The American people are going to be told, and they are going to believe, that they are made more safe, but we will have sent forth an uncertain sound. The people will not be made more safe by this piece of legislation.

The SENATE.

Mr. STEVENS. Mr. President, I have two short statements that I would like to make concerning this legislation. These deals with the use of appropriated funds.

As my colleagues know, one of the major issues confronting Congress with respect to establishing the Department of Homeland Security was the extent to which the Homeland Security Appropriations Act of 2003 provides the necessary authority to trans-fer funds between appropriations ac-counts or among the organizations and programs within the new Department.
Underlying this issue are two critical questions—how best to give the Homeland Secretary the flexibility he or she needs to organize and operate the new Department, and how best to preserve the Congress’s constitutional authority to appropriate funds and to oversee their use.

Previous versions of the Homeland Security Department legislation included extensive language governing how the Department would allocate and use appropriated funds. That language was generated through property disposal or gifts from outside the Federal Government.

The compromise embodied in the final version of the Homeland Security Department legislation now before us takes a somewhat different approach, but the net effect is the same: Congress’s appropriations authorities are maintained. Transferred funds must be used for the purposes for which they were appropriated, and Congress must approve, in advance, the reallocation of transferred funds away from their originally intended purposes.

Language added to the final bill reinforces the requirement that personnel, assets, and obligations transferred to the new Department shall be reallocated to their originally intended purposes. That section of permanent law requires that funds transferred within or between Executive branch agencies to finance transferred assets, and obligations transferred to the new Department are used effectively. As a result, the use of the general authority to transfer funds was dropped, since it is an authority in an appropriations act. The transfer authority provided, and except as otherwise specifically authorized by law, not to exceed two percent of any appropriations available to the Homeland Secretary may be transferred between appropriations. I am satisfied those provisions meet our general requirements, although they are not in the original request I made in the Governmental Affairs Committee on which I serve.

In many respects, these provisions mirror language that is included annually in every Department of Defense authorization act. Appropriations and the language that would be subject to approval or disapproval in writing by the Committees on Appropriations, which would review reprogramming requests submitted and considered under established procedures used by the Defense Department and Congress for defense transfer authority actions. We intend to mirror the procedure that has been so successfully with regard to defense matters when we are reviewing national security matters.

Finally, the authorization bill includes a provision intended to help Congress to assess the long-term funding requirements for the new Department. It requires submission of a Future Years Homeland Security Program that projects spending requirements for at least five fiscal years. This detailed, multi-year document is due beginning with the fiscal year 2003 budget request.

The continuing resolution language, and the language in the continuing resolution, preserve the statutory and administrative requirements needed to ensure that any funds made available to the new Department are used effectively and efficiently in accordance with the will of the people as reflected through their elected Representatives.

This language, and the annual appropriations process, ensure that the Homeland Security Department has the appropriate authorities to organize and operate the new Department, and that Congress will remain directly engaged in deciding how appropriated funds are used, or reallocated, by the Executive branch.

Previous versions of the Department legislation established extensive language governing the Department’s role that the Founding Fathers intended and that our constituents demand. Our constitutional oath requires Members to assure that our constituents’ demand for our oversight will be fulfilled.

In closing, I have a second short statement. I have been very interested in preserving the Coast Guard’s non-homeland security mission performance under this bill. I will discuss for the Senate today a vitally important section of the homeland security legislation that we consider here.

This section—Section 888—is entitled “Preserving Coast Guard Mission Importance,” and its implementation is essential to maintaining without significant reduction the Coast Guard’s non-homeland security capabilities and missions.

We all recognize the critical homeland security missions that the Coast Guard performs. However, it is just as critical to the United States that the Coast guard effectively and successfully discharge its non-homeland security missions. The criticality of these non-homeland security missions extends far beyond the 30 coastal and Great Lake states. These non-homeland security missions affect the maritime safety, law enforcement, environmental conditions, and economic security of our entire nation.

The Coast Guard’s non-homeland security missions are marine safety, search and rescue, aids to navigation, living marine resources—including fisheries law enforcement, marine environmental protection, and ice operations.

All these missions are critical to the well-being of Alaskans, and we rely on the Coast Guard virtually every day for protection and assistance in these mission areas. I am confident that my colleagues who also will speak on this section of the bill will attest further to the importance to their states and to the rest of the nation of preserving the Coast Guard’s vital non-homeland security capabilities and missions.

Preserving these missions and capabilities is the fundamental intent and purpose of Section 888.

The Coast Guard cannot accomplish its non-homeland security missions effectively and successfully unless its critical non-homeland security missions are preserved intact and without significant reduction. Section 888 mandates the preservation of these capabilities, and of the Coast Guard’s authorities and functions in these areas, unless Congress specifies otherwise in subsequent acts.

I would add at this point that, since September 11, 2001, the Coast Guard has assumed greatly expanded homeland security responsibilities without seeing a reduction in its non-homeland security responsibilities. This is a strong justification for allocating even more total resources to the Coast Guard on an annual and long-term basis.
Section 888 further reinforces and protects the Coast Guard’s non-home- 
land security missions and capabilities by preventing the diversion of any mis- 
ion, function, or asset—including ships, aircraft, and helicopters—to the prin- 
cipal and continuing use of any other federal agency, unit, or entity of the 
Homeland Security Department. This restriction is intended to mini-
mize, if not eliminate, any prospect of the diversion from the Coast Guard of 
the personnel, equipment or other re-
sources needed to perform its non-
home- 
land security missions. Personnel 
details or assignments that do not re-
duce the Coast Guard’s capability to per-
form these missions are permitted.

Section 888 further prohibits the 
Homeland Secretary from reducing the 
Coast Guard’s non-home- 
land security missions and capabilities substantially or significantly unless Congress speci-
ifies otherwise in subsequent Acts.

The Homeland Security Secretary 
may waive this restriction for no more than 90 days, but he or she must first declare and certify to Congress that a clear, compelling, and immediate need exists for such a waiver.

If he or she exercises the waiver au-
thority, the Homeland Secretary must sub-
mit to Congress a detailed justifica-
tion. Thus, the elected Senators and 
Representatives of the American peo-
ple will have an opportunity to deter-
mine whether they agree or disagree with the waiver. We will have the op-
portunity to assess the impact of such 
a waiver on the Coast Guard’s non-
home- 
land security missions and to make our views known should there be any cause for concerns.

The language in Section 888 does pro-
vide more flexibility than the Coast 
Guard-related language in the earlier 
versions of the Homeland Security De-
partment bills that we have been de-
bating since July. However, this latest 
language protects the Coast Guard from any major changes to its non-home-land security missions and capabilities because it clearly does not provide the authority to make whole-
sale and sweeping changes in these areas.

This final language also includes 
other important provisions that will con-
tribute to the Coast Guard’s overall 
well-being and effectiveness as part of 
the new Homeland Security De-
partment. These provisions help protect the Coast Guard from any major changes to its non-home-land security missions and capa-
bilities. These provisions have been carried over from at least one of the previous versions of the legislation, or they have been crafted to further en-
hance the Coast Guard’s position in the 
new Department.

These provisions include language 
transferring the Coast Guard to the 
new Department as a freestanding and 
distinct entity that is not under the ju-
risdiction of any of the Department’s new directorates, and language ensur-
ing that the Service’s Commandant 
shall report directly to the Homeland 
Secretary without being required to re-
port through any other departmental 
oficial.

Take separately and together, these 
subsections strengthen the institutional position of the Coast Guard and 
the Commandant within the Depart-
ment. They preserve the Coast Guard’s 
capability to compete for resources and to influence policy in both the non-home-
land security and homeland security areas. They are an unambiguous state-
ment by the Congress about the impor-
tance of the Coast Guard and all its missions that defines the perimeter of 
the Homeland Security Department.

Another subsection requires the new 
Department’s Inspector General to re-
port annually to Congress on the mis-
mission performance of the Coast Guard, 
with a particular emphasis on the non-
home- 
land security missions. This in-
formation should help Congress iden-
tify whether additional actions are 
needed to preserve these non-home-land security missions and capabilities.

The Homeland Secretary also is re-
quired by subsection to report to 
Congress not later than 90 days after 
entactment of the Act on whether the 
procurement rate in the Service’s top-
priority modernization program—the 
integrated deepwater system—can be 
accelerated by 10 years. Timely imple-
dmentation of the Deepwater program is essential to maintaining and improving the Coast Guard’s capabilities to ac-
complish all its missions. Congress 
should consider whether accelerating the program is an affordable and cost-
effective way to accomplish these ob-
jectives, especially in the non-home-
land security area.

A final subsection ensures that the conditions and restrictions in Section 
888 shall not apply when the Coast 
Guard operates as a service in the Navy 
under section 3 of title 14, United 
States code. It would be inappropriate 
to apply these conditions and restric-
tions under such circumstances. Under 
section 2 of title 14, the Coast Guard 
becomes part of the Navy in Wartime 
or as directed by the President.

In summary, Section 888 resulted 
from productive negotiations with the 
White House and our House colleagues 
during which all sides strived to make reasonable compromises that would en-
able Congress to pass a final version of 
the Homeland Security Department 
legislation during this post-election 
session. Refinements suggested by the 
Coast Guard also are included in the 
language.

The language maintains the struc-
tural and operational integrity of the 
Coast Guard, the authority of the Com-
mmandant, the non-home-land security 
missions of the Coast Guard, and the 
Coast Guard’s capabilities to carry 
out these missions even as it is transferred to the new Department. The language 
is clearly intended to assure that the important homeland security priorities 
of the new Department will not eclipse 
the Coast Guard’s crucial non-home-land 
security missions and capabilities. 
Section 888 strikes the right balance 
at this time between maintaining the 
Coast Guard’s vital non-home-land security missions and capabilities and 
permitting it to carry out important homeland security responsibilities.

Just as importantly, this language and the annual appropriations process, 
Congress must continually be di-
rectly engaged in deciding the extent 
to which any significant changes occur in the future to the Coast Guard’s non-
home-land security missions and capa-
bilities. Congress’s continued and di-
rect engagement in such matters is es-
cential to giving the importance to the 
American people of these missions and capabilities.

And again, these missions and capa-
bilities are vital to my State of Alaska. 
I thank my distinguished friend for 
allowing me to make these two state-
ments. I am late to a meeting. I wanted 
to make sure we explained to the Sen-
ate what we have done in modifying 
this bill.

I know it does not meet totally the 
requirements and approval of my friend from West Virginia. But I do think, 
under the circumstances, that we will 
have this continued role of supervision 
and we will retain the same type of 
control over reprogrammings of the 
Homeland Security Department 
that we have over the Department of 
Defense. We should be able to continue 
in the future the same kind of Congres-
sional connection to the changes in the 
use of funds—and there will be changes, 
based on changing priorities, changing 
circumstances—and we are part of that 
process. It will not be done without 
the prior approval of Congress.

I think I can assure my friend, in my 
judgment, we have preserved to the 
maximum extent possible our constitu-
tional role in this process as it goes 
forward. There is no question every ap-
propriations bill annually will address 
this issue and we will address it as we 
have in connection with defense mat-
ters in the past.

I thank my friend from West Vir-
GINIA.

Mr. BYRD. Mr. President, the distin-
guished Senator is welcome. I ap-
preciate what he has said. I hope the Sen-
ator’s assurances—I know they are sin-
erely given—will prove to be direct 
and true. I must say I have great con-
cerns about this legislation as it is 
written as to the verbiage that we find 
in this new package that is on our desks today. It may have to change 
yesterday. I hope the distinguished 
Senator from Alaska is accurate and 
that he is correct, and that the assur-
ances which he has been given and 
which he is giving will prove to be the case.

I have a great deal of confidence in 
my friend from Alaska. I have implicit 
confidence in him. I have never had 
that confidence shaken. But that con-
fidence I have in him does not extend 
beyond him. I have to say truthfully, 
to the people in this administration. 
But I do trust my friend and I know he 
will try to his level best to see to it 
that the administration deals fairly
and squarely with us in the appropriations process.

With that, I again thank him.

Mr. STEVENS. Mr. President, if the Senator will yield.

Mr. BYRD. Yes, I yield.

Mr. STEVENS. I give the Senator my assurance we will continue to work together to assure we maintain our constitutional role in the activities of this new Department. But I also feel it is absolutely necessary that this bill be passed this year because if it is not, regardless of the size of the bill, it will literally die at the end of December and we will have to start all over again. With the tensions facing the world and challenges our Government faces to maintain homeland security, it is absolutely essential we start forward. We have a slight disagreement on that. But I do believe this bill gives us a framework to work with this subject. I think the ongoing responsibility to assure the new Department will continue to be effective will primarily rest with the appropriations process. This will be an enormous demand, a new demand on our Treasury, to fund a wholly new type of homeland security.

We will see a whole series of agencies, hopefully bringing about some new efficiencies. But it will require increased money.

Senator BYRD and I have, will continue to have, the role of seeing to it the Senate appropriations with regard to the appropriations process are fully understood by the new homeland security department and its personnel, and that we will work effectively to see to it we fulfill our constitutional responsibility with regard to control of the people's money.

Mr. BYRD. Mr. President, I thank the distinguished Senator. I have never seen anything in the demeanor of the distinguished Senator from Alaska, anything in his words, anything in his daily activities, the record he has made here, that would create any doubt, as far as I am concerned, in him and his intention to carry this out. I have to say I don't have the same kind of confidence in the people at the other end of the avenue. I think we are making a huge mistake in passing this bill at this time.

I think the appropriations the distinguished Senator from Alaska and I have worked together in making possible the other members of our committee—I think those appropriations, which have not been signed into law by the President, some of which have not passed the other body, and most of which have been held in check by the other body at the behest of the administration—those would have given to the American people far more security than would this bill. But as to the Senator, my trust in him—as I said it before and I will say it again—is implicit. I have no doubt he intends to do the best he can to see this appropriation process goes along as the Framers and as our predecessors have intended.

Mr. STEVENS. I thank the Senator. Mr. AKAKA. Mr. President, I rise to discuss the critical distinctions between the legislation as reported out by the Governmental Affairs Committee and the House passed bill, creating a Department of Homeland Security.

I think it is wise to proceed cautiously when creating a mega-Department of Homeland Security which would encompass approximately 22 agencies and about 170,000 employees. We all recognize that we face new threats, and we all recognize the need to better coordinate efforts to protect Americans from these threats. However, it is also critically important, as the distinguished senior Senator from West Virginia has repeatedly noted, to consider carefully what is being proposed to ensure that any legislation enhances our security and does not detract from it.

William Safire describes in Thursday's New York Times how the House proposed Homeland Security Act will create a computerized dossier on the private life of every American citizen. I urge my colleagues to read Mr. Safire's president column entitled, "You Are a Suspect." His arguments are one reason why we should proceed cautiously to creating a Department of Homeland Security.

The President compares the reorganization of agencies within the federal government, into a Department of Homeland Security to the creation of the Department of Defense after World War II. But the two departments that were combined to create the Department of Defense, the Department of the Army and the Department of the Navy, had the same primary mission, to defend the United States. They had similar cultures and management priorities. This is not true of the proposed new Department of Homeland Security. Many of the agencies, such as the Coast Guard, the Immigration and Naturalization Service, and the Federal Emergency Management Agency, have varying missions, priorities and cultures.

Any far-reaching change to the structure of the federal government demands thorough and open discussion. Senator Lieberman has done a great service to his country by holding hearings and debating extensively the structure of such a department. But there needs to be further debate and amendment to the proposal offered by the Republicans.

Let me make a dozen points as to why the legislation reported out by our Governmental Affairs Committee, which was subjected to numerous public hearings, represents an improvement over legislation passed by the House last night and why the House proposal, supported by the President, is seriously flawed.

First, the House proposal raises serious concerns about the collection, use, and dissemination of private information, the issue addressed by Mr. Safire. It gives the Secretary broad access to information relating to investigations and places restrictions on the authority of the inspector general to conduct inquiries into the new department’s operations. Our committee substitute provides the inspector general with the tools and mechanisms to carry out the duties and responsibilities of both a strong Civil Rights Officer and a strong Chief Privacy Officer.

The privacy officer would assist the Department with the development and implementation of procedures to ensure that privacy considerations and safeguards are incorporated and implemented in programs and activities, and that information is handled in a manner that minimizes the risk of harm to individuals from inappropriate disclosure. Such officers are necessary to protect Americans from encroachments on their civil liberties.

The committee-reported legislation created a powerful civil rights officer, ensuring checks and balances in the civil rights laws, coordinating with the administration, assisting in the development and implementation of civil rights policies, and reporting to the Inspector General on matters pertaining further investigation. In contrast, the new bill just passed by the House would only require the Civil Rights Officer to review and assess alleged abuses and report to Congress. In the House bill the Secretary appoints the officer and in the Governmental Affairs committee-reported bill the President appoints the Senate confirms the officer, ensuring greater accountability. The Committee alternative worked to ensure that civil rights were not violated in the first instance.

The threat of a “Big Brother” new department cannot be overemphasized. With the President proposing programs like the Terrorism Information and Prevention System, or TIPS, a national program to encourage volunteers to report suspect activities to the Department of Justice, and the Department of Defense’s new “Total Information Awareness,” we need strong protections against violating Americans’ privacy and civil rights. The first defense of our freedom comes from a system with checks and balances. The House proposal, supported by the President, does not contain sufficient checks and balances.

Second, under the first House-passed bill and the President’s original proposal, whistleblowers were not protected. Merit Systems Protection Board, MSPB, and the Office of Special Counsel, OSC, enforcement were not included. I am pleased to say that under the proposal before us today, whistleblowers retain most of their rights. However, the bill does not give whistleblowers the individual right to file a complaint, the ability to file a complaint, or the right to appeal a decision. Third-party arbitration may not be protected for those federal employees who are union members and blow the whistle. Third party arbitration is an effective way to resolve whistleblower cases and resolve the hostile decisions of the Federal Circuit.

Third, the administration proposal transfers the Transportation Security

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Agency, TSA, into the new department. Baggage screeners are our first line of defense against terrorism on our airlines, and they need to have the same protections as our border patrol agents, INS employees, and custom inspectors so that they can come forward to do their job to our public health and safety. The committee’s bill, as a result of an amendment offered by Senator LEVIN and myself, gave full whistleblower rights to baggage screeners and their supervisors to contract screeners. This is something that the House proposal fails to do.

Fourth, the new administration-supported bill gives minimal assurances that non-homeland security functions in the 22 agencies to be absorbed in the new Department will be preserved and not eliminated or diminished. The committee’s amendment, which I offered with Senator CARPER, required that all non-homeland security functions of each agency be identified along with the resources needed to preserve these functions, and the additional changes needed to ensure that non-homeland security functions would not be diminished. The new proposal drops this critical reporting requirement. The bill removes all reports to Congress which would allow Congress to monitor closely the creation of the new department and to ensure vital non-homeland security functions are preserved.

Fifth, the committee-reported bill provided critical management guidance to the development of an effective homeland security mission. Agencies need specific guidance on how to achieve success. There are over 40 federal agencies with homeland security missions—some to be within the new department but others to remain outside. For many, homeland security is a new responsibility that must be added to existing missions. Agencies will need help with their new homeland security missions with their existing responsibilities. The committee’s amendment provided for a process for ensuring that this occurs. The House proposal does not.

Sixth, the House-passed bill creates a new Under Secretary for Information Analysis and Infrastructure Protection with two subordinate directorates, including one for intelligence which is given extraordinary access to sensitive information on domestic and international intelligence. Under the House formulation as supported by the President, the new Secretary can trump the authority of the Director of Central Intelligence. The new directorate will duplicate work already being performed by the CIA’s Counter Terrorism Center. Furthermore, Section 202 of the President’s bill requires all agencies to provide all information to the new Department, including information which might pertain to intelligence sources and methods. The Senate approach avoids even having to request that information. This gives this new office unprecedented access with few checks and balances, suggesting that the new office may have the capability to intrude on an extraordinary extent into the private lives of individual American citizens. These are very worrisome developments. The new formulation risks endangering our individual, as well as our national, security.

Senator THOMPSON, Senator LIEBERMAN, Senator LEVIN and I had worked out an amendment which was contained in the committee bill. This amendment had been accepted by the President. I am deeply troubled concerning the administration’s new mission for the Department’s intelligence directorate.

Seventh, the latest proposal does not address the serious shortcomings across the Federal Government in communicating security threats to the public. The American people are confused and frustrated by threats of terrorism and repeated statements by the administration that future terrorist attacks are inevitable. The committee bill ensured that the Secretary of the new Department worked with state and local officials to develop more effective alert systems, more useful warnings, and improved communication with the public and private sector. In short, the Governmental Affairs Committee’s legislation would have empowered the American people to play a role in the war on terrorism.

Eighth, this new proposal transfers the Plum Island Animal Disease Center from the Department of Agriculture to the Department of Homeland Security. However, many potential agriculture terrorism diseases, such as anthrax, are not studied at Plum Island. Rather than pulling off one piece of the Department of Agriculture’s much needed and underappreciated laboratory network, the Governmental Affairs Committee alternative left Plum Island where it was and instead ensured co-ordination and consultation between the Department of Homeland Security and Agriculture on bioterrorism research priorities.

Ninth, the House proposal does not address serious shortfalls in emergency preparedness and response capabilities for agricultural terrorism. The Lieberman alternative acknowledged the importance of agriculture to our national economy and the dangers that an agricultural disease could pose to human health, rural America, and our Nation’s economy. A large scale agricultural disease outbreak, whether of natural or deliberate origin, will require rapid and coordinated efforts by the Department of Agriculture, the Federal Emergency Management Agency, the Environmental Protection Agency, the Departments of Health and Human Services, Transportation, Defense, and Justice, and local and State emergency managers. The amendment ensured that agricultural health diseases were considered in security assessments and that the animal health and agriculture communities would be included in planning, training, and response activities.

Tenth, in the name of flexibility, the President’s initial proposal waived all of the provisions of title 5 leaving federal employees without protection from discrimination or whistleblower retaliations. The House proposal maintains most of title 5; however, it allows for the waiver of provisions affecting collective bargaining. The House proposal maintains many of title 5; however, it allows for the waiver of provisions affecting collective bargaining. The House proposal maintains most of title 5; however, it allows for the waiver of provisions affecting collective bargaining. The House proposal maintains most of title 5; however, it allows for the waiver of provisions affecting collective bargaining. The House proposal maintains most of title 5; however, it allows for the waiver of provisions affecting collective bargaining. The House proposal maintains most of title 5; however, it allows for the waiver of provisions affecting collective bargaining. One of the key factors to the so-called success of the Federal Aviation Administration, FAA, and the Internal Revenue Service, IRS, two agencies that have strong affiliation, is that the strong role federal labor unions play in the shaping of the personnel system and in resolving employee disputes through third-party arbitration. This third-party arbitration is even more critical since cases involving coercion to participate in political activity, violations of veterans preference rights, giving unlawful preference or advantage to any employee, or other prohibited personnel practices can no longer be appealed to an independent body such as the Merit Systems Protection Board, MSPB. The personnel system at the FAA removed MSPB appeal rights in 1996 only to have them reinstated by Congress in 2000 at the urging of Federal employees and managers.

While the merit system principles are designed to ensure that Federal employment is efficient, fair, open to all, and free from political interference, the civil service title 5, reinforced by collective bargaining rights, provide the framework for implementing and enforcing merit principles. Without such laws in place, the principles we all strive for cannot be achieved. The committee-reported bill preserved all of title 5, protected collective bargaining rights, and provided additional flexibilities governmentwide.

Some 25 years ago the Civil Service Reform Act, CSRA, of 1978 was passed to achieve the same issues confronting our Government today. The act established the principles of openness and procedural justice that define the civil service today. It created the Merit Systems Protection Board and the Office of Special Counsel to protect the rights of Federal employees. The Federal Labor Relations Authority was created to oversee labor-management practices. The act provided a statutory basis for the collective bargaining rights of Federal workers. It prohibited reprisals against employees who expose government fraud, waste and abuse. Those in the Federal workforce demonstrate their loyalty and trust to their employer but to their country every day. On September 11, the Federal workforce responded with courage, dedication, and sacrifice. Why is the President repaying their sacrifice by denying Federal workers the same protections as our border patrol agents, INS employees, and custom inspectors?

Eleventh, the House legislation fails to protect veterans by allowing the
waiver of chapter 77 of title 5 relating to appeals. This would make veterans go to an agency management-operated process to challenge anti-veteran personnel actions by the same agency management. Under current law, veterans that they have been denied a position or have been subject to a “designer” Reduction-In-Force, RIF, action in violation of veterans’ preference requirements can challenge such wrongful actions through the Merit Systems Protection Board or through a union grievance procedure. This will no longer be possible under the House bill. The Committee’s bill would have preserved MSPB review of veterans’ preference complaints. Ironically, as we are in the midst of a war on terrorism and have authorized a war against Iraq, the Administration is weakening veterans’ preference rights. This is fundamentally wrong.

Twelfth, the House proposal and the Governmental Affairs Committee-reported bill overly protected the confidential sharing of critical infrastructure information. With cyber attacks on the rise, government and industry leaders have been seeking a way to facilitate the sharing of information on vulnerabilities and attacks. Sharing such information is important because approximately 5 percent of the Nation’s infrastructure is controlled by private utility, telecommunications, or other similar companies. Despite the need for the information, I question the extent to which such information will be protected and the impact of such protections on environmental and public health laws.

In general, the owners and operators of critical infrastructure are concerned about the type and scope of information they are being asked to submit to the government. This data deals with vulnerabilities, incidents, and remedies which, if made available to business competitors, could compromise their competitive position, expose them to liability, disclose sensitive information to terrorists, and others who might wish to disrupt the function of their infrastructure, or harm their public relations.

However, current law provides adequate protection to the private sector for disclosing this type of information to the Federal Government. Nonetheless, industry has expressed its concern over the broad definition of facilities that could be impacted by our inaction here. Across the country, thousands of industrial facilities use dangerous chemicals in amounts that could endanger nearby communities if the facilities were attacked by terrorists. According to the Environmental Protection Agency’s Risk Management Planning program, there are 121 facilities where a release of chemicals could threaten more than 1 million people. There are also more than 700 facilities from which a chemical release could threaten more than 100,000 residential neighbors. Yet there is no Federal security standard for chemical facilities, no federal guidelines on facility proximity to neighboring communities, and no Federal agency overseeing the operations and safety of these facilities.

This bill is not intended to address chemical accidents. The Clean Air Act already provides existing authority. However, a review of the chemical accident data provides clear insight into the dangers associated with chemical releases. Federal data suggests that in 1998 there were almost 50,000 incidents—fires, spills and explosions—over 100 deaths, and nearly 5,000 injuries, related to chemical industrial accidents in the United States. Some analysts suggest that for each catastrophic chemical accident that causes a fatality, there are 300 recordable incidents and 30,000 near misses. One estimate suggests that U.S. chemical accidents cost about $15 billion a year.

In 1999, Congress required the Department of Justice to issue, within 3 years, a report to Congress on the vulnerability of chemical facilities to criminal and terrorist activity. For over a year, the Senate Environment and Public Works Committee has been asking for this report. Beyond a very thin and useless preliminary draft, the administration has not complied with this requirement of the Clean Air Act amendments. The Justice Department claims that constraints have impacted their work. This excuse is completely unacceptable, as is the administration’s delay in addressing what may be this Nation’s biggest terrorist vulnerability. Three years ago, Congress recognized the potential risks to our Nation’s chemical security. Not 1 more year or month should pass with this issue unresolved.

Press reports highlight the public’s frustration. In September, Newsweek reported a failing grade to the Federal Government in protecting chemical plants and other hazardous materials. I believe the article accurately described the forces blocking action: “industry lobbyists and infighting among a multitude of government agencies trying to defend their turf have combined to hold (Governor) Ridge’s office and the Environmental Protection Agency at bay.”

I ask my colleagues to stop beyond bureaucratic delays and special interest pressures to think of the families that could be impacted by our inaction here today. We must act on this issue as soon as possible.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. (Mr. SCHUMER.) The clerk will call the roll.

Mr. REID. Mr. President, I extend my appreciation to the Senator from Iowa who has other things to do, but he has agreed to be here for a few minutes.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar Nos. 788, 789, 851, 911, 922, 926, 1031, 1032, 1033, 1034, 1071 through 1135, 1147 through 1176; and all nominations placed on the Secretary’s desk. I further ask that the motion to confirm en bloc, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate’s action, and any statements be printed in the appropriate place in the Record, and the Senate then resume legislative session, with the preceding all occurring with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

NATIONAL LABOR RELATIONS BOARD

Rene Acosta, of Virginia, to be a Member of the National Labor Relations Board for the remainder of the term expiring August 27, 2003.

Dennis P. Walsh, of Maryland, to be a Member of the National Labor Relations Board for the term of five years expiring December 16, 2008.

DEPARTMENT OF ENERGY

Kyle E. McSlarrow, of Virginia, to be Deputy Secretary of Energy.
THE JUDICIARY

John M. Rogers, of Kentucky, to be United States Circuit Judge for the Sixth Circuit.

DEPARTMENT OF AGRICULTURE

Phyllis K. Fong, of Maryland, to be Inspector General, Department of Agriculture.

FEDERAL COMMUNICATIONS COMMISSION

Jonathan Steven Adelstein, of South Dakota, to be a Member of the Federal Communications Commission for the remainder of the term expiring June 30, 2003.

DEPARTMENT OF THE TREASURY

Wayne Abernathy, of Virginia, to be an Assistant Secretary of the Treasury.

FEDERAL MARITIME COMMISSION

Rebecca Dye, of North Carolina, to be a Federal Maritime Commissioner for the term expiring June 30, 2005

DEPARTMENT OF TRANSPORTATION

Roger P. Nober, of Maryland, to be a Member of the Surface Transportation Board for a term expiring December 31, 2005.

REFORM BOARD (AMTRAK)

David McQueen Laney, of Texas, to be a Member of the Reform Board (Amtrak) for a term of five years.

THE JUDICIARY

Stanley R. Chesler, of New Jersey, to be United States District Judge for the District of New Jersey.

Rosemary M. Collyer, of Maryland, to be United States District Judge for the District of Columbia.

Mark E. Fuller, of Alabama, to be United States District Judge for the Middle District of Alabama.

Daniel L. Hovland, of North Dakota, to be United States District Judge for the District of North Dakota.

Kent A. Jordan, of Delaware, to be United States District Judge for the District of Delaware.

James E. Kinkeade, of Texas, to be United States District Judge for the Northern District of Texas.

Robert G. Klausner, of California, to be United States District Judge for the Central District of California.

Robert B. Kugler, of New Jersey, to be United States District Judge for the District of New Jersey.

Ronald B. Leighton, of Washington, to be United States District Judge for the Western District of Washington.

Jose L. Linares, of New Jersey, to be United States District Judge for the District of New Jersey.

Alisa M. Ludlum, of Texas, to be United States District Judge for the Western District of Texas.

William J. Martini, of New Jersey, to be United States District Judge for the District of New Jersey.

Thomas W. Phillips, of Tennessee, to be United States District Judge for the Eastern District of Tennessee.

Linda R. Reade, of Iowa, to be United States District Judge for the Northern District of Iowa.

William E. Smith, of Rhode Island, to be United States District Judge for District of Rhode Island.

Jeffrey S. White, of California, to be United States District Judge for the Northern District of California.

Fred J. Wolfe, of New Jersey, to be United States District Judge for District of New Jersey.

EXPORT-IMPORT BANK OF THE UNITED STATES

Philip Merrill, of Maryland, to be President of the Export-Import Bank of the United States for the remainder of the term expiring January 20, 2005.

DEPARTMENT OF STATE

Kim R. Holmes, of Maryland, to be an Assistant Secretary of State (International Organizations).

Maura Ann Harty, of Florida, to be a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be an Assistant Secretary of State (Consular Affairs).

Ellen R. Sauerbrey, of Maryland, to be the rank of Ambassador with rank of Minister-Counselor, to be the Representative of the United States of America on the Commission on the Status of Women of the Economic and Social Council of the United Nations.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Quanah Crossland Stamps, of Virginia, to be Commissioner of the Administration for Native Americans, Department of Health and Human Services.

NATIONAL INDIAN GAMING COMMISSION

Philip N. Hogen, of South Dakota, to be Chairman of the National Indian Gaming Commission for the term of three years.

FARM CREDIT ADMINISTRATION

Nancy C. Pellett, of Iowa, to be a Member of the Farm Credit Administration Board, Farm Credit Administration for a term expiring May 31, 2008.

DEPARTMENT OF DEFENSE

Otis Webb Blevins, Jr., of Georgia, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 2003.

NATIONAL LABOR RELATIONS BOARD

Robert J. Battista, of Michigan, to be a Member of the National Labor Relations Board for the term of five years expiring December 16, 2007.

Wilma B. Carter, of the District of Columbia, to be a Member of the National Labor Relations Board for the term of five years expiring August 27, 2006.

Peter Schaumber, of the District of Columbia, to be a Member of the National Labor Relations Board for the term of five years expiring August 27, 2005.

NATIONAL COUNCIL ON DISABILITY

Joel Kahn, of Ohio, to be a Member of the National Council on Disability for a term expiring September 17, 2004.

Patricia Pourd, of Texas, to be a Member of the National Council on Disability for a term expiring September 17, 2005.

Linda Weters, of Ohio, to be a Member of the National Council on Disability for a term expiring September 17, 2006.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

David Gelernter, of Connecticut, to be a Member of the National Foundation on the Arts and the Humanities for a term expiring September 3, 2006.

NATIONAL MUSEUM SERVICES BOARD

A. Wilson Greene, of Virginia, to be a Member of the National Museum Services Board for a term expiring December 6, 2004.

Judith Ann Rapanos, of Michigan, to be a Member of the National Museum Services Board for a term expiring December 6, 2002.

Judith Ann Rapanos, of Michigan, to be a Member of the National Museum Services Board for a term expiring December 6, 2007.

Maria Mercedes Guilemard, of Puerto Rico, to be a Member of the National Museum Services Board for a term expiring December 6, 2005.

Nancy S. Dwight, of New Hampshire, to be a Member of the National Museum Services Board for a term expiring December 6, 2005.

Peter Hero, of California, to be a Member of the National Museum Services Board for a term expiring December 6, 2006.

INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

Juan R. Olivarez, of Michigan, to be Commissioner on the part of the United States of America to the International Joint Commission for a term expiring December 6, 2007.

Irene Brooks, of Pennsylvania, to be a Commissioner on the part of the United States of America to the International Joint Commission for a term expiring December 6, 2003.

NATIONAL INSTITUTE FOR LITERACY

John Randle Hamilton, of North Carolina, to be a Member of the Board of Directors of the National Institute for Literacy for a term expiring December 17, 2004.

INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

Carol C. Gambill, of Tennessee, to be a Member of the International Joint Commission for a term of three years.

NATIONAL MUSEUM SERVICES BOARD

Beverly A. Walkup, of Alaska, to be a Member of the National Museum Services Board for a term expiring December 6, 2003.

DEPARTMENT OF EDUCATION

John Portman Higgins, of Virginia, to be Inspector General, Department of Education.

DEPARTMENT OF STATE

J. Cofer Black, of Virginia, to be Coordinator for Counterterrorism, with the rank and status of Ambassador at Large.

INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

Phillip N. Hogen, of South Dakota, to be Chairman of the National Indian Gaming Commission for the term of three years.

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Peter Hero, of California, to be a Member of the National Museum Services Board for a term expiring December 6, 2006.

INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

Allen I. Olson, of Minnesota, to be a Commissioner on the part of the United States
on the International Joint Commission, United States and Canada.  

Mr. LEAHY. Madam President, last night, the Senate voted to confirm the nomination of John Rogers who is nominated to the U.S. Court of Appeals for the Sixth Circuit. By confirming this nomination, we are trying to move forward in providing help to the Sixth Circuit. Earlier this year, we held a hearing for Judge Julia Gibbons to a seat on the Sixth Circuit, who was confirmed by the Senate on July 29, 2002 by a vote of 95 to 0. With last night’s vote, the Democratic-led Senate confirmed the 15th judge to our Federal Circuits...  

With President Bush’s decision to hold the vacancies, the Senate and the American people have been hurt. He precluded a hearing on his nomination before his nomination was returned to the President for another hearing. With a Bush win, all those seats could have been filled. For example, the 15th circuit nominee was nominated and renominated and re-nominated through March of last year when President Bush chose to withdraw her nomination. Under Republican control, the Senate averaged hold hearings on only about eight Courts of Appeals nominees a year and, in 2000, held only five hearings on Courts of Appeals nominees all year. In contrast, the 15th judge was confirmed by a vote of 95 to 0. With last night’s vote, the Senate confirmed the 15th judge to our Federal Circuits. Earlier this year, we held a hearing on the nominations of Judge Thomas Moyer, Ohio Supreme Court Chief Justice Thomas Moyer, Ohio Supreme Court Justice Evelyn Stratton, Congresswoman DEBORAH PRZYBYL, and Congressman DAVID HOSSN, the National District Attorneys Association, and virtually every major newspaper in the state. In his testimony to the Senate in May, Professor Rogers summarized his experience as a federal judicial nominee, demonstrating how the “history regarding the current vacancy backlog is being obscured by some.” Here are some of those things he said:

On February 9, 2000, I was the President’s first judicial nominee in that calendar year. And then the waiting began... At the time the hearing was pending, despite lower vacancy rates than the 6th Circuit, in calendar year 2000, the Senate confirmed circuit nominees to the 3rd, 9th and Federal Circuits. An Ohio circuit nominee had been afforded a hearing in the prior two years. Of the nominees awaiting a Judicial Committee hearing, there was no circuit with more nominees than the 6th Circuit. With high vacancies already impacting the 6th Circuit’s performance, and more vacancies on the way, why, then, did my nomination expire without putting my credit, Senator DeWine and his staff and Senator Hatch’s staff and others close to him were straight with me. Over and over again they told me two things: (1) There will be more confirmations to the 6th Circuit during the Clinton Administration[,] (2) This has nothing to do with you; don’t take it personally it doesn’t matter who the nominee is, what credentials they may have or what support they may have. It was a decision that was, a decision that was made to hold the vacancies and see who won the presidential election. With a Bush win, all those seats could have been filled.
entire second presidential term—despite these pleas. Not one. Since the shift in majority last summer, the situation has been exacerbated further as two additional vacancies have arisen.

The committee’s April 25th hearing on the nomination of Judge Gibbons to the Sixth Circuit was the first hearing on a Sixth Circuit nomination in almost 5 years, even though three outstanding, fair-minded individuals were nominated to the Sixth Circuit by President Clinton and pending before the Committee for anywhere from one to over four years. Judge Gibbons was confirmed by the Senate on July 29, 2002, by a vote of 95 to 0. We did not stop there, but proceeded to hold a hearing on a second Sixth Circuit nominee, Professor Rogers, just a few short months later in June.

Just as we held the first hearing on a Sixth Circuit nominee in many years, the hearing we held on the nomination of Judge Edith Clement to the Fifth Circuit was the first hearing on a Fifth Circuit nominee in seven years and she was the first new appellate judge confirmed to that Court in six years.

When we held a hearing on the nomination of Judge Harris Hartz to the Tenth Circuit last year, it was the first hearing on a Tenth Circuit nominee in six years and he was the first new appellate judge confirmed to that Court in 6 years. When we held the hearing on the nomination of Judge Roger Gregory to the Fourth Circuit last year, it was the first hearing on a Fourth Circuit nominee in three years and he was the first appellate judge confirmed to that court in three years.

A number of vacancies continue to exist on many Courts of Appeals, in large measure because the recent Republican majority was not willing to hold hearings or vote on half—56 percent—of President Clinton’s Courts of Appeals nominations in 1993 and 2000 and was not willing to confirm a single judge to the Courts of Appeals during the entire 1996 session.

From the time the Republicans took over the Senate in 1995 until the reorganization of the committee last July, circuit vacancies increased from 16 to 33, more than doubling. Democrats have broken with that recent history of inaction. In the last 16 months, we have held 26 judicial nominations hearing, including 20 hearings for circuit court nominees.

Professor Rogers’ nomination was also the fourth judicial nomination from Kentucky to be considered by the committee in its first year, and the eighth nomination from Kentucky overall. There are no judicial vacancies left in the State.

Professor Rogers of the University of Kentucky College of Law has experience as an appellate litigator and a teacher, and is a prolific author on a number of difficult legal topics. It is important to note that aspects of his record raise concerns. As a professor, he has been a strong proponent of judicial activism. No Clinton judicial nominee with such published views would ever have been confirmed during the period of Republican control. In his writings, Professor Rogers has called on lower court judges to reverse higher court holdings. The judge who thinks the higher court will ultimately reverse its own precedent. Such an activist approach is inappropriate in the lower federal courts. The Supreme Court itself has noted that lower courts must follow Supreme Court precedent and not anticipate future decisions in which the Supreme Court may exercise its prerogative to overrule itself.

Professor Rogers also suggested in his academic writings that lower court judges should consider the political views of Justices in making the determination of when lower courts should overrule Supreme Court precedent. In his answers to the committee, Professor Rogers acknowledged that he had taken that position but he now says that lower courts should not look to the views of Justices expressed in speeches or settings other than their opinions. Also, in his answers to the committee, Professor Rogers acknowledged that he would give great weight to Supreme Court dicta, or arguments that are not part of the holding of the case. I would like to take this opportunity to urge him to take seriously the obligation of a judge to follow precedent and the holdings of the Supreme Court, rather than to look to dicta for views that may support his own personal views. I would also urge him resist acting on his academic noting that a judge should diverge from precedent when he anticipates that the Supreme Court may eventually do so.

Professor Rogers has assured us that he would follow precedent and not seek to overturn decisions affecting the privacy of women or any other decision of the Supreme Court. Senator MCCONNELL has also personally assured me that Professor Rogers will not be an activist but is sincerely committed to following precedent if he is confirmed. I sincerely hope that his decisions on the Sixth Circuit do not prove us wrong.

Mr. HATCH. Madam President, I am particularly pleased today to speak in support of the confirmation of John M. Rogers to the U.S. Court of Appeals for the Sixth Circuit. As we know, there is a great need for the Sixth Circuit and the addition of Mr. Rogers to the bench represents a positive step in alleviating that regrettable situation.

John M. Rogers is currently the Thomas P. Lewis Professor at the University of Kentucky College of Law, where he has taught since 1978. He is a Phi Beta Kappa graduate of Stanford University and an Order of the Coif graduate of the University of Michigan Law School, where he was the Michigan Law Review. He is an expert in international, administrative, and constitutional law and a respected teacher and scholar.

Prior to teaching, Professor Rogers was an appellate attorney in the Civil Division of the United States Department of Justice. This work, and a later stint at DOJ, led to his being awarded a Special Commendation for Outstanding Service to the Civil Division of the U.S. Department of Justice. Rogers is currently a Special Lecturer in the People’s Republic of China, and is a member of the Council on Foreign Relations. He has also
served this country for 28 years as a reserve officer in the U.S. Army Reserve and the Kentucky Army National Guard.

All of these accomplishments and contributions explain why the American Bar Association has rated Professor Rogers unanimously qualified. I agree with that judgment, and I applaud President Bush for making this nomination, and I urge all of my colleagues to confirm Professor Rogers to the Sixth Circuit. I am confident he will serve with distinction as a Federal judge.

**Nominees of U.S. District Court**

Mr. HATCH. Madam President, I rise in support of the fine group of district court nominees who are being confirmed tonight. I have reviewed their individual records and I find all of them to be excellent choices for the Federal bench. Permit me a moment to highlight the merits of each nominee.

U.S. Magistrate Judge Stanley R. Chesler, our nominee to the District Court for the District of New Jersey, received his undergraduate degree from Harpur College. He then went on to do graduate work at Brooklyn College where he graduated with 30 graduate credits in education. While working as teacher during the day, he graduated cum laude and first in his class from St. John’s University School of Law, receiving no less than 12 American Jurisprudence Awards and consistently making the dean’s list.

Upon graduation, Magistrate Judge Chesler joined the Bronx District Attorney’s Office and specialized in prosecuting public corruption, organized crime, narcotics and fraud cases. In 1980 he became a Special Attorney for the U.S. Department of Justice’s Newark Organized Crime Strike Force, before becoming an Assistant United States Attorney. During his career at the U.S. Attorney’s Office, he was awarded the Special Commendation Award and the Special Achievement Award. The nominee was then appointed by the New Jersey District Court judges to the office of Magistrate Judge in 1987. Magistrate Judge Chesler has also been recognized by his colleagues in receiving an ABA rating of Unanimously Well Qualified.

Rosemary Collyer, our nominee to the U.S. District Court for the District of Columbia, is a graduate of the University of Denver School of Law. She began her career at the Denver firm of Sherman & Howard as an associate in the labor and employment law group. Four years later she was nominated by President Reagan and confirmed by the Senate to be the Chairman of the Federal Mine Safety and Health Review Commission, which reviews decisions of specialized administrative law judges who adjudicate cases dealing with mine safety, health and discrimination claims under Federal law. Ms. Collyer remained with the firm until 1996, handling insurance and corporate defense work, and domestic relations, real estate, and corporate law matters. From 1997 to 1999, she worked as a part-time Assistant District Attorney in the Manhattan borough of New York.

Mr. Jordan worked in private practice as a trial lawyer, Mr. Fuller joined the firm of Cassady, Fuller & Marsh, a small litigation firm specializing in all aspects of state and federal practice in rural southeast Alabama. He became a partner in 1986 and remained with the firm until 1996, handling insurance and corporate defense work, and domestic relations, real estate, and corporate law matters. From 1987 to 1995, Mr. Fuller worked as a part-time Assistant District Attorney. In 1996 Mr. Fuller accepted the position of Chief Assistant District Attorney for Alabama’s Twelfth Judicial Circuit, serving there until 1997, when he was appointed District Attorney in the same office. While working in the District Attorney’s office, Mr. Fuller has represented the Coffee counties in criminal cases, including capital murder trials and juvenile and district court matters. In 1998 Mr. Fuller was elected to a full six-year term as District Attorney. He oversees the operations of the office and continues to handle criminal jury trials.

Daniel Hovland, nominated to the District Court for the District of North Dakota, promises to be an excellent federal judge. Upon graduation from the University of North Dakota School of Law, he served as a law clerk to the Honorable Ralph J. Erickson on the North Dakota Supreme Court. He then accepted a position with the Office of the Attorney General for North Dakota, working as an Assistant Attorney General and acting as Director of the Consumer Fraud Division from 1980 to 1983.

From there he moved into private practice, working with Fleck Mather & Strutz from 1983 to 1984 and Smith & Bakke from 1984 to the present. As a trial lawyer, Mr. Hovland handles personal injury, wrongful death, medical malpractice, employment/labor, and product liability cases. While in private practice, Mr. Hovland has gained experience particularly helpful for the federal bench.

Since 1994 he has served as an Administrative Law Judge for North Dakota’s Office of Administrative Hearings, he currently serves on the North Dakota Parole Board, and he has experience with mediation and arbitration.

Kent A. Jordan, who has been nominated to the U.S. District Court for the District of Delaware, comes fully recommended by Senators BIDEN and CARPEZ, and I urge my colleagues to support him as well.

Mr. Jordan possesses the experience needed for handling the court’s heavy caseload of intellectual property, government corruption, and corporate matters. Following graduation from Georgetown University Law Center in 1981, he served as a law clerk to the Honorable James L. Latchum, judge on the U.S. District Court for the District of Delaware. He then worked in private practice with a Wilmington, Delaware, firm focusing on corporate and commercial litigation. From 1987 to 1992, Mr. Jordan worked in public service as an Assistant U.S. Attorney for the District of Delaware, advancing to become lead attorney on many civil and criminal issues.

Mr. Jordan currently works as a Vice President and General Counsel for the Corporation Service Company, which provides registered agent public records filing and retrieval, corporate and intellectual property information management, and litigation information management services.

James E. Kinkeade, nominated to the U.S. District Court for the Northern District of Texas, is a graduate of Baylor University School of Law. Judge Kinkeade began his legal career as a law clerk and then associate for Brewer & Price in Irving, Texas. One year later he became a partner at Power & Kinkeade Law Firm. He represented a large number of closely held businesses and acted as local counsel for several national corporations. In addition, he had an active domestic relations and criminal practice. Judge Kinkeade served as an Associate Municipal Judge for the City of Irving from 1976-1980.

Judge Kinkeade stopped practicing law in January of 1981 to become a judge of the County Criminal Court in Dallas, Texas. In fall of 1981, he became a judge for the 194th District Court of Texas. Since 1988, Judge Kinkeade has served on the State of Texas, 5th District Court of Appeals. In addition, Judge Kinkeade has served as an adjunct professor for over 10 years at the Texas Wesleyan School of Law. He received the Outstanding Adjunct Professor award four times while teaching Professional Responsibility.

Judge Robert Gary Klausner, who has been nominated to the District Court for the Central District of California, graduated from Loyola Law School (Los Angeles) in 1967. Though awarded...
Mr. Leighton was nominated by President George H.W. Bush to the
same position in the spring of 1992, but the Democrat-controlled Judiciary
Committee did not grant him a hearing. I am pleased that we can finally
vote Mr. Leighton to the federal court, and I urge my colleagues to join me
in my support.

Nominated to the U.S. District Court for the District of New Jersey, Judge
Jose Luis Linares immigrated to the United States from Cuba when he was
12 years old. He received his undergraduate degree from Jersey City State
University in 1975, where he was a member of the National Honor Society.
He then graduated from Temple Law School in 1978. During his studies at
temple, he was a member of the National Honor Society.

Judge Linares started his career with the New York Department of Investiga-
tion, where he supervised white-collar and corruption investigations in
the City of New York. Later, as an attorney at Horowitz, Bross, Sinnings &
Imperial, P.A., he was responsible for the prosecution of both civil and
criminal cases. In 1982, Judge Linares started his own law firm, litiga-
ting both civil and criminal cases with a focus on complex medical mal-
practice and product liability cases. After 18 years as a partner in his own
firm, in many incarnations, he was appointed as a Judge to the New Jersey
Superior Court in Essex County. He currently oversees complex medical
malpractice cases in the Civil Division of the court. His colleagues there are
quite impressed with his record as well. He has received the highest rating by
the ABA, unanimously Well Qualified. I am proud to say that I will vote for
this nominee and I recommend him without reservation to the Senate.

Nominated to the U.S. District Court for the Western District of Texas,
Judge Alia Moses Ludlum, graduated from the University of Texas School of
Law in 1986. She continued her law career working in the Travis County
Attorney’s Office, where she eventually was promoted to Assistant County
Attorney. She held a variety of positions in the office, first as Intake
Attorney, then as Trial Attorney, and ultimately as Chief of the office’s Ap-
pellate Division. Her primary responsibility as an Assistant County Attorney
was the prosecution of criminal cases at the trial and appellate levels. She
decided to work as a sole attorney, focusing on governmental affairs/regulatory
law and general litigation.

Magistrate Judge Thomas Wade Phillips, nominated to the District Court
for the Eastern Division, is a graduate of Rutgers School of Law. After
attending Vanderbilt University School of Law on a full academic scholarship.
In law school, he was an assistant attorney general, focused on governmental affairs/regulatory
law and general litigation.

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United States Magistrate Judge for the Eastern District of Tennessee. He continues to serve in this capacity. The ABA has given him their highest rating of Unanimously Well Qualified.

Upon graduation from Drake University School of Law, Judge Linda Reade was nominated to the U.S. District Court for the Northern District of Iowa, became an associate with a Des Moines law firm where she worked on litigation involving federal and state civil law. In 1981, she moved to the Des Moines firm of Rosenberg and Margulies, where she worked for three years litigating federal and state, and civil and criminal law.

From 1984 to 1986, Judge Reade worked on both federal and state, and civil and criminal cases as a partner in that firm. In 1986, she became an Assistant United States Attorney for the Southern District of Iowa. In 1990, she was promoted to Chief of the General Criminal Division in the United States Attorney’s Office in the Southern District of Iowa. Since 1993, Judge Reade has served as a general jurisdiction State District Court Judge in Des Moines, Iowa, where she has maintained a low reversal rate. She has also lectured, written, and conducted seminars in the area of labor, employment, and litigation. Her practice has included representing management in union contract negotiations, union organizing drives, arbitration proceedings, employment discrimination matters, sexual harassment, wage and hour law, OSHA, OFCCP compliance and investigations, and other Department of Labor investigations.

While at his firm, in 1993, Mr. Smith successfully competed to become City Solicitor of Warwick, Rhode Island (under Mayor Lincoln Chafee). As such, he led a team of lawyers who took over all of the city’s legal work for a fixed fee. He was also retained that year to be legal counsel to the Rhode Island Secretary of State, performing labor, employment, and litigation matters. In 1994, he was hired by the Rhode Island Department of Administration as outside labor-litigation counsel for a number of arbitration cases. He also worked for the Rhode Island courts during an organizing drive of clerical employees and a restructuring of the court system and as a judge on the municipal court for 4 1/2 years. Mr. Smith has since returned to private practice with Edwards & Angell.

Jeffrey Jon White, who has been nominated to the Northern District of California, is a prime example of the high quality attorneys that President Bush has nominated to the Federal bench. He received his undergraduate degree from Queens College of the City University of New York in 1977. He then graduated magna cum laude from the State University of New York, Buffalo’s School of Law in 1980. During his studies he was a Research Editor of the Law Review and graduated first in his class.

Upon graduation, Mr. White became a Trial Attorney for the U.S. Department of Justice, Criminal Division—White Collar Litigation. In January 1971 he joined the U.S. Attorney Office for the District of Maryland as an Assistant U.S. Attorney. During his tenure at this position, he was designated as an outstanding Assistant United States Attorney in 1974 and 1976. He then returned to the Department of Justice in 1977 to work as a Senior Grade Trial Attorney in the Public Integrity Section of the Criminal Division. In 1978, Mr. White began a 24 year association with the law firm of Orrick, Herrington & Sutcliffe. In 1983 he became Chairman of the firm’s Litigation Department, a position that he held from 1985 to 2000.

Freda L. Wolfson, who has been nominated to the District Court for the District of New Jersey, is a great choice for the federal court. Upon graduation from Rutgers University School of Law, Judge Wolfson was a litigation associate at Lowenstein, Sandler, Kohl, Fisher & Boylan. Her practice mostly involved commercial litigation and employment litigation. She also represented a habeas corpus petitioner in a federal court and represented several criminal defendants as pro bono counsel.

From 1981–1986, she was a litigation associate at Clapp & Eisenberg where she focused on commercial litigation, employment litigation, and defense of ski areas. In addition, she frequently appeared before the New Jersey Casino Control Commission. In 1991, Judge Wolfson was appointed a United States Magistrate Judge, District of New Jersey. Since 1990, she has presided over 32 civil trials, 18 jury trials, and 14 bench trials. She has served on the Third Circuit’s Task Force for Indigent Litigants in Civil Cases since 1998.

I am proud to support all of these nominees. They have excellent educational backgrounds, they have terrific legal experience, and they have earned the respect of all who have appeared before them. During the rigorous screening process that Senator Frist and I undertook to review the records of interested candidates for this judgeship, we heard uniformly and highly favorable comments about Judge Phillips.

I think the record before the committee demonstrates his outstanding qualifications. I cite just one example. In over 11 years on the bench, out of thousands of decisions and recommendations, Judge Phillips has been reversed on just two occasions, and on only one occasion has a District Judge rejected his recommendations.

Judge Phillips has excelled not only in his professional career, but in his commitment to his community as well. He has promoted legal education by serving as a member of the Inns of Court and by teaching at the University of Tennessee Law School. He is an Elder of the Huntsville Presbyterian Church, a member of the American Legion, and a leader of the American, Tennessee, Scott County, and Knoxville Bar Associations. In private practice, Judge Phillips provided extensive pro bono services and served on the boards of Scott County Hospital and Opportunities for the Handicapped.

I would be remiss if I failed to note the importance of moving forward with this nomination. Traditionally, two district judges sit in Knoxville, Tennessee’s third largest city. Late last year and early this year, Judges Jordan and Judge Jarvis respectively assumed senior status, leaving the district court in Knoxville with no active judges. I
want to express my thanks and appreciation to both senior judges for the service they rendered for many years on the Federal bench in Knoxville.

I am confident that there is no one better qualified to fill the large hole left by Judges Phillips and Judge Jarvis than Judge Phillips. I am pleased to endorse Judge Phillips and urge my colleagues to support his nomination.

NOMINATION OF EUGENE SCALIA—MOTION TO PROCEED

Mr. GRASSLEY. Mr. President, I move to proceed to consider the nomination of Eugene Scalia to be solicitor for the Department of Labor.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion is not agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

IDENTITY THEFT VICTIMS ASSISTANCE ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. S. 1742, S. 1742.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1742) to prevent the crime of identity theft, mitigate the harm to individuals victimized by identity theft, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with an amendment from the Committee on the Budget and passed on the Senate floor after the enacting clause and inserting in lieu thereof the following:

[S. 1742]

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

SEC. 1. SHORT TITLE.

This Act may be cited as the “Restore Your Identity Act of 2001”.

SEC. 2. FINDINGS.

Congress finds that—

(1) the crime of identity theft is the fastest growing crime in the United States;

(2) the Federal Trade Commission reports that between March and June of 2001, the total number of identity theft victims in the Commission’s Complaint Clearinghouse System, increased from November 1999, increased from 45,593 to 69,370;

(3) consumer inquiries and complaints to the Federal Trade Commission Identity Theft Hotline increased from 68,000 to about 97,000 over the same 3-month period, and consumer calls into the Hotline increased in the same period from 1,600 calls per week to over 2,000;

(4) the Federal Trade Commission estimates that the call volume to the Identity Theft Hotline represents only 5 to 10 percent of the actual number of victims of identity theft;

(5) victims of identity theft often have extraordinary financial effort, and sums of money, to remedy their circumstances, and may suffer extreme emotional distress including deep depression founded in profound frustration as they address problems that may arise as a result of identity theft;

(6) victims are often required to contact numerous Federal, State, and local law enforcement agencies, consumer credit reporting agencies, and creditors over many years, as each event of fraud arises;

(7) the Government, business entities, and credit reporting agencies have a shared responsibility to assist identity theft victims, to mitigate the harm that results from fraud perpetrated in the victim’s name;

(8) victims of identity theft need a nationally standardized means of—

(a) reporting identity theft to law enforcement, consumer credit reporting agencies, and business entities;

(b) verifying their true identity to business entities and credit reporting agencies;

(9) one of the greatest law enforcement challenges posed by identity theft is that stolen identities are often used to perpetrate crimes in many different localities in different States, and although identity theft is a Federal crime, often, States and local law enforcement agencies are responsible for investigating and prosecuting the crimes; and

(10) the Federal Government should assist State and local law enforcement agencies to effectively combat identity theft and the associated fraud.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) BUSINESS ENTITY.—The term “business entity” means—

(A) a creditor, as that term is defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602); and

(B) any corporation, trust, partnership, association (including telecommunications, utilities, and other service providers).

(2) CONSUMER.—The term “consumer” means an individual.

(3) FINANCIAL INFORMATION.—The term “financial information” means financial information identifiable as relating to an individual consumer that concerns the amount and condition of the assets, liabilities, or credit of the consumer, including—

(A) account numbers and balances;

(B) nonpublic personal information, as that term is defined in section 506 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809); and

(C) codes, passwords, social security numbers, tax identification numbers, State identification numbers issued by a State department of licensing, and other information used for the purpose of account access or transaction initiation.

(4) FINANCIAL INFORMATION REPOSITORY.—The term “financial information repository” means a person engaged in the business of providing services to consumers who have a credit, deposit, or other financial services account or relationship with that person.

(5) IDENTITY THEFT.—The term “identity theft” means an actual or potential violation of section 1028 of title 28, United States Code, or any other similar provision of Federal or State law.

(6) MEANS OF IDENTIFICATION.—The term “means of identification” has the meanings given the term “identification document” in section 1028 of title 18, United States Code.

(7) VICTIM.—The term “victim” means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer with the intent to commit, or to facilitate, identity theft or any other violation of law.

SEC. 4. IDENTITY THEFT TREATED AS RACKETEERING ACTIVITY.

Section 1961(1)(B) of title 18, United States Code, is amended by inserting “, or any similar offense chargeable under State law after ‘identification documents’

SEC. 5. TREATMENT OF IDENTITY THEFT MITIGATION.

(1) INFORMATION AVAILABLE TO VICTIMS.—

(A) IN GENERAL.—A business entity possessing information relating to an identity theft, or who may have knowledge of or control over a transaction, provided credit, products, goods, or services, accepted payment, or otherwise done business with a person that has made an unauthorized use of the means of identification of the victim, shall, not later than 10 days after receipt of a written request by the victim, provide, without charge, to the victim or to any Federal, State, or local government law enforcement agency or officer specified by the victim copies of all related application and transaction information and any information required pursuant to subsection (b).

(B) RULE OF CONSTRUCTION.—Nothing in this section requires a business entity to disclose information that the business entity is otherwise prohibited from disclosing under any other provision of Federal or State law, except that any such provision of law that prohibits the disclosure of financial information to third parties shall not be used to deny disclosure of information to the victim under this section.

(2) VERIFICATION OF IDENTITY.—

(A) IN GENERAL.—Unless a business entity is otherwise able to verify the identity of a victim making a request pursuant to subsection (a)(1), the victim shall provide to the business entity or government law enforcement agency as proof of identity, at the election of the victim—

(a) a copy of a previous identification document evidencing the claim of the victim of identity theft;

(b) a copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission;

(C) any affidavit of fact that is acceptable to the business entity for that purpose.

(3) LIMITATION ON LIABILITY.—No business entity may be held liable for an action taken in good faith to provide information under this section with respect to an individual in connection with an identity theft to other financial information repositories, financial service providers, merchants, law enforcement authorities, victims, or any person alleging to be a victim, if—

(a) the business entity complies with subsection (b); and

(b) such action was taken—

(A) for the purpose of identification and prosecution of identity theft;

(B) to assist a victim in recovery of fines, restitution, rehabilitation of the credit of the victim, or such other relief as may be appropriate.

(4) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business entity may decline to
to provide information pursuant to subsection (a) if, in the exercise of good faith and reasonable judgment, the business entity believes that—

(1) the consideration does not require disclosure of the information; or

(2) the request for the information is based on a misrepresentation of fact by the victim relevant to the request for information.

Sec. 4. Amendments to the Fair Credit Reporting Act.

(a) Consumer Reporting Agency Blocking of Information Resulting From Identity Theft.—Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681o) is amended by adding at the end the following:

"(e) Block of Information Resulting from Identity Theft.—

(1) BLOCK.—Not later than 30 days after the date of the transmittal of the notice described in subparagraph (A) of section 2(f) of the United States Code, or as otherwise required to be retained or maintained in the ordinary course of its business or under other applicable law.

(2) AUTHORITY TO DECLARE OR RESCIND.—

(A) IN GENERAL.—A consumer reporting agency may declare or rescind any block of consumer information under this subsection if—

(1) in the exercise of good faith and reasonable judgment, the consumer reporting agency believes that—

(I) the information was blocked due to a misrepresentation of fact by the consumer relevant to the request to block; or

(II) the consumer knowingly obtained possession of goods, services, or moneys as a result of the blocked transaction or transaction; or

(III) the consumer agrees that the consumer obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions; or

(B) NOTIFICATION.—If the block of information is declined or rescinded under this paragraph, the affected consumer shall be notified promptly, in the same manner as consumers are notified of the reinsertion of information pursuant to subsection (a)(5)(B).

(3) SIGNIFICANCE OF BLOCK.—For purposes of this paragraph, the presence of blocked information in the file of a consumer is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or monies as a result of the block.

(b) Statutory Limitations.—Section 618 of the Fair Credit Reporting Act (15 U.S.C. 1681p) is amended by striking "jurisdiction" and inserting "jurisdiction, not later than 2 years after".

Sec. 7. Commission Study of Coordination Between Federal, State, and Local Authorities in Enforcing Identity Theft Laws.

(a) Membership.—Section 2(b) of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1682 note) is amended by striking the first sentence of the first paragraph of the chapter "in section 2 of the Commerce Act", after "Trade Commissioner".

(b) Consultation.—Section 2 of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1682 note) is amended—

(1) by redesignating subsection (d) as subsection (e); and

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

"(d) Consultation.—The coordinating committee shall consult with interested parties, including the States and local law enforcement agencies, State attorneys general, representatives of business entities (as that term is defined in section 4 of the Restore Your Identity Act of 2001), including telecommunications and utility companies, and organizations representing consumers.

(c) Report Contents.—Section 2(e) of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1682 note) (as redesignated by this section) is amended—

(1) in subparagraph (A), by striking section (c) and inserting section (d); and

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

"(F) a comprehensive description of Federal assistance to address identity theft provided to State and local law enforcement agencies;"

(d) Construction.—Paragraph (1) is amended by striking "and" before "the" and inserting "to" after "the" in clause (ii).

(e) No New Recordkeeping Obligation.—Nothing in this section creates an obligation otherwise required to be retained or maintained in the file of the consumer resulting from the identity theft, so that the information cannot be reported, except as provided in paragraph (3).

(f) Enforcement.—Nothing in this section shall permanently block the reporting of a consumer and an official copy of a police report evidencing the claim of the consumer of identity theft, a consumer reporting agency shall permanently block the reporting of any information identified by the consumer in the file of the consumer resulting from the identity theft, so that the information cannot be reported, except as provided in clause (i).

Sec. 8. Enforcement by State Attorneys General.

(a) General.

(1) Civil actions.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been threatened or adversely affected by the engagement of any person in a practice that is prohibited under this Act or under any amendment made by this Act, the State may, during the pendency of the action, institute an action under subsection (a) against any person named in the complaint in that action for violation of this Act.

(b) Service of Process.—In any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(c) Service of Process.—In any action brought under subsection (a), the process may be served in any district in which the defendant—

(1) is an inhabitant; or

(2) may be found.
credit, may have to spend enormous time, effort, and sums of money to remedy their circum-
cumstances, and may suffer extreme emotional distress including deep depression founded in profound guilt that they address the array of problems that may arise as a result of identity theft;

(4) victims are often required to contact nu-
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cies, and creditors over many years, as each event of fraud arises;

(5) the Government, business entities, and credit reporting agencies have a shared responsi-
bility to assist identity theft victims, to miti-
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(6) victims of identity theft need a nation-
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(A) reporting identity theft to consumer credit reporting agencies and business entities; and

(B) evidencing their true identity and claim of identity theft to consumer credit reporting agen-
cies and business entities;

(7) one of the greatest law enforcement chal-
 lenges posed by identity theft is that stolen identities are often used to perpetrate crimes in
many different localities in different States, and although a victim of identity theft most
often, State and local law enforcement agencies are responsible for investigating and prosecut-
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and local law enforcement agencies to effec-
tively combat identity theft and the associated fraud.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply.

(1) BUSINESS ENTITY.—The term "business en-
tity" means—

(A) a creditor, as that term is defined in sec-
tion 103 of the Truth in Lending Act (15 U.S.C.
1602); (B) any financial service provider; and

(C) any corporation, trust, partnership, sole
proprietorship, or unincorporated association (including telecommunications, utilities, and
other service providers).

(2) CONSUMER.—The term "consumer" means
an individual.

(3) FINANCIAL INFORMATION.—The term
"financial information" means information iden-
tifiable as relating to an individual con-
sumer that concerns the amount and conditions of the consumer's transactions, or credit of the con-
sumer, including—

(A) account numbers and balances;

(B) nonpublic personal information, as that term
is defined in section 509 of the Gramm-
Leach-Bliley Act (15 U.S.C. 6809); and

(C) codes, passwords, social security numbers, tax identification numbers, State identifier num-
bers issued by a State department of licensing,
and other information used for the purpose of
account access or transaction initiation.

(4) FINANCIAL INFORMATION REPOSITORY.—The term
"financial information repository" means a person engaged in the business of providing serv-
ces to consumers who have a credit, de-
posit, trust, stock, or other financial service ac-
count or relationship with that person.

(5) IDENTITY THEFT.—The term "identity theft" means
an actual or potential violation of
section 1028 of title 18, United States Code, or
any other similar provision of Federal or State
law.

(6) MEANS OF IDENTIFICATION.—The term
"means of identification" has the meanings
given in section 1028 of title 18, United States
Code.

(Victim).—The term "victim" means a con-
sumer whose means of identification or finan-
cial information has been used or transferred (or
has been alleged to have been used or trans-
ferred) without the authority of that consumer
with the intent to commit, or to aid or abet, identity theft or any other violation of law.

SEC. 4. TREATMENT OF IDENTITY THEFT MITIGA-
TION.

Section 1028 of title 18, United States Code, is
amended by adding at the end the following:

"(i) TREATMENT OF IDENTITY THEFT MITIGATION.

"(j) INFORMATION AVAILABLE TO VICTIMS.—

(A) IN GENERAL.—A business entity that pos-
sesses information relating to an alleged identity theft, or that has entered into a transaction,
provided credit, products, or services, ac-
cepted payment, or otherwise done business with a person that has misappropriated use of
the means of identification of the victim,
shall, not later than 20 days after the receipt of
a written request by the victim under paragraph
(2), provide, without charge, a copy of all appli-
cation and transaction information related to
the transaction being alleged as a potential or
actual identity theft to—

(i) the presentation of a government-issued identification card;

(ii) if providing proof by mail, a copy of a government-issued identification card;

(iii) upon the request of the person seeking business records, the business entity may inform
the requesting person of the categories of identi-
fying information that the business entity has
provided to the consumer as personally iden-
tifying information, and may require the re-
questing person to provide identifying informa-
tion in those categories that are not otherwise
required to be retained or maintained in the
ordinary course of its business or under other applicable law.

(B) RULE OF CONSTRUCTION.—

"(ii) LIMITATION.—Except as provided in clauses
(A) and (C), subsection (a)(1) shall
apply:

(i) to a consumer reporting agency or business entity for that purpose.

(ii) the business entity informs the person—

(I) that any person may request information under this subsection; and

(II) that the address and toll-free telephone number established and maintained for
this purpose; and

(iii) a person representing the business entity,

"(ii) responds to an information request through the toll-free number within 3 business
days of receiving the request; and

"(ii) facilitates the provision of such informa-
tion to the person who initiated the request.

SEC. 5. AMENDMENTS TO THE FAIR CREDIT RE-
PORTING ACT.

(a) CONSUMER REPORTING AGENCY BLOCKING
OF INFORMATION RESULTING FROM IDENTITY
THEFT.—Section 611 of the Fair Credit Report-
ning Act (15 U.S.C. 1681i) is amended by adding
at the end the following:

"(e) BLOCK OF INFORMATION RESULTING FROM
IDENTITY THEFT.—

"(1) BLOCK.—Except as provided in para-
graph (3) and not later than 30 days after the
date of receipt of proof of the identity of a
consumer and an official copy of a police report
evidencing the claim of the consumer of identity
theft, a consumer reporting agency shall perma-
nently block the reporting of any information
identifying the consumer resulting from the identity theft, so that the information cannot be reported, except as provided in paragraph (3).

"(2) NOTIFICATION.—A consumer reporting
agency shall promptly notify the furnisher of
information identified by the consumer under paragraph (1).

(A) that the information may be a result of
identity theft;

(B) that a police report has been filed;

(C) that a block has been requested under this subsection; and

(D) of the effective date of the block.

"(3) AUTHORITY TO DECLINE OR RESUME.

(A) IN GENERAL.—A consumer reporting
agency may decline to block, or may rescind any block of consumer information under this sub-
section if—

(i) in the exercise of good faith and reason-
able judgment, the consumer reporting agency
believes that—

(II) the information was blocked due to a mis-
representation of fact by the consumer relevant to the request to block;

(III) the consumer knowingly obtained posses-
sion of goods, services, or moneys as a result of the blocked transaction or transactions, or the consumer should have known that the con-
sumer obtained possession of goods, services, or
moneys as a result of the blocked transaction or transactions; or

(iv) the consumer agrees that the blocked in-
formation or portions of the blocked information
were blocked in error.
“(B) NOTIFICATION TO CONSUMER.—If the block of information is declined or rescinded under this paragraph, the affected consumer shall be notified promptly, in the same manner as described in subsection (a)(3) of section 1028 of title 18, United States Code, and the Commissioner of the United States Customs Service.

“(C) SIGNIFICANCE OF BLOCK.—For purposes of this paragraph, the prior presence of blocked information in the file of a consumer is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or monies as a result of the block of information.

“(4) EXCEPTION.—A consumer reporting agency shall not be required to comply with this subsection when the agency is issuing information for authentication purposes or for the purpose of appraising or processing negotiable instruments, electronic funds transfers, or similar methods of payment, based solely on negative information, including—

“(A) dishonored checks;
“(B) accounts closed for cause;
“(C) substantial overdrafts;
“(D) abuse of automated teller machines; or
“(E) other information which indicates a risk of fraud occurring.

“(b) TO ADMINISTER.—Section 1028 of title 18, United States Code, is amended by adding at the end the following:

“(j) Whoever knowingly falsely claims to be a victim of identity theft for the purpose of obtaining the blocking of information by a consumer reporting agency under section 611(e)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681(e)(1)), or a similar law of another State, is imprisoned not more than 3 years, or both.

“(c) STATUTE OF LIMITATIONS.—Section 616 of the Fair Credit Reporting Act (15 U.S.C. 1681t) is amended by adding after “for purposes” the following:

“Section 616. Jurisdiction of Courts; Limitation on Actions.

“(a) In General.—Except as provided in subsections (b) and (c), an action to enforce any liability created under this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than 2 years from the date of the defendant's violation of any requirement under this title.

“(b) WILLFUL MISREPRESENTATION.—In any case in which the defendant has materially and willfully misrepresented any information required to be provided under this title, and the information misrepresented is material to the establishment of the liability of the defendant to that individual under this title, an action to enforce a liability created under this title may be brought at any time within 2 years after the date of discovery by the individual of the misrepresentation.

“(c) IDENTITY THIEF.—An action to enforce a liability created under this title may be brought not later than 5 years from the date of the defendant's violation if—

“(1) the plaintiff is the victim of an identity theft; or
“(2) the plaintiff—
“(A) has reasonable grounds to believe that the plaintiff is the victim of an identity theft; and
“(B) has not materially and willfully misrepresented such a claim.

“SEC. 6. COMMISSIONER’S STUDY OF COORDINATION BETWEEN FEDERAL, STATE, AND LOCAL AUTHORITIES IN ENFORCING IDENTITY THEFT LAWS.

(a) MEMBERSHIP: TERM.—Section 2 of the False Identity Theft Prevention Act of 2000 (18 U.S.C. 1028 note) is amended—

“(1) by striking “and the Commissioner of Immigration and Naturalization” and inserting “the Commissioner of Immigration and Naturalization, the Chairman of the Federal Trade Commission, the Postmaster General, and the Commissioner of the United States Customs Service.”; and

“(2) in subsection (c), by striking “2 years” and inserting “6 years”.

(b) CONSULTATION.—Section 2 of the Internet False Identity Theft Prevention Act of 2000 (18 U.S.C. 1028 note) is amended—

“(1) by redesignating subsection (d) as subsection (e); and
“(2) by inserting after subsection (c) the following:

“(d) CONSULTATION.—The coordinating committee shall consult with interested parties, including State and local law enforcement agencies, agencies responsible for regulating financial businesses, and organizations representing consumers.

“(e) REPORT CONTENTS.—Section 2(e) of the Internet False Identity Theft Prevention Act of 2000 (18 U.S.C. 1028 note) (as redesignated by this section) is amended—

“(1) in subparagraph (E), by striking “and” at the end; and
“(2) by striking subparagraph (F) and inserting the following:

“(F) a comprehensive description of Federal assistance provided to State and local law enforcement agencies for identity-theft activities;

“(G) a comprehensive description of coordination activities between Federal, State, and local law enforcement agencies that address identity theft;

“(H) a comprehensive description of how the Federal Government can best provide State and local law enforcement agencies with timely and current information regarding terrorists or terrorist activity where such information specifically relates to identity theft; and

“(I) recommendations in the discretion of the President, if any, for legislative or administrative changes that would—

“(i) facilitate more effective investigation and prosecution; and
“(ii) improve the effectiveness of Federal assistance to State and local law enforcement agencies and coordination between Federal, State, and local law enforcement agencies;

“(J) to simplify efforts by a person necessary to rectify the harm that results from the theft of the identity of such person; and

“(K) if deemed appropriate, provide for the establishment of an identity theft and false identification office or agency.”.

“SEC. 7. ENFORCEMENT.

“(a) IN GENERAL.—(1) CIVIL ACTIONS.—In any case in which the attorney general of the United States has reason to believe that an interest of the residents of that State has been, or is threatened to be, adversely affected by a violation of section 4 of this Act by any business, the attorney general, as parent of the State, may bring a civil action on behalf of the residents of the State in a district court of the United States.

“(B) The attorney general may consider to be appropriate.

“(2) EFFECT OF INTERVENTION.—(A) The court may consider to be appropriate.

“(B) The court may consider to be appropriate.

“(C) The court may consider to be appropriate.

“(3) INTERESTS.—Any action brought under subsection (a) may be brought in the district court of the United States—

“(A) where the defendant resides;
“(B) where the defendant is doing business; or
“(C) where the defendant may be found.

“(b) ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—In any case in which an action is instituted by or on behalf of the Attorney General of the United States for a violation of section 4, no State may, during the pendency of that action, institute an action under section (a) against any defendant named in the complaint in that action for violation of that statute.

“(c) VENUE.—Any action brought under subsection (a) may be brought in any district in which the defendant resides;

“(D) The court may consider to be appropriate.

“(E) The court may consider to be appropriate.

“(F) The court may consider to be appropriate.

“(G) The court may consider to be appropriate.

“(H) The court may consider to be appropriate.

“(I) The court may consider to be appropriate.

“(J) The court may consider to be appropriate.

“(K) The court may consider to be appropriate.

“(L) The court may consider to be appropriate.

“(M) The court may consider to be appropriate.

“(N) The court may consider to be appropriate.

“(O) The court may consider to be appropriate.

“(P) The court may consider to be appropriate.

“(Q) The court may consider to be appropriate.

“(R) The court may consider to be appropriate.

“(S) The court may consider to be appropriate.

“(T) The court may consider to be appropriate.

“(U) The court may consider to be appropriate.

“(V) The court may consider to be appropriate.

“(W) The court may consider to be appropriate.

“(X) The court may consider to be appropriate.

“(Y) The court may consider to be appropriate.

“(Z) The court may consider to be appropriate.

“Mr. GRAMM. Madam President, the Senate today is considering S. 1742, the Identity Theft Victims Assistance Act of 2002. This is an important issue, and it is proper for the Senate to be giving it consideration. While the text of this bill is seriously flawed and needs careful work and refinement in order for it to have a significantly positive effect in curbing identity theft, I believe that passage of this legislation by the Senate will be seen as an indication of the importance that the Senate attaches to relieving the disruption caused in the lives of victims of these crimes.

“When the Senate returns to this issue in the next Congress, I hope that the problems with this bill can be resolved, thus improving the complex issues involved can be adequately considered so that the legislation focuses on the real culprits without penalizing law-abiding citizens and businesses, and without the substantial confusion to the enforcement responsibility put in the federal financial regulators that the draft before us would cause. The text in its current form would also expand opportunities for predatory lawsuits, creating new
victims, and we must avoid that. We do little good for the country that way.

Mr. REID. Mr. President, Senators CANTWELL and GRASSLEY and others have an amendment at the desk. I ask that that amendment be considered and agreed to; that the committee substitute, as amended, be agreed to; that the bill, as amended, be read the third time and passed, and the motion to reconsider be laid upon the table; and that any statements be printed in the RECORD, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4954) was agreed to.

The amendment is printed in today’s RECORD under “Text of Amendments.”

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 1742), as amended, was read the third time and passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

Mr. REID. Mr. President, let me say I have been working in recent hours with the Senator from Washington, Ms. CANTWELL. She has worked tirelessly on this piece of legislation. She has given a number of statements on the floor related to this issue, dealing with what has taken place and what she knows regarding identity theft. I commend and applaud her for her diligence and perseverance. The burden is now on the House of Representatives. They are still in session. There is no reason in the world that they cannot pass this most important piece of legislation.

EXECUTIVE SESSION

PROMOTIONS DISCHARGED

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to executive session and the list of Coast Guard promotions which are at the desk be discharged from the Commerce Committee, the Senate proceed to their consideration, that the nominations be confirmed, the motions to reconsider be laid on the table, and that any statements appear at the appropriate place in the RECORD as if read, that the President be immediately notified of the Senate’s action, and the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed are as follows:

U.S. COAST GUARD
To be lieutenant commander
Anthony J. Alarid, 1412
Michael S. Antonellis, 6030
Michael A. Arguelles, 4583
Hector A. Avella, 8261
Paul E. Baker, 7988
Barbara J. Barata, 8450
Christopher M. Barrows, 8561
Edward K. Beale, 7399
Scott A. Beauregard, 6053
William D. Bellatty, 1168
Bryan R. Bender, 4002
Ralph L. Benhart, 5056
Benjamin A. Benson, 3424
David F. Berlinder, 6106
Paul R. Bissillon, 4694
Ronali E. Brahms, 9793
John A. Brenner, 3111
Donald L. Brown, 7391
Timothy J. Buchanan, 2328
Russell S. Burnsige, 9517
William Carter, 5270
Anthony, Healy, 2319
Patrick W. Clark, 4993
Leslie W. Clayborne, 8504
Rocky L. Cole, 4901
Richard W. Condit, 6705
Vernon E. Craig, 9080
Michael W. Cribbs, 3103
Christopher Curatillo, 4587
Gregory J. Czerwonska, 4516
Christel A. Dahl, 3531
Bryan E. Dalley, 2760
James W. Daltisch, 0853
Timothy E. Darley, 3496
Joseph E. Deer, 4579
Ann B. DeYoung, 0150
Edwin D. Diazrosario, 7367
Timothy E. Dickerson, 7061
Douglas C. Dixon, 8495
Jean T. Donaldson, 8896
Charlene L. Drey, 1428
Patrick J. Dugan, 5898
Kathryn C. Dunbar, 0745
John C. Durbin, 5567
Bryan L. Durr, 0817
Brian E. Edmiston, 0038
David M. Ehlers, 8019
Thomas M. Emericott, 0148
Dennis C. Ervin, 5583
Rendall B. Farley, 5226
Dale C. Folsom, 4148
Christopher W. Forando, 4062
Gregory T. Fuller, 3143
Eric J. Gandee, 6250
George D. Ganoung, 2083
Christian J. Glander, 3589
Michael W. Glander, 8276
Gene G. Gonzales, 1117
Jeffrey W. Good, 7748
Mark D. Gordon, 0616
Samuel J. Griffin, 6588
Thomas A. Griffitts, 2199
Jason R. Hamilton, 9913
Kevin J. Hanson, 3914
James A. Healy, 7844
Joseph J. Healy, 3174
Michael L. Hershberger, 5328
Joseph P. Higgins, 4706
Daniel J. Higman, 9913
Russell E. Holmes, 0974
Katherine A. Howard, 5315
Jerry A. Hubbard, 8249
David A. Husted, 3248
Jeffrey A. Jansen, 4464
Terrence M. Johns, 9778
Eugene E. Johnson, 2742
Lamar V. Johnson, 7091
Richard L. Jung, 5143
Stephen D. Jutras, 5825
Robert M. Keith, 7355
Quentin C. Kent, 7468
Ian R. Kieman, 2030
Scott H. Kim, 6952
Eric F. Klein, 4294
Nicholas R. Koester, 0771
Joseph E. Kramelk, 8464
Miriam L. Lafferty, 4744
Burt A. Lahn, 6390
Robert J. Landolfi, 7916
Steven A. Lang, 7314
James R. Langevin, 7045
Scott E. Langum, 2954
Keith H. Laplant, 5221
Scott X. Larson, 4589
Stephen G. LeFevre, 1917
Michael R. Leonguerrero, 7974
Michael C. Long, 6213
Jess P. Lopez, 9464
Juan Lopes, 7264
Tung T. Ly, 3465
Lisa K. Mack, 9536
William J. Makeili, 6745
Joseph P. Malnaukas, 1645
August T. Martin, 6627
Carol L. McCarthy, 8396
Thomas W. McDevitt, 4910
Steven F. McGhee, 9865
Patrick W. McMahon, 5758
Jason A. Merriweather, 1212
James F. Miller, 6437
James W. Mitchell, 1953
Kevin G. Morgan, 3889
Patrick J. Murphy, 4093
Nicole S. Nancarrow, 2108
Randall J. Navarro, 3988
Jack C. Neve, 2871
Anthony J. Nygra, 9006
Robert K. Oatman, 3621
Stephen H. Ober, 8546
Stephen F. Osgood, 0310
Keith A. Overstreet, 4897
Geoffrey D. Owen, 3149
Kim J. Pacsaai, 2821
John K. Park, 9448
Edwin W. Parkinso, 7725
Vincent E. Patterson, 8433
Kevin Y. Pekarek, 3307
Daryl R. Peloquin, 5796
Matthew F. Pericalli, 6792
Cornell I. Perry, 7094
Mark G. Pippe, 8278
Zachary H. Pickett, 2955
Kenneth A. Pierre, 6055
Michael E. Platt, 3176
Nathan A. Podoll, 7508
Gary K. Polaksit, 2160
Ronald P. Poole, 6332
Kenneth U. Potolicchio, 7762
Steven J. Pruyn, 5380
Lee S. Putnam, 9334
Gregory M. Rainey, 6693
Jeffrey K. Randall, 7612
Sean P. Regan, 7602
Francisco S. Rego, 9178
James M. Reilly, 9209
Joshua D. Reynolds, 0674
Rodd M. Ricklefs, 6519
Joshua D. Reynolds, 0674
James M. Reilly, 9209
Ronald L. Riedinger, 6390
Jared M. Ricketts, 6519
Ronald L. Riederer, 6390
James V. Roche, 2866
Stuart T. Romanowicz, 5552
Shannon D. Rooney, 9051
Charles A. Roskin, 3977
Kiley R. Ross, 0559
Aaron E. Roth, 9026
Warren J. Russell, 5692
Matthew A. Rymer, 9564
Kristina E. Saydel, 6137
Christopher S. Schuhart, 3470
James W. Seeman, 7067
The PRESIDING OFFICER. Without objection, the resolution of ratification is agreed to.

In the opinion of the Chair, two-thirds of the Senators present having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification is as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the Government of the United States of America and the Government of the Republic of Honduras for the Return of Stolen, Robbed, or Embezzled Vehicles and Aircraft, with Annexes and a related exchange of notes, signed at Tegucigalpa on November 23, 2001 (Treaty Doc. 107–15).

EXTRADITION TREATY WITH PERU

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to Executive Calendar No. 13, Extradition Treaty with Peru, the treaty be advanced through its parliamentary stages up through and including the presentation of the resolution of ratification, and that the understanding and the conditions be agreed to, and the Senate vote on the resolution of ratification.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the resolution of ratification. Senators in favor of the resolution, please stand. (After a pause.) All those opposed, please stand.

In the opinion of the Chair, two-thirds of those present and voting having voted in the affirmative, the Senate vote on the resolution of ratification is agreed to.

The resolution of ratification and condition are as follows:

Resolved, (two-thirds of the Senators present concurring therein),

Section 1. Advice and Consent to Ratification of the Extradition Treaty with Peru, subject to an understanding and a condition. The Senate advises and consents to the ratification of the Extradition Treaty Between the United States of America and the Republic of Peru, signed at Lima on July 26, 2001 (Treaty Doc. 107–4; in this resolution referred to as the “Treaty”), subject to the understanding in section 2 and the condition in section 3.

Section 2. Understanding.

The advice and consent of the Senate under section 1 is subject to the following understanding, which shall be included in the instrument of ratification:

Prohibition of Extradition to the International Criminal Court.—The United States understands that the protections contained in Article XIII concerning the Rule of Speciality would preclude the resurrender of any person extradited to the Republic of Peru from the United States to the International Criminal Court, unless the United States consents to such resurrender; and the United States shall not consent to any such...
Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to Executive Calendar No. 14, extradition treaty with Lithuania, that the treaty be advanced through its parliamentary stages, up to and including the presentation of the resolution of ratification; that the condition be agreed to and the Senate now vote on the resolution of ratification.

The PRESIDING OFFICER. Without objection, it is so ordered. The question is on agreeing to the resolution of ratification of the treaty so that any assistance provided by the Senate will be in accordance with the United States Constitution, or unless the President, with the advice of the Senate,否者在二分之三的参议员的同意下，条约将被提交至总统批准。

The resolution of ratification and condition are as follows:
Resolved, (two-thirds of the Senators present concurring therein).

Section 1. Advice and Consent to Ratification of the Extradition Treaty with Lithuania, subject to a condition.

The Senate advises and consents to the ratification of the Extradition Treaty between the Government of the United States of America and the Government of the Republic of Lithuania, signed at Vilnius on October 23, 2001 (Treaty Doc. 107-4; in this resolution referred to as the "Treaty"), subject to the condition in section 2.

Section 2. Condition.

The advice and consent of the Senate under section 1 is subject to the condition that nothing in the Treaty requires or authorizes legislation or other action by the United States that is prohibited by the Constitution of the United States as interpreted by the United States.

SECOND PROTOCOL AMENDING EXTRADITION TREATY WITH CANADA

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to Executive Calendar No. 15, the Second Protocol Amending Extradition Treaty with Canada; that the treaty be advanced through its parliamentary stages up to and including the presentation of the resolution of ratification; and that the Senate now vote on the resolution of ratification.

The PRESIDING OFFICER. Without objection, it is so ordered.

Senators in favor of the resolution of ratification will rise and stand until counted. After a pause.) Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present and voting and having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification is as follows:
Resolved, (two-thirds of the Senators present concurring therein).


TREATY WITH BELIZE ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to Executive Calendar No. 16, the treaty with Belize on Mutual Legal Assistance in criminal matters; that the treaty be advanced through parliamentary stages up to and including the presentation of the resolution of ratification; that the understanding and conditions be agreed to and the Senate now vote on the resolution of ratification.

The PRESIDING OFFICER. Without objection, it is so ordered.

Senators in favor of the resolution of ratification will rise and stand until counted. After a pause.) Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present and voting, having voted in the affirmative, the resolution is agreed to.

The resolution of ratification and condition are as follows:
Resolved, (two-thirds of the Senators present concurring therein).

Section 1. Advice and Consent to Ratification of the Treaty with Belize on Mutual Legal Assistance in Criminal Matters, subject to an understanding and conditions.

The Senate advises and consents to the ratification of the Treaty Between the Government of the United States of America and the Government of Belize on Mutual Legal Assistance in Criminal Matters, signed at Belize, September 19, 2000, and a related exchange of notes (Treaty Doc. 107-13; in this resolution referred to as the "Treaty"), subject to the understanding in section 2 and the conditions in section 3.

Section 2. Understanding.

The advice and consent of the Senate under section 1 is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON ASSISTANCE TO THE INTERNATIONAL CRIMINAL COURT.—The United States shall exercise its rights to limit the use of assistance that it provides under the Treaty so that any assistance provided by the Government of the United States shall not be transferred to our otherwise used to assist the International Criminal Court unless the treaty establishing the Court has entered into force for the United States by and with
the advice of the Senate in accordance with Article II, Section 2 of the United States Constitution, or unless the President has waived any applicable prohibition on provision of such assistance in accordance with applicable United States law.

Section 3. Conditions.
The advice and consent of the Senate under section 1 is subject to the following conditions:

(1) LIMITATION ON ASSISTANCE.—Pursuant to the right of the United States under the Treaty to deny assistance that would prejudice the essential public policy or interests of the United States, the United States shall deny any request for such assistance if the Central Authority of the United States (as designated in Article 2(2) of the Treaty), after consultation with all appropriate intelligence, anti-narcotic, and foreign policy agencies, has specific information that a senior Government official of the requesting party who will have access to information to be provided as part of such assistance is engaged in a felony, including the facilitation of the production or distribution of illegal drugs.

(2) SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States that is prohibited by the Constitution of the United States as interpreted by the United States.

TREATY WITH IRELAND ON MUTUAL LEGAL ASSISTANCE MATTERS IN CRIMINAL MATTERS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to Executive Calendar No. 18, the treaty with Ireland on mutual legal assistance matters; that the treaty be advanced through its parliamentary stages up to and including the presentation of the resolution of ratification; that the understanding and conditions be agreed to; and that the Senate now vote on the resolution of ratification.

The PRESIDING OFFICER. Without objection, it is so ordered.

Senators in favor of the resolution of ratification will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present and voting, having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification and understanding and conditions are as follows:

Resolved, (two-thirds of the Senators present concurring therein).

Section 1. Advice and Consent to Ratification of the Treaty with Ireland on Mutual Legal Assistance in Criminal Matters, subject to an understanding and conditions. The Senate advises and consents to the ratification of the Treaty Between the Government of the United States of America and the Government of Ireland on Mutual Legal Assistance in Criminal Matters, signed at Washi...
The PRESIDING OFFICER. The Senator from New York.

ECONOMIC SECURITY AND WORKER ASSISTANCE ACT OF 2001

Mrs. CLINTON. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 308, H.R. 3529.

The PRESIDING OFFICER. The clerks will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3529) to provide tax incentives for economic recovery and assistance to displaced workers.

There being no objection, the Senate proceeded to the consideration of the bill.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Madam President, before formally making the unanimous consent request, I wish to thank Senator NICKLES for his understanding and cooperation in reaching this point this evening. I very much appreciate his willingness, and that of his staff, to work with us throughout today. And I am very, very grateful for his leadership and good advice and counsel.

This unemployment insurance extension is being sponsored, in addition to myself, by the Presiding Officer, the Senator from Washington, who has been a tremendous advocate, by Senator FITZGERALD of Illinois, and Senator SPECTER of Pennsylvania.

The commitment of all of the sponsors, and others, have made it possible for us to agree this evening to pass a bill that will be extremely welcomed by about 2.1 million Americans who will be able to take advantage of this extension that runs through the end of March. This will also specifically help approximately 177,000 New Yorkers as they enter the holiday season.

Obviously, this is not all that the Presiding Officer and I would have wanted. Perhaps it is more than some would have thought we should do. But I think it works out to be an acceptable compromise in bringing this about at this time.

Again, I personally thank Senator NICKLES for his extraordinary assistance.

So, Madam President, I ask unanimous consent that the substitute amendment at the desk be agreed to, the act, as amended, be read a third time, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements related thereto be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 4960) was agreed to, as follows:

Strike all after the enacting clause and insert the following:


(a) In General.—Section 208 of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107-147; 116 Stat. 30) is amended to read as follows:

"SEC. 208. APPLICATION.

"(a) IN GENERAL.—Except as provided in subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

"(1) beginning after the date on which such agreement is entered into; and

"(2) ending before April 1, 2003.

"(b) TRANSITION FOR AMOUNT REMAINING IN ACCOUNT.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), in the case of an individual who has amounts remaining in an account established under section 203 as of March 29, 2003, temporary extended unemployment compensation shall continue to be payable to such individual from such amounts for any week beginning after such date for which the individual meets the eligibility requirements of this title.

"(2) NO AUGMENTATION AFTER MARCH 26, 2003.—If the account of an individual is exhausted after March 29, 2003, then section 208(c)(3) shall not be augmented under such section, regardless of whether such individual’s State is in an extended benefit period (as determined under paragraph (2) of such section).

"(3) LIMITATION.—No compensation shall be payable by reason of paragraph (1) for any week beginning after June 28, 2003.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107-147; 116 Stat. 21).

The bill (H.R. 3529), as amended, was read a third time and passed.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Madam President, I thank my colleague and friend from New York for working with us. I think we have worked out an acceptable compromise. Senator FITZGERALD and Senator SPECTER were very much interested in passing this bill so we were happy to accommodate.

In contrast to the previous legislation, which was a significant expansion over current law, of which efforts had been made to pass by unanimous consent earlier today, this is an extension of current law. It is a lot less expensive. This is an extension for 3 months. We also did something else I think is important. We eliminated the cliff. In other words, current law would say by January 1 the 13-week Federal program would be terminated. This says, no, there is a phaseout. So there is not a cliff. At the end of March, if people are already into the system, they can complete their 13-week program. So I think it is responsible.

Also, for the benefit of my colleagues—and some have reservations about this program because, legitimately, they are wondering whether, if you continue to pay out unemployment benefits, they will stay unemployed. And I happen to appreciate many of those concerns.

Now we will not be wrapped up with this beginning in January. So this will give Congress a chance and hopefully offer some assistance to those people who really need it and also offer Congress a chance to get to a good start without wrangling and debating this issue.

I have debated this issue more than I want to debate it. And I appreciate our colleagues on both sides willing to compromise.

The House passed a 1-month extension. This is a 3-month extension eliminating the cliff. I think it is a more orderly and more well-thought-out program that makes sense.

So I will not object to its passage and appreciate our colleagues from New York and Washington, as well as Illinois and Pennsylvania, for their cooperation in making this happen.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. As I was listening to the Senator from Oklahoma explain why this makes sense, and particularly to eliminate the cliff that, frankly, people would have fallen off at the end of March, I must say, right at the beginning of a new year—and hopefully providing new hope for people—I could not help but think of our colleague, Paul Wellstone. I think he is smiling down on us. I think he is up there waving his arms, pacing around, and saying, good work, and thanks for doing that.

To me, this is tremendous evidence of the kind of cooperation that can come about to bring us together to help people.

Again, I thank my friend from Oklahoma. I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I have been on this floor many, many times when there have been speeches on both sides on extending unemployment insurance going back several months.

It is what legislating is all about. It is the art of compromise. Not everyone got what they wanted. But we got something, and it is very important and very positive.

I extend my appreciation to the Presiding Officer, the Senator from Washington, who worked on this diligently, and, of course, the Senator from New York, who has worked on this very hard.

No one has been on the floor more than the Senator from Oklahoma, and he needs to be complimented because he certainly could have stopped this in the last few hours of the session. He chose not to do that. He chose to move forward on a positive note.

I, not only for the Senate, but for the respective States and the whole country, extend my appreciation to the three of you, all fine legislators.

Mr. NICKLES. Thank you.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. CANTWELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.
I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. CANTWELL). Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

IN REMEMBRANCE OF PAUL WELLSTONE

Mr. CHAFEE. Madam President, today I offer my condolences to all the friends, family members and admirers of Paul Wellstone. He has been heard many times. Paul Wellstone was fiercely proud of the causes with which he associated himself. Certainly, to have Paul Wellstone articulately and strongly arguing on one’s behalf was a great asset. His many friends are forever grateful for his wrestler tenacity as he advocated for those issues in which he so emotionally believed.

Several years ago a candidate for Congress in Rhode Island retired from the campaign because of a shortage of funds, declaring that no longer could “Mr. Smith go to Washington.” Paul Wellstone proved that yes, indeed, Mr. Smith could go to Washington. In 1990 he challenged an incumbent who possessed a huge financial advantage in what many assumed to be a quixotic and hopeless campaign. In November of that year Paul Wellstone was the only challenger to beat an incumbent, providing inspiration forever to long shots.

Three cheers for the people of Minnesota who have shown a propensity for embracing people of divergent philosophies. In the last few years Minnesota has elected Rod Grams, Jesse Ventura and Paul Wellstone; public servants with very different approaches to the issues of the day. I join Minnesotans and Americans in mourning the death of the passionate and good-natured Paul Wellstone.

TRIBUTE TO SENATOR MAX CLELAND

Mr. CONRAD. Madam President, I am honored to pay tribute and recognize the leadership, dedication to public service and hard work of my colleague, Senator MAX CLELAND. Few Members of the Senate have sacrificed so much for their country.
and improvement of retirement benefits. All his hard work has not gone unnoticed, Senator CLELAND has been recognized nationally as the “Minute Man of the Year,” an award given by the Reserve Officers Association of America to the individuals annually for their tremendous leadership in the areas of military and national security. There is no doubt that on and off the battlefield, Max was a leader for the Armed Forces.

Senator CLELAND also provided support for the personnel stationed at the Grand Forks Air Force Base in North Dakota. In 1997, during the devastating floods in North Dakota, several hundred active duty personnel from the Grand Forks base were unable to access disaster relief because Federal law limited assistance to personnel living on the base. Senator CLELAND, as a member of the Senate Armed Services Committee, was instrumental in amending the law to enable home servicemen living off base to be eligible for this critical disaster assistance.

Max’s bravery, courage, and passion for these issues and many others will be missed. It has been an honor to serve with somebody who represents his constituents with such energy, drive and passion. I would like to join my colleagues in wishing the Senator and his family the best in the future and paying tribute to his outstanding public service. I wish him well.

TRIBUTE TO REPRESENTATIVE JAMES V. HANSEN

Mr. HATCH. Madam President, I rise to pay tribute to my long-time friend and colleague, Representative James V. Hansen. After 22 years of dedicated service to his country and to the State of Utah, Jim has chosen to end his career as a Member of Congress and return home to Utah and to his grandchildren.

I am pleased that Mr. Hansen will be able to enjoy his retirement, but we will miss him. Utah has never been better served by a Member of Congress.

Just this year he was described by a national media source as one of the 10 most powerful Members of the House of Representatives. Considering the number of Members of that body, that is really saying something. Representative Hansen has had a very positive impact on our Nation, but his impact on Utah and Utahns is truly incalculable.

Mr. Hansen was the first Representative from Utah to chair a full committee. Due in large part to the respect he earned among his colleagues on both sides of the aisle, he was appointed to chair the high-profile Committee on Standards of Official Conduct.

As some of my colleagues may know, Utah is made up of about 70 percent public lands which includes national parks, Bureau of Land Management lands, national forests, national monuments, national wildlife refuges, and vast military holdings. As a very senior member of the House Armed Services Committee and the Chairman of the Committee on Natural Resources, Representative Hansen has the protector and promoter of so many of Utah’s interests.

Mr. Hansen’s service to the public has spanned more than four decades. He spent the first 12 years of his public service career on the City Council of Farmington, UT. Following that, he served for four terms as a member of the Utah House of Representatives, including one term as the Speaker of the House. In 1980, Mr. Hansen was elected to Congress where he has served diligently until today.

Mr. Hansen’s honesty, hard work, and strength of character have made him a lawmaker that we will never forget. I am one of many who will sorely miss his plain talking leadership and his wisdom on matters of public policy. On behalf of my colleagues in the Senate Armed Services Committee, I want to publicly thank Jim and his wonderful wife Ann for giving so much of themselves to their State and to their Nation.

GRATEFUL FOR NEW ZEALAND’S FIREFIGHTERS

Mr. SMITH of Oregon. Madam President, I rise today, on behalf of my State of Oregon, to express our deepest gratitude for the New Zealanders who put their lives on the line this last summer in fighting the ravenous wildfires experienced in the West.

Even as the rains of fall settle into the forests of the Pacific Northwest, it is not difficult to remember the fiery infernos that engulfed the West only a few months ago. The year 2002 was the second worst fire season in 50 years. Nationwide 21 lives were lost and 6.7 million acres were burned.

It was the nation's largest fires, called the Biscuit Fire, that drew a cadre of international firefighters to Oregon, the world's best sent to join the fight against our worst disaster. The Biscuit Fire, the largest wildfire in Oregon in over a century, eventually burned 500,000 acres in southwestern Oregon. At times, firefighters put the chances of losing one or all of the Illinois Valley's four towns at 75 percent.

However, 7,000 of the world's best firefighters fought this fire to keep it off an exploding fire that threatened hundreds of square miles and thousands of homes. As a result of their relentless work, no lives were lost and structural loss was virtually nonexistent.

On behalf of my State of Oregon, I want to thank and commend the brave New Zealand firefighters who helped win that battle against wildfire. They are John Barnes, Darryl Robson, John Sutton, Richard McNamara, Paul Tolladay, Phil Wishnowsky, Robin Thomson, Trevor Tiday, Jock Darragh, and Ross Hamilton.

While I hope that such perilous circumstances will never call these firefighters back to Oregon or elsewhere, I know that forest fires will continue to burn and brave firefighters will continue to put their lives between the fire and ours. We will never forget that.

TRIBUTE TO SENATOR BOB SMITH

Mr. CONRAD. Madam President, I take this opportunity to pay tribute to and recognize the hard work of my colleague from New Hampshire, Senator BOB SMITH. Since joining the Senate in 1990, he has fought with honesty and commitment for the issues that he believes to be of utmost importance.

As the ranking member and former chairman of the Environment and Public Works Committee, he focused great attention on reforms of the Corps of Engineers and funding to expand and improve transportation infrastructure. Also, as a senior member of the Armed Services Committee, Senator Smith fought passionately for a strong military, and always made national security a top priority.

I had the pleasure of working with Bob Smith in his efforts to establish accountability measures for missing MIAs and POWs. In his capacity as a member of the Senate Select Committee on POW/MIA Affairs, Senator Smith was very helpful in answering and addressing questions about Vietnam POWs from North Dakota. He also helped North Dakotans on POW issues from the cold war era.

I also had the privilege of serving with Senator Smith on the Ethics Committee, which he chaired. I found him to be completely fair and non-partisan in his conduct of his duties.

He also was one of the first of my colleagues to console me on the untimely death of my chief of staff, Kent Hall.

Mr. President, it has been an honor to serve in the Senate with Bob Smith. I have the utmost respect for his service to the people of New Hampshire. While sitting in the historic desk of Daniel Webster, he has made contributions not only to our State, but also to our Nation. I would like to join my colleagues in wishing Senator Smith and his family the best in the future.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Madam President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred December 28, 2001 in Marshfield, MA. According to police, a teenage assailant beat a man because the victim was gay. The victim was standing outside a local store when a car containing three men pulled into the parking lot. One of
the men in the car yelled anti-gay obscenities at the victim. The victim entered the store with two friends, and upon exiting, was beaten by the assailant. The assailant yelled anti-gay epithets while punching and kicking the victim, continuing the beating even after the victim fell to the ground.

I believe that government’s first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that we can and that we must believe that by passing this legislation and changing current law, we can change hearts and minds as well.

21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT

Mr. LEAHY. Madam President, I thank the Senate for voting to end debate on the bipartisan 21st Century Department of Justice Authorization Act conference report. I commend the Majority Leader for bringing this important legislation the floor and filing cloture in order for the Senate to take final action on the conference report.

I regret that consideration and a vote on final passage on this important measure was delayed, but I thank the overwhelming majority of my colleagues for supporting cloture and passage of this legislation.

This measure was passed by the House, by a vote of 400 to 4, last Thursday. All Democrats were prepared to pass the conference report that same day last week and any day this week. Given the Republicans’ objection to proceed to a vote and given the refusal to agree to a time agreement, the Majority Leader was required to file cloture. I am glad that the filibuster is over.

This legislation is truly bipartisan. It passed the House 400 to 4. The conference report was signed by every conferee, Republican or Democrat, including Senator HATCH and Representatives SENSENBRENNER, HYDE, and LAMAR SMITH.

Senators from both sides of the aisle spoke in favor of the legislation. In particular, I thank Senator HUTCHISON for coming to the floor on Tuesday to support this conference report. Senator HUTCHISON spoke about how the bill was not just about the victims but about those who believe that by passing this legislation and changing current law, we can change hearts and minds as well.

Mr. LEAHY. Madam President, I thank the Senate for voting to end debate on the bipartisan 21st Century Department of Justice Authorization Act conference report. I commend the Majority Leader for bringing this important legislation the floor and filing cloture in order for the Senate to take final action on the conference report.

I thank Senator SESSIONS for his helpful comments and support throughout the debate on the legislation.

Of course, our bipartisanship is evidenced by our including authorization for additional judgeships not only in California, Arizona, New Mexico, Ohio, North Carolina, Illinois and Florida. I have tried to improve on the record we inherited.

In the six and one-half years that they controlled the Senate, the Republican majority was willing to add only eight judgeships to be appointed by a Democratic President, and most of those were in Texas and Arizona, States with two Republican Senators. We have, on the other hand, proceeded to increase federal judgeships by 20, including in the border States where they are most needed, well aware these positions will be filled with appointments by a Republican President who has shown little interest in working with Democrats in the Senate. These include a number of jurisdictions with Republican Senators.

I also commend the senior Senator from California for her leadership on this legislation. Congresswoman Julia UIntz and Chris McCurley Body Armor Act, the State Criminal Alien Assistance Program reauthorization, and the many anti-drug abuse provisions included in this conference report.

Although he opposes Senator HATCH’s legislation regarding automobile dealer arbitration, which enjoys more than 60 Senate cosponsors and 200 House cosponsors and was included in the conference report, Senator SESSIONS is supporting this conference report because it will improve the Department of Justice’s support of local law enforcement agencies across the nation. I appreciate Senator SESSIONS’ work on the provisions in the conference report on the Paul Coverdell Forensic Sciences Improvement Grants and the Centers for Disease Preparedness in Alabama and other States.

Senator BROWNBACK also spoke in favor of certain immigration provisions in this bill that he worked on with Senator KENNEDY, the Chairman of the Immigration Subcommittee of the Judiciary Committee. In particular, the conference report includes language sought by Senators CONRAD and BROWNBACK to reauthorize the program allowing foreign doctors educated in the United States to remain here if they work in underserved communities. This is a crucial provision to ensure that residents in some of our most rural states receive adequate medical care.

The conference report also contains another important immigration provision to permit H-1B aliens who have labor certification applications caught in lengthy agency backlogs to extend their status beyond the sixth year limitation. If they have already exceeded the H-1B petition approved so they can apply for an H-1B visa to return from abroad or otherwise re-obtain H-1B status. Either a labor certification application or a petition must be filed at least 365 days prior to the end of the 6th year in order for the alien to be eligible under this section.

The slight modification to existing law made by this section is necessary to avoid the disruption of important projects caused by the sudden loss of valued employees. At a time when our economy is weak, this provision is intended to help. I thank Senator KENNEDY and Senator BROWNBACK for their work on this provision and their contributions to the conference report. I thank Senator FEINSTEIN for her excellent speech earlier this week in support of this conference report. Senator FEINSTEIN has been a tireless advocate for the needs of California, including the earliest opposition to an increase in the state’s share of the regional deficit.


Senator SMITH also contributed a great deal to this conference report. He has fought doggedly to authorize a new Violence Against Women Office at the

Justice Department, and his efforts have borne fruit in this legislation. He has also been one of the Senate’s best advocates for reauthorizing the Juvenile Justice and Delinquency Prevention Act, which we do here. In addition, he was a cosponsor of the Drug Abuse Education, Prevention, and Treatment Act, and we have included many provisions from that bill in this conference report.

I also would like to thank Senator DURbin DURbin for statements on the Senate floor and his dedicated efforts to authorize a new Violence Against Women Office, to expand the number of Boys and Girls Clubs in our nation, and to create new judgeships in Illinois.

Senator KORI was a tremendous help in our efforts to reauthorize the Juvenile Justice and Delinquency Prevention Act, especially Title V of that Act, which provides for crucial prevention programs for our nation’s youth.

Senator CARNAHAN deserves the credit for the inclusion of the Family Violence Prevention and Services Act in this conference report. That provision provides Federal assistance for local communities seeking to honor fallen law enforcement officers. Without her tireless work, we would not have included that provision in this conference report.

For his part, Senator FEINGOLD was able to include his and Senator HATCH’S Motor Vehicle Franchise Contract Arbitration Fairness Act, which provides for arbitration in the auto industry. Without his tireless work, we would not have included that provision in this conference report.

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report. She spoke eloquently on the floor of the Senate regarding many of the important provisions she has championed in this process.

This conference report will strengthen our Justice Department and the FBI, combat terrorism, prevent crime and drug abuse, improve our intellectual property and antitrust laws, strengthen and protect our judiciary, and offer our children a safe place to go after school.

This conference report is the product of years of bipartisan work. By my count, the conference report includes significant portions of at least 25 legislative initiatives. This legislation is neither complicated nor controversial. It passed the House overwhelmingly and in short order with a strong bipartisan vote.

I thank my colleagues again for supporting the cloture motion and final passage of the conference report to do all of this bipartisan work and all of the good that this legislation will do, which will reach the President's desk. I particularly want to thank Senator HATCH, who worked very hard to help construct a good, fair and balanced report. Likewise, I want to thank Senator Specter for supporting cloture motion and final bipartisan vote.

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the FBI Reform Act more than six months ago only to be stymied in our bipartisan efforts by an anonymous Republican hold.

The conference report does not contain all of the important provisions in the FBI Reform Act that I have advocated for, including my colleagues, Senators GRASSLEY and L. and the other members of the Judiciary Committee, agreed were needed, but it does contain parts of that other bill.

Among the items that are, unfortunately, not in the conference report and are being blocked from passage on the stand-alone FBI Reform bill by an anonymous Republican hold are the following: Title III of the FBI Reform bill that would institute a career security officer program, which senior FBI officials have testified before our Committee would be very helpful;

Title IV of the FBI Reform bill outlining the requirements for a polygraph program along the lines of what the Weber Committee recommended;

Title VII of the FBI Reform bill that takes important steps to fix some of the double standard problems and support the FBI’s Office of Professional Responsibility, which FBI Ethics and OPR agents say is very important; and

Title VIII of the bill along with implementation of secure communications networks to help facilitate FISA processing between Main Justice and the FBI. These hard-working agents and prosecutors have to hand-carry top secret FISA documents between the offices because they still lack secure e-mail systems.

The FBI Reform bill would help fix many of these problems and I would hope we would be able to pass all of the FBI Reform Act before the end of this Congress. These should not be controversial provisions and are designed to help the FBI.

During the debate on this conference report, some Members complained it included provisions that were not contained in either the Senate or House bills. Now, each of the proposals we included in either the Senate or House bills, whether or not they were part of the FBI Reform Act that was passed Senate floor by anonymous Republican holds.

A section allowing FBI danger pay has been cited.

A complaint was raised on the floor about a provision on the U.S. Parole Commission being included in the conference report. That was included because the Bush Administration included it in its budget request.

A complaint was raised about the conference report’s provision establishing the FBI police to provide protection for the FBI buildings and personnel in this time of heightened concerns about terrorist attacks. Contrary to the critics, this proposal was considered by the Judiciary Committee as part of the FBI Reform Act, S. 1974, which was reported unanimously on a bipartisan basis but has been blocked by an anonymous hold.

Similarly, a complaint was made on the floor about bypassing the Committee with the provision in the conference report for the FBI to tell the Congress about how the FBI is updating its obsolete computer systems. This is in addition to the provision in the contrary, this legislation, S. 1099, was passed the Judiciary Committee and the Senate by unanimous consent last year and in the 106th Congress, as well.

A section that was proposed as part of the original DOJ Authorization bill, S. 1319.

Some have complained that the FBI Reform Act that was authorized in June, 2001.

Some have been critical of the conference report’s authorization of funding for DEA police training in South and Central Asia, and for the United States-Thailand drug prosecutor exchange program. I believe that both of these are worthy programs that deserve the Senate’s support.

The conference report does not contain all of the important provisions in the conference report, was passed by the Senate.

The conference report includes pieces of legislation that had not received Committee consideration, but, again, that was passed the Judiciary Committee as part of the FBI Reform Act, S. 1974, which was considered by the Judiciary Committee and the Senate by unanimous consent last year and in the 106th Congress, as well.

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in February, 2001. It is time to get this done.

The criticism made on the floor that the juvenile justice provisions in the conference report never passed the House or Senate is simply wrong. The conference report contains the justice provisions passed by the House in September and October of last year, in H.R. 863 and H.R. 1900.

The criticism that the conference report contains criminal justice improvement provisions that were blocked after the House bill was reported by the Judiciary Committee. The Antitrust Technical Corrections bills, H.R. 809, had the same fate. After being passed by the House in March, 2001, and reported by the Senate Judiciary Committee, consideration was blocked in the Senate.

CONCLUSION

This conference report is a comprehensive attempt to ensure the administration of justice in our nation. It is not something I would like or that any individual member of Congress might have authored.

It is a conference report, a consensus document, a product of the give and take with the House that is our legislative process. It will strengthen our Justice Department and the FBI, increase our preparedness against terrorist attacks, prevent crime and drug abuse, improve our intellectual property and antitrust laws, strengthen and protect our judiciary, and offer our children a safer place to learn.

The conference report merits the support of the United States Senate to help the Justice Department and the American people.

FY 2003 DEFENSE AUTHORIZATION CONFERENCE REPORT

Mr. SNOWE, Madam President, I rise today to speak briefly about my support for the Fiscal Year 2003 National Defense Authorization Conference Report and would like to particularly endorse its name as the Bob Stump National Defense Authorization Act for Fiscal Year 2003 in recognition of the chairman of the Senate Armed Services Committee's 25 years of distinguished service to that Committee.

I also acknowledge the senior Senator from Michigan, Mr. CARL LEVIN, the chairman of the Armed Services Committee, for the leadership he provided for the authorization bill, and, of course, the ranking member, Senator JOHN WARNER of Virginia, whose tireless efforts on behalf of veterans led to the final agreements that brought this bill to the floor.

Let me recognize the efforts of every Senator on the Committee. As a former member of that committee, I well understand the long hours and persistent effort needed to move this vital bipartisan legislation.

The conference report takes great strides toward improving the quality of service for our dedicated men and women of the military, modernizing our armed services, and making our homeland safe.

Because we recognize that our service members are our most valuable asset, this legislation makes a solid investment in their quality of life by increasing pay and enhancing educational and health care opportunities for our active duty military members and their family members. And that is only right, for today we are asking a great deal of our gallant young men and women as they guard our Nation at home and abroad, and we acknowledge the very dangerous and deadly post-September 11 world.

This legislation recognizes that we also owe a continuing debt to those who have served honorably by finally granting combat-wounded military retirees and their family members the same benefit available to every other retired Federal employee—the ability to collect full retirement pay and disability entitlements without offsets. There is much work to be done before we achieve the full equity among our disabled military retirees, as Senator WARNER has appropriately noted, we have established a “beachhead” for this issue.

I do find it regrettable, however, that the conference report does not completely overturn the ban on privately funded abortion services in overseas military hospitals for military women and dependents based overseas, which was reinstated in the Fiscal Year 1996 authorization bill.

This is a ban that, without merit or reason, puts the reproductive health of these women at risk... a ban that the Senate voted to overturn in June by a vote of 52-40. Sadly, this is the second time that this policy change, which has been supported by the majority of the Senate, has fallen victim to the conference committee process.

This ban continues to be a threat to more than just the freedoms of American women overseas, it’s also a threat to their health because it places them at the mercy of the local health care infrastructure in whatever country that they are based. While I support this conference report, I remain deeply disappointed that the conference report did not include this critical change of policy regarding this arbitrary ban.

As for modernizing our forces, let me speak on an area that is critical to the security of the Nation—shipbuilding. We are learning that in order to effectively engage the forces of terror wherever they hide, we must have the ability to project our power immediately to any part of the globe. Today, we can do that by dispatching our forces in carrier battle groups or amphibious ready groups. However, as a former chair of the Seapower Subcommittee, I remained concerned, as I know the committee is, about the continuing delays in shipbuilding investments made by the Navy.

I note the conferees included detailed language about the Navy’s ship acquisition program and completely agree with their conclusion that, without a fully funded long-term shipbuilding program, we will be faced with a Navy that is unable to carry out the missions assigned to them in both the short-term and the long-term.

To quote the report, “Absent more immediate investment, DDG will have to reduce the number or scope of missions assigned to Navy ships. Witnesses have testified that, if neither course is incorporated in future Navy budget programs, the men and women of the Navy will not be able to deploy to the Persian Gulf to enforce the non-proliferation clauses and to conduct combat operations, and we will lose the burden of these decisions through some combination of longer deployments and less time at home between deployments.”

I find that very troubling indeed in these precarious times.

Therefore, I am encouraged this legislation mandates stronger shipbuilding funding and construction in the future years. Provisions such as section 1022 that requires the Navy to submit an annual 30 year shipbuilding plan with their budget request will not only assist us in understanding the Navy’s ship recapitalization plan but will ensure that the Department of Defense and Navy are committed to buying the number and type of ships necessary to fulfill all of their missions.

I am also pleased that this authorization provides $2.4 billion for the construction of two DDG-51 Arleigh-Burke class destroyers and extends through fiscal year 2007 the procurement authority for that class. For it is these ships, along with cruisers and frigates, that provide protection to the carriers and amphibious ships we are deploying to the Persian Gulf to prosecute the war on terrorism. Surface combatants are the backbone of our Navy and I support section 1021 that requires the Secretary of the Navy to notify Congress should the number of active and reserve surface combatant ships be below 110.

The legislation also looks to the future by authorizing almost $970 million for the development of technologies to be incorporated into the next generation of surface combatant, the DD(X) land attack destroyer. Moreover, it allocates $5 million for the DDG Destroyer Optimized Manning Initiative, a Navy effort to enhance the operational effectiveness of Aegis destroyers with new technologies, policies and procedures to significantly reduce crew workload and construction time.

The legislation authorizes $10.4 billion, $376 million more than requested, for science and technology programs
including many that will be performed in Maine to protect our troopers and our homeland such as the project designed to help identify and address the needs of military personnel in the event of a biowarfare attack.

Of potentially significant value to the Navy, it authorizes $1 million for research at the University of Maine aimed at developing a specialized structural reliability analysis process to optimize the use of polymers in future ship construction, and provides $5 million for development of a new Small Kill Vehicle Technology, aimed at improving the accuracy of missile and anti-missile technology.

Furthermore, among the more critical provisions of this legislation are those aimed at protecting our homeland. It provides the President with $10 billion for the war against terrorism including $4.3 billion for military operations and $1 billion for equipment replacement and upgrades to military capabilities.

And finally, the legislation includes almost $1 billion for Chem-Bio programs designed to provide advanced individual protection and equipment to the men and women of our armed forces with biological agents, as well as additional $480 million for DoD homeland security and consequence management.

This authorization provides the men and women of our armed forces with the equipment they need to accomplish their mission, the quality of life they have earned and security for their families. I have been proud to support this legislation because in a year when our Nation is facing unprecedented security challenges and dangers, we can do no less.

THE PIPELINE SAFETY IMPROVEMENT ACT OF 2002

Mr. HOLLINGS. Madam President, I am pleased to enlighten the Senate unanimously passed pipeline safety legislation in the form of H.R. 3609, the Pipeline Safety Improvement Act of 2002. This bill is the product of over three years of bipartisan work and compromise, and I thank my colleague, Senator MCCAIN, for his leadership on this important issue.

Mr. MCCAIN. I would like to thank my many colleagues for joining us in supporting this important legislation. This bill makes improvements in the safety regulatory program at the Department of Transportation, increased levels of safety throughout our nationwide pipeline system, and in the communities through which pipelines run. This bill contains several important improvements, including: requirements for minimum standards for pipeline integrity management programs, requirements for public education programs, and requirements that the Office of Pipeline Safety and the Pipeline Research and Special Programs Administration comply with safety recommendations made by the National Transportation Safety Board and the Department of Transportation Inspector General, many of which have already been started.

Mr. HOLLINGS. To expedite enactment of the significant pipeline safety reforms included in this bill, the leadership of the Senate Committee on Commerce, Science, and Transportation has worked with the House Committees on Transportation and Infrastructure and Energy and Commerce in developing the compromise agreement. This Joint Explanatory Statement therefore represents the views of the Chairman and Ranking Member of the Senate Commerce Committee, along with the Chairmen and Ranking Members of the Transportation and Infrastructure Committee and the Energy and Commerce Committee. This Joint Explanatory Statement will provide legislative history for interpreting this important pipeline safety legislation. I ask unanimous consent that this statement be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS:

Section 1. Short title; amendment of title 49, United States Code

This section designates the act as the "Pipeline Safety Improvement Act of 2002.

Section 2. One-call notification programs

This section requires that state one-call notification programs provide for the participation of government operators and contractors. Section 2 also requires that state one-call notification programs document enumerated items set forth in the statute. Additionally, the requirement that the Secretary of Transportation include certain one-call notification programs documents shall be made permanent. Authorities for appropriations for grants to states for fiscal years 2003 through 2006 are provided at $1,000,000 per year, and grants for administration in section 6107(b) are updated for fiscal years 2003 through 2006. This section also amends section 6105 of Title 49 by requiring the Secretary to include in the one-call notification program to encourage the states, operators of one-call notification programs, operators of underground facilities, and excavators (including government and private contractors) to use the practices set forth in the best practices report entitled "Common Ground," as periodically updated, and requires the Secretary of Transportation to provide technical assistance to a non-profit organization specifically established for the purpose of reducing construction-related damage to underground facilities and to modernize practices as necessary. In addition, the section allows the Secretary to issue standards prescribing the elements of public education programs and materials for these programs.

Previous versions of Senate-passed pipeline safety legislation also included a provision calling for the coordination of emergency preparedness between operators of pipeline facilities and state and local officials, as well as to provide for public access to certain safety information. Agreement was not reached on how safety information could be accessed by the public in a manner that would protect security-sensitive information from unauthorized distribution. The legislation did that this issue would be better dealt with in the context of the pending homeland security legislation.

Section 3. One-call notification of pipeline operators

This section provides for the enforcement of one-call notification programs by a state authority. If the information system meets the requirements set forth in the statute, the application of the term "person" who intends to engage in an activity necessitating the use of the one-call system is expanded to include government employees or contractors.

This section amends section 6102(d) of Title 49, to the phrase "knowingly and willfully" to address the problem raised when a court interpreted existing law to require a knowing and willful standard to, not only engaging in an excavation activity, but also to subsequently damaging a pipeline facility. The consequences of the court's interpretation makes prosecutions more difficult by requiring the government to show the defendant knew subsequent damages would result from excavation activity and that the conduct was willful. This section of the bill corrects the court's interpretation by now requiring that the "knowingly and willfully" standard apply only to engaging in an excavation activity.

This section also provides that penalties under criminal provisions to action can be reduced if the violator promptly reports a violation.

Section 4. State oversight role

This section amends section 60108 of Title 49 to allow the Secretary of Transportation to make an agreement with a state authority authorizing the state authority to participate in the oversight of interstate pipeline transportation including incident investigation, new construction, and other inspections and investigatory duties. However the Secretary shall not delegate the enforcement of safety standards for the facilities to a state authority. This section further provides that the Secretary may terminate agreements with the state authorities if a gap results in the State authority's oversight rights. Additionally, the Secretary may meet requirements set forth in this section, or continued participation in the oversight of interstate pipeline transportation would not promote pipeline safety. Existing state agreements shall continue until a new agreement between the state and the DOT is executed or December 31, 2003, whichever is sooner.

Section 5. Public education programs

This section amends section 60108 of Title 49 to include hazardous liquid pipeline facilities in this section requiring a continuing program to educate the public on the use of one-call notification systems, the possible hazards associated with unintended releases, and how to tell if an unintended release occurred, what steps should be taken for public safety, the event, and how to report such an event. This section also requires owners and operators to review existing public education programs for effectiveness and to modify them as necessary. In addition, the section allows the Secretary to issue standards prescribing the elements of public education programs and materials for these programs.

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Section 7. Safety orders

Section 7 adds a paragraph to section 6017 of Title 49 to give the Secretary of Transportation authority to order an operator of a facility to take corrective action. The provision includes a sentence that states the Secretary shall order the action to be taken immediately rather than waiting until a facility is classified as “hazardous” prior to requiring corrective action.

Section 8. Penalties

This section modifies the existing penalties provision set forth in section 6012 of Title 49 to allow the Secretary of Transportation to decide if the operation of a pipeline facility, or “would” be hazardous to life, property, or the environment. The purpose of the modification is to give the Secretary authority to take action prior to the facility becoming hazardous, thereby establishing a framework of preventative actions, rather than actions only in response to an imminent hazard.

In subsection (a)(1) of section 6022, the amounts of the penalties have been increased. The per day, per incident, amount has been increased from $25,000 to $1,000,000. The maximum civil penalty for a related series of violations has been increased from $500,000 to $1,000,000. This section of the bill also includes in determining the amount of a civil penalty, the Secretary of Transportation shall consider as an additional consideration in section 6022(b) of Title 49 the extent of the facility’s impact on the environment. The Secretary of Transportation may consider the economic benefit gained from the violation without reduction because of subsequent damages.

This section also modifies the enforcement section of the statute (section 6020(a)(1) of Title 49) by specifically providing that the court may enjoin, injunctive relief, including a temporary or permanent injunction, punitive damages, and the assessment of civil penalties. The current statutory language specifically that the Attorney General may proceed only at the request of the Secretary of Transportation remains in effect.

Section 8 also requires that the Comptroller General conduct a study of the actions, policies, and procedures of the Secretary of Transportation for assessing and collecting fines and penalties.

Section 9. Pipeline integrity management grants to communities

Section 9 requires the Secretary of Transportation to make grants for technical assistance to local communities and groups of individuals for the development of programs relating to the safety of pipelines in local communities. The purpose of this provision is to provide grants to communities for technical assistance such as engineering or scientific analysis of pipeline safety issues. Applicants must compete for the grants in a competitive process. The Secretary of Transportation, who shall also establish the criteria for the recipients. Additionally, the Secretary must establish procedures to ensure that the grants are properly accounted for and spent in a manner consistent with the purpose of the grants. Any one grant recipient may not receive more than $50,000,000 in any one year for lobbying or in direct support of litigation. This section authorizes the appropriation of $1,000,000 for each of the fiscal years 2003 and 2004.

Section 10. Operator assistance in investigations

This section requires the operator of a pipeline facility to make available information and records to the Secretary of Transportation, the National Transportation Safety Board (NTSB) in the event of an accident, subject to constitutional protections for operators and employees. Actions taken by an operator pursuant to this section shall be in accordance with the terms and conditions of any applicable collective bargaining agreement.

Section 11. Population encroachment and rights-of-way

This section requires the Secretary of Transportation, along with the Federal Energy Regulatory Commission (FERC) and other federal and local governments, to study land use practices and zoning ordinances, as well as the preservation of environmental resources, with regard to pipelines. The purposes set forth in this section, a report is to be written that identifies successful practices, ordinances, and laws addressing population encroachment and rights-of-way, being mindful of protecting the public safety, pipeline workers, and the environment. The report must be completed within one year from the date of enactment and provided to Congress, appropriate federal agencies, and the States for further distribution to the appropriate local authorities.

Section 12. Pipeline integrity, safety, and reliability management

This section requires the heads of the participating agencies to carry out a program of research, development, demonstration, and standardization and coordination of pipeline safety standards. The Secretary of Energy, Secretary of Transportation, and the Director of the National Institute of Standards and Technology (NIST), each have defined roles. The Secretary of Transportation, in coordination with the Secretary of Energy and the Director of the National Institute of Standards and Technology (NIST), each have defined roles. The Secretary of Transportation, in coordination with the Secretary of Energy and the Director of the National Institute of Standards and Technology (NIST), each have defined roles. This section requires the Secretary to issue a rule on integrity management programs and for the rule regulating the same, which include a baseline integrity assessment of all Title 49 pipeline facilities. Within 12 months of the enactment of the bill, this section requires the Secretary of Transportation to prescribe standards and criteria for a national pipeline integrity management program, which must occur within 24 months of the enactment of the bill. The Secretary shall be required to submit to Congress a report on the requirements of this section, pipeline facility operators are required to develop and implement qualification programs based on the requirements of this section. The Secretary is required to report to Congress within 5 years on the status and results of personnel qualification regulations. A pilot program is established for the implementation of individualized computer-based systems for controlling the operations of pipelines. The pilot program seeks the participation of 3 pipeline facilities.

Section 13. Pipeline qualification programs

This section requires the Secretary of Transportation to require that all pipeline facilities to develop qualification programs for their personnel who perform covered tasks (as defined in the Code of Federal Regulations). This section also requires the Secretary to have in place standards and criteria for such qualification programs, including a method for examining or testing the qualifications of individuals performing covered tasks. Such method may include written examination, oral examination, on-the-job training, simulations, observation during on-the-job performance, and other forms of assessment. The method may not be limited to observation of on-the-job performance, except with respect to tasks where the Secretary has determined specifically that such observation is the best method of examining or testing qualifications. Further, the Secretary must ensure that the results of any such on-the-job observations are documented in writing. The Secretary may waive or modify requirements if not inconsistent with pipeline safety. The Secretary is required to establish an operator’s qualification program, including modifications to previously verified programs. In the event the Secretary fails to establish standards and criteria, the Secretary may proceed to modify programs based on the recommendations of this section. The Secretary is required to report to Congress within 5 years on the status and results of personnel qualification regulations. A pilot program is established for the implementation of individualized computer-based systems for controlling the operations of pipelines. The pilot program seeks the participation of 3 pipeline facilities.
Section 14 authorizes the Secretary of Transportation to grant waivers and modifications pursuant to section 60118(c) of Title 49 for any requirement for reassessment of a facility that may impact their need to maintain local product supply or the lack of internal inspection devices. The waivers or modifications shall not be inconsistent with safety.

This section also requires that the Comptroller General conduct a study to evaluate the effectiveness of the Federal Pipeline Safety Standards. 

The Department of Transportation’s Research and Special Programs Administration (RSPA) issued a final rule defining “high consequence areas” on August 6, 2002. The managers strongly support RSPA’s regulation defining high consequence areas, although recognize that the definition could be subject to alteration by future regulatory action by RSPA.

Pipeline safety regulations have long required gas operators to survey and patrol along their pipeline rights-of-way to classify areas of population. The new definition of high consequence areas builds on the existing classification of areas where the potential consequences of a gas pipeline accident may be significant or may do considerable harm to people and their property, and includes class 3 and 4 locations, facilities within 0.2 miles of persons who are mobility impaired, confined, or hard to evacuate, and places where people gather for recreational and other purposes.

In the July 2002 Technical Pipeline Safety Standards Committee meeting to consider the proposed definition, RSPA made clear its intent to base its definition on known areas where people gather, such as the Pecos River pipeline crossing near Carlsbad, New Mexico. These are commonly used by anglers and fishermen and was the location of a pipeline rupture in August 2000 that resulted in 12 fatalities. The managers support expressing the definition of high consequence areas and expect RSPA to further clarify the application of the definition in the substantive rule to be issued on integrity management programs.

Section 15. National Pipeline Mapping System

Section 15 requires operators of pipeline facilities, except distribution lines and gathering lines, to provide to the Secretary of Transportation data appropriate for use in the National Mapping System, the name and address of the person with primary operational responsibility and a means for a member of the public to contact the operator for additional information about the facilities. There is a requirement to update the information on an annual basis.

Section 16. Coordination of environmental review

Section 16 requires the President to establish an interagency committee for the purpose of coordinating and ensuring the implementation of a coordinated environmental review and permitting process in order for pipeline operators to complete all activities necessary to maintain the pipeline in any time periods specified by rule by the Secretary of Transportation.

The chairman of the Council on Environmental Quality shall chair the Interagency Committee, which shall consist of representatives of Federal agencies with responsibilities related to pipeline projects. The Interagency Committee shall evaluate Federal permitting requirements and shall examine the access, excavation, and restoration processes, and propose measures for the purpose of developing a compendium of best practices used by the industry to access, excavate, and restore the site of a pipeline repair. Based upon the work completed, the members of the Interagency Committee shall enter into, by unanimous consent, a memorandum of understanding to provide for the coordinated and expedited pipeline repair permit review process so that pipeline operators may commence and complete pipeline repairs within any time periods imposed on the repair projects by rules promulgated by the Secretary of Transportation. Each agency represented on the Interagency Committee is required to revise its regulations to implement the provisions of the memorandum of understanding.

This section also provides for the implementation of alternative mitigation measures to be used for pipeline facilities until all applicable permits have been granted. To the extent necessary, the Secretary of Transportation is required to revise the regulations to accommodate such implementation. However, such revisions shall not allow an operator of a pipeline facility to implement alternative mitigation measures unless to do so would be consistent with the protection of human health, public safety, and the environment. The operator has applied for and is diligently pursuing in good faith, all required Federal, state, and local permits necessary to carry out the repair project; and is compatible with pipeline safety.

The Secretary of Transportation is required to designate an ombudsman to assist in expediting pipeline repairs and resolving disagreements between Federal, state, and local permitting agencies and the operator of a pipeline facility. The actions of the ombudsman must be consistent with the protection of human health, public safety, and the environment.

The Secretary of Transportation is required to encourage states and local governments to develop and use comprehensive pre-repair permitting processes for pipeline repair projects that are subject to any time periods for repair specified by rule by the Secretary of Transportation.

Section 17. Nationwide toll-free number system

Section 17 requires the Secretary of Transportation to work in conjunction with the Federal Communications Commission (FCC), facility operators, service bureaus, and one-call notification system operators for the establishment of a nationwide toll-free 3-digit telephone number system to be used by state one-call notification systems.

Section 18. Implementation of Inspector General recommendations

Section 18 requires the Secretary of Transportation to respond to each of the recommendations of the Department of Transportation Inspector General contained in RT-2000-069 every 90 days and to submit the responses to the appropriate committees of Congress.

Section 19. NTSB safety recommendations

Section 19 requires RSPA and OPS to respond to recommendations received from the NTSB within 90 days from receipt of such recommendations. Such responses shall state whether the recommendation can be implemented as is, whether modifications can be made to the recommendation and shall state the timetable for completing the procedures and reasons for refusals to do so. The responses shall be made available to the public. The OPS is required to submit an annual report describing each recommendation received and the OPS response to each recommendation for the previous year.

Section 20. Miscellaneous amendments

Section 20 amends section 60102(a) of Title 49 by adding language expressing that the purpose of the chapter is to provide adequate protection against risks to life and property posed by pipeline transportation pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation.

This section also modifies the qualifications of the individuals selected to serve on the Technical Safety Standards Committee pursuant to section 60115 of Title 49 so that none of the individuals selected for committee membership from the general public "may have a significant financial interest in the pipeline, petroleum, or gas industry." The intent of this provision is to prevent industry employees and individuals with a sizable stake in the pipeline industry from serving as representatives from the general public, not prevent service from individuals who have pipeline, petroleum, or gas industry stock interests in their retirement plans.

Section 21. Technical amendments

Section 21 makes technical amendments to correct previous drafting errors in the existing legislation.

Section 22. Authorization of appropriations

Section 22 authorizes appropriations for the Department of Transportation’s and state grants for safety programs for the fiscal years 2003 through 2006.

Section 23. Inspections by direct assessment

Section 23 requires the Secretary of Transportation to issue regulations prescribing standards for inspection of a pipeline facility by direct assessment.

Section 24. State pipeline safety advisory committees

Section 24 requires the Secretary of Transportation to respond within 90 days after receiving recommendations from advisory committees appointed by the Governor of any state.

Section 25. Pipeline bridge risk study

Section 25 requires the Secretary of Transportation to conduct a study to determine whether cable-suspension pipeline bridges pose structural or other risks. The Secretary may only use funds specifically appropriated to carry out this section.

Section 26. Study and Report on natural gas pipeline and storage facilities in New England

Section 26 requires the Federal Energy Regulatory Commission, in consultation with the Department of Energy, to conduct a study on the natural gas pipeline transmission network in New England and natural gas storage facilities associated with that network and report back to the relevant House and Senate Committees within a year of the date of enactment.

AVERTING A BREAKDOWN IN FEDERAL TAX ENFORCEMENT

Mr. LEVIN. Madam President, many have said they want the next Congress to work on tax reform. Any tax reform effort we undertake, however, needs to address the grave warning recently provided by IRS Commissioner Charles O. Rossotti about the need for immediate steps to aver a breakdown in federal tax enforcement.
Mr. Rosotti has just completed 5 years of work to restore confidence in the effectiveness and fairness of the IRS. He left the administration last week after submitting a report to the IRS Oversight Board summarizing his efforts and the current state of the IRS. His overall conclusion was that, while the IRS made significant progress over the last 5 years in revamping its procedures and improving interactions with average taxpayers, the IRS is “losing the war” on stopping tax cheats.

Mr. Rosotti wrote that while the size and the complexity of the Tax Code have continued to increase, IRS enforcement resources have continue to diminish. He described the IRS as “outnumbered” and facing a huge and growing problem:“between the number of taxpayers whom the IRS knows are not filing, not reporting or not paying what they owe, and our capacity to require them to comply.” Using specific facts and figures, he provides data supporting the shocking statistic that four out of five U.S. tax cheats will likely escape detection and correction action due to the IRS’ limited resources to enforce the tax laws.

Mr. Rosotti also summarized what is happening among tax professionals enabling sophisticated taxpayers to escape paying their fair share, and what the likely consequence is for honest taxpayers left footing the bill, as he stated:

Recognizing the IRS’ diminished capacity, promoters and some tax professionals are selling a wide range of tax schemes and devices designed to improperly reduce taxes to taxpayers based on the simple premise that they can get away with it. When this perception becomes increasingly widespread, the essential pillar of our tax system is lost—namely, the belief of honest taxpayers that if someone does not pay what he or she owes, then the IRS will do something about it.

Mr. Rosotti’s full analysis appears in the report he filed with the IRS Oversight Board, and I ask unanimous consent for the complete text of that report to appear in the record following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. LEVIN. This report not only sets out the scope and causes of the growing enforcement problems at the IRS, it also identifies practical and immediate steps that can be taken by Congress to avert an enforcement breakdown. Essentially, it comes down to Congress’ providing the IRS with a steady increase of 2 percent per year over the next 5 years in resources for audits, investigators, and enforcement actions. This is a simple case. The numbers show that it will more than pay for itself through the collection of taxes that have improperly been withheld.

Federal tax reform is an important goal, but any reform effort must include a clear-eyed recognition of the growing problem of tax compliance and the need to revitalize the agency charged with ensuring all Americans pay their fair share. Mr. Rosotti was scheduled to bring the enforcement problem to the attention of Congress at a hearing in October, but that hearing was cancelled after, according to press reports, he was asked by the administration to provide a report rather than his recommendation for increased enforcement resources.

To further contribute to an understanding of the scope and nature of tax noncompliance, my staff on the Permanently Subcommittee on Oversight and Investigation has been digging into the problems of offshore tax evasion and tax promoters selling a wide range of tax schemes and devices designed to improperly reduce taxes to taxpayers based on the simple premise that they can get away with it. When this perception becomes increasingly widespread, the essential pillar of our tax system is lost—namely, the belief of honest taxpayers that if someone does not pay what he or she owes, then the IRS will do something about it.

If the trend of the last ten years is allowed to continue, it is only a matter of time until the problem will overwhelm us. Modernization and internal productivity improvements will provide a major part of the needed gains. However, these alone will not be sufficient to close the gap. We must assume greater productivity gains than the private sector was able to achieve over a decade ago.

To succeed, we need more trained personnel to close the known compliance gap while continuing to protect taxpayer rights and provide essential services. Specifically, we must add approximately 2 percent annual net increase in staffing over five years. Even with this increase, the size of the IRS by 2010 would be smaller than it was 20 years earlier in 1990 while the economy will have increased 86 percent.

Over the same period, we must also fund additional increases for modernization programs to accelerate the delivery of key projects and benefits that will provide for greater service, efficiency and productivity.

Together with effective management of the IRS, this modest level of resources can reverse the dangerous trend the tax system is currently taking. It is distressingly clear that the IRS diminished capacity, nor is it an open-ended problem. In the meantime, I urge all my colleagues to read Mr. Rosotti’s report in full and take its warnings and advice to heart as we approach tax reform issues in the coming year.

EXHIBIT 1

REPORT TO THE IRS OVERSIGHT BOARD—ASSESSMENT OF THE IRS AND THE TAX SYSTEM

As the Board requested, and as my term of office draws to a close, I want to share with you my thoughts on the current state of the IRS, our tax system, as we tax system and as the opportunities and challenges that the agency and new commissioner will face.

The IRS is today capable of executing its mission with increasing effectiveness and efficiency. We made measurable progress on a number of high priority areas, such as e-filing, electronic telephone and in-person taxpayer service, protection of taxpayer rights and burden reduction. We stabilized and refocused our key compliance activities to make the best use of our limited resources and are identifying and attacking systemic areas of non-compliance, such as the promotion and use of abusive tax devices. Financial management improved, as evidenced by unqualified audit opinions. Internal morale, which was heavily affected by criticism and internal and external change, turned around. Perhaps most importantly, we regained the confidence of our stakeholders.

For the longer term, the IRS created a firm foundation upon which to make further progress. It includes: a modern organization structure; a fully functional Business Systems Modernization program; a completely new and revised strategy for accelerating the delivery of key projects and benefits that will provide for greater service, efficiency and productivity; Together with effective management of the IRS, this modest level of resources can reverse the dangerous trend the tax system is currently taking. It is distressingly clear that the IRS...
stakeholders also lost confidence in the agency’s ability to do its job at an acceptable level. In 1995, the Tax Systems Modernization program was terminated after several billion dollars were spent. Handling complaints about IRS treatment of constituents became a time-consuming duty in many congressional offices, and many stakeholders, especially those representing small business, had an adversarial relationship with the agency.

Poor service to taxpayers over the telephone or in person contributed to the public’s low perceptions. At the nadir in the mid-1990s, the IRS registered 400 million busy signals a year on its toll-free lines, and when taxpayers did reach the IRS, the likelihood of getting an accurate answer or resolution to a problem was low.

A number of external factors also buffeted the IRS. Budget and staff cuts, rapid economic growth and the shift in the tax base from middle-income wage earners to domestic corporations to upper-income entrepreneurs, passthrough entities and global businesses, all contributed to a diminished capability to cope with service and compliance demands.

The IRS responded to this pressure by emphasizing enforcement revenue and statistics as a way of justifying its budget. The IRS measured the success of its compliance activities by direct enforcement revenues. This is like a police department assessing its success by the number of tickets it issues rather than by the safety and security of the community it serves. As we well know from the ensuing fallout, this grave mistake further aggravated the IRS’s high public perceptions of the IRS as “stiff,” inefficient with the hazards and costs of the opposite—too soft.

To address these problems, we revamped the major standards and procedures, such as those for distributions from qualified retirement plans. We removed procedures, such as those for distributions from qualified retirement plans. We removed procedures, such as those for distributions from qualified retirement plans. We removed procedures, such as those for distributions from qualified retirement plans.

Within the limits of a complex and changing Tax Code, the IRS acted to reduce taxpayer burden. For example, we simplified forms, such as the Schedule D for reporting capital gains. We also rewrote and simplified procedures, such as those for distributions from qualified retirement plans. We removed 2.6 million small business taxpayers from the time-consuming and cost-keeping requirements of reconciling tax returns with balance sheets. We eliminated the need for most small businesses to use the more burdensome accrual method of accounting for tax purposes. We implemented a new and more reliable way of measuring tax compliance—by comparing returns to economic data. In the Office of Taxpayer Burden Reduction, we also have an organization dedicated to continuously measuring and reducing burden.

To protect taxpayers from the IRS, we also implemented taxpayer rights provisions of RRA 98, including such major provisions as collection due process, expanded innocent spouse relief, third party notification and expanded opportunities for offers in compromise. The Taxpayer Advocate Service was established as an effective independent entity within the IRS to assist taxpayers with hardship cases and makes recommendations to improve the way IRS works for them. Because of these efforts, the number of taxpayers with serious unresolved cases, such as those that generate a need for intervention by a congressional office, declined. More generally, our improved service helped to reduce the numbers of cases needing TAS intervention. In 2002, case receipts fell from 191,790 to 169,380 compared with the same 9-month period in 2001.

Stakeholder relations

In the past, relations with IRS stakeholders were often strained and adversarial. Through improved communications and frequent, substantive meetings, our relationship with Congress, other business groups and other stakeholders—especially small businesses—greatly improved. Congressional hearings once considered IRS adversarial have become almost universally positive and constructive—although not without tough questioning. Much closer relationships were formed with organizations representing practitioners and small businesses. A consortium was forged with the software industry on the thorny issue of cost-sensitive e-filing.

One of our basic strategies is to develop the kind of stakeholder relationships that can improve the efficiency and effectiveness of our services. Over the past few years, we developed a model of engaging stakeholders as part of our decision-making process. We call the new approach, “Engage and Then Decide” as contrasted with “Decide and Then Explain.” Seriously engaging key stakeholders as a regular part of the decision-making process has shown that it improves the final product, gives more time for decisions and implementation, and strengthens relationships. Although we successfully used this engagement process, and had some experience with the hazards and costs of the opposite approach, IRS top management must continue to work hard to ensure that it is employed in all decision-making processes because it is so different from traditional practice in the federal government.

Compliance

As the Board is well aware, we do not have the resources to attack every case of non-compliance. Therefore, we must apply our resources to where non-compliance is greatest. The IRS has maintained a large presence in other areas. We must also use carefully, but effectively, the enforcement tools available to us.

In a careful study, we identified some of the most serious and current compliance problems. These areas include: (1) promoters of tax schemes of all varieties, (2) the misuse of foreign tax credits such as those of foreign tax credit to hide or improperly reduce income, (3) abusive corporate tax shelters, (4) under-reporting of tax by high-income individuals, and (5) accumulation and the failure to file and pay large amounts of employment taxes by some employers.

To address these problems, we revamped our compliance programs to focus our resources and to use a full scope of tools and
techniques. They range from educating the public, to systematically identifying promoters and participants, to reinvigorating enforcement actions such as summons enforcement and criminal investigation of promoters.

If we can eliminate confusion and errors before a return or form is ever filed, America’s tax system will be spared countless hours and billions of dollars in unnecessary forms, notices and communications with the IRS. If we can warn taxpayers not to participate in “too good to be true” tax schemes, we can save taxpayers from penalties and more. Moreover, the agency will be in a better position to use its limited compliance resources on the most serious cases of non-compliance.

To achieve these purposes, we created dedicated taxpayer education and pre-filing organizational divisions, e.g., TEC and SPEC in SB/SE and W&I respectively, and pre-filing technical staffs in LMSB and TEGE. We also created new pre-filing tools, such as pre-filing agreements and industry issue resolution published guidance. We greatly stepped up our output of traditional forms of published guidance, including news releases, bulletins, and letters, by increasing their emphasis in Chief Counsel and forging an effective working relationship with Treasury’s Office of Tax Policy.

For example, both the TEC and SPEC organizations worked to raise federal awareness about the slavery reparation schemes. Materials were distributed nationally among the NAACP and the Urban League. As a result, the number of slavery reparation claims declined from 1,538 in CY 2001 to 63 this year. Although our pre-filing measures hold great promise, we must still detect, correct and deter non-compliance. We must focus resources, improve efficiency and use our enforcement powers appropriately, all of which we are doing.

As identified through our research and strategic planning, both SB/SE and LMSB are directing their examination resources at the most important cases and issues. Exam and collection reengineering are focused on increasingly obsolete data from the old models are being developed using 21st century techniques, with interim models already deployed. Obviously, our success in compliance also depends on a cadre of highly qualified trained individuals to perform tasks that require a high level of judgment. After a freeze of nearly six years, recruitment for professional occupations, such as revenue agent and revenue officer, restarted; training was raised to a higher level. For the past two fiscal years, we received unqualified opinions on our financial statements and GAO opinions on our financial statements and heightened focus on employee concerns. Among the most important of these concerns were fair and considerate treatment, addressing the provisions of Section 1203—the so-called ten deadly sins—so that no employee was wrongly disciplined under this section. In addition, legislative proposals were formulated and under consideration by Congress to alleviate employee anxiety over Section 1203.

Because of these actions and focus, and accounting for a recent GAO recommendation to the IRS employees, the level of engagement within the Service increased from 49th to the 56th percentile of all public sector organizations tracked by the organization.

The IRS is also the steward of massive taxpayer revenue and budget and financial resources, and we are expected to properly account for the government’s money and property. To this end, internal accounting standards were raised to a higher level. For the past two fiscal years, we received unqualified opinions on the financial statements for both the Revenue and Administrative accounts. This year, we have plans in place to close the books months earlier than in previous years and to address our material weaknesses over the next two years.

As our FY 2003 and 2004 budget requests demonstrate, strategic planning, budgeting, resource allocation and performance goals were aligned. For the first time, we fully integrated development of our budget with the establishment of performance measures.

**Technology and modernization**

Critical to our success was better managing massive tax processing systems. The IRS reengineered our massive tax processing systems, including Intelligent Call Routing, Integrated Case Processing and the Integrated Collection System.
Business Systems Modernization laid the foundation for success of this massive program. Both the long-term vision and enter-
prise architecture were established and em-
bedded as a living blueprint for all business and technology improvement programs.

BSM began delivering projects with tangi-
table and meaningful benefits to taxpayers,
such as moving the first set of taxpayers to a
modern, reliable database early next year.

Over the next five years, all individual tax-
payers will be moved to it, cutting times for
refunds on e-filed returns to less than a week
and allowing us to provide taxpayer and em-
ployees with up-to-the-minute accuracy on
their accounts. Of paramount importance,
we implemented the first project on our new
security system, which provides one stand-
ard for ensuring the security of all future IRS data and systems.

All major management processes, which
are needed to manage this program on a con-
tinuing basis, were improved. Our goal is to
obtain certification in the near future as
only the second agency in the federal govern-
ment to reach Level Two in the Software En-
gineering Institutions Capability Maturity
Model.

STEADY PROGRESS CAN CONTINUE YEAR AFTER
YEAR

The aforementioned progress and achieve-
ments do not mean that the IRS solved all of its problems, or that there are no more op-
portunities to improve. Rather, it means that the IRS addressed the major impedi-
sments and obstacles that previously stood in
the way of progress and has a clear com-
itted plan to continually reach even higher
levels of performance. There should be no
doubt that the IRS can be raised to a level of
quality and efficiency comparable to the
best managed financial services organiza-
tions.

WINNING THE BATTLE BUT LOSING THE WAR

Despite significant improvements in the
management of the IRS, the health of the
federal tax administration system is on a se-
rious long-term downturn. This is system-
atically undermining one of the most impor-
tant foundations of the American economy.

The source of this problem is two con-
flicting long-term trends: one, ever increas-
ning demands on the tax administration sys-
tem due to rapid growth in the size and com-
plexity of the economy; and two, a steady
decline in IRS resources due to budget con-
straints. The cumulative effect of these con-
flicting trends over a 10-year period has been
to create a huge gap between the number of taxpayers and the IRS resources avai-
lable to process returns, not reporting or
not paying what they owe, and the IRS’s
capacity to require them to comply.

As seen in the next chart, “Trends in Indi-
cators of IRS Workload and Resources,”
from 1992 to 2001, weighted average returns
filed, a measure of overall IRS workload, in-
creased by 16 percent because of the econo-
ym’s growth. However, during this same pe-
riod, FTETs dropped 16 percent from 115,205
in FY 1992 to 95,611 in FY 2001. Since more
and more of the IRS’s declining resources are re-
quired to perform essential operational func-
tions—such as processing returns, issuing re-
unds and answering taxpayer mail—a dis-
proportionate reduction occurred in Field
Collection personnel, falling 28 percent

In assessing these trends, it is extremely
important to recognize a critical fact: tax
administration workload increases every
year because of increased filings by tax-
payers related to the long-term growth of
the economy. These workload increases af-
fect every facet of tax administration, from
processing returns to answering correspond-
ence to collecting delinquent returns to ac-
counting for payments and refunds. In ad-
dition to this growth related to the economy,
tax legislation often adds additional work-
load.

Looking more closely at the most recent
five years (see chart), we see that the num-
ber of income tax returns increased by 12
million, while tax bills changed 292 tax code sections and required 515 changes to forms and instructions. On the average, IRS workload grows at a com-
pound rate of 1.8 percent per year. Therefore,
just to handle this increased workload, the
IRS would either have to add staff—
which is what occurred fairly consistently for
the 45-year period from 1950 through 1995—or would have to increase productivity by 1.8 percent per year just to stay even.

FEDERAL TAX SYSTEM HAS BEEN GROWING AND
CHANGING RAPIDLY FROM 1997 THROUGH 2002

CHANGING RAPIDLY FROM 1997 THROUGH 2002

Volume of activity has been growing rapidly:

<table>
<thead>
<tr>
<th>Year</th>
<th>Income Tax Returns</th>
<th>IRS Gross Collections</th>
<th>IRS Refunds Issued</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>12 Million</td>
<td>490 Billion</td>
<td>121 Billion</td>
</tr>
<tr>
<td>2001</td>
<td>12 Million</td>
<td>527 Billion</td>
<td>121 Billion</td>
</tr>
<tr>
<td>2002</td>
<td>12 Million</td>
<td>561 Billion</td>
<td>121 Billion</td>
</tr>
</tbody>
</table>

Income Tax Returns: $12 Million Increase 9.4%.
IRS Gross Collections: $527 Billion Increase 12.5%.
IRS Refunds Issued: $121 Billion Increase 61.3%.

Tax Code has been changing rapidly

19 Public Laws passed.
283 Tax Code provisions changed.
71 (58%) of provisions with concurrent or retroactive effective dates.
515 completed changes to forms and/or instructions.

Restructuring and Reform Act added many tax-
payer rights.
71 taxpayer rights.
1,900 implementing actions.
Hundreds of thousands of new transactions
per year.
Immigrant spouse.
Collection due process.
Offers in compromise.
Third party notification.
Section 1203 allegations.

Special events created additional activity and change

Century date change required massive three-year project.
Advance rate reduction credit—126 million notices, 91 million taxpayers, $38 billion.
Returns of political organizations (section 527)—new reporting to IRS.
September 11th terrorist attack—victims relief, IRS security response, money laun-
dering task forces.
Anthrax threat—rapid response required prior to 2002 Filing Season.

Globalization is increasing international tax ac-
tivity

U.S. controlled foreign corporations up 25%.
Foreign controlled corporations up 31%.
Resources have been shrinking
IRS full-time equivalent personnel: –2,982.

This is no different from a car company
producing 1.8 percent more cars or a hospital
servicing 1.8 percent more patients. But,
rather than increasing staff, IRS staff de-
creased during this period, creating a major
gap in IRS capacity to administer the tax
system.

In addition to growth in raw numbers, the
tax revenue stream is now dominated by
sources that provide greater opportunities
for manipulation by those who wish to take
advantage of the decline in IRS compliance
resources. For example, returns for tax-
payers with incomes exceeding $100,000 grew
by 342 percent over 1991 levels. The enormous
amounts of money that flow through
“passthrough” entities—such as partner-
ships, trusts and S-corporations—also add
to the complexity of tax administration and
increases the opportunities for under-
reporting of income. In Tax Year 2000, these
entities filed 4.78 million re-
turns with gross revenue of $6 trillion and in-
come to partners/shareholders of more than
$560 billion.

The IRS Restructuring and Reform Act of
1998 added major new or expanded taxpayer
rights programs, such as innocent spouse re-
 lief, third party notification and collection
disputes. The right to request relief is impor-
tant to taxpayers but created very substantial ad-
ditional resource demands on the IRS to process hundreds of thousands of new trans-
actions and additional cases in existing au-
dits and collection actions.

Business globalization creates another ad-
ministration complexity and more opportu-
nities for reducing U.S.-reported income.
Payers with incomes exceeding $100,000
U.S.-controlled foreign cor-
porations and foreign-controlled corpora-
tions grew respectively by 25 and 31 percent.

Looking at this imbalance, one fact
emerges. The IRS is simply out-numbered
when it comes to dealing with noncom-
pliance risks. As noted, IRS employment
(FTEs), and in particular, Field Compliance
FTEs, steadily declined. With the decline in
personnel came a decline in the coverage of
types of non-compliance (see chart). Even after
we refocus on the most egregious non-com-
pliance cases, we can only handle a small frac-
tion of them.

COVERAGE OF ALL TYPES PLUMMETS 60–70%  
(Number of cases per thousand returns)

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Document matching</th>
<th>Correspondence response inmates</th>
<th>In person enforcement virtuals</th>
<th>Exam of pass-through entities</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>33.1</td>
<td>4.8</td>
<td>4.8</td>
<td>5</td>
</tr>
<tr>
<td>1993</td>
<td>32.7</td>
<td>2.6</td>
<td>6.3</td>
<td>5.5</td>
</tr>
<tr>
<td>1994</td>
<td>32.7</td>
<td>6.1</td>
<td>0.8</td>
<td>5.5</td>
</tr>
<tr>
<td>1995</td>
<td>23.6</td>
<td>3.5</td>
<td>6.0</td>
<td>4.6</td>
</tr>
<tr>
<td>1996</td>
<td>16.6</td>
<td>2.6</td>
<td>5.6</td>
<td>4.7</td>
</tr>
<tr>
<td>1997</td>
<td>7.9</td>
<td>3.5</td>
<td>5.8</td>
<td>5.5</td>
</tr>
<tr>
<td>1998</td>
<td>4.3</td>
<td>1.5</td>
<td>5.5</td>
<td>6.5</td>
</tr>
<tr>
<td>1999</td>
<td>14.4</td>
<td>1.1</td>
<td>3.1</td>
<td>4.5</td>
</tr>
<tr>
<td>2000</td>
<td>10.8</td>
<td>0.9</td>
<td>7.0</td>
<td>3.6</td>
</tr>
<tr>
<td>2001</td>
<td>9.1</td>
<td>1.2</td>
<td>1.5</td>
<td>2.9</td>
</tr>
</tbody>
</table>

*Fiscally Partnerships, S-Corporations and Easidacies.

The effect of these trends was to create a
gap in what work the IRS should be doing and
what it had the capacity to do. In the
last two years, the IRS made progress in
quantifying this gap, which is summarized
below. As noted, the majority of the work-
load gap is in compliance.

SELECTED TAX ADMINISTRATION PROGRAMS WORK DONE AND NOT DONE

<table>
<thead>
<tr>
<th>Dollars in millions</th>
<th>Required</th>
<th>Done</th>
<th>Gap</th>
<th>%Gap</th>
<th>Direct revenue loss per year</th>
<th>Direct cost to fill gap</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service To Compliant Taxpayers:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Phone Service Level of Service</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In Person Service</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Known workload in contacts or cases*</td>
<td>87.5</td>
<td>71.5</td>
<td>16.0</td>
<td>18</td>
<td>NA</td>
<td>$2,274</td>
</tr>
<tr>
<td>Direct revenue loss per year</td>
<td>1,014</td>
<td>1,014</td>
<td>1,014</td>
<td>1,014</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Direct cost to fill gap</td>
<td>179.7</td>
<td>179.7</td>
<td>179.7</td>
<td>179.7</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
For each category of compliance, the IRS computed the number of known cases of taxpayers who did not file or pay, or who substantially underreported their taxes. These numbers, therefore, represent not general estimates or assumptions, but specific taxpayer cases. Based on the information available to the IRS, they should and could be treated as cases of non-compliance through collection, audit or other actions.

However, as can be seen from the chart, only a fraction of each category of case, even the most serious, can be worked with available resources. The “gap” represents the number of cases that should be, but cannot be worked because of resource limitations. These cases represent trillions of dollars per year that could be, but are not collected. More importantly, they represent a failure of fairness to the millions of honest taxpayers whose commitment to paying their taxes is based on the assumption that the IRS will act if they or their neighbors do not pay their fair share.

Tax professionals, promoters, sophisticated taxpayers and even some ordinary taxpayers are becoming more aware of our deteriorating ability to deal with compliance. Increasingly, this issue is being reported by mainstream media such as the Wall Street Journal, the New York Times, Fortune and Forbes, and even on national television.

Recognizing the IRS’ diminished capacity, promoters and some tax professionals are selling a wide range of schemes and devices to taxpayers based on the simple premise they can probably get away with it. When this perception becomes increasingly widespread, the essential pillar of the fairness of our tax system is lost.

Our John Doe summonses of records for mailing and notification requirements. Although it is impossible to prove conclusively that attitudes towards tax compliance shifted, we must make informed judgments about behavior and trends. The only responsible conclusion I can draw is that the trend in attitudes of taxpayers and tax professionals poses a real threat to the health of the tax system and ultimately to the American economy.

If these problems and conditions are left unaddressed, we could face an enormous crisis in confidence in the tax administration system. It would not be surprising if this problem emerged into the forefront of public concern, causing an eruption about the IRS similar to those that occurred periodically over the last 50 years. The long-term impact on the economy and our nation of not reversing this trend will be extremely high.

What is needed

What is the answer? Fortunately, the problem is not open-ended and can be solved with a reasonable amount of resources. We need what the National Commission on Restructuring the IRS argued for five years ago: a steady and consistent budget. It must consist of two items over the next five years. First, the level of funding in the budget must be large enough to support modernization until this program levels off several years from now.

Together with aggressive increases in productivity, as called for by the IRS Strategic Plan, this combination can solve the problem by the end of this decade. In fact, our budget planning chart below, a combination of 2 percent per year staff growth with 3 percent per year productivity growth will keep up with increasing demand and close the gap by 2010. But without both elements—modest but steady staff growth and aggressive productivity increases—the trend will not be reversed.

Computer systems alone, even with the most aggressive reasonable assumptions about the productivity gains from modernization, cannot solve the problem. Training and effective staffing is also required. However, modernization will allow the IRS to perform the tax administration function with proportionately fewer staff than in the past. If the IRS staff grew by 2 percent per year through 2010, the total staff would still be smaller than it was 20 years earlier (1990), while the economy is projected to be 86 percent larger in real GDP and the tax system far more complex.

There is another critical point. Sufficient funding must be provided to fund the actual projected staffing. There is no “extra” funding lying around to “absorb” items that are mandated, but not paid for. As shown below, the IRS dollar budget consistently underfunded advertised staffing levels. The actual number of FTEs is lower every year than proposed in the budget. This is the effect of making unrealistically optimistic assumptions about such items as pay raises, inflation and other mandates, including specific mailing and notification requirements.

<table>
<thead>
<tr>
<th>IRS DOLLAR BUDGET HAS CONSISTENTLY UNDER-FUNDED ADVERTISED STAFFING LEVEL</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Full Time Equivalent (FTE) Personnel without EITC]</td>
</tr>
<tr>
<td>Required</td>
</tr>
<tr>
<td>NA</td>
</tr>
<tr>
<td>Identified and Collection of Underreported Tax:</td>
</tr>
<tr>
<td>Document Matching</td>
</tr>
<tr>
<td>Small Corporations</td>
</tr>
<tr>
<td>Mid and Large Corporations</td>
</tr>
<tr>
<td>Total</td>
</tr>
<tr>
<td>Required Done Gap %Gap FTEs Dollars</td>
</tr>
<tr>
<td>NA</td>
</tr>
<tr>
<td>Required Done Gap %Gap FTEs Dollars</td>
</tr>
<tr>
<td>NA</td>
</tr>
</tbody>
</table>

* Includes 1,822 FTE for STABLE Annualization.
Train me and I will bring back my dog and show people here how a blind man can be absolutely on his own.’’ The author, Dorothy Harrison Eustis agreed to Mr. Frank’s request and Mr. Frank’s dog Buddy became the first guide dog in America.

That weekend, and today, there are more than 7,000 guide dogs serving in America, and two performed miracles in New York on September 11.

That morning, Roselle, a yellow Labrador Retriever, and Michael Hingson, went to the office on the 78th floor of the World Trade Center. While Mr. Hingson worked, Roselle slept underneath his desk. Then the plane hit the South Tower, and what she did next was nothing short of heroic. She guided Mr. Hingson through the smoke and to the stairwell. Not only did Roselle help Mr. Hingson down 78 flights of stairs, but another woman who had been blinded by debris clutched Roselle’s harness until they reached safety.

There was another yellow lab in the World Trade Center named Salty. His owner, Omar Rivera, worked on the 71st floor of the Port Authority. After the planes hit, Salty refused to leave his owner’s side. The smoke-filled stairway, broken glass and debris to get Mr. Rivera and a co-worker to safety. Even as the North Tower collapsed and the debris cloud filled the streets, Salty remained calm, loyal, and focused on guiding Mr. Rivera to a place free from danger.

These two guide dogs performed their jobs under the most extreme circumstances. But what they did that day reinforced what guide dogs do every day—they provide independence to individuals who are blind and visually impaired so that they can live their life free from constraints. To serve as another’s set of eyes, to navigate busy city streets, and to keep their owners free from danger is a responsibility that only a loyal dog would welcome with no questions asked.

Throughout the United States and around the world, Guide Dog Schools have given more than one hundred thousand people the chance to move about the world with freedom and dignity. Each school offers their guide dogs at no cost to the owners. All they have to do is apply, attend training, and provide a home for their guide dog for the rest of his or her life. The success of each school is dependent upon thousands of staff, volunteers, and generous supporters. Many people volunteer to raise puppies, socialize them and then give them up at the end of the year. How we get these guide dogs every day—sitting patiently on the subway, stopping at walk lights, and maneuvering people around hazards that prevent a safe, straight path. They wear bright colored vests that read “Guide Dog in Training.”

Not only did Morris Frank bring the first guide dog to America, he opened the first school in 1929, The Seeing Eye. Now in every State, guide dog schools provide an invaluable service. In California, The Guide Dog School just celebrated its 60th Anniversary, and in New York, The Guide Dog Foundation in Smithtown, has assisted New Yorkers and others from around the world since 1946. And Guiding Eyes in New York has graduated more than 5,000 dogs and owners since 1954.

Every success story is testament that one good idea can transform the lives of many. But the success of the guide dog schools would not have happened without two key components: those who believed that the blind and visually impaired could lead more independent lives with the right kind of help, and the dogs, the Labrador Retrievers, the Golden Retrievers, the German Shepherds, and other breeds that are ready, willing, and able to guide their owners through the world.

Every day, thousands of people grab on to the harness and place their trust in their companion. Some have acted with remarkable heroism like those on September 11, and we have all heard the stories about guide dogs waking their owners in the event of a fire and blocking them from the path of a speeding car. But most go through their days with quiet dignity and they deserve our utmost respect. Whether they are named Roselle or Salty or Buddy, they all respond in the same way. That harness goes on, their eyes are set, they show us that it is possible to walk through this world with a profound desire to help another so that life is limitless.

RECOGNIZING MOTT CHILDREN’S HEALTH CENTER

Mr. LEVIN, Madam President, I wish to express my heartfelt congratulations to the Mott Children’s Health Center (MCHC), in Flint, MI, which has been selected by the American Lung Association of Michigan-Genesee Valley Region as the 2002 Corporate Health Advocate of the Year.

The American Health and Lung Association of Michigan-Genesee Valley Region grants this prestigious award to an organization that aspires to restrict or ban smoking, offers employee programs for smoking cessation, or exhibits respect and sensitivity to those suffering with lung disease. Winners must have demonstrated financial assistance to local non-profit agencies as well as encourage employees to sit on local boards of directors for community based non-profit organizations. Recipients also need to display a commitment to improving the quality of life of Genesee Valley’s residents. MCHC has not only met but far surpassed the American Health and Lung Association’s criteria and is a worthy recipient of this award.

Founded in 1939 by Charles Stuart Mott, MCHC’s mission is to better the lives of at-risk youth through health services and community advocacy. As a health service provider, MCHC offers the Genesee County

ADDITIONAL STATEMENTS

TRIBUTE TO GUIDE DOGS

Mrs. CLINTON. Madam President, after reading an article in The Saturday Evening Post about the Germans training dogs to aid veterans blinded during World War I, a blind man living in Tennessee named Morris Frank wrote to the author, “Thousands of blind like me abhor being dependent on others. Help me and I will help them.”
community both emotional and physical pediatric health services, educates families on health-related issues, and supports local schools and neighborhoods with on-site health care. In order to inform community decision makers on issues related to Genesee County’s children’s health needs, MCHC sponsors events on matters affecting children’s health, supports various state and local children’s advocacy organizations, and develops educational materials on children’s issues. In its 63-year history, MCHC has expanded to become a principal in child health advocacy in the Genesee Valley community and throughout Michigan.

MCHC is a recognized leader in the battle against childhood asthma, an illness that affects 15 percent of Genesee County’s children. As part of the Childhood Asthma Task Force (CATF), MCHC provides staff and other resources, including a home to CATF’s three Mini Asthma Resource Centers. MCHC dedicates themselves to educating families about asthma and available treatments, staff these CATF centers. Additionally, in its continuing effort to highlight children’s respiratory health issues, last year MCHC sponsored the 29th Annual Tuuri Conference, which addressed topics such as “New Approached to Pediatric Asthma” and “Smoking Among Children and Families.”

MCHC has a long and impressive history of advocacy for the children of Genesee Valley. I know my colleagues join me in congratulating Mott Children’s Health Center for being named the 2002 Corporate Health Advocate of the Year and wishing them continued success.

RECOGNIZING GLORIA R. BOURDON

- Mr. LEVIN, Madam President, I wish to express my sincerest congratulations to Gloria R. Bourdon of Michigan, who has recently been recognized by the American Lung Association of Michigan-Genesee Valley Region as the 2002 Individual Health Advocate of the Year.

The American Lung Association of Michigan-Genesee Valley Region awards this honor to an individual who has served as board member on a health association or participated in a health related activity for at least 5 years. Recognition must contribute to the community’s health, education, and general well-being. The individual must have been involved in promoting health care research, contributing to articles on health care, and involved in lung health counseling. Gloria Bourdon has not only met these criteria but has far exceeded them; for this she is a worthy recipient of this prestigious award.

Gloria Bourdon’s promotion of children’s health issues began in 1976 as a teacher at Linden Areas Schools, where she taught students to lead healthy lifestyles. As the Director of Health, Safety and Nutrition Services for the Genesee Intermediate School District, Gloria is now responsible for the health and safety of the children in 55 public schools, public academies, and private schools. She is also an active member of the community. She supports many coalitions including Childhood Asthma Task Force, and the Genesee County Curriculum Council. Her outstanding work and dedication have been recognized by various organizations. Most recently, Gloria received the Genesee County Child Advocacy Award, the Michigan Association of School Board’s Health and Safety Award, and the Rainmaker Award from HealthPlus.

Gloria’s dedication to children’s health is evident in her writing and fundraising efforts. In 1998, she authored a Health Action Team Manual for Substance Abuse Education, Physical Activity, Nutrition Education, and Safe and Drug Free School Zones. She has assisted the American Lung Association in efforts regarding asthma, tobacco and air-quality awareness. Gloria also encourages her nursing and teaching staff to support the Association’s goals.

I join the American Lung Association of Michigan-Genesee Valley Region in congratulating Gloria on her great accomplishments in promoting the health and safety of the children in Genesee County and surrounding areas. I know that my colleagues in the Senate will support me in thanking Gloria Bourdon for her efforts and wishing her well in her future endeavors.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 9:36 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:


At 8:46 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5706. An act to reduce preexisting PAYGO balances, and for other purposes.

At 9:19 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2019. An act to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, with amendments.

At 9:52 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agrees to the amendments of the Senate to the bill (H.R. 5065) to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, with amendments.

At 10:25 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3216) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

MEASURES PLACED ON THE CALENDAR

The following joint resolution was read the first and second times by unanimous consent, and placed on the calendar:

H.J. Res. 124. Joint resolution making further continuing appropriations for the fiscal year 2003, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-9469. A communication from the Secretary of Labor, transmitting, pursuant to law, the annual report on the Fiscal Year 2001 operations of the Office of Workers’ Compensation Programs; to the Committee on Health, Education, Labor, and Pensions.

EC-9470. A communication from the Administrator, General Services Administration, transmitting the report of lease purchases that support General Services Administration’s Fiscal Year 2003 Capital Investment and Leasing Program; to the
“Statistical Programs of the United States Government: Fiscal Year 2003”; to the Committee on Governmental Affairs.

EC-9507. A communication from the Chairman of the Committee of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-462, “General Obligation Bonds and Bond Anticipation Notes for Fiscal Year 2002”; to the Committee on Governmental Affairs.

EC-9508. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-468, “Department of Insurance and Securities Regulation Merger Review Temporary Amendment Act of 2002”; to the Committee on Governmental Affairs.

EC-9509. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-463, “Mobile Telecommunication Sourcing and Uniformity Act of 2002”; to the Committee on Governmental Affairs.

EC-9509. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-465, “Temporary Amendment Act of 2002”; to the Committee on Governmental Affairs.

EC-9510. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-468, “Religious Organization Exemption Temporary Amendment Act of 2002”; to the Committee on Governmental Affairs.

EC-9511. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-464, “Department of Veterans Affairs, implementing Convention Center Site Redevelopment Temporary Amendment Act of 2002”; to the Committee on Governmental Affairs.

EC-9512. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-468, “Washington Metropolitan Area Transit Authority Property Dedication Transfer of Jurisdiction Act of 2002”; to the Committee on Governmental Affairs.

EC-9513. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-467, “Other-Type Funds Temporary Amendment Act of 2002”; to the Committee on Governmental Affairs.


EC-9516. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-481, “Forest Service Transfer Station Service and Settlement Agreements Temporary Amendment Act of 2002”; to the Committee on Governmental Affairs.

EC-9517. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-484, “Solid Waste Transfer Station Service and Settlement Agreements Temporary Amendment Act of 2002”; to the Committee on Governmental Affairs.

EC-9518. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-485, “Solid Waste Transfer Station Service and Settlement Agreements Temporary Amendment Act of 2002”; to the Committee on Governmental Affairs.

EC-9519. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-483, “Tax Clarity and Related Uniformity Act of 2002”; to the Committee on Governmental Affairs.


EC-9521. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-482, “Inheritance and Estate Tax Temporary Amendment Act of 2002”; to the Committee on Governmental Affairs.


EC-9523. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 14-486, “Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ‘Food Labeling: Health Claims for Certain Foods and Coronary Heart Disease’ (Doc No. 01Q-0613) received on October 28, 2002; to the Committee on Health, Education, Labor, and Pensions.


EC-9525. A communication from the Deputy Archivist of the United States, National Archives and Records Administration, transmitting, pursuant to law, the report of a rule entitled “Debt Collection” (RIN30065-AA79) received on October 16, 2002; to the Committee on Governmental Affairs.

EC-9526. A communication from the Deputy Archivist of the United States, National Archives and Records Administration, transmitting, pursuant to law, the report of a rule entitled “Books - ‘The First President of the United States’” (RIN30905-AB41); to the Committee on Governmental Affairs.

EC-9527. A communication from the Acting Director, Office of Regulatory Law, Department of the Army, Office of the Secretary of the Army, transmitting, pursuant to law, the report of a rule entitled “Loan Guarantees: Net Value and Pre-Foreclosure Debt Waivers” received on October 28, 2002; to the Committee on Veterans’ Affairs.

EC-9528. A communication from the Acting Director, Office of Regulatory Law, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled “Comprehensive Sevierance Pay from VA Compensation” received on October 15, 2002; to the Committee on Governmental Affairs.

EC-9529. A communication from the Acting Director, Office of Regulatory Law, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled “Enrollment-Providing of Hospital and Outpatient Care to Veterans” received on October 15, 2002; to the Committee on Governmental Affairs.

EC-9530. A communication from the Director of the Office of Insular Affairs, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled “Environmental Protection Agency and Social Impacts of the Compacts of Free Association on the United States Insular Areas and the State of Hawaii”; to the Committee on Energy and Natural Resources.

EC-9531. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled “Food Labeling: Health Claims for Certain Foods and Coronary Heart Disease” (Doc No. 01Q-0613) received on October 28, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC-9532. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled “Secondary Direct Food Additives Permitted in Food for Human Consumption” (Doc No. 02F-0040) received on October 28, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC-9533. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled “White Chocolate: Establishment of a Standard of Identity” (Doc. No. 86P-2297 and 93P-0991) received on October 28, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC-9534. A communication from the Assistant Secretary, Pension and Welfare Benefits Administration, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled “Interim Final Rule Relating to Civil Penalties Under ERISA Section 502(c)(7) and Conforming Technical Changes On Civil Penalties Under ERISA Sections 502(c)(2), 502(c)(5), and 502(c)(6)” ((RR1210-AA91)(1210-AA93)) received on October 21, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC-9535. A communication from the Director, Corporate Policy and Research Department, Pension Benefits Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled “Benefits Payable in Terminated Single-Employer Plans: Allocating Interest Assumptions for Valuing and Paying Benefits” received on October 15, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC-9536. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report on the implementation of the Medicare Prescription Drug, Improvement, and Modernization Act during fiscal year 2001; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES
The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary, without objection:

H.R. 3180: A bill to consent to certain amendments to the New Hampshire-Vermont Interstate School Compact.

HR 3988: A bill to codify the benefits under title 36, United States Code, to clarify the requirements for eligibility in the American Legion.

By Mr. LEAHY, from the Committee on the Judiciary, without amendment in the nature of a substitute:

S. 1655: A bill to amend title 18, United States Code, to prohibit certain interstate commercial enterprises relating to exotic animals.

By Mr. LEAHY, from the Committee on the Judiciary, with amendments:

S. 2480: A bill to amend title 18, United States Code, to exempt, in certain cases, former law enforcement officers from state laws prohibiting the carrying of concealed handguns.

From the Committee on the Judiciary, with an amendment in the nature of a substitute:
S. 2520: A bill to amend title 18, United States Code, with respect to the sexual exploitation of children.

By Mr. LEAHY, from the Committee on the Judiciary, without amendment.

S. 2541: A bill to amend title 18, United States Code, to establish penalties for aggravated identity theft, and for other purposes.

S. 2543: A bill to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion.

By Mr. LEAHY, from the Committee on the Judiciary, without amendment and with a preamble:

S. Con. Res. 94: A concurrent resolution expressing the sense of Congress that public awareness about the importance of health care coverage is of the utmost priority and that a National Importance of Health Care Coverage Month should be established to promote that awareness and education.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LEAHY for the Committee on the Judiciary:

Michael W. McConnell, of Utah, to be United States Circuit Judge for the Tenth Circuit.

Dennis W. Shedd, of South Carolina, to be United States Circuit Judge for the Fourth Circuit.

Kevin J. O’Connor, of Connecticut, to be United States Attorney for the District of Connecticut for the term of four years.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

NOMINATIONS DISCHARGED

The following nominations were discharged from the Committee on Commerce, Science, and Transportation pursuant to the order of November 14, 2002:

Coast Guard nomination of Dana B. Reid.

Coast Guard nominations beginning Douglas A. F. and ending Warren E. Solochuk, which nominations were received by the Senate and appeared in the Congressional Record on October 17, 2002.

Coast Guard nominations beginning Anthony J. Alarid an ending Michael B. Connor, which nominations were received by the Senate and appeared in the Congressional Record on November 12, 2002.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BARKLEY (for himself, Mr. DAYTON, Mr. DASCHLE, Mr. LOTT, Mr. AKAKA, Mr. ALLARD, Mr. ALLEN, Mr. BALCERUS, Mr. BAYH, Mr. BENNETT, Mr. BIDEN, Mr. BINGHAMAN, Mr. BOND, Mrs. BOXER, Mr. BREUCKEN, Mr. BRUMMER, Mr. BURNS, Mr. BYRD, Mr. CAMPBELL, Ms. CANTWELL, Mrs. CARNAHAN, Mr. CARPER, Mr. CHAFEE, Mr. CLELAND, Mrs. CLINTON, Mr. COCHRAN, Ms. COLLINS, Mr. CONRAD, Mr. CONRAD, Mr. CRAPO, Mr. DASH, Mr. DEWINE, Mr. DODD, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. EDWARDS, Mr. ENSEN, Mr. ENZI, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. FITZGerald, Mr. FRIST, Mr. GRAHAM, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. HARKIN, Mr. HATCH, Mr. HELMS, Mr. HOLLINGS, Mr. HUTCHISON, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. JEFFFRS, Mr. MENENDEZ, Mr. MURkowski, Mr. KERRY, Mr. KOHL, Mr. KYL, Ms. LANDRieu, Mr. LEAHY, Mr. LEVINE, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LUGAR, Mr. MCDONNELL, Mr. MIKULski, Mr. MILLER, Mr. MURKOWSKI, Mrs. MURRAY, Mr. NEISON of Florida, Mr. NEISON of Nebraska, Mr. NICHOLLS, Mr. RIEI, Mr. ROBERTS, Mr. ROSEFIELD, Mr. SANTORUM, Mr. SARABANES, Mr. SCHUMER, Mr. SESSIONS, Mr. SHELLBY, Mr. SMITH of New Hampshire, Mr. SMITH of Oregon, Ms. SNOW, Mr. SPEREE, Ms. STABENOW, Mr. STEVENS, Mr. THOMAS, Mr. THOMPSON, Mr. THERMOND, Mr. TORRICELI, Mr. VOINOVICH, Mr. WARNER, and Mr. WYDEN):

S. 3156. A bill to provide a grant for the construction of a new community center in St. Paul, Minnesota, in honor of the late Senator Paul Wellstone and his beloved wife, Sheila; considered and passed.

By Mr. BUNNING:

S. 3157. A bill to expand the boundaries of the Port of Denston in 1862, and for other purposes; to the Committee on the Judiciary.

By Mr. REED (for himself and Mr. DWINE):

S. 3158. A bill to establish a grant program to provide comprehensive eye examinations to children, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. LINCOLN:

S. 3159. A bill to amend the Immigration and Nationality Act to render inadmissible to the United States the extended family of international child abductors, and for other purposes; to the Committee on the Judiciary.

By Mr. NELSON of Nebraska:

S. 3160. A bill to provide emergency disaster assistance to agricultural producers; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BUSH:

S. 3161. A bill to provide a definition of a prevailing party for Federal fee-shifting statute; to the Committee on the Judiciary.

By Mr. DURBIN (for himself, Mr. NELSON of Florida, Mr. CLELAND, and Mr. EDWARDS):

S. 3162. A bill to amend title 49, United States Code, to enhance the security of transporting high-level nuclear waste and spent nuclear fuel for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DWINE:

S. 3163. A bill to establish a grant program to enable institutions of higher education to improve schools of education; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DWINE:

S. 3164. A bill to amend the Higher Education Act of 1965 to provide loan forgiveness for attorneys who represent low-income families or individuals involved in the family or domestic relations court systems; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DWINE (for himself and Mr. ROCKEFLER):

S. 3166. A bill to amend the Higher Education Act of 1965 to provide loan forgiveness for attorneys who represent low-income families or individuals involved in the family or domestic relations court systems; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DWINE (for himself and Mr. LIEBERMAN):

S. 3167. A bill to provide grants to States and outlying areas to encourage the States and outlying areas to enhance existing or establish new statewide coalitions among institutions of higher education, communities around the institutions, and other relevant organization or groups, including anti-drug or anti-alcohol coalitions, to reduce underage drinking and illicit drug-use by students, both on and off campus; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DODD:

S. 3168. A bill to improve funeral home, cemetery, and crematory inspections systems, to establish consumer protections relating to funeral service contracts, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Ms. LANDRIEU:

S. 3169. A bill to provide for military chariters between military installations and local school districts, to provide credit enhancement initiatives to promote military charter school facility acquisition, construction, and renovation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

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

S. Res. 356. A resolution paying a gratuity to Trudy Lapic; considered and agreed to.

By Mrs. FEINSTEIN (for herself and Mr. ROCKEFLER):

S. Res. 357. A resolution commending and congratulating the Anaheim Angels for their remarkable spirit, resilience, and athletic discipline in winning the 2002 World Series; considered and agreed to.

ADDITIONAL COSPONSORS

S. 498:

At the request of Mr. LEAHY, the name of the Senator from New Hampshire (Mr. SMITH) was added as a cosponsor of S. 498, a bill to reduce the risk that innocent persons may be executed, and for other purposes.

S. 650:

At the request of Mrs. BOXER, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 650, a bill to amend the Mineral Leasing Act to prohibit the exportation of Alaska North Slope crude oil.

S. 987:

At the request of Mr. TORRICELLI, the name of the Senator from Oregon (Mr.
WYDEN) was added as a cosponsor of S. 987, a bill to amend title XIX of the Social Security Act to permit States the option to provide Medicaid coverage for low-income individuals infected with HIV.

S. 1904

At the request of Mr. KERRY, the name of the Senator from Missouri (Mrs. CARNAHAN) was added as a cosponsor of S. 1304, a bill to amend title XVIII of the Social Security Act to provide for coverage under the Medicare program of oral drugs to reduce serum phosphate levels in dialysis patients with end-stage renal disease.

S. 2035

At the request of Mr. JEFFORDS, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2035, a bill to provide for the establishment of health plan purchasing alliances.

S. 2445

At the request of Mrs. HUTCHISON, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. 2445, a bill to establish a program to promote child literacy by making book donations available through early learning, child care, literacy, and nutrition programs, and for other purposes.

S. 2777

At the request of Mr. FITZGERALD, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2777, a bill to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the exclusion from Federal income tax for restitution received by victims of the Nazi Regime.

S. 2782

At the request of Mr. JEFFORDS, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2782, a bill to amend title XVIII of the Social Security Act to provide for the establishment of medicare demonstration programs to improve health care quality.

S. 2903

At the request of Mr. JOHNSON, the names of the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. 2903, a bill to amend title 38, United States Code, to provide for a guaranteed adequate level of funding for veterans health care.

S. 2922

At the request of Ms. LANDRIEU, the name of the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 2922, a bill to facilitate the deployment of wireless telecommunications networks in order to further the availability of the Emergency Alert System, and for other purposes.

S. 3081

At the request of Mr. JOHNSON, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 3081, a bill to amend the Internal Revenue Code of 1986 to suspend the tax-exempt status of designated terrorist organizations, and for other purposes.

S. J. RES. 50

At the request of Mr. McCAIN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. J. Res. 50, a joint resolution expressing the sense of the Senate with respect to human rights in Central Asia.

S. RES. 339

At the request of Mrs. MURRAY, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. Res. 339, A resolution designating November 2002, as "National Runaway Prevention Month".

S. CON. RES. 52

At the request of Mr. CORZINE, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. Con. Res. 52. A concurrent resolution expressing the sense of Congress that reducing crime in public housing should be a priority, and that the successful Public Housing Drug Elimination Program should be fully funded.

S. CON. RES. 155

At the request of Mr. SANTORUM, the name of the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. Con. Res. 155, A concurrent resolution affirming the importance of prayer and fasting, and expressing the sense of Congress that November 27, 2002, should be designated as a national day of prayer and fasting.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REED (for himself and Mr. DEWINE):

S. 3158. A bill to establish a grant program to provide comprehensive eye examinations to children, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. REED. Mr. President, I rise today to introduce the "Children's Vision Improvement and Learning Readiness Act." I am pleased to be joined by my colleague from Ohio, Senator DeWine, in this effort. Vision disorders are the fourth most common disability in the United States and the most prevalent lifelong condition among children. This is a startling fact when one considers that eighty percent of what children learn is acquired through vision processing information and the quality of children's eye health has a direct impact on their learning and achievement.

It is estimated that almost ten percent of children have clinically significant vision impairment, which are associated with developmental delays and the need for special education, vocational, and social services. Specifically, studies have found that among the twenty percent of school age children who have a learning disability in reading, seventy percent have some form of visual impairment, such as ocular motor, perceptual or binocular dysfunction, that could interfere with their reading skills. The "Children's Vision Improvement and Learning Readiness Act" recognizes the importance of diagnosing vision disorders in children at an early age so as to allow intervention at a time when these disorders are highly responsive to treatment.

Unfortunately, too many children in school today live with an undiagnosed vision impairment and too many times these same children have not had a comprehensive eye examination prior to entering school. In fact, only one third of all children have had an eye examination or vision screening prior to entering school despite evidence that the earlier a vision problem is diagnosed and corrected, the less the potential negative impact it may have on a child's development.

In addition, undiagnosed visual problems impose economic costs on our Nation. In 1995, the economic impact of visual disorders and disabilities was approximately $38.4 billion. Yet, early, comprehensive exams in children can help reduce the economic and social costs associated with undiagnosed eye disorders. Providing comprehensive eye examinations to children before they enter school helps to decrease long-term medical expenditures, prevent inappropriate placement of children in special education programs, and avoid social welfare spending by improving children's ability to learn and achieve a greater degree of educational and economic attainment. The "Children's Vision Improvement and Learning Readiness Act" gives the Secretary of Health and Human Services the authority to provide grants to States for a variety of educational and outreach activities related to improving and safeguarding the eye health and academic success of our nation's children. Grants may be used for the development of a voluntary statewide school-based comprehensive eye examination program for elementary school age children; the development of State-based education programs to increase public awareness of the benefits of comprehensive eye examinations; and the flexibility of providing comprehensive eye examinations through other related programs, such as Head Start, the Individuals with Disabilities Education Act, the Child Care Block Grant, and the Consolidated Health Centers programs.

This important measure will help ensure that our nation's children have access to comprehensive eye examinations from qualified health professionals so they can start school prepared for a lifetime of learning and achievement. I urge my colleagues to join me and Senator DeWine in supporting this legislation that will help to boost the well-being and academic achievement of our nation's school children.
By Mr. FEINGOLD (for himself, Mr. KENNEDY, and Mr. JEFFORDS):

S. 3161. A bill to provide a definition of a prevailing party for Federal fee-shifting statutes; to the Committee on the Judiciary.

Mr. FEINGOLD. Madam President, I am pleased today to introduce the Settlement Encouragement and Fairness Act of 2002. This bill provides that when plaintiffs bring a lawsuit that acts as a catalyst for a change in position by the opposing party, they will be considered the “prevailing party” for purposes of recovering attorneys’ fees under Federal law. The bill will help ensure that people who are the victims of civil rights, environmental, and worker rights’ abuses can obtain legal representation to enforce their rights.

Over the course of our history, Congress has often enacted laws encouraging private litigants to implement public policy through our court system. An integral part of many such laws are provisions that help individuals obtain adequate legal representation by providing that the defendants will pay the plaintiffs’ attorneys’ fees in cases where the plaintiff prevails. In laws involving public accommodations, housing, labor, disabilities, age discrimination, violence against women, voting rights, pollution, and other areas, Congress has acted over and over again to empower private litigants in their proceedings. Congress has passed laws involving public policy through our court system.

Imagine how the plaintiffs felt when they learned that they had forced a change in the law not only for their own case but also for all of the other individuals who had been subject to the improper self-preservation doctrine. If ever there was a complete and total victory caused by litigation, this was it. One of the state’s own said, “It ain’t over ‘til it’s over.” Once the State legislature changed the law, the District Court granted defendant’s motion to dismiss the case as moot and denied Buckhannon’s request for attorneys’ fees. The court ruled that the legislative action did not amount to a judicially required change in position that would permit Buckhannon to be considered a “prevailing party” in the case. On appeal, the Court of Appeals for the Fourth Circuit, and then the U.S. Supreme Court denied attorneys’ fees for the plaintiffs, ruling that because the change in the defendants’ conduct was voluntary rather than ordered by the court, Buckhannon was not a prevailing party. I believe the narrow definition of ‘prevailing party’ endorsed by the Buckhannon decision will result in many injustices going unchallenged. Indeed, in calculating whether to take a case, a potential plaintiff will have to consider not only the chances of losing, but the chances of winning too easily. If businesses or individuals are able to engage in egregious conduct, refuse to change their behavior without a lawsuit being filed against them, and then avoid paying attorneys’ fees by changing their conduct on the eve of trial, the effect will be that some lawyers will decide that they cannot afford to take a case even if the claims are very strong.

Imagine a case involving a legitimate claim of housing discrimination where, after many months, perhaps even years of work, as the attorney for the plaintiff prepares into the evening for opening statements, the attorney learns that the defendant has admitted its wrongful conduct and offered substantial compensation and a promise to change its practices. This offer came about only because the court put the defendant and the possibility of a large jury verdict. This would be a complete victory for the plaintiff, but under Buckhannon, the attorney who labored for years to bring this case to court has been paid.

Later, if the same defendant returns to discriminatory practices, the next plaintiff might very well not be able to find competent counsel who will take the case. Ironically, the failure to correct the Buckhannon decision could lead to plaintiffs’ attorneys dragging out law suits out far beyond a point in time where the parties could reach a fair settlement, in order to insure that the court will find Buckhannon to be a “prevailing party.” This will increase the costs of litigation and discourage settlement. Simply put, Buckhannon creates unnatural tensions between attorneys and clients and even pushes attorneys not act in the best interest of their clients.

Certainly we can do better. Congress has passed important laws to protect the public in the work place and in our communities; we must ensure that those laws can be enforced, when necessary, in court. The Settlement Encouragement and Fairness Act of 2002 will help insure that all our citizens have the ability to meaningfully challenge injustice.

By Mr. DURBIN (for himself, Mr. NELSON of Florida, Mr. CLELAND, and Mr. EDWARDS):

S. 3162. A bill to amend title 49, United States Code, to enhance the security of transporting high-level nuclear waste and spend nuclear fuel, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. DURBIN. Mr. President, I rise today to introduce legislation to improve the safety of nuclear waste transportation across our Nation. This bill, the Nuclear Waste Transportation Security Act of 2002, seeks to address the concerns raised by the Congress’ decision earlier this year to transport spent nuclear fuel to Yucca Mountain, NV, for underground storage. Joining me in this introduction are Senators CLELAND, EDWARDS, and NELSON.

I voted in favor of moving nuclear waste to Yucca Mountain. My decision was not a simple one; rather its ramifications required serious consideration. I felt that time permitted my ‘yes’ vote on the waste being transported safely and securely through my home State of Illinois and across our Nation, and I indicated that I would introduce legislation to improve that safety and security. This is that legislation.

The Nuclear Waste Transportation Security Act directs the Secretary of...
Transportation to establish a comprehensive transportation safety program that considers terrorist threats and other potential dangers to the safe transportation of this spent fuel. The Department of Transportation, the regulator of this fuel, will consult with numerous cabinet and sub-cabinet offices, including the soon to be created Department of Homeland Security, to develop this program. After one year, the Secretary will deliver a progress report to Congress on the program’s development and implementation.

To better assist State, local, and tribal governments in implementing this program, our bill establishes a grant program at DOT related to the transportation of nuclear spent fuel. First responders will be eligible for these grants, which will emphasize frequently used routes. The grants will be used for infrastructure improvements, drills and training, and other activities as determined by the Secretary. DOE and the Federal Radiological Preparedness Coordinating Committee, FRPCC, of FEMA will consult on the grant program. For this purpose, the bill authorizes $5,000,000 for fiscal year 2003 and additional sums as necessary for fiscal years 2004 through 2012.

A key component of spent nuclear fuel transportation is ensuring the safety and security of routes nationally. With the high water depth and piercing likely to be encountered must also be carried out. The maximum civil penalties for violating hazmat laws regarding radioactive materials are increased from $25,000 to $100,000.

As a means of involving the public in these decisions affecting safety and security, the bill establishes a public outreach program to protect public health and safety. The program will be developed by FEMA in coordination with other agencies. In addition, the bill requires the EPA and the Centers for Disease Control and Prevention to conduct a study and report to Congress regarding the health effects of routine transportation of nuclear waste and accidents involving its transportation. The report is due one year after the date of enactment.

Especially important to my legislation is the establishment of requirements for casks. Also known as packages, these casks contain the spent nuclear fuel that is being shipped. The bill requires the Nuclear Regulatory Commission, which has authority over the transportation of shipments, to conduct a comprehensive testing program in conjunction with DOT and DHS, and requires them to conduct a survey of potential terrorist and other threats that may be posed to casks. The NRC and DOT must jointly certify the safety of the casks, which must be designed to handle head-on collisions at any speed at which they will be transported, attempted puncture by armor-piercing ammunition, falls of the maximum distance to which the package could fall on likely routes, including those at the maximum depth to which the package could be submerged, continuous exposure to the maximum temperature to which the package is likely to be subjected in an event involving fire, and other threats that may be identified. The agencies involved in this effort must report to Congress every two years on these activities.

Finally, the bill amends current status to include the NRC and NRC contractors from participating on the Nuclear Waste Technical Review Board and enables the Board to review the activities of the DOT and NRC and to obtain documents from them as part of its existing investigative powers. This provision will prevent any conflicts of interest between the reviewers and implementers of this law. The Board’s termination date is extended from one year after nuclear waste begins to be deposited at a national repository to 10 years after such waste begins to be deposited.

I believe that our legislation alleviates many of the concerns of shippers, hazmat employees, the federal government, and affected citizens regarding the transportation of spent fuel across our Nation. In the course of its development, we consulted with shippers, railroads, labor unions, the nuclear industry, federal regulators, the environmental community, and our colleagues in the Senate. The bill seeks to address the real threats we face and to take economic and safety concerns into account, with the primary goal of increasing the safety and security of these materials during their transportation to Yucca Mountain. I appreciate the assistance that these groups have provided. I remain open to their further input and look forward to working with them to enact this critical legislation.

Mr. NELSON. Mr. President, I am pleased to join my colleagues, Senator Dodd, Senator Empanel, and Senator Cleland in introducing the Nuclear Waste Transportation Security Act.

Ensuring the safe and secure transportation of our high-level nuclear waste across this country is of paramount importance. Concern I had voting for the Yucca Mountain Resolution was the safe transportation of our waste to Yucca.

This piece of legislation is the first step in what I see as Congress’ ongoing duty to oversee and evaluate our Nation’s support of nuclear waste.

Specifically, this bill directs the Department of Transportation to develop and carry out a comprehensive safety program that considers, among other things, terrorist threats.

State and Federal cooperation is required. States must be consulted by DOT in making routing decisions and notified when shipments are traveling through their State.

Dedicated trains, armed escorts and state of the art communication systems must be employed. Full-scale testing of casks to withstand the maximum temperature, water depth and piercing likely to be encountered must also be carried out.
The EPA and CDC must conduct a study and report to Congress on the effects, if any, on public health of routine transportation of nuclear waste and accidents involving the transportation of nuclear waste.

And the Federal Emergency Management Agency must administer a public outreach program on nuclear waste to educate the public on appropriate means of responding to an accident or attack involving high-level nuclear waste.

Employing the expertise of the DOT, NRC, FEMA, EPA and CDC to protect the American people from any potential danger posed by nuclear waste transport is the aim and goal of this legislation and I hope my colleagues will support it.

The first shipments of nuclear waste to Yucca Mountain will not take place until 2010. We need to use the time between now and then to ensure that the transportation system that will carry this waste is a safe as it can possibly be.

By Mr. DEWINE:

S. 3163. A bill to establish a grant program in institutions of higher education to improve schools of education; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEWINE:

S. 3164. A bill to amend the Higher Education Act of 1965 to improve the loan forgiveness program for child care providers, including preschool teachers, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 3165. A bill to provide loan forgiveness to social workers who work for child protective agencies; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEWINE (for himself and Mr. ROCKEFELLER):

S. 3166. A bill to amend the Higher Education Act of 1965 to provide loan forgiveness for attorneys who represent low-income families or individuals involved in the family or domestic relations court systems; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEWINE (for himself and Mr. LIEBERMAN):

S. 3167. A bill to provide grants to States and outlying areas to encourage the States and outlying areas to enhance existing or establish new statewide coalitions among institutions of higher education, communities around the institutions, and other relevant organizations or groups, including anti-drug or anti-alcohol coalitions, to reduce underage drinking and illicit drug-use by students, both on and off campus; to the Committee on Health, Education, Labor, and Pensions.

Mr. DEWINE. Mr. President, I join several of my colleagues today to introduce a series of bills related to the reauthorization of the Higher Education Act, HEA. These five bills emphasize a number of issues that are vital to higher education, including teacher quality; loan forgiveness for social workers, family lawyers, and early childhood teachers; and the reduction of drug use and underage drinking at our colleges and universities.

The quality of a student's education is the direct result of the quality of that student's teachers. If we don't have well trained teachers, then future generations of our children will not be well educated. That is why I am introducing a bill that would provide $200 million in grants to our schools of education to partner with local schools to ensure that teachers are receiving the best, most extensive training available before they enter the classroom.

The Secretary of Education's annual report on teacher quality reported that a majority of schools of education believe that the traditional teacher preparation program left them ill prepared for the challenges and rigors of the classroom. Part of the responsibility for this lies in the hands of our schools of education. However, Congress also has a responsibility to give our schools of education the tools they need to make necessary improvements.

This new bill would create a competitive grant program for schools of education, which partner with low income communities or groups, to create clinical programs to train teachers. Additionally, it would require schools of education to make internal changes by working with other departments at the university to ensure that teachers are receiving the highest quality education in core academic subjects. Finally, it would require the college or university to demonstrate a commitment to improving their schools of education by providing matching funds.

Another core issue affecting the teaching force is the high percentage of disillusioned beginning teachers who leave the field. Our bill would help combat this issue, as well. Schools of education receiving these grants would be required to follow their graduates and continuing to provide assistance after they enter the classroom.

The more we invest in the education of teachers especially once they have entered the profession the more likely they will remain in the classroom.

Today, I also would like to reintroduce the Early Care and Education Loan Forgiveness Act that Senator Wellstone and I had included in the last higher education reauthorization bill. We had been working on this legislation together before Paul's tragic death. I know he cared greatly about this issue and about making sure that all children receive a quality education. He was passionate about that.

And, this issue became all the more pressing for me when I read to rename our bill the "Paul Wellstone Early Educator Loan Forgiveness Act."

This bill would expand the loan forgiveness program so that it benefits not just childcare workers, but also early childhood educators. This loan forgiveness program would serve as an incentive to keep those educators in the field for longer periods of time.

One of the most important early learning programs are in preparing our children for kindergarten and beyond. Research shows that children who attend quality early childcare programs when they were three or four years older are better prepared for high quality childcare programs. In short, children in early learning programs with high quality teachers, teachers with a bachelor's degree or an associate's degree or higher, do substantially better.

When we examine the number and recent growth of pre-primary education programs, it becomes difficult to differentiate between day care and childcare settings because they are so often intertwined, especially considering that 11.9 million children younger than age five spend part of their time with a care provider other than a parent, and demand for quality childcare and education is growing as more mothers enter the workforce.

Because the bill targets loan forgiveness to those educators working in low-income schools or childcare settings, we can make significant strides toward providing high quality education for all of our young children, regardless of socioeconomic status. The bill would serve a two-fold function. First, it would reward professionals for their training. Second, it would encourage professionals to remain in the profession over longer periods of time, since more time in the profession leads to higher percentages of loans forgiveness. The bill would result in more educated individuals with more teaching experience, and lower turnover rates, each of which enhances student performance.

I encourage my colleagues to join me in this effort to ensure that truly no children, especially our youngest children, are left behind.

I also am working on two bills with my friend and colleagues from West Virginia, Senator JAY ROCKEFELLER. These bills would provide loan forgiveness to students who dedicate their careers to working in the realm of child welfare, including social workers, who work for child protective services, and family law experts.

Currently, there aren't enough social workers to fill available jobs in child welfare today. Furthermore, the number of social work job openings is expected to increase faster than the average for all occupations through 2010. The need for highly qualified social workers in the child protective services is an economic crisis level.

We also need more qualified individuals focusing on family law. The wonderful thing about family law is its
focus on rehabilitation, that is the re-
habilitation of families by helping them through life’s transitions, whether it is a family going through a di-
vorce, a family dealing with their trou-
bled teenager in the juvenile system, or a child getting adopted and becoming a member of a family.
Across the United States, family, ju-
venile, and domestic relations courts are experiencing a shortage of qualified attorneys. As many of my colleagues and I have noted, law school is an expensive investment. In the last 20 years, tui-
tion has increased more than 200 per-
cent. Currently, the average rate of law school debt is about $80,000 per grad-
uate. To be sure, few law school gradu-
ates can afford to work in the public sector because debts prevent even the most
dedicated public service lawyer from being able to take these low-pay-
ing jobs. This results in a shortage of family lawyers.

The shortage of family law attorneys also disproportionately impacts juve-
niles. The lack of available representa-
tion causes children to spend more
time in foster care because cases are adjourned or postponed when they sim-
ply cannot find an attorney to rep-
resent them or those of their par-
tient or guardian. Furthermore, the
number of children involved in the
court system is sharply increasing. We
need to make sure the interests of these children are taken care of by making sure they have an advocate, someone working solely on their be-
half.

By offering loan forgiveness to those willing to purpose careers in the child
care field, we can increase the num-
er of highly qualified and dedicated in-
dividuals who work in the realm of
c divorce and family law.

Finally, I am introduce a bill today
with my friend and colleague from Con-
nec ticut, Senator LIEBERMAN, that
would help address an epidemic of
underage drinking, binge drinking,
and drug-related problems on college and university campuses across the
United States. Our bill would pro-
vide grants to states to establish state-
wide partnerships among colleges and
universities and the surrounding com-
 munities to work together to reduce
underage and binge drinking and illicit
drug use by students.

According to a study by Boston Uni-
versity, over 12,000 students aged 18–24
died in 1998 from alcohol-related inju-
ries, more than 600,000 students were
assaulted by another student, and an-
other 500,000 were unintentionally in-
gured while under the influence of alco-
hol. According to a 1999 Harvard Uni-
versity study, 40 percent of college stu-
dents are binge drinkers and according to
the Department of Health and Human
Services, nearly 10.5 million current
drinkers were under the legal age of
21, and of these, over 5 million were binge drinkers.

Currently, 28 States, including my
home State of Ohio, have coalitions
that deal specifically with the culture
of alcohol and drug abuse on our Na-
tion’s college campuses. They work
with the surrounding communities, in-
cluding local residents, bar, restaurant
and shop owners, and law enforcement
officials, toward a goal of changing the
pervasive culture of drug and alcohol
evil to promote alcohol-free events, as well as support
groups for those who choose not to
drink. They also educate students about the dangers of alcohol and drug-
use.

Furthermore, the coalitions recog-
nize that while it is important to pro-
move an alcohol aware and drug-free
community campus, if the community
surrounding the campus does not pro-
move these initiatives, there will be no
long-term solutions. Therefore, these
collaborating coalitions also have worked
to establish regulations both on and off
campus, which will help our nation’s youth
to stay healthy, alive, and get the most
out of their time at college. Some of
these regulations include the registra-
tion of kegs. This provides account-
ability for both the store and the stu-
dent. This is just an example of one
step that colleges, local communities,
and organizations can take.

To help implement these
collaborating coalitions, our bill would provide $50
million dollars in grants. This is an im-
portant demonstration project that
would help lead to positive effects
for our young people. It is up to us
to change the culture, which has been per-
petuated by years of complacency and
by a dismissal tone of “that’s just the way
it is in college.” We must protect the
health and education of our young peo-
ple by changing this culture of abuse—
and that is exactly what this bill would do.

Next year when we consider the reau-
thorization of the Higher Education
Act, I encourage my colleagues to join
in support of these initiatives.

By Mr. DODD:

S. 3168. A bill to improve funeral
home, cemetery, and crematory inspec-
tions systems to establish consumer
protections relating to funeral service
contracts, and for other purposes; to
the Committee on Commerce, Science,
and Transportation.

Mr. DODD. Mr. President, I rise
today to introduce the Federal Death
Care Inspection and Disclosure Act of
2002, a bill which I believe will go a
long way in restoring the trust that
Americans place in the funeral and
death care industries.

None of us like to think about death
and dying. It is a painful and uncom-
fortable subject, and most Americans,
understandably, choose not to confront
matters related to the death of a loved
one until the death actually occurs.
And when a loved one dies pass on, we
turn to our friends and family to
grieve. Certainly, the last thing anyone
wants is to spend days or days negotiating
or shopping for a funeral, casket, or other
goods and services. Instead, we leave
most of these arrangements in the
hands of funeral service providers,
turning to them to ensure that our
loved ones are cared for and treated
with respect and dignity after their
passing.

We place a great deal of trust in fu-
neral service providers. A funeral, after
all, represents one of the largest pur-
chases many consumers will ever
make, just behind a home, college edu-
cation, and a car. Unlike these other
transactions, the purchase of fu-
neral services is most often done under
intense emotional duress, with very lit-
tle time to spare, and without the ben-
et of the type of consumer informa-
tion that is generally available even when
making such a large purchase. As a result, we
trust funeral service providers to give
us fair prices, to represent goods and
services accurately, and to not take ad-
vantage of us during our moments of
great grief and loss.

For the most part, this trust is well
deserved. I have no doubt, that the ma-
Jity of individuals working in the fu-
neral industry are good men and
women, who practice their profession
with the honor and gravity it demands.
However, recent revelations of abuses
in the industry have shown us that not
all members of the death care industry
are honest and upstanding. We all re-
member hearing, earlier this year, news
of the discovery of over 200 bodies strewed
in the woods near a crematorium in
Noble, GA. There is also recent evi-
dence of desecration of graves and
remains at cemeteries in Florida, Cali-
fornia, Hawaii, and my own State of
Connecticut. These incidents, as well
as developments in the funeral indus-
try as a whole, compel us to reexamine
the regulatory structure we currently
have in place for this industry.

Currently, the death care Industry is
regulated by a patchwork of State and
local laws. These regulations may have
been sufficient years ago, but the char-
acter of the industry has changed sub-
stantly since the laws were passed. The industry has become
surprisingly large and diverse. Today,
the death care industry generates an-
nual revenues of over $15 billion and
employs over 104,000 Americans. The
1990s saw the rise of multi-state
“consolidators” who purchased local
funeral homes across the country. Even
for small local firms, the business has
become increasingly complex. As more
and more Americans travel and live in
places far from where they were born,
the industry has become one that fre-
quently does business across State and
county lines.

There have also been changes in
Americans’ cultural expectations of fu-
nal care. For example, the percentage
of cremations has risen from 5
percent in the 1970s to 25 percent
today. However, only 12 States have
substantive laws which cover crema-
tion. In fact, in the case in Georgia, I
mentioned earlier, the crematorium in
question was statutorily exempt from
inspection, allowing the abuses to con-
tinue undiscovered.
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The only significant Federal regulation of the industry exists in the Federal Trade Commission’s Funeral Rule, promulgated nearly 20 years ago. Again, this rule has not kept up with the nature of the industry. Perhaps most importantly the rule does not cover numerous sectors of the industry such as cemeteries, crematories, and casket makers. It also does not effectively regulate prepaid funeral contracts, which have become an increasingly regular option in recent years.

Earlier this year, I chaired a hearing of the Subcommittee on Children and Families in which we examined developments in the industry and how they have impacted American families. Since that hearing, I have worked with both consumer and industry groups to craft legislation to protect Americans from potential abuse by funeral service providers. The Federal Death Care Inspection and Disclosure Act of 2002 would provide funding to allow States to hire and train inspectors and give consumers the right to legal action against those who violate regulatory standards. In order to be eligible for funding, states would have to adhere to the rules which are outlined in the legislation. The act would also codify and strengthen the existing FTC regulations governing licensing and registration, recordkeeping, inspection, resolution of consumer complaints, and enforcement of State laws in the industry. It would clarify regulations to prevent deceptive trade practices in the industry and ensure that consumers can make informed decisions about funeral services. Finally, the FTC rules would be expanded to cover all segments of the death care industry.

I am aware that as we are in the closing days of this Congress, the Senate will have the opportunity to consider this legislation this year. However, I would like to take this opportunity to raise this issue with colleagues today in the hope that we will be able to move on this issue when we reconvene for the 108th Congress. This legislation is bipartisan. A House companion bill is being sponsored by Representative Foley of Florida. He has been a leader in the effort to ensure that dignity and respect prevail in all aspects of death care services. I look forward to working with him and all of our colleagues in the 108th Congress to advance this worthy objective.

By Ms. Landrieu:

S. 3169. A bill to provide for military charter schools that are connected to the military. It is called the STEADY Act and is the first step to a smoother educational career for military dependent children.

When I last spoke of this bill, I said that in Congress we are becoming laser focused on the issue of education by recognizing that our future and our economy depend on the education of our children.

It truly is an issue of strengthening our Nation. We cannot have an economically strong and militarily secure Nation moving in a progressive way without an excellent school system. No matter where a child is born, rural or urban, on the east coast or west coast, if we do not do a better job as a Nation in giving our quality education, the future of our Nation will not be as bright, and it could put us in jeopardy.

I also make the argument that for our military, the same holds true. It is not just about providing our military with the most extraordinary weapons, it is not just about training our military men and women to highest levels. It is not just providing them the basics.

We have an obligation to recognize that when our men and women sign up to be in our military, they have willingly made sacrifices, but their families’ quality of life should not be one of those sacrifices. We need to provide for them, between the Department of Defense and the Department of Education, a quality education for their children.

When we send our soldiers into battle, we want them focused on the battle and mission at hand. We do not want them worried, as they naturally would be, about spouses and dependents at home, about their happiness, about their comfort, about their security. It makes our military stronger when we provide good, quality-of-life initiatives for their families at home. One of the ways we can do that is by improving the schools for military dependents. There are over 800,000 children who are military dependents out of an overall population of 1.4 million adults and are connected to the military. Many of them are school-age children. Because of the specific demands of our military, which are very unlike the civilian sector, many move every 2 years. Some military members may have a home in the east coast to the west coast, moving families with them. It is very difficult providing an excellent education generally, and yet the military has even more challenges.

What is the solution? I offer this bill to strengthen our military schools in the United States in a creative way. This bill will set up the a pilot program to help create military charter schools around the Nation in partnership with local public school districts. It provide an opportunity not only for our military dependents, but this framework will also help communities who have a large military presence. The benefit overall is that the community gets a better school, a school that will provide an opportunity to provide an excellent education, while being extremely flexible to accommodate the unique needs of a military dependent student.

The second benefit is that it gives children whose families have any connection to the military, an introduction into who military people and what military life can be like.

This is a partnership. It is a pilot program that will help establish charter schools, will give important consideration to military children as they move from community to community, and will create for the first time what we call an academic passport.

An academic passport will help to standardize the curriculum without micromanaging, without dictating what the curriculum should be. It sets up a new approach or a new framework for our local elementary and secondary schools throughout the country to set up a standardized curriculum to address the vast peaks and valleys encountered by military dependent students as they move from one district to another. To illustrate: one school district might require 3 years of a foreign language, 2 years of algebra or 1 year of algebra, or a whole different curriculum. That is part of this bill. It is something about which military families feel very strongly. I hope that with this new pilot program to help create charter schools with a new academic passport, we can begin to focus some of our resources, again, not all within the Department of Defense, but some is within the jurisdiction of the Department of Education, to create something special and wonderful for these 800,000 children.

Madam President, 600,000 of these children are in public schools today, at
out with some excellent facilities laid out in the bill, and end up coming thinking outside of the box, I am convinced with a little creativity, a little bit of long term, and it is something that, military in the intermediate and the retention, will help us strengthen our help us build morale, help us improve focusing on educational opportunities buying more tanks, and on building a pay raises, on building more ships, on its first expansion.

It has alleviated a huge burden on the military and civilian community there. Plaquemines Parish, which serves the the-art, brand new charter school in focusing on educational opportunities buying more tanks, and on building a pay raises, on building more ships, on its first expansion.

It has alleviated a huge burden on the military and civilian community there. Plaquemines Parish, which serves the the-art, brand new charter school in focusing on educational opportunities buying more tanks, and on building a pay raises, on building more ships, on its first expansion.

If you look at the general population, non-officers in our military, 91.5 percent have a high school degree or GED, 91 percent. In our general population, it is about 80 percent. This is a very upwardly mobile group of Americans. Theses are men and women with great discipline, great patriotism, great commitment to the Nation. Obviously, they are serving their country, but they are committed to their families, their communities, and their education. As one can see, the officers exceed the general population at large. Almost 40 percent have advanced degrees; 99 percent or more have bachelor degrees. This is also a very upwardly mobile population. If we can provide excellent schools and opportunities for the children of this 91 percent, I think we will be doing a very good job in helping to strengthen our military but also helping our country be a better place. It is truly something on which we should focus more.

In conclusion, let me tell you of a school of which I am very proud. It might be one of the first military charters, if not the first, in the Nation. This is a school which opened in September and is an even larger success than we anticipated. This is a state-of-the-art, brand new charter school in Plaquemines Parish, which serves the military and civilian community there. It has alleviated a huge burden on the local school district, and is ready for its first expansion.

I think we can work all day long on pay raises, on building more ships, on buying more tanks, and on building a stronger Air Force, but truly I think focusing on educational opportunities for military dependent children will help us build morale, help us improve retention, will help us strengthen our military in the intermediate and the long term, and it is something that, with a little creativity, a little bit of thinking outside of the box, I am convinced once the completion of these schools through means laid out in the bill, and end up coming out with some excellent facilities around this Nation to serve both our military and our nonmilitary families and do a great job for our Defense Department and a great job for our country. That is what this bill would accomplish: again, it sets up a pilot program to establish military charter schools in the areas of the Nation. I would hope that it would be met with enthusiasm from my colleagues who consistently support good education initiatives, and from all of us who know the value of military service to our great.

“Every few years you make new friends. Then you’re gone. You do it all the time. I keep in touch. My best friend and I email, and write back and forth.”—Military dependent student.

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

S.J. Res. 53. A joint resolution relative to the convening of the first session of the One Hundred Eighth Congress; considered and passed.

S.J. Res. 53

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first regular session of the Eighty-Eighth Congress shall begin at noon on Tuesday, January 7, 2003.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 356—COMMENDING AND CONGRATULATING THE ANAHEIM ANGELS FOR THEIR REMARKABLE SPIRIT, RESILIENCE, AND ATHLETIC DISCIPLINE IN WINNING THE 2002 WORLD SERIES

Mrs. FEINSTEIN (for herself and Mrs. BOXER) submitted the following resolution; which was considered and agreed to:

S. Res. 356

Whereas the Anaheim Angels have won the first World Series in franchise history in the 42 year history of the franchise; Whereas the Anaheim Angels completed their best season in franchise history with 99 wins, staging one of the most significant team improvements in Major League Baseball since the 2001 season; Whereas the 2002 World Series was the Anaheim Angels’ first appearance in the Fall Classic; Whereas the Anaheim Angels have fielded such superstars as Nolan Ryan, Rod Carew, Bobby Bonds, Tom Lasorda, Jim Abbott, Wally Joyner, Brian Downing, Jim Edmonds, Gary DiSarcina, and now Troy Percival, Jarrod Washburn, Garret Anderson, Troy Glaus, and Tim Salmon; Whereas third baseman Troy Glaus received the World Series Most Valuable Player Award for his stellar defensive plays, 385 batting average, and 3 home runs during the series; Whereas pitcher Francisco Rodriguez became the youngest pitcher to win a World Series game and the postseason record for games won with 5 outstanding wins; Whereas Manager Mike Scioscia won his first World Series title as a manager; Whereas the Anaheim Angels’ first playoff appearance in 10 seasons as a major league baseball player, the only current player to have played that long without having reached the postseason; Whereas the spirit of Gene Autry, the “Singing Cowboy” and former owner of the Angels, was undoubtedly with the Anaheim players throughout the series as he was an inspirational force to all who played for him and knew of his legacy; Whereas the Anaheim Angels battled another California team deserving of acknowledgment: the San Francisco Giants; Whereas the San Francisco Giants were a worthy rival for the Anaheim Angels and set the stage for an exciting and suspenseful World Series that was watched with great interest by many Californians; Whereas the Anaheim Angels epitomize California pride with their incredible focus, dedication to winning, team cohesiveness, and devotion to playing America’s pastime with class, athleticism, and enthusiasm; and Whereas the Anaheim Angels demonstrate the rewards of perseverance, discipline, teamwork, and championship as they prepare to defend their title of World Champions: Now, therefore, be it

Resolved, That the Senate congratulates the Anaheim Angels on winning the 2002 Major League Baseball World Series title.

SENATE RESOLUTION 356—PAYING A GRATUITY TO TRUDY LAPIC

Mr. DAYTON submitted the following resolution; which was considered and agreed to:

S. Res. 356

Resolved, That the Secretary of the Senate is authorized and directed to pay, from appropriations under the subheading “MISCELLANEOUS ITEMS” under the heading “CONTINGENT EXPENSES OF THE SENATE” to Trudy Lapic, widow of Thomas Lapic, a loyal employee of the Senate for 9 years, a sum equal to 8 months of compensation at the rate Thomas Lapic was receiving by law during the last month of his Senate service, that sum to be considered inclusive of funeral expenses and all other allowances.

AMENDMENTS SUBMITTED & PROPOSED

SA 4906. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 4901 as proposed by Mr. DURBIN (for himself, Mr. MCCAIN, and Mr. NELSON of Nebraska) to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to be on the table.

SA 4908. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to be on the table.

SA 4909. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to be on the table.
amendment SA 4901 proposed by Mr. Thompson (for Mr. Gramm (for himself, Mr. Miller, Mr. Thompson, Mr. Barkley, and Mr. Voinovich)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4911. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. Thompson (for Mr. Gramm (for himself, Mr. Miller, Mr. Thompson, Mr. Barkley, and Mr. Voinovich)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4915. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. Thompson (for Mr. Gramm (for himself, Mr. Miller, Mr. Thompson, Mr. Barkley, and Mr. Voinovich)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 1949. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. Thompson (for Mr. Gramm (for himself, Mr. Miller, Mr. Thompson, Mr. Barkley, and Mr. Voinovich)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4929. Mr. REID submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. Thompson (for Mr. Gramm (for himself, Mr. Miller, Mr. Thompson, Mr. Barkley, and Mr. Voinovich)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4931. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. Thompson (for Mr. Gramm (for himself, Mr. Miller, Mr. Thompson, Mr. Barkley, and Mr. Voinovich)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4933. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. Thompson (for Mr. Gramm (for himself, Mr. Miller, Mr. Thompson, Mr. Barkley, and Mr. Voinovich)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4934. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. Thompson (for Mr. Gramm (for himself, Mr. Miller, Mr. Thompson, Mr. Barkley, and Mr. Voinovich)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4935. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. Thompson (for Mr. Gramm (for himself, Mr. Miller, Mr. Thompson, Mr. Barkley, and Mr. Voinovich)) to the bill H.R. 5005, supra; which was ordered to lie on the table.
SA 4906. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 4902 proposed by Mr. LIEBERMAN (for himself, Mr. McCAIN, and Mr. NELSON of Nebraska) to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra, which was ordered to lie on the table.

SA 4905. Mr. DODD proposed an amendment to amendment SA 4902 proposed by Mr. LIEBERMAN (for himself, Mr. McCAIN, and Mr. NELSON of Nebraska) to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra, which was ordered to lie on the table.

SA 4904. Mr. REID (for Mr. CANTWELL (for himself, Mr. GRASSLEY, Mr. ENZI, and Mr. KOSHI)) proposed an amendment to the bill S. 3742, to prevent the crime of identity theft, to mitigate the harm to individuals victimized by identity theft, and to provide for other purposes; which was ordered to lie on the table.

SA 4903. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the amendment SA 4903 proposed by Mr. BIDEN, and Mr. HELMS) proposed an amendment to the bill S. 4549, to amend title 17, United States Code, with respect to the statutory license for webcasting.

SA 4902. Mr. REID (for Mr. HAGEL (for himself, Mr. BIKIN, and Mr. HELMS)) proposed an amendment to the bill S. 2383, to facilitate and encourage the use of certain spectrum auction winners to pursue alternative measures required in the public interest to meet the needs of wireless telecommunications consumers.

SA 4901. Mr. REID (for Mr. KENNEDY (for himself, Mr. GREGG, Mr. HOLLINGS, and Mr. FRIST)) proposed an amendment to the bill S. 2712, to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other countries.

SA 4900. Mr. REID (for Mr. KERRY (for himself, Mr. BROWNBACK, and Mr. HOLLINGS)) proposed an amendment to the bill S. 3689, to facilitate and encourage the use of certain spectrum auction winners to pursue alternative measures required in the public interest to meet the needs of wireless telecommunications consumers.

SA 4905. Mr. REID (for Mr. KENNEDY (for himself, Mr. GREGG, and Mr. HOLLINGS)) proposed an amendment to the bill H.R. 5669, supra.

SA 4906. Mrs. CLINTON (for herself, Mr. FITZGERALD, Ms. CANTWELL, and Mr. SPECTER) proposed an amendment to the bill H.R. 3292, to provide tax incentives for economic recovery and assistance to displaced workers.

SA 4901. Mr. REID (for Mr. RUSCUC) proposed an amendment to the bill H.R. 5357, to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services and Foreign Service in determining the gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, and for other purposes.

TEXT OF AMENDMENTS

SA 4906. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 4902 proposed by Mr. LIEBERMAN (for himself, Mr. McCAIN, and Mr. NELSON of Nebraska) to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows: At the appropriate place, insert the following:

SEC. 1. [ ]

paragraph (1).

(a) Definition.—In this section, the term ‘enterprise architecture’—

(1) means—

(A) a strategic information asset base, which defines the mission;

(B) the information necessary to perform the mission;

(C) the technologies necessary to perform the mission; and

(D) the transitional processes for implementing new technologies in response to changing mission needs; and

(b) includes—

(A) a baseline architecture;

(B) a target architecture; and

(c) a sequencing plan.

(b) Responsibilities of the Secretary.—

The Secretary shall—

(1) endeavor to make the information technology while preserving the integrity of information systems, to achieve interoperability between and among information systems, in coordination with the comprehensive enterprise architecture for information systems of the Department, including communications systems, effective, efficient, secure, and appropriately interoperable;

(2) in furtherance of paragraph (1), oversee and ensure the development and implementation of an enterprise architecture for Department-wide information technology, with timetables for implementation;

(3) as the Secretary considers necessary, to oversee and ensure the development and implementation of updated versions of the enterprise architecture under paragraph (2); and

(4) report to Congress on the development and implementation of the enterprise architecture under paragraph (2) in—

(A) each implementation progress report required under this Act; and

(B) each biennial report required under this Act; and

(c) Responsibilities of the Director of the Office of Management and Budget.—

(1) In general.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall develop—

(A) a comprehensive enterprise architecture for information systems, including communications systems, to achieve interoperability between and among information systems of agencies with responsibility for homeland security and those of State and local agencies with responsibility for homeland security.

(B) a plan to achieve interoperability between and among information systems, including communications systems, of agencies with responsibility for homeland security and those of State and local agencies with responsibility for homeland security.

(2) Timetables.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall establish timetables for development and implementation of the enterprise architecture under paragraph (1).

(3) Implementation.—The Director of the Office of Management and Budget, in consultation with the Secretary and acting under the responsibilities of the Director under law (including the Clinger-Cohen Act of 1996), shall—

(A) ensure the implementation of the enterprise architecture developed under paragraph (1)(A); and

(B) coordinate, oversee, and evaluate the implementation and acquisition of information technology by agencies with responsibility for homeland security to ensure interoperability consistent with the enterprise architecture developed under subsection (1)(A).

(4) Updated Versions.—The Director of the Office of Management and Budget, in consultation with the Secretary and entities with responsibility for homeland security, shall ensure the development of updated versions of the enterprise architecture and plan developed under paragraph (1), as necessary.

(5) Report.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall annually report to Congress on the development and implementation of the enterprise architecture and plan under paragraph (1).

(6) Consultation.—The Director of the Office of Management and Budget, in consultation with the Secretary and entities with responsibility for homeland security, shall consult with information systems management experts in the public and private sectors, in the development and implementation of the enterprise architecture and plan under paragraph (1).

(7) Principal Officer.—The Director of the Office of Management and Budget shall designate the principal officer of the Department, whose primary responsibility shall be to carry out the duties of the Director under this subsection.

(8) Agency Cooperation.—The head of each agency with responsibility for homeland security shall consult with the Director of the Office of Management and Budget in the development of a comprehensive enterprise architecture for information systems and in the management and acquisition of information technology consistent with the comprehensive enterprise architecture developed under paragraph (1).

(e) Content.—The enterprise architecture developed under subsection (c), and the information systems managed and acquired under the enterprise architecture, shall possess the characteristics of—

(1) rapid deployment;

(2) a highly secure environment, providing data access only to authorized users; and

(3) the capability for continuous system upgrades to benefit from advances in technology while preserving the integrity of stored data.

SA 4907. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 28, line 13, insert “and in accordance with an information systems interoperability architecture or other requirements developed by the Office of Management and Budget,” after “Department.”.

SA 4908. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for
SEC. 15. REQUIREMENT TO BUY CERTAIN ARTICLES OF AMERICAN SOURCES.

(a) REQUIREMENT.—Except as provided in subsections (c) through (g), funds appropriated or otherwise available to the Department of Homeland Security may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) COVERED ITEMS.—An item referred to in subsection (a) is any of the following:

(1) An article or item of—

(A) food;

(B) clothing;

(C) tents, tarpaulins, or covers;

(D) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(E) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(2) Specialty metals, including stainless steel flatware.

(3) Hand or measuring tools.

(c) EXCEPTION FOR SPECIALTY METALS AND CHEMICAL WARFARE PROTECTIVE CLOTHING.—Subsection (a) does not apply to the extent that the Secretary of Homeland Security determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b)(1) or specialty metals (including stainless steel flatware) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed at United States market prices.

(d) EXCEPTION FOR CERTAIN PROCUREMENTS OUTSIDE THE UNITED STATES.—Subsection (a) does not apply to the following:

(1) Procurements outside the United States in support of combat operations.

(2) Procurements by vessels in foreign waters.

(3) Emergency procurements or procurements of perishable foods by an establishment of any type in the United States for the personnel attached to such establishment.

(e) EXCEPTION FOR SPECIALTY METALS AND CHEMICAL WARFARE PROTECTIVE CLOTHING.—Subsection (a) does not preclude the procurement of specialty metals or chemical warfare protective clothing produced outside the United States if—

(1) such procurement is necessary—

(A) to comply with agreements with foreign governments requiring the United States to supply such items on a noncompetitive basis from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs covering defense requirements; or

(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

(2) any such agreement with a foreign government authorizes the Secretary of Homeland Security or the Secretary of Defense to waive the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of title 10, United States Code.

(f) EXCEPTION FOR CERTAIN FONDS.—Subsection (a) does not preclude the procurement of foods manufactured or processed in the United States.

(g) EXCEPTION FOR SMALL PURCHASES.—Subsection (a) does not apply to purchases for amounts not greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(b) APPLICATION OF CONTRACTS AND SUB- CONTRACTS FOR PROCUREMENT OF COMMERCIAL ITEMS.—This section is applicable to contracts and subcontracts for the procurement of commercial items, as defined in section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).

(c) GEOGRAPHIC COVERAGE.—In this section, the terms ‘‘United States’’ includes the possessions of the United States.

SA 4909. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 260, line 1, strike all through line 23 and insert the following:

(c) COOKING PANS.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

SA 4910. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 90, line 5, strike all through page 91, line 10.

SA 4911. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE XVIII—NON EFFECTIVE PROVISIONS

SEC. 1801. NON EFFECTIVE PROVISIONS.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, (including any effective date provision of this Act) the following provisions of this Act shall not take effect:

(1) Section 308(b)(2)(B) (1) through (xv).

(2) Section 311(i).

(3) Subtitle G of title VIII.

(4) Section 871.

(5) Section 890.

(6) Section 1707.

(7) Sections 1714, 1715, 1716, and 1717.

(b) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—Notwithstanding paragraph (2) of subsection (b) of section 232, any advisory group described under that paragraph shall not be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) WAIVER.—Notwithstanding section 853(d), the Secretary shall waive subsection (a) of that section, only if the Secretary determines that the waiver is required in the interest of homeland security.

SA 4912. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security and for other purposes; which was ordered to lie on the table; as follows:

On page 244, line 14, beginning with the comma strike all through ‘‘occur’’ on line 16.

SA 4913. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 302, line 21, strike all through page 303, line 19.

SA 4914. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 280, line 8, strike all through page 281, line 8.

SA 4915. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 268, line 19, strike all through page 280, line 5.

SA 4916. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 477, line 11, strike all through line 16.

SA 4917. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 103, line 12, strike all through line 14.
SA 4918. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. Voinovich) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 482, line 22, strike all through page 484, line 12.

SA 4919. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. Voinovich) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 60, line 8, strike all through “(5 U.S.C. App.)” on line 9.

SA 4920. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. Voinovich) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 29, strike line 13 and insert the following:

19 On behalf of the Secretary, subject to disapproval by the President, to direct the agencies described under subsection (f)(2) to provide intelligence information, analyses of intelligence information, and such other intelligence-related information as the Assistant Secretary for Information Analysis determines necessary.

20 To perform such other duties relating to

SA 4921. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. Voinovich) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

SEC. 841. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.

(a) AUTHORITY.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiency;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

"CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

'Sec. 9701. Establishment of human resources management system by the Secretary.'  

'Sec. 9702. Establishment of human resources management system by the President.'  

(3) NOTWITHSTANDING any other provision of this Act, the Department of Homeland Security may, in regulations prescribed jointly by the Secretary of the Treasury and the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

(1) be flexible;

(2) be contemporary;

(3) not waive, modify, or otherwise affect—

(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

(B) any provision of section 2302, relating to prohibited personnel practices;

(C) any provision of law referred to in section 2302(a)(1); or

(D) any other provision of this part, as referred to in subsection (b)(3)(D), are (to the extent not necessary to carry out this subsection) shall be—

(1) be flexible;

(2) be contemporary;

(3) not waive, modify, or otherwise affect—

(A) the public employment principles of the preceding subparagraphs of this paragraph;

(B) the public employment principles of section 2302(b)(1) by—

(i) providing for equal employment opportunity through affirmative action;

(ii) providing any right or remedy available to any employee or applicant for employment in the civil service;

(C) implement any provision of this part (as described in subsection (c)); or

(D) any rule or regulation prescribed pursuant to any provision of law referred to in any of the preceding subparagraphs of this paragraph;

(2) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

(1) to modify the pay of any employee who serves in—

(A) an Executive Schedule position under subchapter II of chapter 55 of title 5, United States Code;

(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 55 of such title;

(C) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 55 of such title;

(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

(3) to exempt any employee from the application of any provision of law referred to in section 5307.

(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this section, as referred to in subsection (b)(3), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

(1) subparts A, B, E, G, and H of this part;

(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and title 5, United States Code;

(3) limitations relating to pay.—Nothing in this section shall constitute authority—

(1) to modify the pay of any employee who serves in—

(A) an Executive Schedule position under subchapter II of chapter 55 of title 5, United States Code;

(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 55 of such title;

(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

(3) to exempt any employee from the application of any provision of law referred to in section 5307.

(d) PROVISIONS RELATING TO APPEAL PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) employees of the Department are entitled to fair treatment in any appeals that
they bring in decisions relating to their employment; and

"(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

"(i) should ensure that employees of the Department are afforded the protections of due process; and

"(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

"(a) shall be issued only after consultation with the Merit Systems Protection Board; and

"(B) should ensure the availability of procedures which shall—

"(i) be fully consistent with requirements of due process; and

"(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

"(C) shall modify procedures under chapter 77 only insofar as such modifications are deductible, for the expeditious handling of any procedures which shall

(3) EXCLUSION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such authority in conformance with the requirements of this subsection.

SEC. 412. LABOR-MANAGEMENT RELATIONS.

(a) EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—In paragraph (2), the President may issue an order excluding any executive agency, or subdivision thereof, from coverage under chapter 71 of title 5, United States Code, if the President determines that—

(A) the agency or subdivision has, as a primary function, intelligence, counterintelligence, investigative, or national security work; and

(B) the provisions of such chapter 71 cannot be applied to that agency or subdivision in a manner that satisfies all national security requirements and considerations.

(2) ADDITIONAL DETERMINATION.—In addition to the requirements under paragraph (1), the President may also exclude any executive agency, or subdivision thereof, transferred to the Department under this Act, from coverage under chapter 71 of title 5, United States Code, if the President determines that—

(A) the mission and responsibilities of the agency or subdivision materially change; and

(B) there is a substantial number of the employees within such agency or subdivision have, as their primary duty, intelligence, counterintelligence, investigative, or investigative work directly related to terrorism investigations.

(3) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) or (2) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of title 5, United States Code; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—Each unit, which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, before the effective date of this Act (and any subdivision of any such unit) shall, if such unit or subdivision is transferred to the Department under this Act, continue to be so recognized for such purposes, unless—

(1) the mission and responsibilities of the personnel in such unit (or subdivision), or the threats of domestic terrorism being addressed by the personnel in such unit (or subdivision), materially change; and

(2) a substantial number of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigations.

(c) COORDINATION.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner which, regardless of whether or not the Department has a similar or identical record.

SA 4922. Mr. JEPSON (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM, for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. Voinovich) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 94, line 5 and all that follows through page 48, line 16, and insert the following:

Subtitle B—Protection of Voluntarily Furnished Confidential Information

SEC. 211. PROTECTION OF VOLUNTARILY FURNISHED CONFIDENTIAL INFORMATION

(a) DEFINITIONS.—In this section:

(1) CRITICAL INFRASTRUCTURE.—The term "critical infrastructure" means the term "critical infrastructure" which has the meaning given that term in section 102(1) of the USA PATRIOT ACT of 2001 (42 U.S.C. 15510(u))).

(2) FURNISHED VOLUNTARILY.—

(A) DEFINITION.—The term "furnished voluntarily" means a submission of a record that—

(i) is made to the Department in the absence of authority of the Department requiring that record to be submitted; and

(ii) is not submitted or used to satisfy any legal requirement or obligation or to obtain any grant, permit, benefit (such as agency forbearance, loans, or reduction or modification of agency penalty or charge), or other approval from the Government.

(B) BENEFIT.—In this paragraph, the term "benefit" does not include any warning, alert, or other risk analysis by the Department.

(b) IN GENERAL.—Notwithstanding any other provision of law, a record pertaining to the vulnerability of a threat to critical infrastructure (such as attacks, response, and recovery efforts) that is furnished voluntarily to the Department shall not be made available under section 552 of title 5, United States Code, if—

(1) the provider would not customarily make the record available to the public; and

(2) the record is designated and certified by the provider, in a manner specified by the Department, as confidential and not customarily made available to the public.

(c) RECORDS SHARED WITH OTHER AGENCIES.—

(1) IN GENERAL.—

(A) RESPONSE TO REQUEST.—An agency in receipt of a record that was furnished voluntarily to the Department shall share the record with the Department, if the Department has requested the record.

(B) EMERGENCY RESPONSIBILITY.—The Department may request a record that was furnished voluntarily to the Department, if the Department has a responsibility to process the request under laws that establish the Department's responsibility to process the request.

(C)elicating a record that was furnished voluntarily to the Department, the Department has a responsibility to process the request under laws that establish the Department's responsibility to process the request.

(D) EMERGENCY RESPONSIBILITY.—The Department may request a record that was furnished voluntarily to the Department, if the Department has a responsibility to process the request under laws that establish the Department's responsibility to process the request.

(E) PROCEDURES.—The Department shall prescribe procedures, to the extent that it does so by specific reference to this section.

SEC. 11091.
(2) the designation, certification, and marking of records furnished voluntarily as confidential and not customarily made available to the public;
(3) the recovery and storage of records furnished voluntarily;
(4) the protection and maintenance of the confidentiality of records furnished voluntarily;
(5) the withdrawal of the confidential designation of records under subsection (d).

(1) EFFECT ON STATE AND LOCAL LAW.—Nothing in this section shall be construed as preempting or otherwise modifying State or local law concerning the disclosure of any information that a State or local government receives independently of the Department.

(g) REPORT.—
(1) REQUIREMENT.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the committees of Congress specified in paragraph (2) a report on the implementation and use of this section, including—
(A) the number of persons in the private sector, and the number of State and local agencies, that furnished voluntarily records to the Department under this section;
(B) the number of requests for access to records granted or denied under this section; and
(C) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analyses of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats.

(2) COMMITTEES OF CONGRESS.—The committees of Congress specified in this paragraph are—
(A) the Committees on the Judiciary and Governmental Affairs of the Senate; and
(B) the Committees on the Judiciary and Governmental Reform and Oversight of the House of Representatives.

(3) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

SA 4923. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4901, as ordered to the bill by unanimous consent, which increases the funding for the Department of Homeland Security, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 145, strike line 16 and all that follows through page 148, line 5.

SA 4924. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VINOIVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 200, strike line 3 and all that follows through page 208, line 7, and insert text đầy

SEC. 501. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to all public health emergency preparedness and response activities that are conducted by State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall establish the Department’s national preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary.

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretaries in developing specific benchmarks, measures, and targets for evaluating progress toward achieving the priorities and goals described in such subsection.

SEC. 502. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) IN GENERAL.—The Federal Emergency Management Agency include the following:
(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).
(2) Carrying out mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program.
(A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;
(B) of planning for building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;
(C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;
(D) of recovery, by assisting communities and individuals to recover and to regain self-sufficiency;
(E) of increased efficiencies, by coordinating efforts relating to mitigation, planning, response, and recovery.

(b) FEDERAL RESPONSE PLAN.—
(1) ROLE OF FEMA.—Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12656 (53 Fed. Reg. 47491).
(2) REVISION PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

SEC. 503. USE OF COMMERCIALLY AVAILABLE TECHNOLOGY, GOODS, AND SERVICES.

It is the sense of Congress that—
(1) the Secretary should, to the maximum extent possible, use off-the-shelf commercially developed technologies to ensure that the Department’s information technology systems allow the Department to collect, manage, share, analyze, and disseminate information securely over multiple channels of communication; and
(2) in order to further the policy of the United States to avoid competing commercially with the private sector, the Department shall rely on commercial sources to supply the goods and services needed by the Department.

SA 4925. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VINOIVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 208, between lines 7 and 8, insert the following:

Subtitle B—First Responder Terrorism Preparedness

SEC. 5. 1. SHORT TITLE.

This subtitle may be cited as the “First Responder Terrorism Preparedness Act of 2002”.

SEC. 5. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—
(1) the Federal Government must enhance the ability of first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and
(2) as a result of the events of September 11, 2001, it is necessary to clarify and consolidate the authority of the Federal Emergency Management Agency to support first responders.

(b) PURPOSES.—The purposes of this subtitle are—
(1) to establish within the Federal Emergency Management Agency the Office of National Preparedness;
(2) to establish a program to provide assistance to enhance the ability of first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and
(3) to address issues relating to urban search and rescue task forces.

SEC. 5. 3. DEFINITIONS.

(a) MAJOR DISASTER.—Section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5192(2)) is amended by inserting “incidents of terrorism,” after “drought”.

(b) WEAPON OF MASS DESTRUCTION.—Section 602(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196(a)) is amended by adding at the end the following:

(11) WEAPONS OF MASS DESTRUCTION.—The term ‘weapon of mass destruction’ has the meaning given the term in section 2302 of title 50, United States Code.

SEC. 5. 4. ESTABLISHMENT OF OFFICE OF NATIONAL PREPAREDNESS.

Subtitle A of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5129(2)) is amended by inserting “incidents of terrorism,” after “drought”.

SEC. 618. OFFICE OF NATIONAL PREPAREDNESS.

(a) IN GENERAL.—There is established in the Federal Emergency Management Agency, an office to be known as the ‘Office of National Preparedness’ (referred to in this section as the ‘Office’).

(b) APPOINTMENT OF ASSOCIATE DIRECTOR.—

(1) IN GENERAL.—The Office shall be headed by an Associate Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) COMPENSATION.—The Associate Director shall receive the compensation of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(c) DUTIES.—The Office shall—

(1) lead a coordinated and integrated overall effort to build, exercise, and ensure viable terrorism preparedness and response capability at all levels of government;
(2) establish clearly defined standards and guidelines for Federal, State, tribal, and local government terrorism preparedness and response; and
(3) establish and coordinate an integrated capability for Federal, State, tribal, and
local governments and emergency responders to plan for and address potential consequences of terrorism;

(4) coordinate provision of Federal terrorism assistance to State, tribal, and local governments;

(5) establish standards for a national, interoperable emergency communications and warning system;

(6) establish standards for training of first responders (as defined in section 630(a)), and for equipment to be used by first responders, to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

(7) carry out such other related activities as are approved by the Director.

(d) Designation of Regional Contacts.—The Associate Director shall designate an officer or employee of the Federal Emergency Management Agency in each of the 10 regions of the Agency to serve as the Office contact for the States in that region.

(e) Use of Existing Resources.—In carrying out this section, the Associate Director shall:

(1) to the maximum extent practicable, use existing resources, including planning documents, equipment lists, and program inventories; and

(2) consult with and use—

(A) existing Federal interagency boards and committees;

(B) existing government agencies; and

(C) nongovernmental organizations.

SEC. 5. PREPAREDNESS ASSISTANCE FOR FIRST RESPONDERS.

(a) In General.—Subtitle B of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197 et seq.) is amended by adding at the end the following:

SEC. 630. PREPAREDNESS ASSISTANCE FOR FIRST RESPONDERS.

(a) Definitions.—In this section:

(1) First Responder.—The term ‘first responder’ means—

(A) fire, emergency medical service, and law enforcement personnel; and

(B) such other personnel as are identified by the Director.

(2) Local entity.—The term ‘local entity’ has the meaning given the term by regulation promulgated by the Director.

(3) Program.—The term ‘program’ means the program established under subsection (b).

(b) Program to Provide Assistance.—

(1) In General.—The Director shall establish a program for a State to enhance the ability of State and local first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction.

(2) Federal Share.—The Federal share of the costs eligible to be paid using assistance provided under the program shall be not less than 75 percent, as determined by the Director.

(3) Forms of Assistance.—Assistance provided under paragraph (1) may consist of—

(A) grants; and

(B) such other forms of assistance as the Director determines to be appropriate.

(c) Use of Assistance.—Assistance provided under subsection (b) —

(1) shall be used—

(A) to purchase, to the maximum extent practicable, interoperable equipment that is necessary to respond to incidents of terrorism, including incidents involving weapons of mass destruction;

(B) to provide assistance to first responders, consistent with guidelines and standards developed by the Director;

(C) in consultation with the Director, to develop, construct, or upgrade terrorism preparedness training facilities;

(D) to develop, construct, or upgrade emergency preparedness training facilities;

(E) to develop preparedness and response plans consistent with Federal, State, and local strategies, as determined by the Director;

(F) to provide systems and equipment to meet communication needs, such as emergency notification systems, interoperable equipment, and secure communication equipment;

(G) to conduct exercises; and

(H) to carry out such other related activities as are approved by the Director; and

(2) shall not be used to provide compensation to first responders (including payment for overtime).

(d) Allocation of Funds.—For each fiscal year, in providing assistance under subsection (b), the Director shall make available—

(1) to each of the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, $3,000,000; and

(2) to each other than a State specified in paragraph (1)—

(A) a base amount of $15,000,000; and

(B) a percentage of the total remaining funds made available for the fiscal year based on criteria established by the Director, such as—

(i) population;

(ii) location of vital infrastructure, including—

(I) military installations;

(II) public buildings (as defined in section 13 of the Public Buildings Act of 1959 (40 U.S.C. 612));

(III) nuclear power plants;

(IV) chemical plants; and

(V) national landmarks;

and

(iii) proximity to international borders.

(e) Provision of Funds to Local Governments and Local Entities.—

(1) In General.—For each fiscal year, not less than 75 percent of the assistance provided to each State under this section shall be provided to local governments and local entities within the State.

(2) Allocation of Funds.—Under paragraph (1), a State shall allocate assistance to local governments and local entities within the State, as specified in paragraph (1) of section 1201(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (114 Stat. 1654, 1654A–360).

(f) Deadlines for Provision of Funds.—Under paragraph (1), a State shall provide assistance to local governments and local entities not later than 45 days after the date on which the State receives the assistance.

(g) Coordination.—Each State shall coordinate with local governments and local entities concerning the use of assistance provided to local governments and local entities under paragraphs (1) and (3).

(h) Administrative Expenses.—

(1) Director.—For each fiscal year, the Director may use pay salaries and other administrative expenses incurred in administering the program not more than the lesser of—

(A) 5 percent of the funds made available to carry out this section for the fiscal year; or

(B) $100,000.

(2) Recipients of Assistance.—For each fiscal year, not more than 10 percent of the funds retained by a State after application of subsection (e) may be used to pay salaries and other administrative expenses incurred in administering the program.

(i) Maintenance of Expenditures.—The Director may provide assistance to a State under this section only if the State agrees to maintain, and to ensure that each local government that receives funds from the State in accordance with subsection (b) maintains, for the fiscal year for which the assistance is provided, the aggregate expenditures by the State or the local government, respectively, for the uses described in subsection (c)(1) at a level that is at or above the annual level of those expenditures by the State or local government, respectively, for the 2 fiscal years preceding the fiscal year for which the assistance is provided.

(j) Reports.—

(1) Annual Report to the Director.—As a condition of receipt of assistance under this section for a fiscal year, a State shall submit to the Director, not later than 60 days after the close of the fiscal year, a report on the use of the assistance in the fiscal year.

(2) Exercise and Report to Congress.—As a condition of receipt of assistance under this section, not later than 3 years after the date of enactment of this section, a State shall—

(A) conduct an exercise, or participate in a regional exercise, approved by the Director, to measure the progress of the State in enhancing the ability of State and local first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

(B) submit a report on the results of the exercise to—

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

(ii) the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives.

(k) Coordination.—

(1) With Federal Agencies.—The Director, as necessary, shall coordinate the provision of assistance under this section with activities carried out by—

(A) the Administrator of the United States Fire Administration in connection with the implementation by the Administrator of the assistance to firefighters grant program established under section 33 of the Federal Fire Prevention and Control Act of 1917 (15 U.S.C. 2229) (as added by section 170(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (114 Stat. 1654, 1654A–360));

(B) the Attorney General, in connection with the implementation of the Community Oriented Policing Services (COP) Program established under section 170(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3760(a)); and

(C) other appropriate Federal agencies.

(2) With Indian Tribes.—In providing and using assistance under this section, the Director and the States shall, as appropriate, coordinate with—

(A) Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) and other tribal organizations; and

(B) Native villages (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)) and other Alaska Native organizations.

(l) Cost Sharing for Emergency Operating Centers.—Section 614 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196c) is amended—

(1) by inserting “other than section 630)” after “carry out this title” and

(2) by inserting “other than section 630)” after “under this title”.

November 14, 2002
CONGRESSIONAL RECORD—SENATE
S11093
SEC. 5. 6. PROTECTION OF HEALTH AND SAFETY OF FIRST RESPONDERS.

Subtitle B of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197 et seq.) (as amended by section 5-5(a)) is amended by adding at the end the following:

"SEC. 632. PROTECTION OF HEALTH AND SAFETY OF FIRST RESPONDERS.

(a) Definitions.--In this section:

(1) FIRST RESPONDER.--The term ‘first responder’ means any person participating in any activity that may be dangerous to the health and safety of any person specified in section 5-5(a).

(b) PROGRAM.--The term ‘program’ means a program provided for in subsection (b)(1).

(1) IN GENERAL.--If the President determines that 1 or more harmful substances are being, or have been, released in an area that the President has declared to be a major disaster area under this Act, the President shall carry out a program with respect to the area for the protection, assessment, monitoring, and study of the health and safety of first responders.

(2) ACTIVITIES.--A program shall include--

(A) collection and analysis of environmental and exposure data;

(B) development and dissemination of educational materials;

(C) provision of information on releases of a harmful substance;

(D) identification of, performance of baseline health assessments on, taking biological samples from, and establishment of an exposure registry of first responders exposed to a harmful substance;

(E) study of the long-term health impacts of any exposure of first responders to a harmful substance through epidemiological studies; and

(F) provision of assistance to participants in registries and studies under subparagraphs (D) and (E) in determining eligibility for health coverage and identifying appropriate health services.

(2) PARTICIPATION IN REGISTRIES AND STUDIES.--

(A) IN GENERAL.--Participation in any registry or study under subparagraph (D) or (E) of subsection (b) shall be voluntary.

(B) PROTECTION OF PRIVACY.--The President shall take appropriate measures to protect the privacy of any participant in a registry or study described in subparagraph (A).

(C) COOPERATIVE AGREEMENTS.--The President may carry out a program through a cooperative agreement with a medical or academic institution, or a consortium of such institutions, that is--

(i) located in close proximity to the major disaster area with respect to which the program is carried out; and

(ii) experienced in the area of environmental or occupational health and safety, including epidemiology.

(D) CONDUCTING LONG-TERM EPIDEMIOLOGICAL STUDIES.--

(i) conducting long-term epidemiological studies;

(ii) conducting long-term mental health studies;

(iii) establishing and maintaining environmental exposure or disease registries.

(c) REPORTS AND RESPONSES TO STUDIES.--

(1) ENVIRONMENTAL AND OCCUPATIONAL EXPOSURE TO TOXIC SUBSTANCES.--In no event shall the President enter into the cooperative agreement under subsection (b)(4) unless, after a period of no less than 1 year after the date of completion of a study under section (b)(2), the Governor of the State, the Secretary of Health and Human Services, the Governor of the State, or the Administrator of the Environmental Protection Agency report a report on the study.

"(2) CHANGES IN PROCEDURES.--To protect the health and safety of first responders, the President shall make such changes in procedures as the President determines to be necessary based on the findings of a report submitted under paragraph (1)."

SEC. 5. 7. URBAN SEARCH AND RESCUE TASK FORCES.

Subtitle B of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197 et seq.) (as amended by section 5-6) is amended by adding at the end the following:

"(a) Definitions.--In this section:

(1) URBAN SEARCH AND RESCUE EQUIPMENT.--The term ‘urban search and rescue equipment’ means any equipment that the Director determines to be necessary to respond to a major disaster or emergency declared by the President under this Act.

(2) URBAN SEARCH AND RESCUE TASK FORCE.--The term ‘urban search and rescue task force’ means any of the urban search and rescue task forces designated by the Director as of the date of enactment of this section.

(3) PARTICIPATION IN REGISTRIES AND STUDIES.--

(A) MANDATORY GRANTS FOR COSTS OF OPERATIONS.--For each fiscal year, of the amounts made available to carry out this section, the President shall provide to each urban search and rescue task force a grant of not less than $1,500,000 to pay the costs of operations of the urban search and rescue task force (including costs of basic urban search and rescue equipment).

(B) DISCRETIONARY GRANTS.--The Director may provide to any urban search and rescue task force a grant, in such amount as the Director determines to be appropriate, to pay the costs of--

(i) operations in excess of the funds provided under paragraph (A);

(ii) urban search and rescue equipment;

(iii) equipment necessary for an urban search and rescue task force to operate in an environment contaminated or otherwise affected by a weapon of mass destruction;

(iv) training, including training for operating in an environment described in subparagraph (C);

(v) transportation;

(vi) expansion of the urban search and rescue task force; and

(vii) incident support teams, including costs of conducting appropriate evaluations of the readiness of the urban search and rescue task force.

(4) PRIORITIES FOR FUNDING.--The Director shall distribute funding under this subsection so as to ensure that each urban search and rescue task force has the capacity to deploy simultaneously at least 2 teams with all necessary equipment, training, and transportation.

(c) GRANT REQUIREMENTS.--The Director shall establish such requirements as are necessary to provide grants under this section.

(d) ESTABLISHMENT OF ADDITIONAL URBAN SEARCH AND RESCUE TASK FORCES.--

(1) IN GENERAL.--Subject to paragraph (2) of this subsection, the Director may establish urban search and rescue task forces in addition to the 28 urban search and rescue task forces in existence on the date of enactment of this Act.

(2) REQUIREMENT OF FULL FUNDING OF EXISTING URBAN SEARCH AND RESCUE TASK FORCES.--Except in the case of an urban search and rescue task force designated to replace any urban search and rescue task force that withdraws or is otherwise no longer considered to be an urban search and rescue task force designated by the Director, no additional urban search and rescue task forces may be designated or funded until the 28 urban search and rescue task forces are able to deploy simultaneously at least 2 teams with all necessary equipment, training, and transportation.

SEC. 5. 8. AUTHORIZATION OF APPROPRIATIONS.

Section 626 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197(e) is amended by striking subsection (a) and inserting the following:

"(a) AUTHORIZATION OF APPROPRIATIONS.--

(1) IN GENERAL.--There are authorized to be appropriated such sums as are necessary to carry out this title (other than sections 630 and 632).

(2) PREPAREDNESS ASSISTANCE FOR FIRST RESPONDERS.--There are authorized to be appropriated such amounts as are necessary to carry out section 630.

(3) URBAN SEARCH AND RESCUE TASK FORCES.--

(A) IN GENERAL.--There are authorized to be appropriated such amounts for each of fiscal years 2007 and 2008 as follows:

(i) $142,000,000 for fiscal year 2007; and

(ii) $142,000,000 for each of fiscal years 2008 through 2009.

(B) AVAILABILITY OF MOUNTS.--Amounts made available under subparagraph (A) shall remain available until expended.

SEC. 632. URBAN SEARCH AND RESCUE TASK FORCES.

(A) IN GENERAL.--There are authorized to be appropriated such amounts for each of fiscal years 2007 and 2008 as follows:

(i) $142,000,000 for fiscal year 2007; and

(ii) $142,000,000 for each of fiscal years 2008 through 2009.

(C) AVAILABILITY OF MOUNTS.--Amounts made available under subparagraph (A) shall remain available until expended.

SA 4926. Mr. CORZINE (for himself and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill S. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title II, add the following:

"Subtitle E—Chemical Security

SEC. 241. SHORT TITLE.

This subtitle may be cited as the ‘Chemical Security Act of 2002.’

SEC. 242. FINDINGS.

Congress finds that--

(1) the chemical industry is a crucial part of the critical infrastructure of the United States--

(A) in its own right; and

(B) because that industry supplies resources essential to the functioning of other critical infrastructures, national security, and the environment;

(2) the possibility of terrorist and criminal attacks on chemical sources (such as industrial facilities) poses a serious threat to public health, safety, and welfare, critical infrastructure, national security, and the environment;

(3) the possibility of theft of dangerous chemicals from chemical sources for use in terrorist attacks poses a further threat to public health, safety, and welfare, critical infrastructure, national security, and the environment; and

(4) there are significant opportunities to prevent theft from, and criminal attack on, chemical sources and reduce the harm that such acts would produce.

(A)(i) reducing usage and storage of chemicals by changing production methods and processes; and

(ii) employing inherently safer technologies in the manufacture, transport, and use of chemicals;

(B) enhancing secondary containment and other existing mitigation measures; and

(C) improving security.

SEC. 243. DEFINITIONS.

In this subtitle:
SEC. 244. DESIGNATION OF AND REQUIREMENTS FOR HIGH PRIORITY CATEGORIES.

(a) Designation and Regulation of High Priority Categories by the Administrator.

(1) IN GENERAL.—The term ‘‘Administrator’’ means the Administrator of the Environmental Protection Agency.

(2) CHEMICAL SOURCE.—The term ‘‘chemical source’’ means a stationary source (as defined in section 112(r)(2) of the Clean Air Act (42 U.S.C. 7412(r)(2))) that contains a substance of concern.

(3) DESIGNATION OF SUBSTANCE OF CONCERN.—The term ‘‘covered substance of concern’’ means a substance of concern that, in combination with a chemical source and other factors, is designated as a high priority category by the Administrator under section 244(a)(1).

(4) EMPLOYEE.—The term ‘‘employee’’ means—

(A) a duly recognized collective bargaining representative at a chemical source; or

(B) in the absence of such a representative, other appropriate personnel.

(5) SAFER DESIGN AND MAINTENANCE.—The term ‘‘safer design and maintenance’’ includes, with respect to a chemical source that is within a high priority category designated under section 244(a)(1), implementation, to the extent practicable, of the practices of—

(A) preventing or reducing the vulnerability of the chemical source to an unauthorized release of a covered substance of concern through use of inherently safer technology;

(B) reducing the vulnerability of the chemical source to an unauthorized release of a covered substance of concern through use of less hazardous substances or benign substances;

(C) the threats to national security; and

(D) a release or removal from a chemical source of a covered substance of concern that is unauthorized or an event that, in the case of a liquid chemical source, results in spillage of a substance of concern.

(b) Certification.

(1) VULNERABILITY AND HAZARD ASSESSMENT.—Not later than 1 year after the date of promulgation of regulations under paragraph (1) and (3), each owner or operator of a chemical source that is within a high priority category designated under paragraph (1), in consultation with the Secretary, shall promulgate regulations to require each owner and operator of a chemical source that is within a high priority category designated under paragraph (1), in consultation with local law enforcement, first responders, and emergency management planning organizations, to—

(i) conduct an assessment of the vulnerability of the chemical source to a terrorist attack or other unauthorized release;

(ii) prepare a prevention, preparedness, and response plan that incorporates the results of those vulnerability and hazard assessments.

(c) ACTIONS AND PROCEDURES.—A prevention, preparedness, and response plan required under subparagraph (A)(iii) shall include actions and procedures, including safer design and maintenance of the chemical source, to eliminate or significantly lessen the potential consequences of an unauthorized release of a covered substance of concern.

(d) THREAT INFORMATION.—To the maximum extent permitted by applicable authorities and the interests of national security, the Administrator shall, in consultation with the Administrator, shall provide owners and operators of chemical sources with threat information relevant to the assessments and plans required under paragraphs (1) and (3) and may designate additional substances that pose a serious threat as substances of concern.

(e) MULTIPLE AGENCY REVIEW PLANS.—Not later than 5 years after the date of promulgation of regulations under each of paragraphs (1) and (3), the Administrator, in consultation with the Secretary, shall review the regulations and make any necessary revisions.

(f) ADDITION OF SUBSTANCES OF CONCERN.—For the purpose of designating high priority categories under paragraph (1) or any subsequent revision of the regulations promulgated under paragraph (1), the Administrator may designate additional substances that pose a serious threat as substances of concern.

(g) CERTIFICATION.—

(1) VULNERABILITY AND HAZARD ASSESSMENTS.—Not later than 1 year after the date of promulgation of regulations under subsection (a)(3), each owner or operator of a chemical source that is within a high priority category designated under subsection (a)(1) shall—

(A) certify to the Administrator the chemical source has conducted assessments in accordance with the regulations; and

(B) submit to the Administrator written copies of the assessment plan.

(2) PREVENTION, PREPAREDNESS, AND RESPONSE PLANS.—Not later than 18 months after the date of promulgation of regulations under subsection (a)(3), the owner or operator shall—

(A) certify to the Administrator that the chemical source has completed a prevention, preparedness, and response plan that incorporates the results of the assessments and complies with the regulations; and

(B) submit to the Administrator a written copy of the plan.

(3) 5-YEAR REVIEW.—Not later than 5 years after each of the date of submission of a copy of an assessment under paragraph (1) and a plan under paragraph (2), and not less than every 3 years thereafter, the owner or operator of the chemical source covered by the assessment or plan, in coordination with local law enforcement and first responders, shall—

(A) review the adequacy of the assessment or plan, as the case may be; and

(B) certify to the Administrator that the chemical source has completed the review; and

(C) the threats to critical infrastructure; and

(D) threat information relevant to the assessments and plans required under paragraphs (1) and (3) and may designate additional substances that pose a serious threat as substances of concern.

""
(ii) as appropriate, submit to the Administrator any changes to the assessment or plan.

(4) PROTECTION OF INFORMATION.—

(A) PROPER USE OF INFORMATION.—Except with respect to certifications specified in paragraphs (1) through (3) of this subsection and section 245(a), all information provided to the Administrator under this subsection, and all information derived from that information, shall be exempt from disclosure under section 552 of title 5, United States Code.

(B) INCLUSION OF PROTOCOL.—

(i) IN GENERAL.—The Administrator, in consultation with the Secretary, shall develop such protocols as are necessary to protect the confidentiality of assessments and plans required to be submitted under this subsection (including the information contained in those assessments and plans) from unauthorized disclosure.

(ii) REQUIREMENTS.—The protocols developed under clause (i) shall ensure that—

(1) each copy of an assessment or plan, and all information contained in or derived from the assessment or plan, is maintained in a secure location;

(2) except as provided in subparagraph (C), only individuals designated by the Administrator may have access to the copies of the assessments and plans; and

(3) no copy of an assessment or plan or any portion thereof, and no information contained in or derived from an assessment or plan, shall be available to any person other than an individual designated by the Administrator.

(III) DEADLINE.—As soon as practicable, but not later than 1 year after the date of enactment of this Act, the Administrator shall complete the development of protocols under clause (i).

(C) FEDERAL OFFICERS AND EMPLOYEES.—An individual referred to in subparagraph (B)(ii) who is a member of the Armed Forces of the United States may discuss with a State or local official the contents of an assessment or plan described in that subparagraph.

SEC. 245. ENFORCEMENT.

(a) REVIEW OF PLANS.—

(1) IN GENERAL.—The Administrator, in consultation with the Secretary, shall review each assessment and plan submitted under section 244(b) to determine the compliance of the chemical source covered by the assessment or plan with regulations promulgated under paragraphs (1) and (3) of section 244(a).

(2) CERTIFICATION OF COMPLIANCE.—

(A) IN GENERAL.—The Administrator shall certify in writing each determination of the Administrator that, with respect to an assessment or plan described in section 244(b) that—

(i) the results of an assessment of a source; or

(ii) a threat described in clause (1).

(B) DETERMINATION.—If the Administrator, after consultation with the Secretary, makes a determination, the Administrator shall—

(1) notify the chemical source of the determination; and

(2) provide such advice and technical assistance, in coordination with the Secretary, as is necessary to—

(A) bring the assessment or plan of a chemical source described in section 244(b) into compliance; or

(B) address any threat described in clause (1) or (2) of paragraph (1).

(b) COMPLIANCE ORDERS.—

(1) IN GENERAL.—If, after the date that is 30 days after the date on which the Administrator first provides assistance, or a chemical source, under subparagraph (A) of paragraph (1) of section 244(b), or any inaccuracy in which any record required to be maintained under subsection (a) are located; and

(2) at any reasonable times have access to, and copy, any records or other information described in subsection (a).

(c) INFORMATION REQUESTS.—In carrying out this title, the Administrator may require any chemical source to provide such information as is necessary to—

(1) enforce this title; and

(2) promulgate or enforce regulations under this title.

SEC. 247. PENALTIES.

(a) CIVIL PENALTIES.—Any owner or operator of a chemical source that violates, or fails to comply with, any order issued may, in an action brought in United States district court, be subject to a civil penalty of not more than $25,000 for each day in which such violation occurs or such failure to comply continues.

(b) CRIMINAL PENALTIES.—Any owner or operator of a chemical source that knowingly violates, or fails to comply with, any order issued shall—

(1) in the case of a first violation or failure to comply, be fined not less than $2,500 nor more than $25,000 per day of violation, imprisoned not more than 1 year, or both; and

(2) in the case of a subsequent violation or failure to comply, be fined not more than $50,000 per day of violation, imprisoned not more than 2 years, or both.

(c) ADMINISTRATIVE PENALTIES.—(1) PENALTY ORDERS.—If the amount of a civil penalty determined under subsection (a) does not exceed $125,000, the penalty may be assessed in an order issued by the Administrator.

(2) NOTICE AND HEARING.—Before issuing an order described in paragraph (1), the Administrator shall provide the person against whom the penalty is to be assessed—

(A) written notice of the proposed order; and

(B) the opportunity to request, not later than 30 days after the date on which the notice is received by the person, a hearing on the proposed order.

SEC. 248. NO EFFECT ON REQUIREMENTS UNDER OTHER LAW.

Nothing in this subtitle affects any duty or other requirement imposed under any other Federal or State law.
SEC. 249. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this subtitle.

SA 4927. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 86, strike lines 18 through 23, and insert the following:

(B) advance the development, testing and evaluation, and deployment of critical homeland security technologies;
(C) accelerate the prototyping and deployment of technologies that would address homeland security vulnerabilities; and
(D) to support the development of—
(i) methods to increase the ability of the Customs Service to inspect, or target for inspection, merchandise carried on any vessel that will arrive or has arrived at any port or place in the United States;
(ii) equipment to accurately detect explosives, chemical and biological agents that could be used to commit terrorism acts against the United States;
(iii) equipment to accurately detect nuclear materials, including scintillation-based detection equipment capable of attachment to spreaders to signal the presence of nuclear materials during the unloading of containers;
(iv) improved tags and seals designed for use on shipping containers to track the transportation of such containers, including “smart sensors” that are able to track a container throughout its entire supply chain, detect hazardous and radiological materials within that container, and transmit such information to the appropriate authorities at a remote location;
(v) tools to mitigate the consequences of a terrorist act at a port of the United States, including a network of sensors to predict the dispersion of radiological, chemical, or biological agents that might be intentionally or accidentally released;
(vi) applications to apply existing technologies from other industries to increase overall port security.

SA 4928. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 246, line 21, strike “and” and insert “or”.

On page 246, line 24, strike “and” and insert “or”.

SA 4929. Mr. REID submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 208, insert between lines 7 and 8 the following:

SEC. 510. JOINT SPONSORSHIP ARRANGEMENTS.

The Secretary may enter into joint sponsorship arrangements under section 309(b) for sites used for emergency preparedness and response training.

SA 4930. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 248, line 1, between “59.,” and “72,” add “71.”

SA 4931. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

In the amendment strike from page 248 through page 260 and insert the following:

(b) TABLE OF CONTENTS.

The table of contents for this Act is as follows:

(1) CHAPTERS—
(a) chapter 1—
(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;
(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of title 5, United States Code; or
(3) to exempt any employee from the application of such section 5307.

(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEES.

(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in a manner that ensures the participation of employee representatives in the planning, development, and implementation of any human resources management system or adjustments to such system by the manner in which the Secretary of Homeland Security and the Director of the Office of Personnel Management shall proceed with any recommendations from employee representatives, together with the recommendations from employee representatives, the Secretary and the Director shall—
(A) NOTICE OF PROPOSAL.—The Secretary and the Director shall, with respect to any proposed system or adjustment—
(i) provide to each employee representative—
(A) notice of the proposal;—
(ii) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and
(iii) give any recommendations received from such representatives under clause (ii) full and fair consideration in deciding whether to proceed with the proposal;
(B) PER-IMPLEMENTATION CONGRESSIONAL NOTIFICATION, CONSULTATION, AND MEDICATION.—Following receipt of recommendations, if any, from employee representatives with respect to a proposal described in subparagraph (A), the Secretary and the Director shall accept such recommendations or any modifications made to the proposal in response to the recommendations as they determine advisable and shall, with respect to any parts of the proposal as to which the representatives have not accepted the recommendations—
(i) notify Congress of those parts of the proposal, together with the recommendations of employee representatives with respect to those parts of the proposal;
(ii) meet and confer for not less than 30 calendar days with any representatives who have made recommendations, or any modifications made to the proposal in response to the recommendations as they determine advisable and shall, with respect to any parts of the proposal as to which the representatives have not accepted the recommendations—
(C) IMPLEMENTATION.—
(i) With respect to any part of the proposal as to which the representatives do not make a recommendation, or as to which their recommendations are accepted by the Secretary and the Director, may be implemented immediately.
(ii) With respect to any parts of the proposal as to which the representatives have made recommendations, or any modifications made to the proposal in response to the recommendations as they determine advisable, the Secretary may implement any or all of such parts, including any modifications made in response to the recommendations as the Secretary determines advisable.
(iii) The Secretary shall promptly notify Congress of the implementation of any part of the proposal and shall furnish with such notice an explanation of the proposal, any changes made to the proposal as a result of the recommendations of employee representatives, and of the reasons why implementation is appropriate under this subparagraph.

(b) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.

(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in a manner that ensures the participation of employee representatives in the planning, development, and implementation of any human resources management system or adjustments to such system by the manner in which the Secretary of Homeland Security and the Director of the Office of Personnel Management shall proceed with any recommendations from employee representatives; and
(2) PROCEDURES.—Any procedures necessary to carry out the authority established by the Secretary and the Director jointly as internal rules of departmental procedure which shall not be subject to review. Such procedures shall include measures to ensure that—
(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;
(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees; and
(C) such other manner as may be appropriate, consistent with the purposes of the subsection;
"(C) the fair and expeditious handling of the consultation and mediation process described in subparagraph (B) of paragraph (1), including procedures by which, if the number of employees represented by the organization or other representatives involved select a committee or other unified representative with which the Secretary and Director confer, the recommendations exceeds 5, such representatives select a committee or other unified representative with which the Secretary and Director confer; and

"(D) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

"(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

"(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

"(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

"(i) should ensure that employees of the Department are afforded the protections of due process; and

"(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

(2) REQUIREMENTS.—Any regulations under the title to which the Committee on the Judiciary is referred under this subsection which relate to any matters within the purview of chapter 77 of title 5, United States Code, are amended by adding at the end of the following:

"(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

"(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

"(i) should ensure that employees of the Department are afforded the protections of due process; and

"(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including a consultation and mediation process established under such chapter, shall be in conformance with the requirements of this subsection.

SEC. 4932. MR. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. Voinovich)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 280, strike line 19 and all that follows through page 280, line 5.

SEC. 4933. MR. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. Voinovich)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 302, strike line 21 and all that follows through page 303, line 19.

SEC. 4934. MR. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. Voinovich)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 303, strike line 21 and all that follows through page 304, line 19.

SEC. 4935. MR. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. Voinovich)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 280, beginning on line 11, strike "An advisory committee established under this section” and all that follows through line 24.

SEC. 4936. MR. SPECTER submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. Voinovich)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 284, strike line 19 and all that follows through page 286, line 23, and insert the following:

"(D) any other provision of this part (as described in subsection (c)); or

"(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

"(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any regulation or limitation on negotiated establishment by law; and

"(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

"(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part, as referred to

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in subsection (b)(3)(D), are to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3)—

(1) subparts A, B, E, G, and H of this part; and

(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall authorize—

(1) to modify the pay of any employee who serves in—

(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management shall provide for the following:

(A) NOTICE OF PROPOSAL.—The Secretary and the Director shall, with respect to any proposed system or adjustment—

(i) provide to each employee representa- tive representing any employees who may be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

(ii) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

(iii) to exempt any employee from the applica- tion of such section 5307.

(C) the selection of representatives in a manner consistent with the relative number of employees represented by the organiza- tions or other representatives involved.

(b) EFFECT ON PERSONNEL.—Under section 7119, after negotiations con- sistent with section 7117,

(1) PROVIDES TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collabora- tion with, and in a manner that en- sures the participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary and the Director of the Office of Personnel Management shall provide for the following:

(A) NOTICE OF PROPOSAL.—The Secretary and the Director shall—

(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

(ii) give each representative an oppor- tunity to make recommendations with respect to the proposal; and

(iii) give any recommendations received from any such representatives under clause (i) full and fair consideration in deciding whether to implement the proposal.

(B) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subpara- graph (A), they shall before implementa- tion—

(i) give each representative specific details of the decision to implement the proposal, together with the information upon which the decision is based;

(ii) give each representative an oppor- tunity to make recommendations with respect to the proposal; and

(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

(C) CONTINUING COLLABORATION.—If a pro- posal described in subparagraph (A) is imple- mented, the Secretary and the Director shall—

(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

(ii) give each employee representative adequate access to information to make that participation productive.

Procedures.—Any procedures nec- essary to carry out this subsection shall be established by the Secretary and the Direc- tor jointly. Such procedures shall include measures to—

(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representa- tion by individuals designated or from among individuals nominated by such organ- ization;

(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which rep-resents a substantial percentage of those em- ployees who are eligible for recognition in any other manner as may be appropriate, consistent with the pur- poses of the subsection; and

(C) the selection of representatives in a manner consistent with the relative number of employees represented by the organiza- tions or other representatives involved.

(a) EXCLUSIONARY AUTHORITY.

In addition to the requirements under paragraph (1), the President may issue an order excluding any executive agency, or subdivision thereof, from coverage under chapter 71 of title 5, United States Code, if the President deter- mines that—

(1) the agency or subdivision has, as a pri- mary function, intelligence, counterintel- ligence, investigative, or national security work; and

(2) the provisions of such chapter 71 can- not be applied to that agency or subdivision in a manner consistent with national secu- rity requirements and considerations.

(2) ADDITIONAL DETERMINATION.

In addi- tion to the requirements under paragraph (1), the President may issue an order excluding any executive agency, or subdivision thereof, from coverage under chapter 71 of title 5, United States Code, if the President deter- mines that—

(1) the affected agency or subdivision has, as a primary function, intelligence, counter intel- ligence, investigative, or national security work;

(2) the provisions of chapter 71, 53, 51, 53, 71, 75, or 77 or of the imposed agreement cannot be applied to the affected agency or subdivision in a manner consistent with national security re- quirements and considerations;
Their primary duty intelligence, counterdressed by the personnel in such unit (or subdivision) have as
recognized for such purposes, unless
proceeded lawfully commended by or against the head of an agency or other officer of the United States, in the
that the reorganization plan becomes effective, shall be deemed
the heads or officers under the reorganization
the unit (or subdivision) have as
primary duty intelligence, counterdressed by the personnel in such unit (or subdivision).
Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5055, to establish the Department of Homeland Security, and for
an amendment intended to be proposed to
an amendment intended to be proposed to
of Homeland Security, and for
During the effective date of this Act (and any
term that does not include a resolution)
by this Act may be construed or applied in a
of this Act or of any amendment made
of this section
and
in the manner so as to limit, supersede, or other-
the computation of any period of time in
other purposes; which was ordered to
the resolution. The motion is highly privi-
the motion is agreed to or disagreed to shall not be
the resolution. The motion is highly privi-
the resolution. The motion is highly privi-
the resolution. The motion is highly privi-

SA 4937. Mr. BYRD submitted an
amendment intended to be proposed to
amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5055, to establish the Department of Homeland Security, and for
other purposes; which was ordered to
on the table; as follows:

On page 451, strike line 17 and all that follows through page 452, line 12, and insert the following:

(d) Effective Date and Publication of Reorganization Plans.—

(1) Effective Date.—Except as provided under subsection (e), the reorganization plan shall be effective upon approval by the President of a resolution (as defined in subsection (g)) with respect to such plan, only if such resolution, the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be maintained by or against the successor of the reorganization plan is transmitted to the

(2) Session of Congress.—For the purpose of this section—

(A) continuity of session is broken only by

(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the calculation of any period of time in which Congress is in continuous session.

(3) Later Effective Date.—Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective.

(4) Publication of Plan.—A reorganization plan which shall be printed shall be

(A) in the Statutes at Large in the same volume as the public laws; and

(B) in the Federal Register.

(c) Delegation of Functions.—If the President designates, against such agency or officer as the

DEFINITION.—In this paragraph, the term “reorganization plan” means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(EFFECT.—A statute enacted, and a regulation or other action made, prescribed, or issued by or on behalf of or by an agency or function affected by a reor-

(2) a substantial number of the employees

(a) Discharge of Committee Considering Resolution.—If the committee to which is referred a resolution introduced pursuant to

(1) the President designates.

(2) Rules of Senate and House of Representa-

(f) Application of Rules of Senate and House of Representatives to Reorganization Plans.

(1) EFFECT ON LAWS.

(2) PROCEEDINGS.

(i) DISCHARGE OF COMMITTEE CONSIDERING RESOLUTION.

(1) PROCEDURE.—When the committee has received or has been deemed to be dis-

(A) continuity of session is broken only by

(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the calculation of any period of time in which Congress is in continuous session.

(3) Later Effective Date.—Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective.

(4) Publication of Plan.—A reorganization plan which shall be printed shall be

(A) in the Statutes at Large in the same volume as the public laws; and

(B) in the Federal Register.

(c) Delegation of Functions.—If the President designates, against such agency or officer as the

DEFINITION.—In this paragraph, the term “reorganization plan” means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(EFFECT.—A statute enacted, and a regulation or other action made, prescribed, or issued by or on behalf of or by an agency or function affected by a reor-

(2) a substantial number of the employees

(a) Discharge of Committee Considering Resolution.—If the committee to which is referred a resolution introduced pursuant to

(1) the President designates.

(2) Rules of Senate and House of Representa-

(f) Application of Rules of Senate and House of Representatives to Reorganization Plans.

(1) EFFECT ON LAWS.

(2) PROCEEDINGS.
(5) Prior passage.—If, prior to the passage by 1 House of a resolution of that House, the House receives a resolution with respect to the same reorganization plan from the other House or Congress:
   (A) the procedure in that House shall be the same as if no resolution had been received from the other House; but
   (B) the vote on final passage shall be on the resolution of the other House.

SA 4938. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself), Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. Voinovich) to the bill B.106 (to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:
   On page 222, strike line 18 and all that follows through page 225, line 12, and insert the following:

SEC. 811. INSPECTOR GENERAL.
(a) In General.—There shall be in the Department an Inspector General.
(b) Establishment.—There shall be in the Department an Assistant Inspector General.
(c) Assistant Inspector General for Civil Rights and Civil Liberties.—
   (1) The Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the “Assistant Inspector General”) shall be under the authority, direction, and control of the Secretary of Homeland Security.
   (2) The Assistant Inspector General shall:
      (i) conduct such investigations as the Inspector General considers necessary or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of:
         (I) the Department;
         (II) any unit of the Department;
         (III) independent contractors employed by the Department;
         (IV) grantees of the Department;
      (ii) conduct investigations of the programs and operations of the Department to determine whether the Department’s civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunity Act.
      (iii) conduct investigations of the programs and operations of the Department to determine whether the Department’s civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunity Act.
      (iv) having received a complaint under paragraph (1) or (2), the Assistant Inspector General shall notify the Office of Civil Rights and Civil Liberties of any complaints of violations of civil rights or civil liberties, and consult with the Officer for Civil Rights and Civil Liberties regarding the investigation of such complaints, upon request or as appropriate.
      (v) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertising, any known violations of civil rights or civil liberties of any person.
   (d) Additional provisions with respect to the Inspector General—
      (1) If the Inspector General initiates an audit or investigation under paragraph (1), the Inspector General shall:
         (I) in paragraph (1), by inserting “Homeland Security,” after “Health and Human Services,”; and
         (II) in paragraph (2), by inserting “Homeland Security,” after “Health and Human Services.”;
      (2) with respect to the information described in paragraph (1), to:
         (A) intelligence or counterintelligence matters;
         (B) ongoing criminal investigations or proceedings;
         (C) undercover operations;
         (D) any other matters the disclosure of which would constitute a serious threat to national security;
         (E) any other matters the disclosure of which would constitute a serious threat to national security;
         (F) matters the disclosure of which would constitute a serious threat to national security;
      (3) the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department in any subdivision referred to in paragraph (1) as the Inspector General considers appropriate.
   (e) Assistant Inspector General for Civil Rights and Civil Liberties.—
      (1) The Assistant Inspector General shall:
         (I) in paragraph (1), by inserting “Homeland Security,” after “Health and Human Services,”; and
         (II) in paragraph (2), by inserting “Homeland Security,” after “Health and Human Services.”;
      (2) with respect to the information described in paragraph (1), to:
         (A) intelligence or counterintelligence matters;
         (B) ongoing criminal investigations or proceedings;
         (C) undercover operations;
         (D) any other matters the disclosure of which would constitute a serious threat to national security;
         (E) any other matters the disclosure of which would constitute a serious threat to national security;
         (F) other matters the disclosure of which would constitute a serious threat to national security;
      (3) the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department in any subdivision referred to in paragraph (1) as the Inspector General considers appropriate.
   (f) Inspector General of the Department of Homeland Security.—
      (1) Notwithstanding the last 2 sentences of section 3006 of title 18, United States Code;
      (2) the Inspector General shall:
         (I) keep the Secretary before the Assistant Inspector General of the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:
   On page 222, strike line 18 and all that follows through page 225, line 12.
grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) by redesignating subsection (c) as subsection (d), and inserting "(8)";

(2) in subsection 8J (as redesignated by subsection (d)(1)), by striking "or 8I" and inserting "or 8J";

(f) DEFINITION.—In this Act, the term "civil rights and civil liberties" means rights and liberties which—

(1) are or may be protected by the Constitution or implementing legislation; or

(2) are analogous to the rights and liberties under paragraph (1), whether or not secured by treaty, statute, regulation or executive order.

SA 4939. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 13, strike lines 8 and 9, and insert the following. This Act shall not take effect until the Congress provides for an effective date for this Act in subsequent legislation.

SA 4940. Mr. DODD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 206, between lines 7 and 8, insert the following:

SEC. 510. GRANTS FOR FIRING PERSONNEL.


(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively,

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

"(c) PERSONNEL GRANTS.—

(1) DURATION.—In awarding grants for hiring firefighting personnel in accordance with subsection (b)(3)(A), the Director shall award grants extending over a 3-year period.

(2) MAXIMUM AMOUNT.—The total amount of grants awarded under this subsection shall not exceed $100,000 per firefighter, indexed for inflation, over the 3-year grant period.

(3) FEDERAL SHARE.—

(A) IN GENERAL.—A grant under this subsection shall not exceed 75 percent of the total salary and benefits cost for additional firefighters hired.

(B) WAIVER.—The Director may waive the 25 percent non-Federal match under subparagraph (A) for a jurisdiction of 50,000 or fewer residents or in cases of extreme hardship.

(4) APPLICATION.—An application for a grant under this subsection shall—

"(A) meet the requirements under subsection (b)(5);

"(B) include an explanation for the applicant’s need for Federal assistance; and

"(C) include a plan for obtaining necessary support to retain the position following the conclusion of Federal support.

"(5) MAINTENANCE OF EFFORT.—Grants awarded under this subsection shall only be used to pay the salaries and benefits of additional firefighting personnel, and shall not be used to supplement funding allocated for personnel from State and local sources.", and

(3) in subsection (f) (as redesignated by paragraph (1)), by adding at the end the following:

"(3) SUPPLEMENTAL APPROPRIATION.—In addition to the authorization provided in paragraph (1), there are authorized to be appropriated $1,000,000,000 for each of fiscal years 2003 and 2004 for the purpose of providing personnel grants described in subsection (c). Such sums may be provided solely for the purpose of hiring employees engaged in fire protection (as defined in section 3 of the Fair Labor Standards Act (29 U.S.C. 201)), and shall not be subject to the provisions of paragraphs (10) or (11) of subsection (b)."

SA 4941. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 256 after line 17, insert the following:

"(f) NONAPPLICATION OF CERTAIN AUTHORITIES TO CHAPTER 71.—No authority under this chapter to waive, modify, or otherwise affect law shall apply to chapter 71.

SA 4942. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 308, between lines 7 and 8, insert the following:

"SEC. 1301. ESTABLISHMENT.

There is established with-
Coordinator, and other offices as may be necessary to carry out this title.

(c) RESPONSIBILITIES.—The Director shall—

(1) administer the Agency and be responsible for the promulgation of rules and regulations affecting the Agency; and

(2) appoint and fix the compensation of attorneys, clerks, administrative assistants, and other employees necessary to carry out this title.

SEC. 1303. BOARD OF IMMIGRATION APPEALS.

(a) In General.—The Board of Immigration Appeals (in this title referred to as the “Board”) shall perform the appellate functions of the Agency. The Board shall consist of a Chair and not less than 14 other immigration appeals judges.

(b) Appointment.—Members of the Board shall be appointed by the Attorney General, in consultation with the Director and the Chair of the Board of Immigration Appeals.

(c) Qualifications.—The Chair and each other Member of the Board shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.

(d) Chair.—The Chair shall direct, supervise, and establish the procedures and policies of the Board.

(e) Jurisdiction.—

(1) In General.—The Board shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the Board of Immigration Appeals (as in effect under the Executive Office of Immigration Review).

(2) No Review.—The Board shall have de novo review of any decision by an immigration judge, including any final order of removal.

(f) Decisions of the Board.—The decisions of the Board shall constitute final agency action, subject to review only as provided by the Immigration and Nationality Act and other applicable law.

(g) Independence of Board Members.—The Members of the Board shall exercise their independent judgment and discretion in the cases coming before the Board.

(h) Referral of Case to the Director of the Agency for Immigration Hearings and Appeals.

(i) In General.—The Board shall refer to the Director of the Agency for Immigration Hearings and Appeals for review of its decision all cases which—

(A) the Director, in consultation with the Attorney General, directs the Board to refer to him;

(B) the Chair or a majority of the Board believes should be referred to the Director of the Agency for Immigration Hearings and Appeals for review; and

(C) the Under Secretary of Homeland Security for Immigration Affairs or the Attorney General requests be referred to the Director for review.

(j) Decision of the Director.—In any case in which the Director of the Agency for Immigration Hearings and Appeals makes a decision, such decision shall be in writing and shall be transmitted to the Board for transmittal and service as provided by regulation.

SEC. 1304. CHIEF IMMIGRATION JUDGE.

(a) Establishment of Office.—There shall be within the Agency the position of Chief Immigration Judge, who shall administer the immigration court dockets.

(b) Duties of the Chief Immigration Judge.—The Chief Immigration Judge shall be responsible for the general supervision, direction, and procurement of resource and facilities and for the general management of immigration court dockets.

(c) Appointment of Immigration Judges.—Immigration judges shall be appointed by the Attorney General, in consultation with the Director and the Chief Immigration Judge.

(d) Qualifications.—Each immigration judge, including the Chief Immigration Judge, shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.

(e) Jurisdiction and Authority of Immigration Courts.—The immigration courts shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the immigration courts within the Executive Office for Immigration Review of the Department of Justice.

(f) Independence of Immigration Judges.—The immigration judges shall exercise their independent judgment and discretion in the cases coming before the Immigration Court.

SEC. 1305. CHIEF ADMINISTRATIVE HEARING OFFICER.

(a) Establishment of Position.—There shall be within the Agency the position of Chief Administrative Hearing Officer.

(b) Duties of the Chief Administrative Hearing Officer.—The Chief Administrative Hearing Officer shall hear cases brought under section 242 of the Immigration and Nationality Act.

SEC. 1306. REMOVAL OF JUDGES.

Immigration judges and Members of the Board may be removed from office only for good cause, including neglect of duty or malfeasance, by the Director, in consultation with the Chair of the Board, in the case of the removal of a Member of the Board, or in consultation with the Chief Immigration Judge, in the case of the removal of an immigration judge.

SEC. 1307. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Agency such sums as may be necessary to carry out this title.

Subtitle B—Transfer of Functions and Savings Provisions

SEC. 1311. TRANSITION PROVISIONS.

(a) Transfer of Functions.—All functions under the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by section 121 of this title) are transferred to, or to be made available in connection with, the immigration courts and, if so designated, the Board of Immigration Appeals, under this Act.

(b) Transfer and Allocations of Appropriations.—The person or persons employed by the Board of Immigration Appeals in connection with such functions shall be transferred to, or to be made available in connection with, the immigration courts and, if so designated, the Board of Immigration Appeals, under this Act.

(c) Continuance of Suit With Substitution of Parties.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function transferred pursuant to this Act, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(d) The provisions of this Act shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

Subtitle C—Effective Date

SEC. 1321. EFFECTIVE DATE.

This title shall take effect one year after the effective date of division A of this Act.
SA 4949. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKEY, and Mr. Voinovich)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike Title IV, subtitles D, E, and F and insert the following:

—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

SEC. 1001. SHORT TITLE.
This division may be cited as the “Immigration Reform, Accountability, and Security Enhancement Act of 2002”.

SEC. 1002. DEFINITIONS.
In this division:
(1) ENFORCEMENT BUREAU.—The term “Enforcement Bureau” means the Bureau of Enforcement and Border Affairs established in section 114 of the Immigration and Nationality Act, as added by section 1106 of this Act.
(2) FUNCTION.—The term “function” includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.
(3) IMMIGRATION ENFORCEMENT FUNCTIONS.—The term “immigration enforcement functions” has the meaning given the term in section 114(b)(2) of the Immigration and Nationality Act, as added by section 1106 of this Act.
(4) IMMIGRATION LAWS OF THE UNITED STATES.—The term “immigration laws of the United States” has the meaning given the term in section 111(e) of the Immigration and Nationality Act, as added by section 1102 of this Act.
(5) IMMIGRATION POLICY, ADMINISTRATION, AND INSPECTION FUNCTIONS.—The term “immigration policy, administration, and inspection functions” has the meaning given the term in section 112(b)(3) of the Immigration and Nationality Act, as added by section 1106 of this Act.
(6) INSPECTION SERVICES.—The term “inspection services” has the meaning given the term in section 113(b)(2) of the Immigration and Nationality Act, as added by section 1106 of this Act.
(7) OFFICE.—The term “office” includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.
(8) SECRETARY.—The term “Secretary” means the Secretary of Homeland Security.
(9) SERVICE BUREAU.—The term “Service Bureau” means the Bureau of Immigration Services established in section 113 of the Immigration and Nationality Act, as added by section 1106 of this Act.
(10) UNDER SECRETARY.—The term “Under Secretary” means the Under Secretary of Homeland Security for Immigration Affairs appointed under section 112 of the Immigration and Nationality Act, as added by section 1103 of this Act.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

SEC. 1101. ABOLITION OF INS.
(a) IN GENERAL.—The Immigration and Naturalization Service is abolished.
(b) REPEAL.—Section 4 of the Act of February 5, 1917, (8 U.S.C. 2), relating to the establishment of the Immigration and Naturalization Service, is repealed.

SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.
(a) ESTABLISHMENT.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—
(1) by inserting “CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES” after “TITLE I—GENERAL”;
(2) by adding to the end the following:
   "CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS"

(b) SHORT TITLE.—The Immigration and Nationality Act, as amended by this Act, may be cited as the “Immigration Reform, Accountability, and Security Enhancement Act of 2002”.

(c) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service is hereby deemed to refer to the Directorate of Immigration Affairs of the Department of Homeland Security, and any reference in the immigration laws of the United States as defined in section 111(e) of the Immigration and Nationality Act, as added by this section, to the Attorney General shall be deemed to refer to the Secretary of Homeland Security, acting through the Under Secretary of Homeland Security for Immigration Affairs.

SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.
(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 of this Act, is amended by adding at the end the following:
   "CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS"

SEC. 1104. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.
(a) ESTABLISHMENT.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—
(1) by inserting “CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES” after “TITLE I—GENERAL”;
(2) by adding to the end the following:
   "CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS"

(b) SHORT TITLE.—The Immigration and Nationality Act, as amended by this Act, may be cited as the “Immigration Reform, Accountability, and Security Enhancement Act of 2002”.

(c) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service is hereby deemed to refer to the Directorate of Immigration Affairs of the Department of Homeland Security, and any reference in the immigration laws of the United States as defined in section 111(e) of the Immigration and Nationality Act, as added by this section, to the Attorney General shall be deemed to refer to the Secretary of Homeland Security, acting through the Under Secretary of Homeland Security for Immigration Affairs.

SEC. 1105. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.
(a) IN GENERAL.—The Under Secretary shall be charged with any and all responsibilities and authorities in the administration of the Directorate and of this Act which are conferred upon the Secretary as may be delegated to the Under Secretary by the Secretary or which may be prescribed by the Secretary.
(b) DUTIES.—Subject to the authority of the Secretary under paragraph (1), the Under Secretary shall have the following duties:
(1) IMMIGRATION POLICY.—The Under Secretary shall develop and implement policy under the immigration laws of the United States. The Under Secretary shall propose, promulgate, and issue rules, regulations, and statements of policy with respect to any function within the jurisdiction of the Directorate.
(2) ADMINISTRATION.—The Under Secretary shall have responsibility for—
   "(i) the administration and enforcement of the functions conferred upon the Directorate under section 111(c) of this Act; and
   (ii) the administration and enforcement of the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States;"
(3) INSPECTIONS.—The Under Secretary shall be directly responsible for the administration and enforcement of the functions of the Directorate under the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States.
(4) ACTIVITIES.—As part of the duties described in paragraph (2), the Under Secretary shall do the following:
   "(A) RESOURCES AND PERSONNEL MANAGEMENT.—The Under Secretary shall manage the resources, personnel, and other support requirements of the Directorate."
"(B) INFORMATION RESOURCES MANAGEMENT.—Under the direction of the Secretary, the Under Secretary shall manage the information resources of the Directorate, including the records and databases and the coordination of records and other information within the Directorate, and shall ensure that the Directorate obtains and retains information technology systems to carry out its functions.

"(C) COORDINATION OF RESPONSE TO CIVIL RIGHTS VIOLATIONS.—The Under Secretary shall coordinate, with the Chief Civil Rights Officer of the Department of Homeland Security or other officials, as appropriate, the resolution of civil rights issues that involve immigration violations.

"(D) RISK ANALYSIS AND RISK MANAGEMENT.—Assisting and supporting the Secretary, the Under Secretary shall coordinate with other Directors and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

"(3) DEFINITION.—In this chapter, the term ‘immigration policy, administration, and inspection functions’ means the duties, activities, and services described in this subsection.

"(c) GENERAL COUNSEL.—

"(1) IN GENERAL.—There shall be within the Directorate a General Counsel, who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary.

"(2) FUNCTIONS.—The General Counsel shall—

"(A) serve as the chief legal officer for the Directorate; and

"(B) be responsible for providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Under Secretary with respect to legal matters affecting the Directorate, and any of its components.

"(d) FINANCIAL OFFICERS FOR THE DIRECTORATE OF IMMIGRATION AFFAIRS.—

"(1) CHIEF FINANCIAL OFFICER.—

"(A) IN GENERAL.—There shall be within the Directorate a Chief Financial Officer.

"(B) RESPONSIBILITIES.—The position of Chief Financial Officer shall be a career reserved position in the Senior Executive Service and shall have the authorities and functions described in section 902 of title 5, United States Code, in relation to financial matters of the Directorate.

"(2) DEPUTY CHIEF FINANCIAL OFFICER.—The Deputy Chief Financial Officer shall be responsible for directing, supervising, and coordinating all budget formulas and execution for the Directorate.

"(e) CONFORMING AMENDMENTS.—(1) Section 101(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(8)) is amended to read as follows:—

"(2) The term ‘Under Secretary’ means the Under Secretary of Homeland Security for Immigration Affairs who is appointed under section 101(c).

"(B) Except as provided in subparagraph (C), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking ‘Commission of Immigration and Naturalization’ and ‘Commissioner’ each place they appear and inserting ‘Under Secretary of Homeland Security for Immigration Affairs’ and ‘Under Secretary’, respectively.

"(e) The amendments made by subparagraph (B) do not apply to the ‘Commission of Social Security’ in section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1160(c)).

"(2) Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended—

"(A) in subsection (c), by striking ‘Commissioner’ and inserting ‘Under Secretary’;

"(B) in the subsection heading, by striking ‘COMMISSIONER’ and inserting ‘UNDER SECRETARY’;

"(C) in subsection (d) by striking ‘Commissioner’ and inserting ‘Under Secretary’; and

"(D) in subsection (e) by striking ‘Commissioner’ and inserting ‘Under Secretary’.

"(3) Sections 104 and 105 of the Immigration and Nationality Act (8 U.S.C. 1104, 1105) are amended by striking ‘Secretary’ each place it appears and inserting ‘Assistant Secretary of State for Consular Affairs’.

"(4) Section 106 of the Immigration and Nationality Act (8 U.S.C. 1106(c)) is amended—

"(A) in the first sentence, by striking ‘Passport Office, a Visa Office,’ and inserting ‘a Passport Services office, a Visa Services office, an Overseas Citizens Services and Visa Services office’; and

"(B) in the second sentence, by striking ‘the Passport Office and the Visa Office’ and inserting ‘the Passport Services office and the Visa Services office’.

"(5) Section 5315 of title 5, United States Code, is amended by striking the following:—

"(a) Establishment of Bureau.—

"(B) Assistant Secretary.—The head of the Service Bureau shall be the Assistant Secretary for Immigration Security (in this chapter referred to as the ‘Service Bureau’).

"(C) Responsibilities of the Assistant Secretary.—

"(1) In General.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Security shall administer the immigration service functions of the Directorate.

"(2) Immigration Service Functions Defined.—In this chapter, the term ‘immigration service functions’ means the following functions under the immigration laws of the United States:

"(A) Adjudications of petitions for classification of nonimmigrant and immigrant status.

"(B) Adjudications of applications for adjustment of status and change of status.

"(C) Adjudications of naturalization applications.

"(D) Adjudications of asylum and refugee applications.

"(E) Adjudications performed at Service centers.

"(F) Determinations concerning custody and parole of asylum seekers who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, including determinations under section 208.

"(G) All other adjudications under the immigration laws of the United States.

"(c) Chief Budget Officers of the Service Bureau.—There shall be within the Service Bureau a Chief Budget Officer, who shall be appointed by the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Service Bureau shall be responsible for monitoring and supervising all financial activities of the Service Bureau.

"(d) Quality Assurance.—There shall be within the Service Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—
“(1) ensure that the Directorate’s policies with respect to immigration enforcement functions of the Directorate are properly implemented; and

“(2) include Service Bureau policies or practices result in sound record management and efficient and accurate service.

(e) Office of Professional Responsibility.—There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Service Bureau employees and investigating charges of misconduct or ill treatment made by the public.

(f) Training of Personnel.—The Assistant Secretary for Immigration Services, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Service Bureau.

(b) Compensation of Assistant Secretary of Service Bureau.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

“Assistant Secretary of Homeland Security for Immigration Enforcement, Director, Department of Homeland Security.”.

(c) Service Bureau Officers.—(1) Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Services, shall establish Service Bureau offices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Service Bureau offices, the Under Secretary shall consider the location’s proximity and accessibility to the public served, the workload for which that office shall be responsible, whether the location is in a geographic area that is significantly reduced or backlog of cases in that given geographic area, whether the location will improve customer service, and whether the location is in a geographic area with an increase in the population to be served. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Service Bureau offices adequately serve customer service needs.

(2) Transition Provision.—In determining the location of Service Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraphs (1) and (2) for which action has been taken, and the feasibility and desirability of establishing new Service Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

(a) In General.—Chapter 2 of title I of the Immigration and Nationality Act, as added by sections 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:


(a) Establishment of Bureau.—(1) In General.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Enforcement, shall establish the Bureau of Enforcement, Bureau offices, including suboffices and satellite offices, in appropriate geographic areas, and other enforcement considerations.

(b) Responsibilities of the Assistant Secretary.—(1) In General.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Enforcement shall administer the immigration enforcement functions of the Directorate.

(2) Immigration Enforcement Functions Defined.—In this chapter, the term ‘immigration enforcement functions’ means the following functions under the immigration laws of the United States:

(A) The border patrol function.

(B) The investigative function, except as specified in section 113(b)(2)(F).

(C) The removal function.

(D) The intelligence function.

(E) The training function.

(F) The budget function.

(G) The budget officer of the Enforcement Bureau.

(b) Enforcement Bureau Offices.—There shall be within the Enforcement Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Enforcement Bureau shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau.

(c) Office of Professional Responsibility.—There shall be within the Enforcement Bureau a Director of Professional Responsibility who shall have the responsibility for ensuring the professionalism of the Enforcement Bureau and receiving charges of misconduct or ill treatment made by the public and investigating the charges.

(d) Office of Quality Assurance.—There shall be within the Enforcement Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

(1) ensure that the Directorate’s policies with respect to immigration enforcement functions are properly implemented; and

(2) ensure that Enforcement Bureau policies or practices result in sound record management and efficient and accurate recordkeeping.

(e) Training of Personnel.—The Assistant Secretary for Immigration Enforcement, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Enforcement Bureau.

(f) Compensation of Assistant Secretary of Enforcement Bureau.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

“Assistant Secretary of Homeland Security for Enforcement and Border Affairs, Director, Office of Immigration Affairs, Department of Homeland Security.”.

(g) Enforcement Bureau Officers.—(1) In General.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Enforcement, shall establish Enforcement Bureau offices, including suboffices and satellite offices, in appropriate geographic areas, and other enforcement considerations.

(2) Transition Provision.—In determining the location of Enforcement Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraphs (1) and (2) for which action has been taken, and the feasibility and desirability of establishing new Enforcement Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1106. Office of the Ombudsman Within the Directorate

(a) In General.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:


(a) In General.—There is established within the Directorate the Office of the Ombudsman for Immigration Affairs, which shall be headed by the Ombudsman.

(b) Ombudsman.—(1) Appointment.—The Ombudsman shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Ombudsman shall report directly to the Under Secretary.

(2) Compensation.—The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5332 of title 5, United States Code, or, if the position of Ombudsman so determines, at a rate fixed under section 9503 of such title.

(c) Responsibilities of Office.—The functions of the Office of the Ombudsman for Immigration Affairs shall include—

(1) to assist individuals in resolving problems with the Directorate or any component thereof;

(2) to identify systemic problems encountered by the public in dealings with the Director or any component thereof;

(3) to propose changes in the administrative practices or regulations of the Directorate, or any component thereof, to mitigate problems identified under paragraph (2);

(4) to identify potential changes in statutory law that may be required to mitigate such problems; and

(5) to monitor the coverage and geographic distribution of local offices of the Directorate.

(d) Personnel Actions.—The Ombudsman shall have the authority to appoint local or regional representatives of the Ombudsman’s Office as in the Ombudsman’s judgment may be necessary to address and resolve problems encountered by the public.

(e) Annual Report.—Not later than December 31 of each year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Each report shall contain a full and substantive analysis, in addition to statistical information, and shall contain—

(1) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems;

(2) a summary of actions taken by the Ombudsman to improve the responsiveness of the Directorate;

(3) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems; and

(4) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, and the result of such action;

(5) an accounting of the items described in paragraphs (1) and (2) for which action remains to be completed;

(6) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, the result of such action, and identify any Agency official who is responsible for such inaction;
“6” recommendations as may be appropriate to resolve problems encountered by the public;

“(7) recommendations as may be appropriate to resolve problems encountered by the public, including problems created by backlogs in the adjudication and processing of petitions and applications;

“(8) recommendations as may be necessary to carry out its functions.

“(9) such other information as the Ombudsman may deem advisable.

“(f) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be appropriated to the Office of the Ombudsman such sums as may be necessary to carry out its functions.

“(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.”.

SEC. 1106. OFFICE OF IMMIGRATION STATISTICS WITHIN THE DIRECTORATE.

(a) In General.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

“SEC. 116. OFFICE OF IMMIGRATION STATISTICS.

“(a) Establishment.—There is established within the Directorate an Office of Immigration Statistics (in this section referred to as the ‘Office’), which shall be headed by a Director who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Office shall collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involved in the functions of the Directorate and the Executive Office for Immigration Review (or its successor entity).

“(b) Responsibilities of Director.—The Director of the Office shall be responsible for the following:

“(1) Statistical Information.—Maintenance of all immigration statistical information of the Directorate of Immigration Affairs.

“(2) Standards of Reliability and Validity.—Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review (or its successor entity).

“(3) Relation to the Directorate of Immigration Affairs and the Executive Office for Immigration Review.—

“(1) Other Authorities.—The Director of the Office and the Executive Office for Immigration Review (or its successor entity) shall provide statistical information to the Office from the operational data systems controlled by the Directorate and the Executive Office for Immigration Review (or its successor entity), for the purpose of meeting the responsibilities of the Director of the Office.

“(2) Databases.—The Director of the Office, under the direction of the Secretary, shall ensure the interoperability of the databases of the Directorate, the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review (or its successor entity) to permit the Director of the Office to perform the duties of such office.

“(4) Other Functions.—There are transferred to the Directorate of Immigration Affairs for exercise by the Under Secretary through the Office of Immigration Statistics transferred under this title of responsibility for the administration of the Immigration and Nationality Act, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service, and the statistical functions performed by the Executive Office for Immigration Affairs (as added by this title) on the day before the effective date of this title.

SEC. 1108. CEREMONIAL AMENDMENTS.

The title of contents of the Immigration and Nationality Act is amended—

“(1) by inserting after the item relating to the heading for title I the following:

“CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES”;

“(2) by striking the item relating to section 103 and inserting the following:

“Sec. 103. Powers and duties of the Sec- tion 1106 of this Act.

“Sec. 111. Establishment of Directorate of Immigration Affairs.


“Sec. 114. Bureau of Enforcement and Border Affairs.

“Sec. 115. Office of the Ombudsman for Immigration Affairs.


Sec. 1114. Delegation and Reservation of Functions.

Subtitle B—Transition Provisions

SEC. 1111. TRANSFER OF FUNCTIONS.

(a) In General.—

(1) Functions of the Attorney General.—All functions under the immigration laws of the United States statute in, or exercised by, the Attorney General, immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Secretary through the Under Secretary in accordance with section 112(b) of the Immigration and Naturalization Act, as added by section 1103 of this Act.

(2) Functions of the Commissioner or the INS.—All functions under the immigration laws of the United States statute in, or exercised by, the Commissioner of Immigration and Naturalization, or the Immigration and Naturalization Service (or any other officer or employee thereof), immediately prior to the effective date of this title, are transferred to the Director of Immigration Affairs on such effective date for exercise by the Secretary on such effective date for exercise by the Secretary in accordance with section 112(b) of the Immigration and Naturalization Act, as added by section 1103 of this Act.

(b) Exercise of Authorities.—Except as otherwise provided by law, the Under Secretary may, for purposes of performing any function transferred to the Director of Immigration Affairs pursuant to section (a), exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RESOURCES.

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the Under Secretary for appropriate allocation in accordance with section 1115—

(1) the personnel of the Department of Justice employed in connection with the functions transferred under this title; and

(2) the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising, or otherwise provided by law, and the statistical information transferred pursuant to this title.

SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNCTIONS AND RESOURCES.

Under the direction of the Secretary, the Under Secretary shall determine, in accordance with the corresponding criteria set forth in sections 1112(b), 1113(b), and 1114(b) of the Immigration and Nationality Act (as added by this title),

(1) which of the functions transferred under section 1111 are—

(A) immigration policy, administration, and inspection functions;

(B) immigration service functions; and

(C) immigration enforcement functions;

and

(2) which of the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred under section 1111 shall be held or used, or from were available to, or were made available, in connection with the performance of the respective functions specified in paragraph (1) immediately prior to the effective date of this title.

SEC. 1114. DELEGATION AND RESERVATION OF FUNCTIONS.

(a) In General.—

(1) Delegation to the Bureaus.—Under the direction of the Secretary, and subject to section 1112(b) of the Immigration and Nationality Act (as added by section 1103), the Under Secretary shall delegate—

(A) immigration service functions to the Assistant Secretary for Immigration Services; and

(B) immigration enforcement functions to the Assistant Secretary for Immigration Enforcement.

(2) Reservation of Functions.—Subject to section 1112(b)(1) of the Immigration and Nationality Act (as added by section 1103), immigration policy, administration, and inspection functions shall be reserved for exercise by the Under Secretary.

(b) Nonexclusive Delegations Authorized.—Delegations made under subsection (a) may be on a nonexclusive basis as the Under Secretary may determine may be necessary to perform the functions of the Under Secretary’s responsibilities and duties under law.

(c) Effect of Delegations.—Except as otherwise expressly prohibited by law or otherwise provided in this title, the Under Secretary may make delegations under this subsection to such officers and employees of the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau, respectively, as the Under Secretary may designate, and may authorize successive redelega- tions of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the functions so transferred.

(d) Statutory Construction.—Nothing in this division may be construed to limit the authority of the Under Secretary, acting directly or by delegation, to establish such offices or positions within the Directorate of Immigration Affairs, in accordance with the needs of the functions transferred pursuant to this title.

SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RESOURCES.

(a) Authority of the Under Secretary.—
(1) IN GENERAL.—Subject to paragraph (2) and section 1114(b), the Under Secretary shall make allocations of personnel, assets, liabilities, grants, contracts, property, receipts, and expenses in balance with appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the performance of the respective functions, as determined under section 1113, in accordance with the delegation of functions and the reservation of functions made under this Act.

(2) LIMITATION.—Unexpended funds transferred pursuant to section 1112 shall be used only for the purposes for which the funds were appropriated at the time of the transfer.

(b) AUTHORITY TO TERMINATE AFFAIRS OF INS.—The Attorney General in consultation with the Secretary shall provide for the termination of the affairs of the Immigration and Naturalization Service and such further measures and dispositions as may be necessary to effectuate the purposes of this division.

(c) TREATMENT OF SHARED RESOURCES.—

The Under Secretary is authorized to provide for an appropriate allocation, or coordination, of personnel, resources involved in supporting shared support functions for the office of the Under Secretary, the Service Bureau, and the Immigration and Naturalization Service, or by the President, any other Government official, or by a court of competent jurisdiction.

SEC. 1116. SAVINGS PROVISIONS.

(a) General.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, in the General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this title; and

(2) that are in effect on the effective date of such transfer, shall continue in effect according to their terms as in effect on such effective date; shall continue in effect according to their terms, as determined under section 1113, in accordance with the performance of such function by the head of the office, and other employees in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(b) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Director or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such officer or employee in connection with a function transferred pursuant to this section, shall be continued.

(c) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit, added as a party to such order, and such function is transferred under this title to any other officer or office, then such suit shall be continued with the name of such officer or office as applicable, substituted or added as a party.

(d) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, and adjudication that apply to any function transferred under this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred.

SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION.

The Immigration and Naturalization Service, on the day before the effective date of this title may serve as Under Secretary until the date on which the Under Secretary is appointed under section 112 of the Immigration and Naturalization Act.

SEC. 1118. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW AUTHORITY NOT AFFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function that is performed by the Executive Office for Immigration Review of the Department of Justice (or its successor entity), or by any officer, employee, or component thereof immediately prior to the effective date of this title.

SEC. 1119. OTHER AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Secretary of State under the State Department Basic Authorities Act of 1956, or

(2) the Secretary of Labor, for such purposes; and

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Attorney General, for such purposes; and

(2) the Secretary of Labor, for such purposes.

(b) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary—

(A) to effectuate the abolition of the Immigration and Naturalization Service;

(B) to effectuate the establishment of the Directorate of Immigration Affairs and its components, the Bureau of Enforcement and Border Affairs, and the Bureau of Immigration Services, and the Board of Immigration Appeals; and

(C) to transfer the functions required to be made under this division and to carry out any other duty that is made necessary by this division, or any amendment made by this division.

(2) ACTIVITIES SUPPORTED.—Activities supported by appropriations made by this title, or any amendment made by this division, shall include—

(A) planning for the transfer of functions from the Immigration and Naturalization Service to the Directorate of Immigration Affairs, including the preparation of any report and implementation plans necessary for such transfer;

(B) the division, acquisition, and disposition of—

(i) buildings and facilities;

(ii) support and infrastructure resources; and

(iii) computer hardware, software, and related documentation;

(C) other capital expenditures necessary to effect the transfer of functions described in this paragraph;

(D) revision of forms, stationery, logos, and signage;

(E) expenses incurred in connection with the transfer and training of existing personnel and hiring of new personnel; and

(F) such other expenses necessary to effect the transfer, as determined by the Secretary.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

(c) TRANSITION ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the “Directorate of Immigration Affairs Transition Account”.

(2) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under subsection (a) and amounts reprogrammed for the purposes described in subsection (a).

(d) REPORT TO CONGRESS ON TRANSITION.—Beginning not later than 90 days after the effective date of division A of this Act, and at the end of each fiscal year in which appropriations are made pursuant to subsection (c), the Secretary of Homeland Security shall submit a report to Congress concerning the availability of funds to cover transition costs, including—

(1) any unobligated balances available for such purposes; and

(2) a calculation of the amount of appropriations that would be necessary to fully fund the activities described in subsection (a).

(e) EFFECTIVE DATE.—This section shall take effect 1 year after the effective date of division A of this Act.

Subtitle C—Miscellaneous Provisions

SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.

(a) LEVEL OF FEES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking “services,” including the costs of consular services provided without charge to asylum applicants or other immigrants” and inserting “services”.

(b) USE OF FEES.—
(1) In general.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to availability of funds provided pursuant to subsection (c), costs of similar services provided without charge to asylum and refugee applicants.

(2) Prohibited fees.—No fee may be used to fund adjudication- or naturalization-related audits that are not regularly conducted in the normal course of operation.

(c) READER AND ASYLUM ADJUDICATION SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as may be otherwise available for such purposes, the funds appropriated to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act.

(2) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(d) REPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other funds available for the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs.

(2) FEES.—Fees imposed for a particular service or benefit shall be deposited into the account established under paragraph (1) that is for the bureau with jurisdiction over the function to which the fee relates.

(3) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs.

(e) AUTHORIZATION OF APPROPRIATIONS FOR BACKLOG REDUCTION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2006 to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (title II of Public Law 106-313).

(2) APPROPRIATION OF FUNDS.—Amounts appropriated under paragraph (1) are authorized to remain available until expended.

(f) INFRASTRUCTURE IMPROVEMENT ACCOUNT.—Funds appropriated pursuant to paragraph (1) shall be deposited into the Immigration Services and Infrastructure Improvement Account established by section 209(a)(2) of Public Law 106-313.

SEC. 1122. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) Establishment of On-Line Database.

(1) In general.—Not later than 2 years after the effective date of division A, the Secretary, in consultation with the Internet Technology Advisory Committee, shall establish an Internet-based system that will permit an immigrant, nonimmigrant, employer, or other person who files any application, petition, or other request for any benefit under the immigration laws of the United States access to on-line information about the processing status of the application, petition, or other request.

(2) PRIVACY CONSIDERATIONS.—The Secretary shall consider all applicable privacy issues in the establishment of the Internet system described in paragraph (1). No personally identifying information shall be accessible to unauthorized persons.

(b) Means of Access.—The on-line information system described in paragraph (1) shall be accessible to the persons described in paragraph (1) through a personal identification number (PIN) or other personalized password.

(4) PROHIBITION ON FEES.—The Under Secretary shall not charge any immigrant, nonimmigrant, employer, or other person described in paragraph (1) a fee for access to the information in the database pertinent to such person.

(2) FEASIBILITY STUDY FOR ON-LINE FILING AND IMPROVED PROCESSING.—

(1) ON-LINE FILING.—

(a) IN GENERAL.—The Under Secretary, in consultation with the Technology Advisory Committee, shall conduct a study to determine the feasibility of on-line filing of the documents described in subsection (b). (B) STUDY.—The study shall—

(i) include a review of computerization and technology of the Immigration and Naturalization Service (or successor agency) relating to immigration services and the processing of such documents;

(ii) include an estimate of the time-frame and costs of implementing on-line filing of such documents; and

(iii) consider other factors in implementing such a filing system, including the feasibility of filing on-line.

(b) REPORT.—Not later than 2 years after the effective date of division A, the Under Secretary shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the findings of the study conducted under this subsection.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 1 year after the effective date of division A, the Under Secretary shall establish, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, an advisory committee (in this section referred to as the “Technology Advisory Committee”) to assist the Under Secretary in—

(A) establishing the tracking system under subsection (a); and

(b) conducting the study under subsection (b).

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of—

(A) experts from the public and private sector capable of establishing and implementing the system in an expeditious manner; and

(B) representatives of persons or entities who may use the tracking system described in subsection (a) on an on-line filing system described in subsection (b)(1).

SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

(a) ASSIGNMENT OF ASYLUM OFFICERS.—The Under Secretary shall assign asylum officers to major ports of entry in the United States to assist in the inspection of asylum seekers. For other ports of entry, the Under Secretary shall take steps to ensure that asylum officers participate in the inspections process.

(b) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by inserting after section 1226A the following new section:

"SEC. 126B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

(1) DEVELOPMENT OF ALTERNATIVES TO DETENTION.—The Under Secretary shall—

(A) develop specific alternatives to detention of asylum seekers who do not have nonpolitical criminal records; and

(B) develop conditions for the detention of asylum seekers that ensure a safe and humane environment.

(2) SPECIFIC ALTERNATIVES FOR CONSIDERATION.—The Under Secretary shall consider the following specific alternatives to the detention of asylum seekers described in subsection (a); namely—

(a) Parole from detention.

(2) For individuals not otherwise qualified for parole under paragraph (1), parole with appearance assistance provided by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

(3) For individuals not otherwise qualified for parole under paragraph (1) or (2), non-secure shelter care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

(4) Noninstitutional settings for minors such as foster care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

(c) REGULATIONS.—The Under Secretary shall promulgate such regulations as may be necessary to carry out this section.

(d) DEFINITION.—In this section, the term ‘asylum seeker’ means any applicant for asylum under section 208 or any alien who indicates an intention to apply for asylum under that section.”

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236A the following new item:

"Sec. 236B. Alternatives to detention of asylum seekers.

Subtitle D—Effective Date

SEC. 1131. EFFECTIVE DATE.

This title, and the amendments made by this title, shall take effect one year after the effective date of division A of this Act.

TITLE XII—UNACCOMPANIED ALIEN CHILD PROTECTION

SEC. 1201. SHORT TITLE.

This title may be cited as the “Unaccompanied Alien Child Protection Act of 2002”.

SEC. 1202. DEFINITIONS.

(a) In General.—In this title:

(1) DIRECTOR.—The term “Director” means the Director of the Office.

(2) OFFICE.—The term “Office” means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act.

(3) SERVICE.—The term “Service” means the Immigration and Naturalization Service (or, upon the effective date of title XI, the Director of Immigration and Naturalization Affairs).

(4) UNACCOMPANIED ALIEN CHILD.—The term “unaccompanied alien child” means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained the age of 18; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(5) VOLUNTARY AGENCY.—The term “voluntary agency” means a private, nonprofit voluntary agency with expertise in the cultural, developmental, or psychological needs of unaccompanied alien children as licensed by the appropriate State and certified by the Director of the Office of Refugee Resettlement.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraph:

"(53) The term ‘unaccompanied alien child’ means a child who—

(A) has no lawful immigration status in the United States; or

(B) has not attained the age of 18; and

(C) with respect to whom—
“(i) there is no parent or legal guardian in the United States;

“(ii) no parent or legal guardian in the United States is able to provide care and physical custody of a child who is unaccompanied by a parent or legal guardian;

“(5) the term ‘unaccompanied refugee children’ means persons described in paragraph (3);

“(6) the term ‘unaccompanied alien child’ means a child described in paragraph (3) who—

“(II) has not attained the age of 18; and

“(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.”

Subtitle A—Structural Changes

SEC. 1211. RESPONSIBILITIES OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) IN GENERAL.

(1) RESPONSIBILITIES OF THE OFFICE.—The Office shall be responsible for—

(A) coordinating and implementing the care and placement for unaccompanied alien children who are in Federal custody by reason of—

(B) ensuring minimum standards of detention and care for all unaccompanied alien children.

(2) DUTIES OF THE DIRECTOR WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.—The Director shall be responsible under this title for—

(A) ensuring that the best interests of the children are considered in decisions and actions relating to the care and placement of an unaccompanied alien child;

(B) making placement, release, and detention determinations for all unaccompanied alien children in the custody of the Office;

(C) implementing the placement, release, and detention determinations made by the Office;

(D) convening, in the absence of the Assistant Secretary, Administration for Children and Families of the Department of Health and Human Services, the Interagency Task Force on Unaccompanied Alien Children established in section 1212;

(E) identifying a sufficient number of qualified persons, entities, and facilities to house unaccompanied alien children in accordance with sections 1222 and 1223;

(F) overseeing the persons, entities, and facilities described in sections 1222 and 1223 to ensure their compliance with such provisions;

(G) compiling, updating, and publishing at least annually a State-by-State list of professionals or other entities qualified to contract with the Office to provide the services described in sections 1231 and 1232;

(H) maintaining statistical information and other data on unaccompanied alien children in the custody of the Office and care, which shall include—

(i) biographical information such as the child’s name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody, including each instance in which such child came into the custody of—

(I) the Service; or

(ii) the Office;

(iii) information relating to the custody, detention, release, and repatriation of unaccompanied alien children who have been in the custody of the Office;

(iv) in any case in which the child is placed in detention, an explanation relating to the detention of the child;

(v) the disposition of any actions in which the child is the subject;

(vi) collecting and compiling statistical information from the Service, including Border Patrol and inspections officers, on the unaccompanied alien children with whom they come into contact; and

(vii) Inspections and inspections of facilities and other entities in which unaccompanied alien children reside.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (3)(F), the Director is encouraged to utilize the refugee children foster care system established in section 1212 and the power to have an individual or entity, engaged in the provision of child welfare services, contract with service providers to perform the services described in sections 1222, 1223, and 1225.

(B) compel compliance with the terms and conditions set forth in section 1225, including the power to terminate the contracts of providers that are in default with such conditions and reassign any unaccompanied alien child to a similar facility that is in compliance with such section.

(b) NO EFFECT ON SERVICE, EOIR, AND DEPARTMENT OF STATE FUNCTION.

(1) The Director, the Office of Immigration Review, and the Department of State shall retain their responsibilities for the review of deportation proceedings and the distribution of funds to execute the FIP for Immigration and Nationality Act for the placement of unaccompanied alien children.

(2) The Director shall have the power to—

(A) contract with service providers to perform the services described in sections 1222, 1223, and 1225;

(B) compel compliance with the terms and conditions set forth in section 1225, including the power to terminate the contracts of providers that are in default with such conditions and reassign any unaccompanied alien child to a similar facility that is in compliance with such section.

(c) ENSURING MINIMUM STANDARDS OF DETENTION AND CARE.

(1) No child shall be detained in an alien child to a similar facility that is in compliance with such section.

(2) In carrying out the duties described in paragraph (3), the Director shall have the power to—

(A) contract with service providers to perform the services described in sections 1222, 1223, and 1225;

(B) compel compliance with the terms and conditions set forth in section 1225, including the power to terminate the contracts of providers that are in default with such conditions and reassign any unaccompanied alien child to a similar facility that is in compliance with such section.

(d) ENSURING MINIMUM STANDARDS OF DETENTION AND CARE.

SEC. 1212. ESTABLISHMENT OF INTERAGENCY TASK FORCE ON UNACCOMPANIED ALIEN CHILDREN.

(a) ESTABLISHMENT.—There is established an Interagency Task Force on Unaccompanied Alien Children.

(b) COMPOSITION.—The Task Force shall consist of the following members:

(1) The Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(2) The Under Secretary of Homeland Security for Immigration Affairs.

(3) The Assistant Secretary of State for Population, Refugees, and Migration.

(4) The Director.

(c) S UITS.—Such other officials in the executive branch of Government as may be designated by the President.

(d) CHAIRMAN.—The Task Force shall be chaired by the Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(e) A MENDMENTS OF LAWS.—The Task Force shall have power to amend laws as it determines necessary to carry out its responsibilities.

(f) ACTIVITIES OF THE TASK FORCE.—In consultation with nongovernmental organizations, the Task Force shall—

(A) measure and evaluate the progress of the United States in treating unaccompanied alien children in United States custody; and

(B) expand interagency procedures to collect and analyze data, including significant research and resource information on the needs and treatment of unaccompanied alien children in the custody of the United States Government.

SEC. 1213. TRANSITION PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—All functions with respect to the care and custody of unaccompanied alien children described in the Immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization or (any officer, employee, or component thereof), immediately prior to the effective date of this subtitle, are transferred to the Office.

(b) TRANSFER AND ALLOCATIONS OF APPROVED PERSONNEL.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, and other funds of any officer, employee, or component thereof, immediately prior to the effective date of this subtitle, are transferred to the Office.

(c) COMPLIANCE WITH STATUTE.—Except as provided by this title, any statutory requirements relating to notice, hearings, action upon the
record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office or other officers of the office, to which such function is transferred pursuant to such provision.

SEC. 1214. EFFECTIVE DATE.

This section shall take effect one year after the effective date of division A of this Act.

Subtitle B—Custody, Release, Family Reunification, and Detention

SEC. 1221. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDERS OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act, the officer shall—

(A) permit such child to withdraw the child’s application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act; and

(B) remove such child from the United States or at a United States port of entry.

(2) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous to the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), unless a determination is made on a case-by-case basis that—

(i) such child has a fear of returning to the child’s country of nationality or country of last habitual residence owing to a fear of persecution;

(ii) the return of such child to the child’s country of nationality or country of last habitual residence would endanger the life or safety of such child; or

(iii) the child cannot make an independent decision to withdraw the child’s application for admission due to age or other lack of capacity.

(b) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) or (B) of paragraph (2) shall have the right to consult with a consular officer from the child’s country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right.

(c) RULE OF CONSTRUCTION.—Subject to the availability of appropriations, the Director is authorized to make grants to, and enter into contracts with, voluntary agencies to carry out the provisions of this section.

SEC. 1222. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the Director’s discretion under paragraph (4) and subsection (a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with one of the following individuals in the following order of preference:

(A) A legal guardian that is capable and willing to provide for the child’s well-being.

(B) A parent who seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and take into account such information on the child’s placement within 30 days.

(2) R ULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(A) supersede obligations under any treaty or other international agreement to which the United States is a party, including the Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Programme of Action, and the Declaration of the Rights of the Child; or

(B) limit any right or remedy under such international agreement.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to such placement, the parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and take into account such information on the child’s placement within 30 days.

(b) R ULE OF CONSTRUCTION.—Nothing in this section shall be construed to—

(A) supersede obligations under any treaty or other international agreement to which the United States is a party, including the Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Programme of Action, and the Declaration of the Rights of the Child; or

(B) limit any right or remedy under such international agreement.

(c) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—The Director shall take affirmative steps to ensure that unaccompanied alien children are protected from smugglers, traffickers, or others seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity. Authorities involved in such efforts shall be reported to their State bar associations for disciplinary action.

(d) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director is authorized to make grants to, and enter into contracts with, voluntary agencies to carry out the provisions of this section.

(e) REMUNERATION OF STATE EXPENSES.—Subject to the availability of appropriations, the Director is authorized to reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to this title.

(f) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person listed in subsection (a) shall remain confidential and may be used only for the purposes of determining such person’s qualifications under subsection (a)(1).

SEC. 1223. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(b) STATE LICENSURE.—In the case of a placement of a child with an entity described in section 1222(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(c) CONDITIONS OF DETENTION.—The Director shall promulgate regulations incorporating standards for conditions of detention in such places that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment for depression;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) access to educational services appropriate to the child.

(d) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the Director’s discretion under paragraph (4) and subsection (a)(2), an unaccompanied alien child shall be promptly placed with one of the following individuals in the following order of preference:

(A) A parent who seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and take into account such information on the child’s placement within 30 days.

(B) A legal guardian that is capable and willing to provide for the child’s well-being.

(C) A foster care provider that is capable and willing to provide for the child’s well-being.

(D) A foster care provider that is capable and willing to provide for the child’s well-being.

(E) A foster care provider that is capable and willing to provide for the child’s well-being.

(F) A qualified adult or entity seeking custody of an unaccompanied alien child, the Secretary shall promptly notify the Office.

(2) TRANSFER OF UNACCOMPANIED ALIEN CHILD—

(A) TRANSFER TO THE SERVICE.—Upon apprehension of an unaccompanied alien child, the Secretary shall promptly notify the Office.

(B) TRANSFER TO THE SERVICE.—Upon determining that a child in the custody of the Office is described in subsection (a)(2) at a land border or port of entry of the United States, the Secretary shall promptly make arrangements to transfer the care and custody of such child to the Service.

(c) AGE REQUIREMENT.—In any case in which the age of an alien is in question and the resolution of questions of such alien’s age would affect the alien’s eligibility for treatment under the provisions of this title, a determination of whether such alien meets the age requirements of this title shall be made in accordance with the provisions of section 1225.

SEC. 1222. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the Director’s discretion under paragraph (4) and subsection (a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with one of the following individuals in the following order of preference:

(A) A parent who seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and take into account such information on the child’s placement within 30 days.

(B) A legal guardian that is capable and willing to provide for the child’s well-being.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(c) CONDITIONS OF DETENTION.—The Director shall promulgate regulations incorporating standards for conditions of detention in such places that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment for depression;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) access to educational services appropriate to the child.

(d) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the Director’s discretion under paragraph (4) and subsection (a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with one of the following individuals in the following order of preference:

(A) A parent who seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and take into account such information on the child’s placement within 30 days.

(B) A legal guardian that is capable and willing to provide for the child’s well-being.

(C) A foster care provider that is capable and willing to provide for the child’s well-being.

(D) A foster care provider that is capable and willing to provide for the child’s well-being.

(E) A foster care provider that is capable and willing to provide for the child’s well-being.

(F) A qualified adult or entity seeking custody of an unaccompanied alien child, the Secretary shall promptly notify the Office.

(B) TRANSFER TO THE SERVICE.—Upon determining that a child in the custody of the Office is described in subsection (a)(2) at a land border or port of entry of the United States, the Director shall promptly make arrangements to transfer the care and custody of such child to the Service.

(c) AGE REQUIREMENT.—In any case in which the age of an alien is in question and the resolution of questions of such alien’s age would affect the alien’s eligibility for treatment under the provisions of this title, a determination of whether such alien meets the age requirements of this title shall be made in accordance with the provisions of section 1225.
needs of children in immigration proceedings;
(viii) recreational programs and activities;
(ix) spiritual and religious needs; and
(x) a fair and impartial hearing.

(b) Notification of Children.—Such regulations shall provide that all children are notified orally and in writing of such standards.

(2) Prohibition of Certain Practices.—The Director and the Secretary of Homeland Security shall develop procedures prohibiting the unreasonable use of
(i) shackling, handcuffing, or other restraint on children;
(ii) solitary confinement; or
(iii) strip searches.

(c) Rule of Construction.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 1224. Replaced Unaccompanied Alien Children.

(a) Country Conditions.—

(1) Sense of Congress.—It is the sense of Congress that to the extent consistent with the treaties and other international agreements to which the United States is a party and to the extent practicable, the United States shall undertake to the extent possible to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) Assessment of Conditions.—In assessing country conditions, the Office shall, to the maximum extent practicable, examine the conditions specific to the locale of the child's repatriation.

(b) Report on Repatriation of Unaccompanied Alien Children.—Beginning not later than 18 months after the date of enactment, and annually thereafter, the Director shall submit a report to the Judiciary Committees of the House of Representatives and Senate on the Director's efforts to repatriate unaccompanied alien children. Such report shall include at a minimum the following information:

(1) The number of unaccompanied alien children repatriated and the number of such children actually removed from the United States.

(2) A description of the type of immigration relief sought and denied to such children.

(3) A statement of the nationalities, ages, and gender of such children.

(4) A description of the procedures used to effect the removal of such children from the United States.

(5) A description of steps taken to ensure that such children were safe and humanly repatriated to their country of origin.

(6) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 1225. Establishing the Age of an Unaccompanied Alien Child.

The Director shall develop procedures that permit the presentation and consideration of a variety of forms of evidence, including testimony of a child and other persons, to determine an unaccompanied alien child's age for purposes of removal, custody, and detention. Such procedures shall allow the appeal of a determination to an immigration judge. Radiographs shall not be the sole means of determining age.

SEC. 1226. EFFECTIVE DATE.

This subtitle shall take effect one year after the effective date of division A of this Act.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

SEC. 1231. Right of Unaccompanied Alien Children to Guardians Ad Litem.

(a) Guardian Ad Litem.—

(1) Appointment.—The Director shall appoint a guardian ad litem who meets the qualifications described in paragraph (2) for each unaccompanied alien child in the custody of the Office not later than 72 hours after the child's arrival or re-constructive custody of such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) Qualifications of Guardian Ad Litem.—

(A) In General.—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters;

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children; and

(B) Prohibition.—A guardian ad litem shall not be an employee of the Service.

(3) Duties.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child’s age;

(B) investigate the facts and circumstances relevant to the child’s presence in the United States, including facts and circumstances arising in the country of the child’s nationality or last habitual residence and facts and circumstances arising subsequent to the child’s departure from such country;

(C) work with counsel to identify the child’s eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child’s custody, detention, release, and repatriation;

(E) ensure that the child’s best interests are protected, participates in, or is subject to, proceedings or actions under the Immigration and Nationality Act; and

(F) ensure that the child understands such determinations and proceedings;

and

(G) report findings and recommendations to the Director and to the Executive Office of Immigration Review (or successor entity).

(4) The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed,

(B) the child is located by United States,

(C) the child is granted permanent resident status in the United States,

(D) the child attains the age of 18, or

(E) the child’s parent is in the custody of a parent or legal guardian, whichever occurs first.

(5) Powers.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child; and

(D) shall be notified in advance of all hearings involving the child that are held in connection with proceedings under the Immigration and Nationality Act, and shall be given a reasonable opportunity to be present at such hearings; and

(E) shall be permitted to consult with the child during any hearing or interview involving such child.

(b) Training.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the circumstances and conditions that unaccompanied alien children face as well as in the various immigration benefits for which such a child might be eligible.

SEC. 1232. Right of Unaccompanied Alien Children to Counsel.

(a) Access to Counsel.—

(1) In General.—The Director shall ensure that all unaccompanied alien children in the custody of the Office of the Service who are not described in section 1221a(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) Pro Bono Representation.—To the maximum extent practicable, the Director shall utilize the services of pro bono attorneys who agree to provide representation to such children without charge.

(b) Government Funded Representation.—

(A) Appointment of Competent Counsel.—Notwithstanding section 226 of the Immigration and Nationality Act (8 U.S.C. 1362) or any other provision of law, when no competent counsel is available to represent an unaccompanied alien child without charge, the Director shall appoint competent counsel for such child at the expense of the Government.

(c) Limitation on Attorney Fees.—Counsel appointed under subparagraph (A) may not be compensated at a rate in excess of the rate provided under section 3006A of title 18, United States Code.

(d) Assumption of the Cost of Government-Funded Counsel.—In the case of a child for whom counsel is appointed under subparagraph (A) who is subsequently placed in the physical custody of a parent or legal guardian, such parent or legal guardian may elect to retain the same counsel to continue representation of the child, at no expense to the Government, beginning on the date that the parent or legal guardian assumes physical custody of the child.

(4) Development of Necessary Infrastructures and Systems.—In ensuring that legal representation is provided to such children, the Director shall explore the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(5) Contracting and Grant Making Authority.—

(A) In General.—Subject to the availability of appropriations, the Director shall enter into contractual arrangements with national nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) Ineligibility for Grants and Contracts.—In making grants and entering into contracts with such agencies, the Director shall ensure that such grants are awarded to national nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(6) Requirement of Legal Representation.—

(A) In General.—The Director shall ensure that all unaccompanied alien children have legal representation in all phases of the child coming into Federal custody.

(B) Duties.—Counsel shall represent the unaccompanied alien child before immigration judge, and whenever such representation involves the status or other actions involving the
it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence; and

(4) for ‘‘(d)’’ of the ‘‘Special Immigrant of Refugee Resettlement’’ of the Department of Health and Human Services has certified to the Under Secretary of Homeland Security for Immigration and Nationality Act, that the alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent who has provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

(b) ADJUSTMENT OF STATUS.—Section 246(h)(2) (8 U.S.C. 1255(h)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

‘‘(A) paragraphs (1), (4), (5), (6), and (7)(A) of section 212(a) shall not apply;’’;

(2) in subsection (b) by adding the following new subparagraph:

‘‘(C) the Secretary of Homeland Security may waive paragraph (2) (A) and (B) in the case of an offense which arose as a consequence of the child being unaccompanied.’’

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted refugee status under section 207(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), and who is in the custody of a State shall be eligible for all funds made available under any of sections 412(d) of such Act.

SEC. 1243. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This subtitle shall take effect one year after the effective date of division A of this Act.

(b) APPLICABILITY.—The provisions of this subtitle shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this subtitle.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

SEC. 1241. SPECIAL IMMIGRANT JUVENILE VISAs.

(a) J Visa.—Section 101(a)(27)(J) (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

‘‘(J) a child in the custody of any agency identified under the Act is the date of application who is present in the United States—

(1) who has been declared dependent on a juvenile court in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment, or a similar basis found under State law;

(2) for whom it has been determined in administrative or judicial proceedings that

‘‘Guidelines for Children’s Asylum Claims’’, dated December 1998, and encourages and supports the Service’s implementation of such guidelines in an effort to facilitate the handling of children’s asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice (or successor entity) to adopt the “Guidelines for Children’s Asylum Claims” in its handling of children’s asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary of Homeland Security shall provide periodic comprehensive training under the “Guidelines for Children’s Asylum Claims” to the immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 1252. UNACCOMPANIED REFUGEES.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

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

‘‘(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region; such an analysis shall include an assessment of—

(A) the number of unaccompanied refugee children by region;

(B) the capacity of the Department of State to identify such refugees;

(C) the capacity of the international community to care for and protect such refugees; and

(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.’’.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEES.—Section 207(f)(2) (8 U.S.C. 1157(f)(2)) is amended—

(1) striking “and” and “countries,”; and

(2) inserting before the period at the end the following: ‘‘, and instruction on the needs of unaccompanied children.’’

Subtitle F—Authorization of Appropriations

SEC. 1261. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out provisions of this title.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to this section are authorized to remain available until expended.

TITLE XIII—AGENCY FOR IMMIGRATION HEARINGS AND APPEALS

Subtitle A—Structure and Function

(a) IN GENERAL.—There is established within the Department of Justice the Agency for Immigration Hearings and Appeals (in this title referred to as the “Agency”).

(b) ABOLITION OF EOIR.—The Executive Office for Immigration Review of the Department of Justice is hereby abolished.

(1) APPOINTMENT.—There shall be at the head of the Agency a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) OFFICES.—The Director shall appoint a Deputy Director, General Counsel, Pro Bono
SEC. 1305. CHIEF ADMINISTRATIVE HEARING OFFICER.
(a) ESTABLISHMENT OF POSITION. — There shall be within the agency the position of Chief Administrative Hearing Officer.
(b) DUTIES OF THE CHIEF ADMINISTRATIVE HEARING OFFICER. — The Chief Administrative Hearing Officer shall perform the appellate functions of the Agency. The Board shall consist of a Chair and not less than 14 other immigration appeals judges.
(c) APPOINTMENT. — Members of the Board shall be appointed by the Director, in consultation with the Chair of the Board of Immigration Appeals.
(d) QUALIFICATIONS. — The Chair and each other Member of the Board shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 10 years of professional legal expertise in immigration and nationality law.
(e) JURISDICTION. — (1) IN GENERAL. — The Board shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the Board of Immigration Appeals (as in effect under the Executive Office of Immigration Review).
(2) DE NOVO REVIEW. — The Board shall have de novo review of any decision by an immigration judge, including any final order of removal.
(f) DECISIONS OF THE BOARD. — The decisions of the Board shall constitute final agency action, subject to review only as provided by the Immigration and Nationality Act and other applicable law.
(g) INDEPENDENCE OF BOARD MEMBERS. — The Members of the Board shall exercise their independent judgment and discretion in the carrying out of their duties.
(h) CHIEF IMMIGRATION JUDGE. — (a) ESTABLISHMENT OF OFFICE. — There shall be within the agency the position of Chief Immigration Judge, who shall administer the immigration courts.
(b) DUTIES OF THE CHIEF IMMIGRATION JUDGE. — The Chief Immigration Judge shall be responsible for the general supervision, direction, and procurement of personnel and facilities and for the general management of immigration court dockets.
(c) APPOINTMENT OF IMMIGRATION JUDGES. — Immigration judges shall be appointed by the Director, in consultation with the Chief Immigration Judge.
(d) QUALIFICATIONS. — Each immigration judge, including the Chief Immigration Judge, shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.
(e) JURISDICTION AND AUTHORITY OF IMMIGRATION COURTS. — The immigration courts shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the immigration courts, as the appropriate for the Immigration Review of the Department of Justice.
(f) INDEPENDENCE OF IMMIGRATION JUDGES. — The immigration judges shall exercise their independent judgment and discretion in the cases coming before the Immigration Court.
(g) ADMINISTRATION. — (1) That have been issued, made, granted, or otherwise transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.
(2) The Executive Office of Immigration Review, or by any individual in the official capacity of such individual or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.
(h) CHIEF ADMINISTRATIVE HEARING OFFICER. — The decisions of the Board shall constitute final agency action, subject to review only as provided by the Immigration and Nationality Act.
(i) EFFECTIVE DATE. — This title shall take effect one year after the effective date of division A of this Act.

CHAPTER XIV CHIEF HUMAN CAPITAL OFFICERS

SEC. 1401. Establishment of agency Chief Human Capital Officers.
SEC. 1402. Authority and functions of agency Chief Human Capital Officers.
SEC. 1403. Authority of Executive Office of Human Capital Officers.
title 31 shall appoint or designate a Chief Human Capital Officer, who shall—

(1) advise and assist the head of the agency and other agency officials in carrying out the agency’s duties and responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

(2) identify the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

(3) perform such other duties and functions as the President shall designate for the primary duty of the Chief Human Capital Officer.

§ 1402. Authority and functions of agency Chief Human Capital Officers

(a) The authority of each Chief Human Capital Officer shall include—

(1) setting the workforce development strategy of the agency;

(2) assessing workforce characteristics and future needs based on the agency’s mission and strategic plan;

(3) aligning the agency’s human resources policies and programs with organization mission, strategic goals, and performance outcomes;

(4) developing and advocating a culture of continuous improvement to attract and retain employees with superior abilities;

(5) identifying best practices and benchmarking studies; and

(6) establishing an infrastructure for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer—

(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—

(A) are the property of the agency or are available to the agency; and

(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and

(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the following:

"14. Chief Human Capital Officers ..... 1401", SEC. 2103. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.

(a) ESTABLISHMENT.—There is established a Chief Human Capital Officers Council, consisting of—

(1) the Director of the Office of Personnel Management, who shall act as chairperson of the Council;

(2) the Deputy Director for Management of the Office of Management and Budget, who shall act as vice chairperson of the Council; and

(3) the Chief Human Capital Officers of Executive departments and any other members who are designated by the Director of the Office of Personnel Management.

(b) MEETINGS.—The Chief Human Capital Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations.

(c) MEETINGS AT MEETINGS.—The Chief Human Capital Officers Council shall ensure that representatives of Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

SEC. 2104. STRATEGIC HUMAN CAPITAL MANAGEMENT.

Section 1103 of title 5, United States Code, is amended by adding at the end the following:

"(c)(1) The Office of Personnel Management shall design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

(2) The systems referred to under paragraph (1) shall be defined in regulations of the Office of Personnel Management and include standards for—

(A) aligning human capital strategies of agencies with the missions, goals, and organizational objectives of those agencies; and

(B) integrating those strategies into the budget and strategic plans of those agencies; and

(c) closing skill gaps in mission critical occupations.

(c) CONTINUING EFFORT.—The Office of Personnel Management shall develop and implement a human capital management strategy supported by appropriate investment in training and technology; and

(d) FOCUSING.—Managers and human resources officers accountable for effective and efficient human resources management in support of agency missions in accordance with merit system principles.

SEC. 2105. EFFECTIVE DATE.

This title shall take effect 180 days after the date of enactment of this division.

TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT.

SEC. 2201. INCLUSION OF AGENCY HUMAN CAP- TIAL STRATEGIC PLANNING IN PERFORMANCE PLANS AND PROGRAM PERFORMANCE REPORTS.

(a) PERFORMANCE PLANS.—Section 1115 of title 31, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking "and" after the semicolon;

(B) by redesignating paragraph (2) as paragraph (3); and

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

"(3) provide a description of how the performance goals and objectives are to be achieved, including the operational processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.

(b) PROGRAM PERFORMANCE REPORTS.—Section 1116(d) of title 31, United States Code, is amended—

(1) in subsection (d), by striking "and" after the semicolon;

(2) by redesigning paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

"(5) include a review of the performance goals and objectives of the annual performance plan relative to the agency’s strategic human capital management; and"

SEC. 2202. REFORM OF THE COMPETITIVE SER- VICE HIRING PROCESS.

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended—

(1) in section 3303(a), (A) in paragraph (1), by striking "and" after the semicolon;

(B) in paragraph (2), by striking the period and inserting ; and

(C) by adding at the end the following:

"(3) authority for agencies to appoint, with regard to the provisions of sections 3309 through 3318, candidates directly to positions for which—

(A) public notice has been given; and

(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria; and

(2) by inserting after section 3318 the following:

"§ 3319. Alternative ranking and selection procedures.

(1) the Office, in exercising its authority under section 3304;

(2) an agency to which the Office has delegated examining authority under section 1104(a)(2); and

(b) establish ranking systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS-9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

(b) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in a preference category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

(c) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

(1) the number of employees hired under that system;

(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, Hispanic, Native Hawaiian or other Pacific Islander; and

(3) the way in which managers were trained in the administration of that system.

(b) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.

(b) TECHNICAL AND CONFORMING AMEND- MENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the item relating to section 3319 and inserting the following:

"3319. Alternative ranking and selection proce- dures."
SEC. 2203. PERMANENT EXTENSION, REVISION, AND EXPANSION OF AUTHORITIES FOR USE OF VOLUNTARY SEPARATION INCENTIVE PAY AND VOLUNTARY EARLY RETIREMENT.

(a) VOLUNTARY SEPARATION INCENTIVE PAYMENTS

(1) IN GENERAL.—

(A) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Chapter 35 of title 5, United States Code, is amended by inserting after subchapter I the following:

‘‘SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

§ 3521. Definitions

‘‘In this subchapter, the term—

‘‘(1) ‘agency’ means an Executive agency as defined under section 105; and

‘‘(2) ‘employee’ means—

‘‘(A) an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

‘‘(i) is serving under an appointment without time limitation; and

‘‘(ii) has been currently employed for a continuous period of at least 3 years; and

‘‘(B) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

‘‘(ii) an employee who is in receipt of a disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

‘‘(iii) an employee who is in receipt of a disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

‘‘(iv) an employee who has previously received an involuntary separation incentive payment from the Federal Government under this subchapter or any other authority;

‘‘(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

‘‘(vi) any other—

‘‘(1) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5753; or

‘‘(2) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

‘‘(3) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754;

§ 3522. Agency plans; approval

‘‘(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

‘‘(b) Not later than 15 days after an agency under section (a) shall include—

‘‘(1) the specific positions and functions to be reduced or eliminated;

‘‘(2) the identification of which categories of employees will be offered incentives;

‘‘(3) the time period during which incentives may be paid;

‘‘(4) the purposes and amounts of voluntary separation incentive payments to be offered; and

‘‘(5) a description of how the agency will operate without the eliminated positions and functions.

‘‘(c) The Director of the Office of Personnel Management shall review each agency’s plan and may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget, if the plan or the implementation may not be implemented without the approval of the Director of the Office of Personnel Management.

§ 3523. Authority to provide voluntary separation incentive payments

‘‘(a) A voluntary separation incentive payment under this subchapter may be paid to an employee who is provided in the plan of an agency established under section 3522.

‘‘(b) A voluntary separation incentive payment—

‘‘(1) shall be offered to agency employees on the basis of—

‘‘(A) 1 or more organizational units;

‘‘(B) 1 or more occupational series or levels;

‘‘(C) 1 or more geographical locations;

‘‘(D) skills, knowledge, or other factors related to a position;

‘‘(E) specific periods of time during which eligible employees may elect a voluntary separation incentive payment; or

‘‘(F) any appropriate combination of such factors;

‘‘(2) shall be paid in a lump sum after the employee’s separation;

‘‘(3) shall be equal to the lesser of—

‘‘(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

‘‘(B) an amount determined by the agency head, not to exceed $25,000;

‘‘(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

‘‘(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

‘‘(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on any other separation; and

‘‘(7) shall be paid from appropriations or funds available for the payment of the basic separation incentive at the discretion of the agency, with the consent of the employee, or from any other type of Government benefit for which the employee is eligible.

§ 3524. Effect of subsequent employment with the Government

‘‘(a) The term ‘employment’—

‘‘(1) in subsection (b) includes employment under a personal service contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

‘‘(2) in subsection (c) does not include employment under such a contract.

‘‘(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States within 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual’s first day of employment, the entire amount of the incentive payment to the agency that paid the incentive payment.

‘‘(1) If the employment under this section is with an agency, other than the General Accounting Office, the United States Postal Service, or the Postal Retirement Sys-

‘‘(2) If the employment under this section is with any other agency, the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if—

‘‘(A) the employee possesses unique abilities and is the only qualified applicant available for the position; or

‘‘(B) in the case of an emergency involving a direct threat to life or property, the individual—

‘‘(1) has skills directly related to resolving the emergency; and

‘‘(2) will serve on a temporary basis only so long as that individual’s services are made necessary by the emergency.

§ 3525. Regulations

‘‘The Office of Personnel Management may prescribe regulations to carry out this subchapter.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 35 of title 5, United States Code, is amended—

(2) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to that established under paragraph (1) for individuals serving in the judicial branch.

(3) CONTINUATION OF OTHER AUTHORITY.—Authority exercising the voluntary separation incentive authority in effect on the effective date of this subsection may continue to offer voluntary separation incentives consistent with that authority until that authority expires.

(4) EFFECTIVE DATE.—This subsection shall take effect 90 days after the date of enactment of this Act.

(b) FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT.

(1) CIVIL SERVICE RETIREMENT SYSTEM.—Section 5535(b)(2) of title 5, United States Code, is amended to read as follows:

‘‘(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

‘‘(B) is serving under an appointment that is not time limited.

‘‘(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

‘‘(D) is separated from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Secretary of the Treasury, the immediate separation of the employee involves unique abilities and is the only qualified applicant available for the position; or

‘‘(E) such agency (or, if applicable, the component in which the employee is serving) is..."
undergoing substantial delaying, substantive reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

(2) continue as if such amendments had not been enacted.

(c) APPLICATION.—The amendment made by subsection (a)(2)(B) shall not apply with respect to an individual who, before the effective date of this section, is removed from the Senior Executive Service for failure to be reclassified as a senior executive under section 3383a of title 5, United States Code.

SEC. 2302. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.

(a) In General.—Section 5307(a) of title 5, United States Code, is amended by adding at the end the following:—

"(5) Notwithstanding paragraph (1), the total payment referred to under such paragraph with respect to an employee paid under section 5372, 5376, or 5383 of title 5 or section 332(b), 605, or 604 of title 28 shall not exceed the total annual compensation payable to the Vice President under section 104 of title 3. Regulations prescribed under subsection (c) may extend the application of this paragraph to other equivalent categories of employees."

TITLE XXIV—ACADEMIC TRAINING

SEC. 2401. ACADEMIC TRAINING.

(a) In General.—The amendment made by section 2301(b) of this title is repealed.

(b) In exercising authority under subsection (a), the President shall:

"(1) not exceed the total annual compensation payable to the Vice President under section 104 of title 3; and

"(2) provide academic training and further education and training to improve organizational and individual performance;"
the extent that the time spent in travel status is not otherwise compensable.

(b) Not later than 30 days after the date of enactment of this section, the Office of Personnel Management shall prescribe regulations to implement this section.

SA 4950. Mr. INOUYE submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 5, in the item relating to section 801, insert "tribal," after "State."

On page 9, line 21, insert "tribal," after "State."

On page 10, between lines 9 and 10, insert the following:

(19) INDIAN TRIBE.—The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as being eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

On page 10, line 10, strike ("9") and insert ("10").

On page 10, strike lines 22 through 24 and insert the following:

(19) AN ALASKA NATIVE VILLAGE OR ORGANIZATION; and

On page 11, line 3, strike ("11") and insert ("12").

On page 11, line 7, strike ("12") and insert ("13").

On page 11, line 9, strike ("13") and insert ("14").

On page 11, line 11, strike ("14") and insert ("15").

On page 11, line 17, strike ("15") and insert ("16").

On page 12, strike line 9 and insert the following:

(Tribal Colleges and Universities.— The term "tribal college or university" has the meaning given the term "tribally controlled college or university" in section 318(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

(19) TURK AND CAICO ISLANDS.—The term "Turk and Caicos Islands" means the island of Turks and Caicos Islands, which is a Territory of the United Kingdom and is not a State.

On page 25, line 9, strike "tribal," after "State."

On page 25, line 20, insert "tribal," after "State."

On page 26, line 4, insert "tribal," after "State."

On page 26, line 10, insert "tribal," after "State."

On page 27, line 1, insert "tribal," after "State."

On page 27, line 21, insert "tribal," after "State."

On page 28, line 24, insert "tribal," after "State."

On page 29, line 7, insert "tribal," after "State."

On page 36, line 3, insert "tribal," after "State."

On page 37, line 5, insert "tribal," after "State."

On page 38, line 22, insert "tribal," after "State."

On page 42, line 9, insert "tribal," after "State."

On page 42, line 11, strike "or State" and insert "tribal," after "State."

On page 43, line 9, insert "tribal," after "State."

On page 43, line 12, insert "tribal," after "State."

On page 43, line 15, insert "tribal," after "State."

On page 45, line 1, insert "tribal," after "State."

On page 46, line 17, insert "tribal," after "State."

On page 50, line 13, insert "tribal," after "State."

On page 54, line 22, insert "tribal," after "State."

On page 60, line 1, insert "tribal," after "State."

On page 60, line 11, insert "tribal," after "State."

On page 60, line 17, insert "tribal," after "State."

On page 61, line 12, insert "tribal," after "State."

On page 62, line 7, insert "tribal," after "State."

On page 62, line 19, insert "tribal," after "State."

On page 63, line 6, insert "tribal," after "State."

On page 63, line 12, insert "tribal," after "State."

On page 65, line 2, insert "tribal," after "State."

On page 71, line 10, strike ("state," and insert "State, tribal,"

On page 97, line 3, insert "tribal," after "State."

On page 105, line 11, insert "tribal colleges and universities," after "education,"

On page 106, line 16, insert "tribal," after "State."

On page 107, line 3, insert "tribal," after "State."

On page 107, line 17, insert "tribal," after "State."

On page 147, line 1, insert "tribal," after "State."

On page 154, line 7, insert "tribal," after "State."

On page 201, line 22, insert "tribal," after "State."

On page 204, line 8, insert "tribal," after "State."

On page 214, line 7, insert "tribal," after "State."

On page 221, line 21, insert "TRIBAL," after "STATE."

On page 221, line 24, insert "tribal," after "State."

On page 222, line 1, insert "tribal," after "State."

On page 222, line 6, insert "tribal," after "State."

On page 283, line 9, insert "tribal," after "STATE."
On page 285, line 11, insert “tribal,” after “State.”

On page 285, line 12, insert “tribal,” after “State.”

On page 289, line 10, insert “Tribal,” after “State.”

On page 289, line 13, insert “tribal,” after “State.”

On page 289, line 16, insert “tribal,” after “State.”

On page 289, line 19, insert “tribal,” after “State.”

On page 289, line 22, insert “tribal,” after “State.”

On page 290, line 6, insert “tribal,” after “State.”

On page 290, line 13, insert “tribal,” after “State.”

On page 291, line 6, insert “tribal,” after “State.”

On page 301, line 21, insert “tribal,” after “State.”

On page 304, line 4, insert “tribal,” after “State.”

On page 304, line 12, insert “tribal,” after “State.”

On page 304, line 14, insert “tribal,” after “State.”

On page 304, line 21, insert “tribal,” after “State.”

On page 305, line 23, insert “tribal,” after “State.”

On page 305, line 3, insert “tribal,” after “State.”

On page 305, line 5, insert “tribal,” after “State.”

On page 305, line 9, insert “tribal,” after “State.”

On page 305, line 12, insert “tribal,” after “State.”

On page 305, line 23, insert “tribal,” after “State.”

On page 306, line 5, insert “tribal,” after “State.”

On page 306, line 19, insert “tribal,” after “State.”

On page 307, line 19, insert “tribal,” after “State.”

On page 308, line 15, insert “tribal,” after “State.”

On page 309, line 23, insert “tribal,” after “State.”

On page 310, line 20, insert “tribal,” after “State.”

On page 311, line 2, insert “tribal,” after “State.”

On page 311, line 9, insert “tribal,” after “State.”

On page 311, line 21, insert “tribal,” after “State.”

On page 311, line 23, insert “tribal,” after “State.”

On page 312, line 4, insert “tribal,” after “State.”

On page 312, line 17, insert “tribal,” after “State.”

On page 312, line 20, insert “tribally” or “tribal,” after “other.”

On page 312, line 22, insert “tribal,” after “State.”

On page 313, line 1, insert “tribal,” after “State.”

On page 313, line 18, insert “tribal,” after “State.”

On page 316, line 15, strike “federal, state,” and insert “Federal, State, tribal,.”

On page 316, line 24, strike “state,” and insert “tribal.”

On page 318, line 4, insert “tribal,” after “State.”

On page 318, line 18, insert “tribal,” after “State.”

On page 319, line 17, insert “tribal,” after “State.”
On page 42, line 9, insert “tribal,” after “State,”.
On page 42, line 11, strike “or State” and insert “, State, or tribal”.
On page 43, line 9, insert “, tribal,” after “State,”.
On page 43, line 12, insert “, tribal,” after “State,”.
On page 43, line 15, insert “, tribal,” after “State,”.
On page 45, line 1, insert “tribal,” after “State,”.
On page 46, line 17, insert “, tribal,” after “State,”.
On page 50, line 13, insert “, tribal,” after “State,”.
On page 54, line 22, insert “tribal,” after “State,”.
On page 60, line 1, insert “tribal,” after “State,”.
On page 60, line 11, insert “tribal,” after “State,”.
On page 60, line 17, insert “tribal,” after “State,”.
On page 61, line 12, insert “tribal,” after “State,”.
On page 62, line 7, insert “tribal,” after “State,”.
On page 62, line 19, insert “tribal,” after “State,”.
On page 63, line 6, insert “tribal,” after “State,”.
On page 63, line 12, insert “tribal,” after “State,”.
On page 65, line 2, insert “tribal,” after “State,”
On page 71, line 10, strike “state,” and insert “State, tribal,”.
On page 97, line 3, insert “tribal,” after “State,”.
On page 105, line 11, insert “tribal colleges and universities,” after “education,”.
On page 106, line 16, insert “tribal,” after “State,”.
On page 107, line 3, insert “tribal,” after “State,”.
On page 147, line 1, insert “tribal,” after “State,”
On page 154, line 7, insert “tribal,” after “State,”.
On page 201, line 22, insert “tribal,” after “State,”
On page 204, line 8, insert “tribal,” after “State,”.
On page 204, line 12, insert “and Indian Health Service” after “Health Service,”.
On page 214, line 7, insert “tribal” after “State,”.
On page 221, line 21, insert “tribal,” after “State,”
On page 221, line 24, insert “, Tribal,” after “State,”
On page 222, line 1, insert “tribal,” after “State,”
On page 222, line 6, insert “tribal,” after “State,”
On page 222, line 8, insert “tribal,” after “State,”
On page 222, line 10, insert “tribal,” after “State,”
On page 222, line 14, insert “tribal,” after “State,”
On page 230, line 4, insert “tribal,” after “State,”
On page 285, line 9, insert “Tribal,” after “State,”
On page 285, line 11, insert “tribal,” after “State,”
On page 285, line 12, insert “tribal,” after “State,”
On page 289, line 10, insert “Tribal,” after “State,”
On page 289, line 13, insert “tribal,” after “State,”
On page 289, line 16, insert “tribal,” after “State,”
On page 289, line 19, insert “tribal,” after “State,”
On page 289, line 22, insert “tribal,” after “State,”
On page 290, line 6, insert “tribal,” after “State,”
On page 290, line 13, insert “tribal,” after “State,”
On page 291, line 6, insert “tribal,” after “State,”
On page 301, line 21, insert “tribal,” after “State,”
On page 304, line 4, insert “tribal,” after “State,”
On page 304, line 12, insert “tribal,” after “State,”
On page 304, line 14, insert “tribal,” after “State,”
On page 304, line 21, insert “tribal,” after “State,”
On page 304, line 23, insert “tribal,” after “State,”
On page 305, line 3, insert “tribal,” after “State,”
On page 305, line 5, insert “tribal,” after “State,”
On page 305, line 9, insert “tribal,” after “State,”
On page 305, line 12, insert “tribal,” after “State,”
On page 305, line 23, insert “tribal,” after “State,”
On page 306, line 5, insert “tribal,” after “State,”
On page 306, line 19, insert “tribal,” after “State,”
On page 307, line 19, insert “tribal,” after “State,”
On page 308, line 15, insert “tribal,” after “State,”
On page 309, line 23, insert “tribal,” after “State,”
On page 310, line 20, insert “tribal,” after “State,”
On page 311, line 2, insert “tribal,” after “State,”
On page 311, line 6, insert “tribal,” after “State,”
On page 311, line 9, insert “tribal,” after “State,”
On page 311, line 21, insert “tribal,” after “State,”
On page 311, line 23, insert “tribal,” after “State,”
On page 312, line 4, insert “tribal,” after “State,”
On page 312, line 17, insert “tribal,” after “State,”
On page 312, line 20, insert “tribally or after other,”
On page 312, line 22, insert “tribal,” after “State,”
On page 313, line 1, insert “tribal,” after “State,”
On page 313, line 18, insert “tribal,” after “State,”
On page 313, line 24, strike “, and insert “, State, tribal,”
On page 318, line 4, insert “tribal,” after “State,”
On page 318, line 18, insert “tribal,” after “State,”
On page 319, line 17, insert “tribal,” after “State,”
On page 319, line 23, insert “tribal,” after “State,”
On page 320, line 19, insert “or Indian tribe” after “subdivision”
On page 321, line 4, insert “or Indian tribe” after “subdivision”
On page 376, line 22, insert “tribal,” after “State,”
On page 476, line 2, insert “tribal,” after “State,”
On page 476, line 8, insert “tribal,” after “State,”

On page 46, line 10, insert “tribal,” after “State,”

On page 476, line 12, insert “tribal,” after “State,”

SA 4953. Mr. LIBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes, which was ordered to lie on the table; as follows: Strike all after the first word and insert the following:

**TITLE XVIII—NON-EFFECTIVE PROVISIONS**

**SEC. 1801. NON-EFFECTIVE PROVISIONS.**

(a) IN GENERAL—Notwithstanding any other provision of this Act. (including any effective date provision of this Act) the following provisions of this Act shall not take effect:

(1) Section 308(b)(2)(B) (1) through (xiv).

(2) Section 311(i).

(3) Subtitle G of title VIII.

(4) Section 871.

(5) Section 890.

(6) Section 1707.

(7) Sections 1714, 1715, 1716, and 1717.

(b) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—Notwithstanding paragraph (2) of subsection (b) of section 232, any advisory group described under that paragraph shall not be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) WAIVER.—Notwithstanding section 836(d), the Secretary shall waive subsection (a) of that section, only if the Secretary determines that the waiver is required in the interest of homeland security.

The amendment made by subsection (a)(1) of this section shall be effective one day after enactment.

SA 4954. Mr. REID (for Ms. CANTWELL (for herself, Mr. GRASSLEY, Mr. ENZI, and Mr. KOHL)) proposed an amendment to the bill S. 1742, to prevent the crime of identity theft, mitigate the harm to individuals victimized by identity theft, and for other purposes; as follows:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Identity Theft Victims Assistance Act of 2002”.

**SEC. 2. FINDINGS.**

Congress finds that—

(1) the crime of identity theft is the fastest growing crime in the United States;

(2) victims of identity theft often have extraordinary difficulty restoring their credit and regaining control of their identity because of the viral nature of identity theft;

(3) identity theft may be ruinous to the good name and credit of consumers whose identities are misappropriated, and victims of identity theft may be denied otherwise well-deserved credit, may have to spend enormous time, effort, and sums of money to remedy their circumstances, and may suffer extreme emotional distress including deep depression founded in profound frustration as they address the array of problems that may arise as a result of identity theft;

(4) victims are often required to contact numerous Federal, State, and local law enforcement agencies, consumer credit reporting agencies, and creditors over many years, as each event of fraud arises;

(5) the Government, business entities, and credit reporting agencies have a shared responsibility to assist identity theft victims, to mitigate the harm that results from fraud perpetrated in the victim’s name;

(6) victims of identity theft need a nationally standardized means of—
(A) reporting identity theft to consumer credit reporting agencies and business entities; and
(B) evidencing their true identity and claims of identity theft to consumer credit reporting agencies and business entities;
(7) one of the greatest law enforcement challenges today is that stolen identities are often used to perpetrate crimes in many different localities in different States, and although identity theft is a Federal crime, most often, State and local law enforcement agencies are responsible for investigating and prosecuting the crimes; and
(b) the Federal Government should assist State and local law enforcement agencies to effectively combat identity theft and the associated fraud.

SEC. 3. TREATMENT OF IDENTITY THEFT MITIGATION.

(a) IN GENERAL.—Chapter 47 title 18, United States Code, is amended by adding after section 1028 the following:

"§1028A. Treatment of identity theft mitigation.

"(a) DEFINITIONS.—As used in this section—
"(1) the term ‘business entity’ means any corporation, trust, partnership, sole proprietorship or any other association, including any financial service provider, financial information repository, creditor (as that term is defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), telecommunication organizations, utilities, or other service provider;
"(2) the term ‘consumer’ means an individual;
"(3) the term ‘financial information’ means information identifiable as relating to an individual consumer that concerns the amount and conditions of the assets, liabilities, or credit of the consumer, including—
"(A) account numbers and balances;
"(B) nonpublic personal information, as that term is defined in section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801);
"(C) codes, passwords, social security numbers, tax identification numbers, State identification numbers issued by a State department of licensing, and other information used for the purpose of account access or transaction initiation;
"(4) the term ‘financial information repository’ means a person engaged in the business of providing services to consumers who have a credit, deposit, trust, stock, or other financial services account or relationship with that person;
"(5) the term ‘identity theft’ means an actual or potential violation of section 1028 or any other similar provision of Federal or State law;
"(6) the term ‘means of identification’ has the same meaning given the term in section 1028;
"(7) the term ‘victim’ means a consumer whose means of identification or financial information has been stolen or transferred (or has been alleged to have been stolen or transferred) without the authority of that consumer with the intent to commit, or to aid or abet, identity theft or any other violation of law;
(b) INFORMATION AVAILABLE TO VICTIMS.—

"(1) IN GENERAL.—A business entity that possesses information relating to an alleged identity theft, or that has entered into a transaction, provided credit, products, goods, or services, accepted payment, or otherwise done business with a person that has made unauthorized use of the means of identification of the victim, shall, not later than 20 days after receipt of a written request from the victim, meeting the requirements of subsection (c), provide, without charge, a copy of all application and transaction information necessary to prove the identity theft being alleged as an identity theft to—
"(A) the victim;
"(B) any Federal, State, or local governing law enforcement agency or officer specified by the victim; or
"(C) any law enforcement agency investigatively authorized by the victim to take receipt of records provided under this section.

"(2) RULE OF CONSTRUCTION.—
"(A) IN GENERAL.—No provision of Federal or State law prohibiting the disclosure of financial information by a business entity to third parties shall be used to deny disclosure of information to the victim under this section.

"(B) LIMITATION.—Except as provided in subparagraph (A), the form required by the category of identifying information that the unauthorized person provided the business entity as personally identifying information, and may require the requesting person to provide identifying information in those categories; and
"(2) as proof of a claim of identity theft, at the election of the business entity—
"(A) a copy of a police report evidencing the claim of victim identity theft;
"(B) a copy of a standardized affidavit of identity theft that is available by the Federal Trade Commission;
"(C) any affidavit of fact that is acceptable to the business entity for that purpose.

"(d) LIMITATION ON LIABILITY.—No business entity may be held liable for a disclosure, made in good faith and reasonable judgment, to provide information under this section with respect to an individual in connection with an identity theft to other business entities, law enforcement authorities, victims, or any person alleging to be a victim, if—
"(1) the business entity complies with subsection (c); and
"(2) such disclosure was made—
"(A) for the purpose of detection, investigation, or prosecution of identity theft or fraud;
"(B) to assist a victim in recovery of fines, restitution, rehabilitation of the credit of the victim, or such other relief as may be appropriate.

"(e) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business entity may decline to provide information under subsection (b) if, in the exercise of good faith and reasonable judgment, the business entity believes that—
"(1) the section does not require disclosure of the information; or
"(2) the request for information is based on a misrepresentation of fact by the victim relevant to the request for information.

"(f) NO NEW RECORDKEEPING OBLIGATION.—Nothing in this section creates an obligation on the part of a business entity to obtain, retain, or maintain any records, that are not otherwise required to be obtained, retained, or maintained in the ordinary course of the business enterprise.

"(g) AFFIRMATIVE DEFENSE.—In any civil action under this section, it is an affirmative defense (which the defendant must establish by a preponderance of the evi-
"(i) where the defendant resides;
(ii) where the defendant is doing business; or
(iii) that meets applicable requirements relating to venue under section 1391 of title 28.

(B) SERVICE OF PROCESS.—In an action brought under this subsection, process may be served in any district in which the defendant—

(i) resides;
(ii) is doing business; or
(iii) may be found.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1028 the following new item:

"1028A. Treatment of identity theft mitigation."

SEC. 4. AMENDMENTS TO THE FAIR CREDIT REPORTING ACT.

(a) Consumer Reporting Agency Blocking of Information Resulting from Identity Theft.—Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i) is amended by adding at the end the following:

"(c) Blocking of Information Resulting from Identity Theft.

(1) Blocks.—Except as provided in paragraph (3) and not later than 30 days after the date of receipt of proof of the identity of a consumer and a copy of a police report evidencing the claim of the consumer of identity theft, a consumer reporting agency shall block the reporting of any information identified by the consumer in the file of the consumer resulting from the identity theft, so that the information cannot be reported.

(2) Notification.—A consumer reporting agency shall promptly notify the furnisher of the blocked information to which the consumer under paragraph (1)—

(A) that the information may be a result of identity theft;

(B) that a police report has been filed;

(C) that a block has been requested under this subsection; and

(D) of the effective date of the block.

(3) Authority to Decline or Rescind.—

(A) In General.—A consumer reporting agency may decline to block, or may rescind any block, of consumer information under this subsection if—

(i) in the exercise of good faith and reasonable judgment, the consumer reporting agency finds that—

(I) the information was blocked due to a misrepresentation of fact by the consumer relevant to the request to block; or

(II) the consumer knowingly obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions, or the consumer should have known that the consumer obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions; or

(ii) the consumer agrees that the blocked information or portions of the blocked information were blocked in error.

(B) Notification to Consumer.—If the block of information is declined or rescinded under this paragraph, the affected consumer shall be notified promptly, in the same manner as consumers are notified of the reinserter of information under subsection (a)(5)(C).

(C) Significance of Block.—For purposes of this paragraph, if a consumer reporting agency rescinds a block, the presence of information from an end or any prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or moneys as a result of the block.

(4) Exceptions—

(5) Negative Information Data.—A consumer reporting agency shall not be required to comply with this subsection when such agency is issuing information for authorizations, for purposes of processing negotiable instruments, electronic funds transfers, or similar methods of payment, based solely on negative information, including—

(i) dishonored checks;

(ii) accounts closed for cause;

(iii) substantial overdrafts;

(iv) abuse of automated teller machines; or

(v) other information which indicates a risk of fraud occurring.

(B) Rescinding Block.—The provisions of this subsection do not apply to a consumer reporting agency if the consumer reporting agency—

(I) does not maintain a file on the consumer from which consumer reports are produced;

(II) is not, at the time of the request of the consumer under paragraph (1), otherwise furnishing or reselling a consumer report concerning the information identified by the consumer;

(III) informs the consumer, by any means, that the consumer may report the identity theft to the Federal Trade Commission to obtain consumer information regarding identity theft;

(iv) Reseller with File.—The sole obliga-

uties of the consumer reporting agency under subsection (ii), with regard to any request of a consumer under this subsection, shall be to block the consumer report maintained by the consumer reporting agency from any subsequent use if—

(I) the consumer, in accordance with the provisions of paragraph (1), identifies, to a consumer reporting agency, information in the file of the consumer that resulted from identity theft;

(II) the consumer reporting agency is act-

ing as a reseller of the identified information by assembling or merging information about that consumer which is contained in the database of not less than 1 other consumer reporting agency; and

(III) the consumer reporting agency does not store or maintain a database of information obtained for resale from which new consumer reports are produced.

(2) Notice.—In carrying out its obliga-

tion under clause (ii), the consumer reporting agency shall provide a notice to the consumer of the decision to block the file. Such notice shall include the name, address, and telephone number of each consumer reporting agency from which the consumer information was obtained for resale.

(b) False Claims.—Section 1028 of title 18, United States Code, is amended by adding at the end the following:

"(1)(I) the plaintiff is the victim of an identity theft;

(II) the plaintiff has a reasonable basis to believe that the plaintiff is the victim of an identity theft; and

(III) the plaintiff has not materially and willfully misrepresented such a claim.

SEC. 5. COORDINATING COMMITTEE STUDY OF COORDINATION BETWEEN FEDERAL, STATE, AND LOCAL AUTHORITIES IN ENFORCING AND REGULATING LAWS.

(a) Membership; Term.—Section 2 of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) is amended—

(1)(I) in subsection (b), by striking "and the Commissioner of Immigration and Naturalization" and inserting "the Commissioner of Immigration and Naturalization, the Chairman of the Federal Trade Commission, the Postmaster General, and the Commissioner of the United States Customs Service;" and

(2) in subsection (c), by striking "2 years after the effective date of this Act." and inserting "on December 23, 2003.

(b) Consultation.—Section 2 of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) is amended by redesigning subsection (b) as subsection (e), and by inserting after subsection (c) the following:

"(d) Consultation.—In discharging its duties, the coordinating committee shall consult with interested parties, including State and local law enforcement agencies, State and local government, and business entities (as that term is defined in section 4 of the Identity Theft Victims Assistance Act of 2002), including telecommunications and utility companies, and organizations representing consumers."

(c) Report Distribution and Contents.—Section 2(e) of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) (as redesignated by subsection (b)) is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) In General.—The Attorney General and the Secretary of the Treasury, at the end of each year of the existence of the coordinating committee, shall report on the activities of the coordinating committee to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives;

(C) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(D) the Committee on Financial Services of the House of Representatives.

(2) in paragraph (2), by striking "and at" at the end, and

(3) by striking paragraph (3) and inserting the following:

"(F) a comprehensive description of Federal, State, and local law enforcement agencies to address identity theft;"
SA 4955. Mr. REID (for Mr. HELMS (for himself and Mr. LEAHY)) proposed an amendment to title 17, United States Code, with respect to the statutory license for webcasting; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE. This Act may be cited as the “Small Webcaster Settlement Act of 2002.”

SEC. 2. FINDINGS. Congress finds the following:

(1) Small webcasters who did not participate in the copyright arbitration royalty panel proceeding leading to the July 8, 2002 order of the Librarian of Congress establishing rates and terms for certain digital performances of sound recordings and ephemeral sound recordings, and permitted reproduction in ephemeral phonorecords, as provided in part 261 of the Code of Federal Regulations (published in the Federal Register on July 8, 2002) (referred to in this section as “small webcasters”), have expressed their desire for a fee based on a percentage of revenue.

SEC. 3. SUSPENSION OF CERTAIN PAYMENTS.

(a) NONCOMMERCIAL WEBCASTERS. — (1) In general.—The payments to be made by noncommercial webcasters for the digital performance of sound recordings under section 114 of title 17, United States Code, and the making of ephemeral phonorecords under section 112 of title 17, United States Code, during the period beginning on October 26, 1998, and ending on May 31, 2003, which have not already been paid, shall not be due until June 20, 2003.

(b) SMALL COMMERCIAL WEBCASTERS.— (1) In general.—The receiving agent may, in a written agreement with or on behalf of the webcaster and a copyright owner, or other person entitled to payment under this section, agree to make payments pursuant to section 112 of title 17, United States Code, for a period determined by such entity to allow negotiations as permitted in section 4 of this Act, except that any such period shall end no later than December 15, 2002. The duration of a compromise or any of the above-mentioned effects of compromise shall be admissible as evidence or considered in any administrative proceeding or recordkeeping requirements thereto, or the establishment of notice or recordkeeping requirements set forth therein, shall be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding involving the setting or adjustment of any rate, royalty, or recordkeeping requirements, or any such effect on any recordkeeping requirements by the Librarian of Congress under paragraph (4) or section 112(e). It is the intent of Congress that any rate, rate structure, definitions, terms, conditions, or notice and recordkeeping requirements, included in such agreements shall be considered as a compromise motivated by the unique business, economic and political circumstances of small webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in section 801(b).

SEC. 4. AUTHORIZATION FOR SETTLEMENTS.

Section 114(f) of title 17, United States Code, is amended by adding after paragraph (4) the following new paragraph: (5)(A) Notwithstanding section 112(e) and the other provisions of this subsection, the receiving agent may enter into agreements with the copyright owners for the performance of sound recordings under section 112(e) and this section, by any 1 or more small commercial webcasters or noncommercial webcasters during the period beginning on October 28, 1998, and ending on December 31, 2004, that, once published in the Federal Register pursuant to subparagraph (B), shall be binding on all copyright owners of sound recordings and other persons entitled to payment under this section, in lieu of any determination by a copyright arbitration royalty panel or decision by the Librarian of Congress. Any such agreement for small commercial webcasters shall include provisions for payment of royalties on the basis of a percentage of revenue or expenses, or both, and include a minimum fee. Any such agreement may include other terms and conditions, including requirements by which copyright owners of sound recordings, and other parties, may increase their use of their sound recordings and under which records of such use shall be kept and made available by small commercial webcasters or other persons entitled to payment under this section, in lieu of any determination by the Librarian of Congress. Any such agreement shall have the meaning given that term in section 261.2 of title 37, Code of Federal Regulations, as published in the Federal Register on July 8, 2002.

SEC. 5. MODIFICATIONS OF RATES.

(a) NONCOMMERCIAL WEBCASTERS. — (1) In general.—The payments to be made by noncommercial webcasters for the digital performance of sound recordings under section 114 of title 17, United States Code, and the making of ephemeral phonorecords under section 112 of title 17, United States Code, shall be considered as a compromise motivated by the unique business, economic and political circumstances of small webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in section 801(b).

(b) SMALL COMMERCIAL WEBCASTERS. — (1) In general.—The receiving agent may, in a written agreement with or on behalf of the webcaster and a copyright owner, or other person entitled to payment under this section, agree to make payments pursuant to section 112 of title 17, United States Code, for a period determined by such entity to allow negotiations as permitted in section 4 of this Act, except that any such period shall end no later than December 15, 2002. The duration of a compromise or any of the above-mentioned effects of compromise shall be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding involving the setting or adjustment of any rate, royalty, or recordkeeping requirements, or any such effect on any recordkeeping requirements by the Librarian of Congress under paragraph (4) or section 112(e). It is the intent of Congress that any rate, rate structure, definitions, terms, conditions, or notice and recordkeeping requirements, included in such agreements shall be considered as a compromise motivated by the unique business, economic and political circumstances of small webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in section 801(b).

(c) Neither subparagraph (A) nor any provisions of any agreement entered into pursuant to subparagraph (A), including any rate structure, fees, terms, conditions, or notice and recordkeeping requirements, shall be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding involving the setting or adjustment of any rate, royalty, or recordkeeping requirements, or any such effect on any recordkeeping requirements by the Librarian of Congress under paragraph (4) or section 112(e). It is the intent of Congress that any rate, rate structure, definitions, terms, conditions, or notice and recordkeeping requirements, included in such agreements shall be considered as a compromise motivated by the unique business, economic and political circumstances of small webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in section 801(b).

(d) Nothing in the Small Webcaster Settlement Act of 2002 or any agreement entered into pursuant to subparagraph (A) shall be binding on the Librarian of Congress for the District of Columbia Circuit in its review of the determination by the Librarian of Congress under paragraph (4) or section 112(e). It is the intent of Congress that any rate, rate structure, definitions, terms, conditions, or notice and recordkeeping requirements, included in such agreements shall be considered as a compromise motivated by the unique business, economic and political circumstances of small webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in section 801(b).

(e) As used in this paragraph—

(1) the term ‘noncommercial webcaster’ means a webcaster that—

(i) is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501); and

(ii) has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501(c)(3) of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted; or

(iii) is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes; and

(iv) the term ‘receiving agent’ shall have the meaning given that term in section 261.2 of title 37, Code of Federal Regulations, as published in the Federal Register on July 8, 2002;

(2) the term ‘small commercial webcaster’ means a webcaster that—

(i) is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501); and

(ii) has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501(c)(3) of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted; or

(iii) is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes; and

(iv) the term ‘receiving agent’ shall have the meaning given that term in section 261.2 of title 37, Code of Federal Regulations, as published in the Federal Register on July 8, 2002; and

(3) the term ‘ephemeral phonorecords’ means—

(i) any phonorecords or copies of such works, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements thereto, or the establishment of notice or recordkeeping requirements by the Librarian of Congress under paragraph (4) or section 112(e), including any rate, rate structure, definitions, terms, conditions, or notice and recordkeeping requirements, included in such agreements shall be considered as a compromise motivated by the unique business, economic and political circumstances of small webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in section 801(b).
“(F) The authority to make settlements pursuant to subparagraph (A) shall expire December 15, 2002, except with respect to noncommercial webcasters for whom the authority expires on July 31, 2003.”

SEC. 5. DEDUCTIBILITY OF COSTS AND EXPENSES OF AGENTS AND DIRECT PAYMENT TO ARTISTS OF ROYALTIES FOR DIGITAL PERFORMANCES OF SOUND RECORDINGS.

(a) FINDINGS.—Congress finds that—

(1) in the case of royalty payments from the licensing of digital transmissions of sound recordings under subsection (f) of section 114 of title 17, United States Code, the parties have voluntarily negotiated arrangements whereby such payments shall be paid directly to featured recording artists and the administrators of the accounts provided in subsection (g)(2) of that section;

(2) such voluntarily negotiated payment arrangements have been codified in regulations issued by the Librarian of Congress, currently found in section 261.4 of title 37, Code of Federal Regulations, as published in the Federal Register on July 8, 2002;

(3) other regulations issued by the Librarian of Congress were inconsistent with the voluntary negotiated arrangements by parties concerning the deductibility of certain costs incurred for licensing and arbitration, and Congress is therefore restoring those terms as originally negotiated among the parties; and

(4) in light of the special circumstances described in this subsection, the uncertainty created by the regulations issued by the Librarian of Congress, and the fact that all of the interested parties have reached agreement, the voluntarily negotiated arrangements agreed to among the parties are being codified.

(b) DEDUCTIBILITY.—Section 114(g) of title 17, United States Code, is amended by adding after subsection (a) the following:

“(3) A nonprofit agent designated to distribute receipts from the licensing of transmissions in accordance with subsection (f) may deduct from any of its receipts, prior to the distribution of such receipts to any person or entity entitled thereto other than copyright owners and performers who have elected to receive such payments from such agent under section 115 of title 17, United States Code, and have notified such nonprofit agent in writing of such election, the reasonable costs of such agent incurred after November 1, 1995, in

(A) the administration of the collection, distribution, and calculation of the royalties;

(B) the settlement of disputes relating to the collection and calculation of the royalties; and

(C) the licensing and enforcement of rights with respect to the making of ephe
eral recordings and performances subject to licensing under section 112 and this section, including those incurred in participating in negotiation and arbitration proceedings under section 112 and this section, except that all costs incurred relating to the section 112 ephemeral recordings may only be deducted from the royalties received pursuant to section 112.

“Notwithstanding paragraph (3), any designated agent designated to distribute receipts from the licensing of transmissions in accordance with subsection (f) may deduct from any of its receipts, prior to the distribution of such receipts, the reasonable costs incurred after November 1, 1995, with respect to such copyright owners and performers who have entered with such agent a contract or agreement that specifies that such costs may be deducted from such royalty receipts.”

(c) DIRECT PAYMENT TO ARTISTS.—Section 114(g)(2) of title 17, United States Code, is amended to read as follows:

“(2) An agent designated to distribute receipts from the licensing of transmissions in accordance with subsection (f) shall distribute such receipts as follows:

(A) 50 percent of the receipts shall be paid to the copyright owner of the exclusive right under section 106(6) of this title to publicly perform a sound recording by means of a digital audio transmission.

(B) 2 1/2 percent of the receipts shall be paid to a sound recording performer (or any successor entity) to be distributed, directly or indirectly, to the interested parties who have performed on sound recordings.

(C) 2 1/2 percent of the receipts shall be paid to an escrow account managed by an independent administrator jointly appointed by copyright owners of sound recordings and the American Federation of Musicians (whether or not members of the American Federation of Musicians) who have performed on sound recordings.

(D) 15 percent of the receipts shall be paid, on a per sound recording basis, to the recording artist or artists featured on such sound recording (or the persons conveying such rights).”

SEC. 6. REPORT TO CONGRESS.

By not later than June 1, 2004, the Comptroller General of the United States, in consultation with the Register of Copyrights, shall conduct and submit to the Committee on the Judiciary of the Senate a study concerning the economic arrangements among small commercial webcasters covered by agreements entered into pursuant to section 114(h)(5)(A) of title 17, United States Code, as added by section 4 of this Act, and third parties, and the effect of those arrangements on royalty fees payable on a percentage of revenue or expense basis.

SA 4956. Mr. REID (for Mr. HAGEL (for himself, Mr. BIDEN, and Mr. HELMS)) proposed an amendment to the bill S. 2712, to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries; as follows:

On page 39, line 20, strike “and”. On page 39, line 24, strike the period and insert “;”.

On page 39, after line 24, insert the following:

“(9) Foster the growth of a pluralistic societi

that promotes and respects religious freedom.

Beginning on page 40, strike line 1 and all that follows through line 15 on page 41.

On page 41, sec. 104, and insert “sec. 1053.”. Starting on line 17, strike “any other provision of law,” and insert “section 512 of P.L. 107-115 or any other similar provision of law.”

On page 42, line 7, insert “and other unexplained ordinance” after “lanndmines”. On page 44, lines 24 and 25, strike “2002 through 2005” and insert “2003 through 2006”. On page 44, line 25, strike “of the amount and all that follows through 2005” and insert “is authorized to be appropriated to the President”.

On page 47, line 6, insert “(including re-

pairing homes damaged during military op-

erations)” after “housing”. On page 48, line 11, insert “including reli-

gious freedom, after”. On page 48, line 16, insert “the recognition of religious freedom in the con-

stitution and other legal frameworks,” after “Afghanistan”.

On page 49, line 4, insert “(including reli-

gious freedom, freedom of expression, and freedom of association)” after “rights”.

On page 49, between lines 5 and 6, insert: “(x) support for Afghan and international efforts to investigate human rights atrocities committed in Afghanistan by the Taliban regime, of\n
and terrorist groups operating in Afghan-

stana, including the collection of forensic evi-

cidences relating to such atrocities.”

On page 49, line 6, strike “(x)” and insert “(xi)”.

On page 49, line 8, strike “(xi)” and insert “(xii)”.

On page 49, line 12, strike “(xii)” and insert “(xiii)”.

On page 49, line 14, strike “(xiii)” and insert “(xiv)”.

On page 49, line 21, strike “not less than”. On page 49, beginning on line 21, strike “of the” and add all that follows through “that should” on line 22 insert “is authorized to be ap-

propriated to the President”.

On page 50, line 23 “and”.

On page 50, after line 23, insert the follow-

(E) develop handicraft and other small-

scale industries; and

(F) .

On page 51, line 1, strike “(E)” and insert “(F)”.

On page 51, line 2, insert “(including the rights of religious freedom, freedom of expression, and freedom of association,” after “rights”.

On page 51, line 8, insert “(including the rights of religious freedom, freedom of expression, and freedom of association,” after “human rights”.

On page 51, line 12, strike “2002 through 2005” and insert “2003 through 2006”.

On page 53, beginning on line 13, strike “of” and all that follows through “that should” on line 20 insert “is au-

thorized to be appropriated to the Presi-

dent”.

On page 53, beginning on line 18, strike “of” and all that follows through “that should” on line 20 insert “is au-

thorized to be appropriated to the Presi-

dent”.

On page 54, line 12, insert “that respects human rights” after “Afghanistan”.

On page 55, beginning on line 5, strike “for fiscal year” and all that follows through “2005” on lines 7.

On page 55, line 17, strike “sec. 105.” and in-

sert “sec. 104.”.

On page 56, between lines 14 and 15, insert the following: “SEC. 105. SENSE OF CONGRESS REGARDING PRO-

MOTIONS: CO-OPERATION IN OPIUM PRODUCING AREAS.

It is the sense of Congress that the Presi-
dent should—

(A) to the extent practicable, under such pro-

cedures as the President may prescribe, with-

hold United States bilateral assistance from, and oppose multilateral assistance to, opium-producing areas, if, and in such areas, appropriate cooperation is not within such areas, appropriate cooperation is not provided to the United States, the Gov-

ernment of Afghanistan, and international organizations with respect to the suppress-

tion of narcotics cultivation and trafficking, and if withholding such assistance would promote such cooperation; and

(B) to the extent practicable, under such pro-

cedures as the President may prescribe, with-

hold United States bilateral assistance (and to promote the redistribu-

tion of any multilateral assistance) withhold
from an opium-producing area to other areas with respect to which assistance has not been withheld as a consequence of this section; and

(3) define or redefine the boundaries of opium producing areas of Afghanistan for the purposes of this section.

On page 57, line 14, strike "LAND GRANT". On page 57, line 12, strike "inalienable"

On page 58, beginning with line 1, strike "Amounts" and all that follows through the period on line 5 and insert the following: "Of the funds made available to carry out the purposes of assistance authorized by this title in any fiscal year, up to 7 percent may be used for administrative expenses of Federal departments in connection with the provision of such assistance."

On page 58, line 11, strike "(A) In general...

On page 58, strike lines 17 through 20.

On page 59, line 8, strike "$500,000,000" and insert "$425,000,000."

On page 59, line 9, strike "2002 through 2005" and insert "2003 through 2006".

On page 61, line 20, insert "and shall not count toward any limitation contained in section 204(b)(1) of the National Security Act of 1962 (22 U.S.C. 2318) after section 204(b)(1)."

On page 61, strike line 23.

On page 61, line 24, strike "(1) IN GENERAL...

On page 61, lines 24 and 25, strike "paragraph (2)" and insert "subsection (b)".

On page 62, line 3, strike "(A)" and insert "(1)"

On page 62, line 8, strike "(B)" and insert "(2)"

On page 62, line 10, strike "(2)" and insert "(3)"

On page 62, line 12, after "repeatedly," insert "engaged in gross violations of human rights"

On page 62, strike lines 19 through 22.

On page 63, lines 15 and 16, strike "are authorized to remain available until expended, and"

Beginning on page 64, strike line 9 and all that follows through line 22 on page 68 and insert the following:

SEC. 206. PROMOTING SECURE DELIVERY OF HUMANITARIAN AND OTHER ASSISTANCE IN AFGHANISTAN AND EXPANSION OF THE INTERNATIONAL SECURITY ASSISTANCE FORCE.

(a) FINDINGS.—Congress finds the following:

(1) The President has declared his view that the United States should provide significant assistance to Afghanistan so that it is no longer a haven for terrorism.

(2) The delivery of humanitarian and reconstruction assistance from the international community is necessary for the safe return of refugees and is critical to the future stability of Afghanistan.

(3) Enhanced stability in Afghanistan through an improved security environment is critical to the functioning of the Government of Afghanistan and the traditional Afghan assembly or "Loya Jirga" process, which is intended to lead to a permanent national government in Afghanistan, and also is essential for the participation of women in Afghan society.

(4) Incidents of violence between armed factions and local and regional commanders, and serious abuses of human rights, including attacks on women and ethnic minorities throughout Afghanistan, create an insecure, volatile, and unsafe environment in parts of Afghanistan, displacing thousands of Afghan civilians from their local communities.

(A) On July 6, Vice President Haji Abdul Qadir was assassinated in Kabul by unknown assailants.

(B) On September 5, 2002, a car bomb exploded in Kabul killing 32 and injuring 150

and on the same day a member of Kandahar Governor Sherzai's security team attempted to assassinate President Karzai.

(6) The violence and lawlessness may jeopardize the success of efforts to build a strong central government, severely impede reconstruction and the delivery of humanitarian assistance, and incurr the likelihood that parts of Afghanistan will once again become safe havens for al-Qaida, Taliban forces, and drug traffickers.

(7) The lack of security and lawlessness may also perpetuate the need for United States Armed Forces in Afghanistan and threaten the security of the United States to meet its military objectives.

(8) The International Security Assistance Force in Afghanistan, currently led by Turkey, and composed of forces from other willing countries without the participation of United States Armed Forces, is deployed only in Kabul and currently does not have the mandate or the capacity to provide security to other parts of Afghanistan.

(9) Due to the ongoing military campaign in Afghanistan, the United States does not control the zone of the International Security Assistance Force but has provided support to other countries that are doing so.

(10) The United States is providing political, military, and other assistance to the Afghan interim authority as it begins to build a national army and police force to help provide security throughout Afghanistan, but the Afghan government lacks the immediate security needs of Afghanistan.

(11) Because of these immediate security needs, the Government of Afghanistan, its regional and local partners, and many Afghan regional leaders have called for the International Security Assistance Force, which has successfully brought stability to Kabul, to be expanded throughout the rest of the country, and this request has been strongly supported by a wide range of international humanitarian organizations, including the International Committee of the Red Cross, Catholic Relief Services, and Refugees International.

(b) STATEMENT OF POLICY.—It should be the policy of the United States to support measures to help meet the immediate security needs of Afghanistan in order to promote the formation and expansion of a functioning, representative Afghan government.

(c) IMPLEMENTATION OF STRATEGY.—

(1) INITIAL REPORT.—Not later than 60 days after the date of the enactment of this Act, the President shall provide the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate with—

(A) a strategy for meeting the immediate and long-term security needs of Afghanistan in order to promote the establishment of a strong central government, a capable bar, reintegration of women legal professionals and a reliable penal system, and the respect for human rights; and

(B) a description of the progress of the Government of Afghanistan in its efforts to meet the matters described in paragraphs (1)(A) and (1)(B).

(2) EXPANSION OF THE INTERNATIONAL SECURITY ASSISTANCE FORCE.—

(A) SENSE OF CONGRESS.—Congress urges the President, in order to fulfill the objective of establishing security in Afghanistan, to take all appropriate measures to assist Afghanistan establish a secure environment throughout the country.

(B) Expanding the International Security Assistance Force in Afghanistan, or the establishment of a similar security force.

(C) AUTHORIZATION OF APPROPRIATIONS.—(A) There are authorized to be appropriated to the President $500,000,000 for each of fiscal years 2003 and 2004 to support the International Security Assistance Force or the establishment of a similar security force.

(B) Amounts made available under subparagraph (A) may be appropriated pursuant
to chapter 4 of part II of the Foreign Assistance Act of 1961, section 551 of such Act, or section 23 of the Arms Export Control Act. (C) Funds appropriated pursuant to subparagrap A) shall be subject to the notification requirements under section 634A of the Foreign Assistance Act of 1961. On page 63, line 24, insert “and the Committee on Appropriations” after “Relations”. On page 63, line 25, insert “and the Committee on Appropriations” after “Relations”. On page 69, line 5, strike “any other provi- sion of law” and insert “section 512 of Public Law 107-115 or any similar provision of law”. Beginning on line 6 and all that follows through line 4 on page 70. On page 70, line 5, strike “sec. 209.” and insert “sec. 208.” On page 70, line 7, strike “2005” and insert “2006”. On page 70, after line 7, add the following: 

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. REQUIREMENT TO COMPLY WITH PROCEDURES RELATING TO THE PROHIBITION ON ASSISTANCE TO DRUG TRAFFICKERS.

Assistance pursuant to this Act shall be subject to the same provisions as are applicable to assistance under the Foreign Assistance Act of 1961 and the Arms Export Control Act of 1976 as amended. Assistance shall be provided for the personal security of the President of the United States, United States diplomatic security, United States security and law-enforcement, or military personnel, and should not utilize private contracted personnel to provide actual physical protection services; (2) United States allies should be invited to volunteer active-duty military or law enforcement personnel to participate in such a protection force; (3) such a protection force should be limited in duration and should be succeeded by qualified Afghan security forces as soon as practical.

SEC. 302. SENSE OF CONGRESS REGARDING PROTECTING AFGHANISTAN’S PRESIDENT.

It is the sense of Congress that—

(1) any United States physical protection force provided for the personal security of the President of Afghanistan should be composed of United States diplomatic security, law-enforcement, or military personnel, and should not utilize private contracted personnel to provide actual physical protection services;

(2) United States allies should be invited to volunteer active-duty military or law enforcement personnel to participate in such a protection force;

(3) such a protection force should be limited in duration and should be succeeded by qualified Afghan security forces as soon as practical.

SEC. 303. DONOR CONTRIBUTIONS TO AFGHANISTAN AND REPORTS.

(a) FINDINGS.—The Congress finds that inadequate, international assistance promised by donor states at the Tokyo donors conference and elsewhere have been delivered to Afghanistan, impairing the rebuilding and development of civil society and infrastructure, and endangering peace and security in that war-torn country.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) in general.—The Secretary of State shall submit reports to the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee on International Relations and the Committee on Appropriations of the House of Representatives, in accordance with this paragraph, on the status of contributions of assistance from donor states to Afghanistan. The first report shall be submitted not later than 60 days after the date of enactment of this Act, the second report shall be submitted 90 days thereafter, and subsequent re- ports shall be submitted every 180 days thereafter through December 31, 2004.

(2) FURTHER REQUIREMENTS.—Each report, which shall be unclassified and posted on the Senate or House of Representatives’ Internet website, shall include, by donor country, the total amount pledged, the amount delivered within the previous 60 days, the total amount of assistance of the type of assistance and type of projects supported by the assistance.

SEC. 304. SENSE OF CONGRESS REGARDING AFGHANISTAN.

It is the sense of Congress that—

(a) any United States physical protection force provided for the personal security of the President of Afghanistan should be composed of United States diplomatic security, United States security and law-enforcement, or military personnel, and should not utilize private contracted personnel to provide actual physical protection services;

(2) within 5 days after receiving the election that meets the requirements of section 3 from an Auction 35 winning bidder that has failed to make a deposit, the Commission shall refund any deposit or down-payment made with respect to a winning bidder to which the Commission has made an offer of the license that is the subject of the election.

SEC. 3. QUALIFIED PERSONS.

Any person who is entitled to be a bidder in any Auction 35 proceeding shall be deemed a qualified person for all purposes of this Act.

SEC. 2. REQUIREMENTS.

(a) PUBLIC NOTICE.—Within 30 days after the date of enactment of this Act, the Commission shall give public notice specifying the form and the process for the return of deposits and downpayments under section 2.

(b) TIME FOR ELECTION.—An election under this section is made within 30 days after the date of enactment of this Act.

SEC. 4. WAIVER OF PAPERWORK REDUCTION ACT REQUIREMENTS.

Section 5007 of title 44, United States Code, shall apply to the Commission’s implementation of this Act.

SEC. 5. NO INFERENCE WITH RESPECT TO NEXTWAVE.

It is the sense of the Congress that no inference with respect to any issue of law or fact is to be drawn from the Commission’s order in NextWave Personal Communications, Inc. v. NextWave Personal Communications, Inc., et al. (Supreme Court Docket No. 01-653) should be drawn from the introduction, amendment, defeat, or enactment of this Act.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The National Science Foundation has made major contributions for more than 50 years to strengthen and sustain the Nation’s academic research enterprise that is the envy of the world.

(2) Economic strength and national security of the United States and the quality of life of all Americans are grounded in the Nation’s scientific and technological capabilities.

(3) The National Science Foundation carries out important functions in supporting basic research in all science and engineering disciplines and in supporting science, mathematics, engineering, and technology education at all levels.

(4) The research and education activities of the Foundation promote the discovery, integration, dissemination, and application of new knowledge in service to society and prepare future generations of scientists, mathematicians, and engineers who will be necessary to ensure America’s leadership in the global marketplace.

(5) The National Science Foundation must be provided with sufficient resources to enable it to carry out its responsibilities to develop intellectual capital, strengthen the scientific infrastructure, integrate research and education, enhance mathematics and science education in the United States, and improve the technological literacy of all people in the United States.

The emerging global economy, scientific, and technical environment challenges long-standing assumptions about domestic and international policy, requiring the National Science Foundation to play a more proactive role in sustaining the competitive advantage of the United States through superior research capabilities.

(6) Congress authorizes appropriation for fiscal years 2005, 2006, and 2007 for the National Science Foundation, and for other purposes; as follows:

SEC. 3. POLICY OBJECTIVES.

In allocating resources made available under this section, the Committee on Appropriations shall have the following policy objectives:

(1) To strengthen the Nation’s lead in science and technology by—

(2) To increase the national investment in general scientific research and increasing investment in strategic areas;
(B) balancing the Nation’s research portfolio among the life sciences, mathematics, the physical sciences, computer and information science, geoscience, engineering, and social, behavioral, and economic sciences, all of which are important for the continued development of enabling technologies necessary for sustained international competitiveness;

(C) expanding the pool of scientists and engineers in the United States;

(D) modernizing the Nation’s research infrastructure;

(E) establishing and maintaining cooperative international relationships with premier research institutions, with the goal of such relationships to enhance the exchange of personnel, data, and information in an effort to alleviate problems common to the global community;

(2) To increase overall workforce skills by—

(A) improving the quality of mathematics and science education, particularly in kindergarten through grade 12;

(B) promoting access to information technology for all students;

(C) raising postsecondary enrollment rates in science, technology, mathematics, and engineering disciplines for individuals identified in section 3301(3) of the Elementary and Secondary Education Act of 1965 (42 U.S.C. 2931(3)).

(D) increasing access to higher education in science, mathematics, engineering, and technology fields for students from low-income households;

(E) expanding science, mathematics, engineering, and technology training opportunities at institutions of higher education.

(3) To increase innovation by expanding the focus of competitiveness and innovation policy at the regional and local level.

SEC. 4. DEFINITIONS.

In this Act:

(A) ACADEMIC UNIT.—The term “academic unit” means a department, division, institute, school, college, or other subcomponent of an institution of higher education.

(B) BOARD.—The term “Board” means the National Science Board established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

(C) COMMUNITY COLLEGE.—The term “community college” has the meaning given such term in section 303(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7011(3)).

(D) DIRECTOR.—The term “Director” means the Director of the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

(E) ELEMENTARY SCHOOL.—The term “elementary school” has the meaning given such term by section 802(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(18)).

(F) FISCAL YEAR.—The term “fiscal year” means a fiscal year ending on September 30.

(G) FOUNDATION.—The term “Foundation” means the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

(H) HIGH-NEED LOCAL EDUCATIONAL AGENCY.—The term “high-need local educational agency” means a local educational agency that meets one or more of the following criteria:

(A) It has at least one school in which 50 percent or more of the enrolled students are eligible for participation in the free and reduced-price lunch program established by the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

(B) It has at least one school in which—

(i) more than 34 percent of the academic classroom teachers at the secondary level (across all academic subjects) do not have an academic degree with a major or minor in, or a graduate degree in, the academic field in which they teach the largest percentage of their classes.

(ii) more than 34 percent of the teachers in two of the academic departments do not have an undergraduate degree with a major or minor in, or a graduate degree in, the academic field in which they teach the largest percentage of their classes.

(C) It has at least one school whose teacher attrition rate has been 15 percent or more over the last three school years.

(D) PROVIDING IN-CAMPUS TEACHING—The term “institution of higher education” has the meaning given such term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(E) LOCAL EDUCATIONAL AGENCY.—The term “local educational agency” has the meaning given such term by section 9101(18) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(18)).

(F) NATIONAL RESEARCH FACILITY.—The term “national research facility” means a research facility funded by the Foundation which is available, subject to appropriate policies and procedures, to all scientists and engineers affiliated with research institutions located in the United States.

(G) NONPROFIT ORGANIZATION.—The term “nonprofit organization” means a nonprofit research institute, or a nonprofit professional association, which is available, subject to appropriate policies and procedures, to all scientists and engineers affiliated with research institutions located in the United States.

(H) PRIMARY SCHOOL.—The term “primary school” means a primary school which is available, subject to appropriate policies and procedures, to all scientists and engineers affiliated with research institutions located in the United States.

(I) RESOURCES.—The term “resources” has the meaning given such term by section 9101(18) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(18)).

(J) STATE.—The term “State” means a State educational agency including for the purposes of training other scientists—

(i) $300,000,000 shall be for mathematics and science education partnerships described in section 9;

(ii) $30,000,000 shall be for the Robert Noyce Scholarship Program described in section 10; and

(iii) $25,000,000 shall be for the science, mathematics, engineering, and technology talent expansion program described in paragraph (7) of section 8;

(K) STATE EDUCATIONAL AGENCY.—The term “State educational agency” has the meaning given such term by section 9101(18) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(18)).

(L) UNITED STATES.—The term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(M) UNITED STATES—The term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(a) FISCAL YEAR 2003.

(1) IN GENERAL.—There are authorized to be appropriated to the Foundation $5,536,390,000 for fiscal year 2003.

(2) SPECIFIC ALLOCATIONS.—Of the amount authorized under paragraph (1)—

(A) $4,155,690,000 shall be made available to carry out research and related activities, of which $704,000,000 shall be for information technology research and development, as described in paragraph (1) of section 8 and $301,000,000 shall be for nanoscale science and engineering described in paragraph (2) of section 8;

(B) $1,006,250,000 shall be made available for education and human resources, of which—

(i) $300,000,000 shall be for mathematics and science education partnerships described in section 9;

(ii) $20,000,000 shall be for the Robert Noyce Scholarship Program described in section 10; and

(iii) $25,000,000 shall be for the science, mathematics, engineering, and technology talent expansion program described in paragraph (7) of section 8;

(C) $172,050,000 shall be made available for major research equipment and facilities construction;

(D) $191,200,000 shall be made available for salaries and expenses;

(E) $3,500,000 shall be made available for the Office of the National Science Board, including salaries and expenses for members of the Board and staff appointed under section 4 of the National Science Foundation Act of 1950 (42 U.S.C. 1861), travel and training expenses for the Board and its staff, and Board operating expenses, travel expenses, and on-call and overtime pay for Board members; and

(F) $20,000,000 shall be made available for the Office of Inspector General.

(b) FISCAL YEAR 2004.—

(1) IN GENERAL.—There are authorized to be appropriated to the Foundation $6,390,822,000 for fiscal year 2004.

(2) SPECIFIC ALLOCATIONS.—Of the amount authorized under paragraph (1)—

(A) $4,799,822,000 shall be made available to carry out research and related activities, of which $747,000,000 shall be for information technology research and development, as described in paragraph (1) of section 8 and $350,000,000 shall be for nanoscale science and engineering described in paragraph (2) of section 8;

(B) $1,157,188,000 shall be made available for education and human resources, of which—

(i) $300,000,000 shall be for mathematics and science education partnerships described in section 9;

(ii) $20,000,000 shall be for the Robert Noyce Scholarship Program described in section 10; and

(iii) $25,000,000 shall be for the science, mathematics, engineering, and technology talent expansion program described in paragraph (7) of section 8;

(C) $120,320,000 shall be made available for salaries and expenses;

(E) $3,850,000 shall be made available for the Office of the National Science Board for the purposes described in subsection (a)(2); and

(F) $8,470,000 shall be made available for the Office of Inspector General.

(c) FISCAL YEAR 2005.—

(1) IN GENERAL.—There are authorized to be appropriated to the Foundation $7,378,343,000 for fiscal year 2005.

(2) SPECIFIC ALLOCATIONS.—Of the amount authorized under paragraph (1)—

(A) $5,543,794,000 shall be made available to carry out research and related activities;
(B) $1,330,776,000 shall be made available to carry out education and human resources, of which:

(i) $400,000,000 shall be for mathematics and science education partnerships described in section 9;
(ii) $20,000,000 shall be for the Robert Noyce Scholarship Program described in section 10; and
(iii) $35,000,000 shall be for the science, mathematics, engineering, and technology talent expansion program described in paragraph 8 of section 9.
(C) $258,879,000 shall be made available for major research equipment and facilities construction;
(D) $337,000 shall be made available for salaries and expenses;
(E) $4,250,000 shall be made available for the Office of the National Science Board for the purposes described in subsection (a)(2)(E); and
(F) $9,317,000 shall be made available for the Office of Inspector General.

(f) CONTINGENT AUTHORIZATION.

(1) In general.—None of the funds authorized under section 5(a)(2)(C) may be obligated until 30 days after the report required under section 14(a)(2) is transmitted to the Congress.

(2) Consequence.—If the Director of the Office of Management and Budget has certified to the Congress that the Foundation has made successful progress toward meeting management goals consisting of—

(A) strategic management of human capital;
(B) competitive sourcing;
(C) improved financial performance;
(D) expanded electronic government; and
(E) budget and performance integration.

(3) Determination.—Congress shall take into consideration whether or not the Director of the Office of Management and Budget has certified that the Foundation has, overall, made successful progress toward meeting those goals.

(4) ANNUAL PLAN FOR ALLOCATION OF FUNDING.

Not later than 60 days after the date of enactment of legislation providing for the annual appropriation of funds for the Foundation, the Director shall submit to the Committee on Commerce, Science, and Transportation, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate, a plan for the allocation of funds authorized by this Act for the corresponding fiscal year. The portion of the plan pertaining to Research and Related Activities shall include a description of how the allocation of funds will—

(1) affect the average size and duration of research grants supported by the Foundation by field of science, mathematics, and engineering;

(2) will affect trends in research support for major fields and subfields of science, mathematics, and engineering, including for emerging multidisciplinary research areas; and

(3) is designed to achieve an appropriate balance among major fields and subfields of science, mathematics, and engineering.

SEC. 6. SPECIFIC PROGRAM AUTHORIZATIONS.

From amounts authorized to be appropriated under section 5, the Director shall carry out the Foundation’s research and education programs, including the following initiatives in accordance with this section:

(1) INFORMATION TECHNOLOGY.—An information technology research program to support competitive, merit-reviewed proposals for research, education, and infrastructure support in areas related to cybersecurity, terascale computing systems, software, networking, scalability, telecommunications, data management, and remote sensing and geospatial information technologies.

(2) NANOSCALE SCIENCE AND ENGINEERING.—A nanoscale science and engineering research and education program to support competitive, merit-reviewed proposals that emphasize—

(A) research aimed at discovering novel phenomena, processes, materials, and tools that address grand challenges in materials, electronics, chemical and biological magnetics, manufacturing, the environment, and health care; and

(B) supporting new research and interdisciplinary centers and networks of excellence, including shared national user facilities, infrastructure, research, and education activities on the societal implications of advanced information infrastructure.

(3) PLANT GENOME RESEARCH.—(A) A plant genome research program to support competitive, merit-reviewed proposals that—

(i) that advance an understanding of the structure, organization, and function of plant genomes; and

(ii) that accelerate the use of new knowledge and technologies toward a more complete understanding of basic biological processes in plants, especially in economically important plants such as corn and soybeans.

(B) Regional plant genome and gene expression research centers to conduct research and dissemination activities that may include—

(i) basic plant genomics research and genomics applications, including those related to cultivation of crops in extreme environments and to cultivation of crops with reduced reliance on fertilizer, herbicides, and pesticides;

(ii) basic research that will contribute to the development or use of innovative plant-derived products;

(iii) basic research on alternative uses for plants and plant materials, including the use of plants and plant alterations—

(I) for advanced energy production and nonpetroleum-based industrial chemicals and precursors; and

(iv) basic research and dissemination of information on the ecological and other consequences of genetically engineered plants.

(2) NATIONAL INITIATIVES TO IMPROVE AMERICAN COMPETITIVENESS.—The following initiatives to improve American competitiveness are authorized by this Act for the corresponding fiscal year:

(a) FISCAL YEAR 2006.

(i) basic research on alternative uses for plants and plant materials, including the development or use of plants and plant alterations—

(I) for advanced energy production and nonpetroleum-based industrial chemicals and precursors; and

(ii) basic research and dissemination of information on the ecological and other consequences of genetically engineered plants.

(b) FISCAL YEAR 2007.

(i) competitive, merit-reviewed proposals that seek to stimulate innovation at the local level through new partnerships involving States, regional governmental entities, local government entities, institutions of higher education, nonprofit organizations, for-profit companies, or consortia that enter into a partnership that shall include one or more research institutions, one or more developing institutions, and that may also include for-profit companies involved in plant biotechnology. The Director, by means of outreach, shall encourage inclusion of historically Black colleges and universities, Hispanic-serving institutions, tribally controlled colleges and universities, Alaska Native-serving institutions, and Native Hawaiian-serving institutions, and other related organizations in strategically important fields of science and technology.

(4) INNOVATION PARTNERSHIPS.—An innovation partnerships program to support competitive, merit-reviewed proposals that seek to stimulate innovation at the local level through new partnerships involving States, regional governmental entities, local government entities, institutions of higher education, nonprofit organizations, for-profit companies, or consortia that enter into a partnership that shall include one or more research institutions, one or more developing institutions, and that may also include for-profit companies involved in plant biotechnology. The Director, by means of outreach, shall encourage inclusion of historically Black colleges and universities, Hispanic-serving institutions, tribally controlled colleges and universities, Alaska Native-serving institutions, and Native Hawaiian-serving institutions, and other related organizations in strategically important fields of science and technology.

SEC. 7. ANNUAL PLAN FOR ALLOCATION OF FUNDING.

Not later than 60 days after the date of enactment of legislation providing for the annual appropriation of funds for the Foundation, the Director shall submit to the Committee on Commerce, Science, and Transportation, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the House of Representatives, and to the Committee on Commerce, Science, and Transportation, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate, a plan for the allocation of funds authorized by this Act for the corresponding fiscal year. The portion of the plan pertaining to Research and Related Activities shall include a description of how the allocation of funds will—

(1) affect the average size and duration of research grants supported by the Foundation by field of science, mathematics, and engineering;

(2) will affect trends in research support for major fields and subfields of science, mathematics, and engineering, including for emerging multidisciplinary research areas; and

(3) is designed to achieve an appropriate balance among major fields and subfields of science, mathematics, and engineering.

(4) Research partnerships to focus on—

(i) basic genomic research on crops grown in the developing world;

(ii) basic plant genome research that will advance and expedite the development of important cultivars, including crops that are pest-resistant, produce increased yield, reduce the need for fertilizers, herbicides, or pesticides, or have increased tolerance to stress;

(iii) basic research that could lead to the development of technologies to produce pharmaceutical compounds such as vaccines and medications in plants that can be grown in the developing world; and

(iv) research on the impact of plant biotechnology on the social, political, economic, health, and environmental conditions in countries in the developing world.

Competitive, merit-based awards for partnerships under this subparagraph shall be to institutions of higher education, nonprofit organizations, or consortia that enter into a partnership that shall include one or more research institutions in one or more developing nations, and that may also include for-profit companies involved in plant biotechnology. The Director, by means of outreach, shall encourage inclusion of historically Black colleges and universities, Hispanic-serving institutions, tribally controlled colleges and universities, Alaska Native-serving institutions, and Native Hawaiian-serving institutions, and other related organizations in strategically important fields of science and technology.

SEC. 8. MATHEMATICS AND SCIENCE EDUCATION PARTNERSHIPS.—The mathematics and science education partnerships program described in section 9.

(6) ROBERT NOYCE SCHOLARSHIP PROGRAM.—The Robert Noyce Scholarship Program described in section 10.

(7) SCIENCE, MATHEMATICS, ENGINEERING, AND TECHNOLOGY TALENT EXPANSION PROGRAM.—(A) A program of competitive, merit-based, multi-year grants for eligible applicants to increase the number of students studying toward and completing associate’s, baccalaureate degrees, or bachelor’s degrees in science, mathematics, engineering, and technology, particularly in fields that have faced declining enrollment in recent years.

(B) In selecting projects under this paragraph, the Director shall strive to increase the number of students studying toward and completing associate’s, baccalaureate degrees, concentrations, or certificates in science, mathematics, engineering, or technology who are individuals identified in section 33 or 34 of the America COMPETES Act (42 U.S.C. 1885a or 1885b).

(C) The types of projects the Foundation may support under this paragraph include those that promote partnerships and engage—

(i) interdisciplinary teaching;

(ii) undergraduate-conducted research;
SEC. 9. MATHEMATICS AND SCIENCE EDUCATION

(a) Program Authorized.—(1) In carrying out this section, the Director shall carry out a program to award grants to institutions of higher education or eligible nonprofit organizations to establish mathematics and science education partnerships to improve elementary and secondary mathematics and science instruction.

(b) Grants shall be awarded under this section on a competitive, merit-reviewed basis.

(2) Partnerships.—(A) In order to be eligible to receive a grant under this subsection, an institution of higher education or eligible nonprofit organization (or consortium of such institutions or organizations) shall—

(A) in a position of administrative leadership at the institution of higher education, at least 1 principal investigator shall be a faculty member from an academic department included in the work of the project. For each grant awarded to a consortium or partnership, each institution of higher education participating in the consortium or partnership, at least 1 of the individuals responsible for carrying out activities authorized under this paragraph at that institution shall be in a position of administrative leadership at the institution, and at least 1 shall be a faculty member from an academic department included in the work of the project at that institution.

(B) ensure that reports required under sections 36 and 37 of such Act are submitted to the—

(i) Committee on Science of the House of Representatives;

(ii) Committee on Health, Education, Labor, and Pensions of the Senate; and

(iii) Committee on Commerce, Science, and Transportation of the Senate.

(c) Grants shall be used for activities, such as—

(1) scientific research in the sciences, engineering, and technology, or in the educational sciences; and

(2) professional development of teachers that are designed to advance the goals of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1865 et seq.), including programs to—

(A) provide support to minority-serving institutions; and

(B) ensure that reports required under sections 36 and 37 of such Act are submitted to the—

(i) Committee on Science of the House of Representatives;

(ii) Committee on Health, Education, Labor, and Pensions of the Senate; and

(iii) Committee on Commerce, Science, and Transportation of the Senate.

(d) Strengthened teacher training in mathematics, science, and reading as it relates to technical and specialized texts;

(E) laboratory improvement and provision of equipment as part of a comprehensive program to enhance the quality of mathematics, science, engineering, and technology instruction; or

(F) other secondary school systemic initiatives that enable grantees to leverage private sector funding for mathematics, science, engineering, and technology scholarships.

In awarding grants under this paragraph, the Director shall give priority to agencies that serve high poverty communities.

(b) Experimental Program to Stimulate Competitive Research.—(1) The Experimental Program to Stimulate Competitive Research, established under section 113 of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1862g), is that designed to enhance—

(A) research in mathematics, science, and engineering throughout the States eligible to participate in the program and the Commonwealth of Puerto Rico;

(B) research infrastructure in the States eligible to participate in the program and the Commonwealth of Puerto Rico; and

(C) the geographic distribution of Federal research and development support.

(2) The science and engineering equal opportunity programs authorized by this section shall be used for activities, such as—

(3) Use of Funds.—(A) Grants awarded under this subsection shall be used for activities that draw upon the expertise of the partners to improve elementary and secondary education in mathematics or science and that complement State mathematics and science student academic achievement standards, including—

(B) recruiting and preparing students for careers in elementary or secondary mathematics or science education;

(C) offering professional development programs, including summer or academic year institutes or workshops, designed to strengthen the capabilities of mathematics and science teachers;

(D) offering professional development programs for teachers or students, including developing courses, curricular materials, and other resources for professional development of teachers that are available to teachers through the Internet; and

(E) developing a cadre of master teachers who will promote reform and improvement in schools;

(F) offering teacher preparation and certification programs for professional mathematicians, scientists, and engineers who wish to begin a career in teaching;

(G) developing tools to evaluate activities conducted under this subsection;

(H) developing or adapting elementary school and secondary school mathematics and science curricular materials that incorporate contemporary research on the science of learning;

(I) developing initiatives to increase and sustain the number, quality, and diversity of prekindergarten through grade 12 teachers of mathematics and science, especially in underserved areas;

(J) bringing mathematicians, scientists, and engineers employed by private businesses to help recruit and train mathematics and science teachers;

(K) developing and offering mathematics or science enrichment programs for students, including after-school and summer programs;

(L) providing research opportunities in business or academia for students and teachers;

(M) bringing mathematicians, scientists, and engineers from business and academia into elementary school and secondary school classrooms; and

(N) any other activities the Director determines will accomplish the goals of this subsection.

(3) Master Teachers.—Activities carried out in accordance with paragraph (3)(E) shall include—

(A) emphasize the training of master teachers who will improve the instruction of mathematics or science in kindergarten through grade 12;

(B) include training in both content and pedagogy; and

(C) provide training only to teachers who will be granted sufficient time to serve as master teachers, as demonstrated by assurances their employing school has...
provided to the Director, in such time and such manner as the Director may require.

(5) SCIENCE ENRICHMENT PROGRAMS FOR GIRLS.—Activities carried out in accordance with paragraph (3)(K) may include support for partnerships for the purposes of this paragraph may support programs for—
(A) encouraging girls to pursue studies in science, mathematics, engineering, and technology; and
(B) tutoring girls in science, mathematics, engineering, and technology; and
(C) providing mentors for girls in person and through the Internet to support such girls in pursuing studies in science, mathematics, engineering, and technology;
(D) educating the parents of girls about the difficulties faced by girls to maintain an interest and desire to achieve in science, mathematics, engineering, and technology, and enlisting the help of parents in overcoming these difficulties; and
(E) acquainting girls with the careers in science, mathematics, engineering, and technology and encouraging girls to plan for careers in such fields.

(6) RESEARCH IN SECONDARY SCHOOLS.—Activities carried out in accordance with paragraph (3)(K) may include support for research projects performed by students at secondary schools. Uses of funds made available through the partnerships for purposes of this paragraph may include—
(A) training secondary school mathematics and science teachers in the design of research projects; and
(B) establishing a system for students and teachers involved in research projects funded under this subsection to exchange information about their projects and research results; and
(C) assessing the educational value of the student research projects by such means as tracking student performance and choice of academic majors of students conducting research.

(7) STIPENDS.—Grants awarded under this subsection may be used to provide stipends for teachers or students participating in training or research activities that would not be part of their typical classroom activities and
(a) application.—An institution of higher education or an eligible nonprofit organization (or a consortium of such institutions or organizations) seeking funding under subsection (a) shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—
(i) a description of the partnership and the role that each member will play in implementing the proposal;
(ii) a description of each of the activities to be carried out, including—
(I) how such activities will be aligned with State mathematics and science student academic achievement standards and with other activities that promote student achievement in mathematics and science;
(ii) how such activities will be based on research in mathematics and science education and to major in such fields in postsecondary education;
(6) describing the number, size, and nature of any stipends that will be provided to students or teachers and the reasons such stipends are needed;
(D) describing how the partnership will make available to the public the results of the evaluation required under paragraph (1) shall be made available to the public; and
(E) a description of how the partnership will assess its success;
(F) a description of how the partnership will collaborate with the State educational agency to ensure that similar activities may be replicated throughout the State; and
(G) a description of the manner in which the partnership will be continued after assistance under this section ends.

(2) REVIEW OF APPLICATIONS.—In evaluating the applications submitted under paragraph (1), the Director shall consider, at a minimum—
(A) the ability of the partnership to carry out effectively the proposed programs;
(B) the extent to which the members of the partnership are committed to making the partnership a central organizational focus;
(C) the degree to which activities carried out by the partnership are based on relevant research and are likely to result in increased student achievement;
(D) the degree to which such activities are aligned with State mathematics and science student academic achievement standards;
(E) the likelihood that the partnership will demonstrate that such activities can be widely implemented as part of larger scale reform efforts; and
(F) the extent to which the activities will encourage the interest of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1865a or 1865b) in mathematics, engineering, and technology; and
(G) a description of how the partnership will serve as a catalyst for reform of mathematics and science education programs;
(H) the likelihood that the partnership will provide for teachers or students participating in such activities to be carried out, including
(i) how such activities will be aligned with State mathematics and science student academic achievement standards and with other activities that promote student achievement in mathematics and science; and
(ii) how such activities will be based on research in mathematics and science education and to major in such fields in postsecondary education;
(iii) why such activities are expected to improve student performance and strengthen the quality of mathematics and science instruction; and
(iv) any activities that will encourage the interest of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1865a or 1865b) in mathematics, engineering, and technology and will help prepare such individuals to pursue postsecondary studies in these fields;
(C) description of the number, size, and nature of any stipends that will be provided to students or teachers and the reasons such stipends are needed;
(D) describing how the partnership will make available to the public the results of the evaluation required under paragraph (1) shall be made available to the public; and
(E) a description of how the partnership will assess its success;
(F) a description of how the partnership will collaborate with the State educational agency to ensure that similar activities may be replicated throughout the State; and
(G) a description of the manner in which the partnership will be continued after assistance under this section ends.

(2) REVIEW OF APPLICATIONS.—In evaluating the applications submitted under paragraph (1), the Director shall consider, at a minimum—
(A) the ability of the partnership to carry out effectively the proposed programs;
(B) the extent to which the members of the partnership are committed to making the partnership a central organizational focus;
(C) the degree to which activities carried out by the partnership are based on relevant research and are likely to result in increased student achievement;
(D) the degree to which such activities are aligned with State mathematics and science student academic achievement standards;
(E) the likelihood that the partnership will demonstrate that such activities can be widely implemented as part of larger scale reform efforts; and
(F) the extent to which the activities will encourage the interest of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1865a or 1865b) in mathematics, engineering, and technology; and
(G) a description of how the partnership will serve as a catalyst for reform of mathematics and science education programs;
(H) the likelihood that the partnership will provide for teachers or students participating in such activities to be carried out, including
(i) how such activities will be aligned with State mathematics and science student academic achievement standards and with other activities that promote student achievement in mathematics and science; and
(ii) how such activities will be based on research in mathematics and science education and to major in such fields in postsecondary education;
(iii) why such activities are expected to improve student performance and strengthen the quality of mathematics and science instruction; and
(iv) any activities that will encourage the interest of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1865a or 1865b) in mathematics, engineering, and technology and will help prepare such individuals to pursue postsecondary studies in these fields.

(3) ANNUAL MEETING.—The Director, in consultation with the Secretary of Education, shall convene an annual meeting of the partnerships participating under this section to foster greater national collaboration.

(4) REPORT ON COORDINATION.—The Director, in consultation with the Secretary of Education, shall provide an annual report to the Committee on Science of the House of Representatives, the Committee on Education and the Workforce of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate describing how the program authorized under this section has been and will be coordinated with the program authorized under part B of title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.).

(5) TECHNICAL ASSISTANCE.—At the request of an eligible partnership or a State educational agency, the Director shall provide technical assistance or fiscal assistance in meeting any requirements of this section, including providing advice from experts on how to develop
(A) a quality application for a grant; and
B) quality activities from funds received from a grant under this section.

SEC. 10. ROBERT NOYCE SCHOLARSHIP PROGRAM.

(a) SCHOLARSHIP PROGRAM.—
(1) IN GENERAL.—The Director shall carry out a program to award grants to institutions of higher education or consortia of such institutions (as such institutions) to provide scholarships, stipends, and programming designed to recruit and train mathematics and science teachers. Such program shall be known as the “Robert Noyce Scholarship Program”.

(2) MERIT REVIEW.—Grants shall be provided under this subsection on a competitive, merit-reviewed basis.

(3) USE OF GRANTS.—Grants provided under this section shall be used by institutions of higher education or consortia—
(i) to develop and implement a program to encourage top college juniors and seniors majoring in mathematics, science, and engineering at the graduate’s institution to become mathematics and science teachers, through—
(I) administering scholarships in accordance with subsection (c);
(ii) offering programs to help scholarship recipients to teach in elementary schools and secondary schools, including programs that will result in teacher certification or licentia
(iii) offering programs to scholarship recipients, both before and after they receive their baccalaureate degree, to enable the recipients to become better mathematics and science teachers, to fulfill the service requirements of this section, and to exchange ideas with others in their fields; or
(B) to develop and implement a program to encourage science, mathematics, or engineering professionals to become mathematics and science teachers, through—
(i) administering stipends in accordance with subsection (d);
(ii) offering programs to help stipend recipients obtain teacher certification or licentia
(iii) offering programs to stipend recipients, both during and after matriculation in
the program for which the stipend is received, to enable recipients to become better mathematics and science teachers, to fulfill the service requirements of this section, and to excel academically with others in their fields.

(b) SELECTION PROCESS.—

(1) APPLICATION.—An institution of higher education or consortium seeking funding under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—

(A) a description of the scholarship or stipend program that the applicant intends to operate, including the number of scholarships or stipends the applicant intends to award, and the selection process that will be used in awarding the scholarships or stipends;

(B) evidence that the applicant has the capability to administer the scholarship or stipend program in accordance with the provisions of this section; and

(C) a description of the programming that will be offered to scholarship or stipend recipients during and after their matriculation in the program for which the scholarship or stipend is received.

(2) REVIEW OF APPLICATIONS.—In evaluating the applications submitted under paragraph (1), the Director shall consider, at a minimum—

(A) the ability of the applicant to effectively carry out the program;

(B) the extent to which the applicant is committed to making the program a central organizational focus;

(C) the degree to which the proposed programming will enable scholarship or stipend recipients to become successful mathematics and science teachers;

(D) the number and quality of the students that will be served by the program; and

(E) evidence that the applicant has the capability to recruit students who would otherwise not pursue a career in teaching.

(c) SCHOLARSHIP REQUIREMENTS.—

(1) IN GENERAL.—Scholarships under this section shall be available only to students who are—

(A) majoring in science, mathematics, or engineering; and

(B) in the last 2 years of a baccalaureate degree program.

(2) SELECTION.—Individuals shall be selected by the Director primarily on the basis of academic merit, with consideration given to financial need and to the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b).

(3) AMOUNT.—The Director shall establish for each year the amount to be awarded for scholarships under this section for that year, which shall be not less than $7,500 per year, except that no individual shall receive for any year more than the cost of attendance at the institution in which the individual is enrolled, as determined by the Director.

(4) SERVICE OBLIGATION.—If an individual receives a scholarship, that individual shall be required to complete, within 6 years after graduation from the baccalaureate degree program for which the scholarship was awarded, 2 years of service as a mathematics or science teacher for each year a scholarship was received. Service required under this section shall be performed in a high-need local educational agency.

(d) STIPENDS.—

(1) IN GENERAL.—Stipends under this section may be awarded only to mathematics and science, and engineering professionals who, while receiving the stipend, are enrolled in a program to receive certification or licensing to teach.

(2) SELECTION.—Individuals shall be selected to receive stipends under this section on the basis of academic merit, with consideration given to financial need and to the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b).

(3) DURATION.—Individuals may receive a maximum of 1 year of stipend support.

(4) SERVICE OBLIGATION.—If an individual receives a stipend under this section, that individual shall be required to complete, within 6 years after the program for which the stipend was awarded, 2 years of service as a mathematics or science teacher for each year a stipend was received. Service required under this section shall be performed in a high-need local educational agency.

(e) CONDITIONS OF SUPPORT.—As a condition of acceptance of a scholarship or stipend under this section, a recipient shall enter into an agreement with the institution of higher education—

(1) accepting the terms of the scholarship or stipend pursuant to subsections (c) and (g), or subsection (d);

(2) agreeing to provide the awarding institution of higher education with annual certification of employment and up-to-date contact information and to participate in surveys provided by the institution of higher education as part of an ongoing assessment program; and

(3) establishing that any scholarship recipient shall be liable to the United States for any amount that is required to be repaid in accordance with the provisions of subsection (g).

(f) COLLECTION FOR NONCOMPLIANCE.—

(1) MONITORING COMPLIANCE.—An institution of higher education (or consortium thereof) receiving a grant under this section shall, as a condition of participating in the program, enter into an agreement with the Director to monitor the compliance of scholarship and stipend recipients with their respective service requirements.

(2) COLLECTION OF REPAYMENT.—(A) In the event that a scholarship recipient is required to repay the scholarship under subsection (g), the institution is responsible for collecting the repayment amounts.

(B) Except as provided in subparagraph (C), any such repayment shall be returned to the Treasury of the United States.

(C) A grantee may retain a percentage of any repayment it collects to defray administrative costs associated with the collection. The Director shall establish a single, fixed percentage that will apply to all grantees.

(g) FAILURE TO COMPLETE SERVICE OBLIGATION.—

(1) GENERAL RULE.—If an individual who has received a scholarship under this section—

(A) fails to maintain an acceptable level of academic standing in the educational institution in which the individual is enrolled, as determined by the Director;

(B) is dismissed from such educational institution for disciplinary reasons;

(C) withdraws from the baccalaureate degree program for which the award was made before the completion of such program; or

(D) declares that the individual does not intend to fulfill the service obligation under this section; or

(E) fails to fulfill the service obligation of the individual under this section, such individual shall be liable to the United States as provided in paragraph (2).

(2) AMOUNT.—If a circumstance described in paragraph (1) occurs before the completion of one year of a service obligation under this section, the United States shall be entitled to recover from the individual, within one year after the date of the occurrence of such circumstance, an amount equal to—

(i) the total amount of awards received by such individual under this section; plus

(ii) the interest on the amounts of such awards which would have been payable at that time that the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States, multiplied by 2.

(b) If a circumstance described in paragraph (1)(D) or (E) occurs after the completion of one year of a service obligation under this section, the United States shall be entitled to recover from the individual, within one year after the date of the occurrence of such circumstance, an amount equal to the total amount of awards received by such individual under this section minus 1/2 of the amount of the award received per year for each full year of service completed, plus the interest on such amounts which would be payable if at the time the amounts were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

(3) EXCEPTIONS.—The Director may provide for the partial or total waiver or suspension of the service obligation for an individual under this section whenever compliance by the individual with the obligation is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be unconscionable.

(h) DATA COLLECTION.—Institutions or consortia receiving grants under this section shall supply to the Director any relevant statistical and demographic data on scholarship recipients and stipend recipients the Director may request, including information on employment required by subsection (e).

(1) DEFINITIONS.—In this section—

(1) the term ‘‘cost of attendance’’ has the meaning given such term in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1078-21); and

(2) the term ‘‘mathematics and science teacher’’ means a mathematics, science, or technology teacher at the elementary school or secondary school level.

(3) the term ‘‘mathematics, science, or engineering professional’’ means a person who holds a baccalaureate, masters, or doctoral degree in science, mathematics, or engineering and is working in that field or a related area.

(4) the term ‘‘scholarship’’ means an award under subsection (c); and

(5) the term ‘‘stipend’’ means an award under subsection (d).

SEC. 11. ESTABLISHMENT OF CENTERS FOR RESEARCH ON MATHEMATICS AND SCIENCE LEARNING AND EDUCATION IMPROVEMENT.

(a) ESTABLISHMENT.—(A) The Director shall award grants to institutions of higher education (or consortia thereof) to establish multidisciplinary Centers for Research on Learning and Education Improvement.

(B) The purpose of the Centers established under this subsection is to—

(1) conduct and evaluate research on academic and cognitive science, education, and related fields and to develop ways in which the results of such research can be applied in elementary school and secondary school classrooms to improve the teaching of mathematics and science;
information technology is used in the teach-
and science.
student achievement levels in mathematics
low-performing elementary schools and sec-
a specific Center.
similar questions.
other Federal programs support research on
ator shall consult with the National Academy
the research focus of the Centers, the Direc-
tor shall enter into an arrangement with the National Academy of Sciences to
assess the need for an interagency program
to establish and support state-of-the-art university-based centers for
interdisciplinary research and advanced in-
stumentation development.
Transmittal to Congress.—Not later than 15 months after the date of the enact-
ment of this Act, the Director shall transmit to
the Committee on Science of the House of
Representatives, the Committee on Com-
merce, Science, and Transportation of the
Senate, and the Committee on Health, Edu-
caion, Labor, and Pensions of the Senate
the assessment conducted by the National
Academy of Sciences together with the
Foundation’s reaction to the assessment au-
thorized under this section.

SEC. 14. MAJOR RESEARCH EQUIPMENT AND FA-
cILITIES CONSTRUCTION PLAN.
(a) Prioritization of Proposed Major Re-
search Equipment and Facilities Construc-
tion.—
(1) DEVELOPMENT OF PRIORITIES.—(A) The Director shall—
—(i) develop a list indicating by number the
relative priority for funding under the major
research equipment and facilities construc-
tion account that the Director assigns to
each project the Board has approved for in-
clusion in a future budget request; and
—(ii) submit the list described in clause (i)
—(B) The Director shall update the list pre-
pared under subparagraph (A) each time the
Board approves a new project that would
re-
—(C) The Director shall transmit to the Committee on Science of the House of
Representatives, the Committee on Commerce, Science, and Transportation of the
Senate, and the Committee on Health, Edu-
cation, Labor, and Pensions of the Senate a report containing—
—(i) a most recent Board-approved pri-
ority list developed under paragraph (1)(A);
—(ii) a description of the criteria used to de-
velop such list; and
—(iii) a description of the major factors for
each project that determined the ranking of
such project on the list, based on the appli-
cation of the criteria described pursuant to
paragraph (1)(A).
(b) Criteria.—(1) In general.—Section 201(a)(1) of the National Science Foundation Authorization

Act of 1998 (42 U.S.C. 1862(a)(1)) is amended to read as follows:

“(1) **IN GENERAL.**—The Director shall prepare, and include as part of the Foundation’s annual budget request to Congress, a plan for the proposed construction of, and repair and upgrades to, national research facilities, including full life-cycle cost information.”

(2) **APPLICATION—**Section 4(e) of the National Science Foundation Authorization Act of 1998 (42 U.S.C. 1862(a)(2)) is amended—

(a) in subparagraph (A), by striking “(1)” and inserting “(1), including costs for instrumentation development;”;

(b) in subparagraph (B), by striking “and” and inserting “and inserting “construction;”;

(c) in subparagraph (C), by striking “construction,” and inserting “construction”;

(d) by adding at the end the following:

“(D) for each project funded under the major research equipment and facilities construction account—

(i) estimates of the total project cost (from planning to commissioning); and

(ii) the source of funds, including Federal funding, non-Federal funding, and matching funds identified by appropriations categories and non-Federal funding;

(E) estimates of the full life-cycle cost of each national research facility;

(F) information about any plans to retire national research facilities; and

(G) estimates of funding levels for grants supporting research that will be conducted using facilities or instrumentation funded by a research facility.

(3) **DEFINITION.**—Section 2 of the National Science Foundation Authorization Act of 1998 (42 U.S.C. 1862k) is amended—

(a) by redesignating paragraphs (3) through (5) as paragraphs (4) through (6), respectively; and

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

“(3) **FULL-LIFE-CYCLE COST.**—The term ‘full life-cycle cost’ means all costs of planning, development, procurement, construction, operations and support, and shut-down costs, without regard to funding source and without regard to what entity manages the project or facility involved.”

(c) **PROJECT MANAGEMENT.**—No national research facility project funded under the major research equipment and facilities construction account may be managed by an individual whose appointment to the Foundation is temporary.

(d) **BOARD APPROVAL OF MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION PROJECTS.**—

(1) **IN GENERAL.**—The Board shall explicitly approve any project to be funded out of the major research equipment and facilities construction account before any funds may be obligated from such account for such project.

(2) **REPORT.**—Not later than September 15 of each fiscal year, the Board shall report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Science, Space, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate the audit required under paragraph (3) along with recommendations for corrective actions that need to be taken to achieve full compliance with the requirements described in paragraph (2), and recommendations to ensure public access to the Board’s deliberations.

(b) **CONFIDENTIALITY OF CERTAIN INFORMATION.**—Section 14(i) of the National Science Foundation Act of 1950 (42 U.S.C. 1863(i)) is amended to read as follows:

“(i) **(A) Information supplied to the Foundation or a contractor of the Foundation or to another educational, or for similar instruments for purposes of section 3(a)(5) or (6) by an individual, an industrial or commercial organization, or an educational, or other nonprofit institution; and **(B) Information that has not been transformed into statistical or abstract formats that do not allow for the identification of the supplier.”

(c) **USE OF FUNDS.**—Activities supported by grants under this section may include—

(1) expansion of successful reform efforts beyond a single course or group of courses to achieve reform within an entire academic unit;

(2) expansion of successful reform efforts beyond a single academic unit to other science, mathematics, engineering, or technology academic units within an institution;

(3) creation of multidisciplinary courses or programs that formalize collaborations for the purpose of improved student instruction and research in science, mathematics, engineering, or technology.

(4) expansion of undergraduate research opportunities beyond a particular laboratory, course, or academic unit to engage multiple educational institutions or federal, state, or local agencies or instrumentalities for purposes of section 3(a)(5) or (6) that allows for the identification of the supplier. No such person may—

“A) publish information collected pursuant to section 3(a)(5) or (6) in such a manner that either an individual, an industrial or commercial organization, a Federal, academic, or other nonprofit institution that has received a pledge of confidentiality from the Foundation can be specifically identified;”

(B) permit anyone other than individuals authorized by the Foundation to examine data that allows for such identification relating to an individual, an industrial or commercial organization, an educational, or other nonprofit institution that has received a pledge of confidentiality from the Foundation; or

(c) **KNOWINGLY and willfully request or obtain any nondisclosable information described in paragraph (1) from the Foundation under false pretenses.”

(c) **APPOINTMENT.**—Section 4(g) of the National Science Foundation Act of 1950 (42 U.S.C. 1862g) is amended by striking the second and third sentences and inserting “The Board shall adopt procedures governing the conduct of its meetings, including delivery of notice and a definition of a quorum, in which no case shall be less than one-half plus one of the confirmed members of the Board.”

(d) **OPEN MEETINGS.**—The Board and all of its committees, subcommittees, and task forces (and any other entity consisting of members of the Board and reporting to the Board) shall be subject to section 55b of title 5, United States Code.

(4) **REPORT.**—Not later than September 15 of each year, the Inspector General of the Foundation shall transmit to the Committee on Science of the House of Representatives, the Committee on Science, Space, and Technology of the Senate, and the Committee on Appropriations of the Senate, the report conducted by the National Academy of Sciences together with the Foundation’s reaction to the study authorized by section 15(a).

SEC. 15. ADMINISTRATIVE AMENDMENTS.

(a) **BOARD MEETINGS.**—

(1) **IN GENERAL.**—Section 4(e) of the National Science Foundation Act of 1950 (42 U.S.C. 1862e) is amended by striking the second and third sentences and inserting “The Board shall adopt procedures governing the conduct of its meetings, including delivery of notice and a definition of a quorum, in which no case shall be less than one-half plus one of the confirmed members of the Board.”

(2) **OPEN MEETINGS.**—The Board and all of its committees, subcommittees, and task forces (and any other entity consisting of members of the Board and reporting to the Board) shall be subject to section 55b of title 5, United States Code.

(b) **REPORT.**—Not later than September 15 of each year, the Inspector General of the Foundation shall transmit to the Committee on Science of the House of Representatives, the Committee on Science, Space, and Technology of the Senate, and the Committee on Appropriations of the Senate, the report conducted by the National Academy of Sciences together with the Foundation’s reaction to the study authorized by section 15(a).

(c) **KNOWINGLY and willfully request or obtain any nondisclosable information described in paragraph (1) from the Foundation under false pretenses.”

(d) **APPOINTMENT.**—Section 4(g) of the National Science Foundation Act of 1950 (42 U.S.C. 1862g) is amended by striking the second and third sentences and inserting “The Board shall adopt procedures governing the conduct of its meetings, including delivery of notice and a definition of a quorum, in which no case shall be less than one-half plus one of the confirmed members of the Board.”

SEC. 16. SCIENCE AND ENGINEERING EQUAL OPPORTUNITIES ACT AMENDMENTS.

Section 32 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1865) is amended—

(1) in subsection (a) by striking “backgrounds,” and inserting “backgrounds, including persons with disabilities;” and

(2) in subsection (b)—

(A) by inserting “, including persons with disabilities,” after “backgrounds;” and

(B) by striking “and minorities” each place it appears, and inserting “and minorities;” and

(C) by striking “or” each place it appears, and inserting “or minorities and persons with disabilities.”

SEC. 17. UNDERGRADUATE EDUCATION REFORM.

(a) **IN GENERAL.**—The Director shall award grants on a competitive basis, on the basis of an application and evaluation process, to institutions of higher education to expand previously implemented reforms of undergraduate science, mathematics, engineering, and technology education that have been demonstrated to have been successful in increasing the number and quality of students studying toward and completing associate’s or baccalaureate degrees in science, mathematics, engineering, or technology.

(b) **USE OF FUNDS.**—Activities supported by grants under this section may include—

(1) expansion of successful reform efforts beyond a single course or group of courses to achieve reform within an entire academic unit;

(2) expansion of successful reform efforts beyond a single academic unit to other science, mathematics, engineering, or technology academic units within an institution;

(3) creation of multidisciplinary courses or programs that formalize collaborations for the purpose of improved student instruction and research in science, mathematics, engineering, or technology.

(4) expansion of undergraduate research opportunities beyond a particular laboratory, course, or academic unit to engage multiple educational institutions or federal, state, or local agencies or instrumentalities for purposes of section 3(a)(5) or (6) that allows for the identification of the supplier. No such person may—

(A) publish information collected pursuant to section 3(a)(5) or (6) in such a manner that either an individual, an industrial or commercial organization, a Federal, academic, or other nonprofit institution that has received a pledge of confidentiality from the Foundation can be specifically identified;”

(B) permit anyone other than individuals authorized by the Foundation to examine data that allows for such identification relating to an individual, an industrial or commercial organization, an educational, or other nonprofit institution that has received a pledge of confidentiality from the Foundation; or

(C) knowingly and willfully request or obtain any nondisclosable information described in paragraph (1) from the Foundation under false pretenses.”

(2) **REPORT.**—Not later than September 15 of each year, the Inspector General of the Foundation shall transmit to the Committee on Science of the House of Representatives, the Committee on Science, Space, and Technology of the Senate, and the Committee on Appropriations of the Senate, the report conducted by the National Academy of Sciences together with the Foundation’s reaction to the study authorized by section 15(a).
(5) expansion of innovative tutoring or mentoring programs proven to enhance student recruitment or persistence to degree completion in science, mathematics, engineering, and technology education for nonmajors, including education for the preprofessional student; 

(6) improvement of undergraduate science, mathematics, engineering, and technology education for nonmajors, including education for the preprofessional student; 

(7) implementation of technology-driven reform efforts, including the installation of technology to facilitate such reform, that directly impact undergraduate science, mathematics, engineering, or technology instruction or research experiences.

(c) Selection Process.—

(1) A proposal for a Center of higher education seeking a grant under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—

(A) a description of the proposed reform effort;

(B) a description of the previously implemented reform effort that will serve as the basis for the proposed reform effort and evidence regarding the success of that previous effort, including data on student recruitment, persistence to degree completion, and academic achievement;

(C) evidence of institutional support for, and commitment to, the proposed reform effort, including a description of existing or planned institutional policies and practices regarding faculty hiring, promotion, tenure, and teaching assignment that reward faculty contributions to undergraduate education equal to, or greater than, scholarly scientific research;

(2) Review of Applications.—In evaluating applications submitted under paragraph (1), the Director shall consider at a minimum—

(A) the evidence of past success in implementing undergraduate education reform and the likelihood of success in undertaking the proposed expanded effort;

(B) the degree to which the faculty, staff, and administrators of the institution are committed to making the proposed institutional reform a priority of the participating academic unit;

(C) the degree to which the proposed reform will contribute to change in institutional culture and policy such that a greater value is placed on faculty engagement in undergraduate education, as evidenced through promotion and tenure policies; and

(D) the likelihood that the institution will sustain or expand the reform beyond the period of the grant.

(3) Grant Distribution.—The Director shall ensure, to the extent practicable, that grants awarded under this section are made to a variety of types of institutions of higher education.

SEC. 18. REPORTS.

(1) Grant Size and Duration.—Not later than 6 months after the date of enactment of this Act, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report containing, in accordance with section 113 of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1662b(c))—

(a) a description of the proposed reform effort;

(b) the number of students enrolled in undergraduate science, mathematics, engineering, and technology programs participating in the proposed expanded effort;

(c) the degree to which the proposed reform effort is funded for the first year of the grant and that funding will increase annually for the period of the grant.

(2) Consultation.—In preparing the reports under paragraph (1), the Director shall consult with Federal agencies and educational entities as the Director considers appropriate.

(3) Issues to be Addressed.—The reports shall—

(A) identify the availability of high-speed, large bandwidth capacity access to different demographic groups served by elementary schools, secondary schools, and libraries in the United States;

(B) identify how the provision of high-speed, large bandwidth capacity access to the Internet to such schools and libraries can be effectively utilized within each school and library;

(C) consider the effect that specific or regional circumstances may have on the ability of high-speed, large bandwidth capacity access to achieve universal connectivity as an effective tool in the education process; and

(D) include recommendations and issues identified in the reports.

(e) Minority-Serving Institution Fundings.—

(1) Annual Reporting Required.—The Director shall submit an annual report, along with the President’s annual budget request, to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate on the amount of funding awarded by the Foundation to minority-serving institutions, including funding received as members of consortia. The report shall include information on such funding to minority-serving institutions.

(2) Report on Ways to Improve Funding.—Within one year after the date of enactment of this Act, the Director shall submit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report on recommendations on how the Foundation can improve funding to minority-serving institutions.

SEC. 19. EVALUATIONS.

(a) Education.—

(1) General.—The Director, through the Research, Evaluation and Communication Division of the Education and Human Resources Directorate of the Foundation, shall evaluate the effectiveness of all under-graduate science, mathematics, engineering, or technology education activities supported by the Foundation in increasing the number and quality of students, including individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunity Act (42 U.S.C. 1885a or 1885b) studying toward and completing associate’s or baccalaureate degrees in science, mathematics, engineering, and technology. In conducting the evaluation, the Director shall consider information on—

(A) the number of students enrolled in undergraduate science, mathematics, engineering, and technology programs; and

(B) student academic achievement, including quantifiable measurements of students’ mastery of content and skills;

(C) persistence to degree completion, including students who transfer from science, mathematics, engineering, and technology programs to programs in other academic disciplines; and

(D) placement during the first year after degree completion in post-graduate education or career pathways.

(2) Assessment Benchmarks and Tools.—The Director, through the Research, Evaluation and Communication Division of the Education and Human Resources Directorate of the Foundation, shall establish a common set of assessment benchmarks and tools, and the Committee on Science of the Senate a project to incorporate the use of these benchmarks and tools in their project-based assessment activities.

(3) Reports to Congress.—Not later than 3 years after the date of the enactment of this Act, and once every 3 years thereafter, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report containing the results of evaluations conducted pursuant to this Act.

(b) Awards.—Notwithstanding any other provision of this Act, the Director shall annually evaluate a random sample of grants, contracts, or any other award made under this Act.

(c) Dissemination.—The Director shall—

(1) provide for the dissemination of the results of the evaluations conducted pursuant to this Act;

(2) provide notice to the public that such evaluations are available;
As part of the first report required by section 36(e) of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1862(e)) transmitted to Congress after the date of enactment of the Committee on Equal Opportunities in Science and Engineering shall include—

1. a summary of its findings over the previous 10 years;
2. a description of past and present policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities in science, mathematics, and engineering fields, including activities in support of minority-serving institutions; and
3. an assessment of the trends in participation in Foundation activities, and an assessment of the success of Foundation policies and activities, along with proposals for new strategies or the broadening of existing successful strategies toward facilitating the goals of that Act.

SEC. 21. ADVANCED TECHNOLOGICAL EDUCATION PROGRAM.

(a) CORE SCIENCE AND MATHEMATICS COURSES.—Section 3(a) of the Scientific and Advanced-Technology Act of 1992 (42 U.S.C. 1862) is amended—

1. by inserting “,” and to improve the quality of their core education courses in science and mathematics,” after “education in advanced-technology fields”; and
2. in paragraph (1) by inserting “and in core science and mathematics courses” after “advanced-technology fields”; and
3. in paragraph (2) by striking “in advanced-technology fields” and inserting “who provide instruction in science, mathematics, and advanced-technology fields’’.

(b) ARTICULATION PARTNERSHIPS.—Section 3(c)(1)(B) of the Scientific and Advanced-Technology Act of 1992 (42 U.S.C. 1862c)(1) is amended—

1. by striking “and” at the end of clause (i);
2. by striking the period at the end of clause (i) and inserting a semicolon; and
3. by adding after clause (ii) the following new clauses:

(iii) provide students with research experiences at bachelor’s-degree-granting institutions participating in the partnership, including stipend support for students participating in summer programs; and
(iv) provide monetary support for students participating in activities under clause (iii), including summer salary support for faculty mentors;

(c) NATIONAL SCIENCE FOUNDATION REPORT.—Within 6 months after the date of the enactment of this Act, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Education, Labor, and Pensions of the Senate on—

1. efforts by the Foundation and awardees under the program carried out under section 3 of the Scientific and Advanced-Technology Act of 1992 (42 U.S.C. 1862) to disseminate information about the results of projects;
2. the effectiveness of national centers of science and engineering education and models for best practices in undergraduate science, mathematics, and technology education; and
3. efforts to satisfy the requirement of section 3(a) of the Scientific and Advanced-Technology Act of 1992 (42 U.S.C. 1862f(a)(4)).

SEC. 22. REPORT ON FOUNDATION BUDGETARY AND PROGRAMMATIC EXPANSION.

The Board shall prepare a report to address and examine the budgetary and programmatic growth provided for by this Act. The report shall be submitted to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate within one year after the date of the enactment of this Act and shall include—

1. recommendations on how the increased funding should be utilized;
2. an examination of the projected impact that the budgetary increases will have on the Nation’s scientific and technological workforce;
3. a description of new or expanded programs that will enable institutions of higher education to expand their participation in Foundation-funded activities;
4. an estimate of the national scientific and technological research infrastructure needed to adequately support the Foundation’s increased funding and additional programs; and
5. a description of the impact the budgetary increases provided under this Act will have on the size and duration of grants awarded by the Foundation.

SEC. 23. ASTRONOMY AND ASTROPHYSICS ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Foundation and the National Aeronautics and Space Administration shall jointly establish an Astronomy and Astrophysics Advisory Committee (in this section referred to as the “Advisory Committee”).

(b) DUTIES.—The Advisory Committee shall—

1. assess, and make recommendations regarding, the coordination of astronomy and astrophysics programs of the Foundation and the National Aeronautics and Space Administration; and
2. assess, and make recommendations regarding, the status of the activities of the Foundation and the National Aeronautics and Space Administration as they relate to the recommendations contained in the National Research Council’s 2001 report entitled ‘‘Astronomy and Astrophysics in the New Millennium’’; and
3. not later than March 15 of each year, transmit to the Director, the Administrator of the National Aeronautics and Space Administration, and the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the programmatic growth provided for by this Act. The report shall be submitted to the Director of the Office of Management and Budget, and the heads of other Federal agencies, shall enter into agreement with the National Academy of Sciences to conduct a comprehensive study to determine the source of discrepancies in Federal reports on obligations and actual expenditures of Federal research and development funding.

(c) MEMBERSHIP.—The Advisory Committee shall consist of 13 members, none of whom shall be a Federal employee, including—

1. 5 members selected by the Director;
2. 5 members selected by the Administrator of the National Aeronautics and Space Administration;
3. 3 members selected by the Director of the Office of Science and Technology Policy; and
4. 2 members who shall be Indian tribes or native-serving institutions.

(d) COMPENSATION.—The Advisory Committee shall be paid their actual necessary travel expenses, as authorized by law, for each meeting, in accordance with the Federal Travel Act.

SEC. 24. MINORITY-SERVING INSTITUTIONS UNDERGRADUATE PROGRAM.

(a) IN GENERAL.—The Director is authorized to establish a new program to award grants on a competitive, merit-reviewed basis to Hispanic-serving institutions, Alaskan Native-serving institutions, Native Hawaiian-serving institutions, and other institutions of higher education serving a substantial number of minority students to enhance the quality of undergraduate science, mathematics, and engineering education at such institutions and to increase the retention and graduation rates of students pursuing associate’s or baccalaureate degrees in science, mathematics, engineering, or technology.

(b) PROGRAM COMPONENTS.—Grants awarded under this section shall support—

1. activities to improve courses and curriculum in science, mathematics, and engineering;
2. faculty development;
3. stipends for undergraduate students participating in research; and
4. other activities consistent with subsection (a), as determined by the Director.

(c) PROGRAM COORDINATION.—This program shall be coordinated with and in addition to the ongoing Historically Black Colleges and Universities Undergraduate Program and the Tribal Colleges and Universities Program.

SEC. 25. STUDY ON RESEARCH AND DEVELOPMENT FUNDING DISCREPANCIES.

(a) STUDY.—The Director, in consultation with the Director of the Office of Management and Budget and the heads of other Federal agencies, shall enter into agreement with the National Academy of Sciences to conduct a comprehensive study to determine the source of discrepancies in Federal reports on obligations and actual expenditures of Federal research and development funding.

(b) CONTENTS.—The study shall—

1. examine the relevance and accuracy of reporting classifications and definitions used in the reports described in subsection (a);
2. examine whether the classifications and definitions are used consistently across Federal agencies for data on Federal research and development funding.
3. examine whether and how Federal agencies use reports described in subsection (a), and describe any other sources of similar data provided by those agencies.
4. recommend alternatives for modifications to the current reporting process and system that would—
   a. accommodate emerging fields of science and changing practices in the conduct of research and development;
30) is amended to read as follows:

"SEC. 208. APPLICABILITY.

(a) IN GENERAL.—Except as provided in subsection (b), an agreement entered into under this title shall apply to weeks of
unemployment beginning—

(1) after the date on which such agreement is entered into; and
(2) ending before April 1, 2003.

(b) TRANSITION FOR AMOUNT REMAINING IN ACCOUNT.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the nonrefundable amount remaining in an account shall be augmented for purposes of this title by the amount by which the amount of Federal funding requirements exceeds whatever amounts remaining in such an account as established under section 203 as of March 29, 2003, with $75 per week for weeks beginning after March 29, 2003, and $100 per week thereafter for weeks beginning after March 29, 2004. 

(2) NO AMENDMENT AFTER MARCH 29, 2003.—If the amount of an individual is exhausted after March 29, 2003, then section 203(c) shall not apply and such amount shall not be augmented under such section, regardless of whether such individual's State is in an extended benefit period as determined under paragraph (2) of such section.

(3) LIMITATION.—No compensation shall be payable by reason of paragraph (1) for any week beginning after June 26, 2003.

(c) TRAFFIC JAM AID.—The amount of compensation payable under this section shall not exceed $50 for uncompensated weeks of unemployment.

(d) IMPLEMENTATION.—Within 6 months after the completion of the study required by subsection (a), the Director of the Office of Management and Budget shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Education, Labor, and Pensions of the Senate within one year after the date of enactment of this Act.

SEC. 26. PLANNING GRANTS.

The Director is authorized to accept planning proposals from applicants who are with an 0.5 percentage points of the current eligibility level for the Experimental Program to Stimulate Competitive Research. Such proposals shall be reviewed by the Foundation to determine their merit for support under the Experimental Program to Stimulate Competitive Research or any other appropriate program.

SA 4595. Mr. REID (for Mr. KENNEDY (for himself, Mr. GREGG, and Mr. HOLLINGS)) proposed an amendment to the bill H.R. 4664. An act to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes; as follows:

Amend the title so as to read: “An Act to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes.”

SA 4596. Mrs. CLINTON (for herself, Mr. FITZGERALD, Ms. CANTWELL, and Mr. SPECTER) proposed an amendment to the bill H.R. 3529, to provide tax incentives for economic recovery and assistance to displaced workers; as follows:

Strike all after the enacting clause and insert the following:

SEC. 1. Section 114 of Public Law 107–229 is amended by striking “the date specified in section 170(c) of this joint resolution” and inserting “March 31, 2003.”

Section 2. EXTENSION OF THE TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002.

(a) In general.—Section 208 of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 30) is amended to read as follows:

"SEC. 208. APPLICABILITY.

(a) IN GENERAL.—Except as provided in subsection (b), an agreement entered into under this title shall apply to weeks of unemployment beginning—

(1) after the date on which such agreement is entered into; and
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(c) TRAFFIC JAM AID.—The amount of compensation payable under this section shall not exceed $50 for uncompensated weeks of unemployment.

(d) IMPLEMENTATION.—Within 6 months after the completion of the study required by subsection (a), the Director of the Office of Management and Budget shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Education, Labor, and Pensions of the Senate within one year after the date of enactment of this Act.

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(c) TRAFFIC JAM AID.—The amount of compensation payable under this section shall not exceed $50 for uncompensated weeks of unemployment.

(d) IMPLEMENTATION.—Within 6 months after the completion of the study required by subsection (a), the Director of the Office of Management and Budget shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Education, Labor, and Pensions of the Senate within one year after the date of enactment of this Act.

SEC. 26. PLANNING GRANTS.

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SEC. 10. ABOVE-THE-LINE DEDUCTION FOR OVERNIGHT TRAVEL EXPENSES OF NATIONAL GUARD AND RESERVE MEMBERS.

(a) DEDUCTION ALLOWED.—Section 162 of the Internal Revenue Code of 1986 (relating to regimental and other expenses) is amended by redesignating subsection (p) as subsection (q) and inserting after such subsection the following new subsection:

"(p) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ELECTS TO ITEMIZE.—Section 62(a)(2) relating to certain trade and business deductions of employees) is amended by adding at the end the following new subparagraph:

"(5) Certain expenses of members of reserve components of the Armed Forces of the United States.—For purposes of subsection (a)(2), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such services.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2002.

SEC. 11. EXTENSION OF INTERNAL REVENUE SERVICE USER FEES.

(a) IN GENERAL.—Chapter 77 of the Internal Revenue Code of 1986 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

"SEC. 7527. INTERNAL REVENUE SERVICE USER FEES.

(a) GENERAL RULE.—The Secretary shall establish a program requiring the payment of user fees for services of the Internal Revenue Service, as determined by the Secretary, to the extent that the fees charged with respect to such services shall not be less than the amount determined under the following table:

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exempt organization ruling</td>
<td>$350</td>
</tr>
<tr>
<td>Estate plan ruling and opinion</td>
<td>$250</td>
</tr>
<tr>
<td>Exempt organization ruling</td>
<td>$300</td>
</tr>
<tr>
<td>Chief counsel ruling</td>
<td>$200</td>
</tr>
</tbody>
</table>

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 77 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 7527. Internal Revenue Service user fees."

(2) Section 1051(f) of the Economic Growth and Tax Relief Reconciliation Act of 2001 is repealed.

(c) LIMITATIONS.—Notwithstanding any other provision of law, any fees collected pursuant to section 7527 of the Internal Revenue Code of 1986, as added by subsection (a), shall not be expended by the Internal Revenue Service unless provided by an appropriations Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to requests for payment made after the date of the enactment of this Act.

SEC. 12. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) of the Internal Revenue Code of 1986 (relating to authorization of agreements) is amended—

(A) by striking "satisfy liability for payment of" and inserting "make payment on"; and

(B) by inserting "full or partial" after "facilitate"

(2) Section 6156(c) of such Code (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting "full" before "payment."

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159(j) of the Internal Revenue Code of 1986 is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and inserting after subsection (c) the following new subsection:

"(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COL-
S. 2934. To Amend the charter of the American Legion [Johnson].

H.R. 3988. To Amend the charter of the American Legion [Gekas].


H.R. 3180. To consent to certain amendments to the New Hampshire-Vermont Interstate School Compact [Bass].


S. Con. Res. 94. A Sense of Congress that a National Importance of Health Coverage Month should be established [Wyden/Hatch/Grassley].

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance, the Select Committee on Homeland Security, the Select Committee on Intelligence, and the Select Committee on Technology and Terrorism and Government Information be authorized to meet to conduct a hearing on "America Still Unprepared—America Still in Danger" on Thursday, November 14, 2002, at 2 p.m. in room 226 of the Dirksen Senate Office Building.

Witness List

Senator Warren B. Rudman, Co-Chair, Independent Terrorism Task Force Washington, DC.

Stephen E. Flynn, Member, Independent Terrorism Task Force, Senior Fellow, National Security Studies, Council on Foreign Relations, New York, NY.

Philip A. Odeen, Member, Independent Terrorism Task Force, Chair, TRW Inc., Arlington, VA.

Col. Randy Larsen, Ret., Director, ANSER Institute for Homeland Security, Arlington, VA.

The PRESIDING OFFICER. Without objection, it is so ordered.

(PRIVILEGES OF THE FLOOR)

Mr. MCCAIN. Madam President, I ask unanimous consent that Joe Raymond, a Coast Guard fellow on the Senate Commerce Committee, be granted the privilege of the floor during consideration of the conference report to accompany S. 1214, the Port and Maritime Security Act.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CLINTON. Madam President, I ask unanimous consent that a fellow in my office, Dr. Leo Tressande, be given floor privileges.

The PRESIDING OFFICER. Without objection, it is so ordered.

SMALL WEBCASTER AMENDMENTS ACT OF 2002

Mr. REID. Madam President, I ask unanimous consent the Senate proceed to the consideration of H.R. 5469. The PRESIDING OFFICER. The clerk will report the bill by title. The legislative clerk as follows: A bill (H.R. 5469) to amend title 17, United States Code, with respect to the statutory license for webcasting. There being no objection, the Senate proceeded to consider the bill. Mr. LEAHY. Madam President, I am pleased that the Senate is taking the important step of passing H.R. 5469, the "Small Webcaster Amendments Act of 2002." This legislation reflects hard choices made in hard negotiations under hard circumstances. I commend House Judiciary Chairman Sensenbrenner and Representative Conyers for bringing this legislation to a successful conclusion and passage in the House of Representatives in a timely fashion to ensure the survival in the prospects of many small webcasters. The Internet is an American invention that has become the emblem of the Information Age and an engine for bringing American content into homes and businesses worldwide. I have long been an enthusiast and champion of the Internet and of the creative spirits who are the source of the music, films, books, news, and entertainment content that enrich our lives, energize our economy, and influence our culture. As a citizen, I am impressed by the innovation of new online entrepreneurs, and as a Senator, I want to do everything possible to promote the full realization of the Internet's potential. A flourishing Internet with clear, fair and enforceable rules governing how content may be used will benefit all of us, including the entrepreneurs who want us to become new customers and the artists who create the content we value. The advent of webcasting—streaming music online rather than broadcasting it over the air as traditional radio stations do—has marked one of the most exciting and quickly growing of the new industries that have sprung up on the Web. Many of the new webcasters, unconstrained by the technological limitations of traditional radio transmission, can and do serve listeners across the country and around the world. They offer in specialized niches not available over the air. They feature new and fringe artists who do not enjoy the few spots in the Top 40. And they can bring music of all types to listeners who, for whatever reason, are not being catered to by traditional broadcasters.

We have been mindful on this Committee that as the Internet is a boon to consumers, we must not neglect the artists who create and the businesses which produce the digital works that make the online world so fascinating and worth visiting. With each legislative effort to provide clear, fair, and enforceable intellectual property rules for the Internet, a fundamental principle to which we have adhered is that artists and producers of digital works merit compensation for the value derived from the use of their work. In 1995, we enacted the Digital Performance Right in Sound Recordings Act, which created an intellectual property right in digital sound recordings, giving copyright owners the right to receive royalties when their copyrighted sound recordings are digitally transmitted, royalties are due. In the 1998 Digital Millennium Copyright Act, DMCA, we made clear that this law applied to webcasters and that they would have to pay these royalties. At the same time, we created a compulsory license so that webcasters could be sure of the use of these digital works. We directed that the royalty rate be set by the parties or determined by a Copyright Arbitration Royalty Panel—or CARP—at the Library of Congress.

Despite some privately negotiated agreements, no agreement on royalty rates was reached and therefore a CARP proceeding was instituted that concluded on February 20, 2002. The CARP decision set the royalty rate to be paid by commercial webcasters to no more than .14 cents per song per listener, with royalty payments retroactive to October 1998, when the DMCA was passed. At a Judiciary Committee hearing I convened on this issue on May 15, 2002, nobody seemed happy with the outcome of the arbitration and, in fact, all the parties appealed. The recording industry and artist representatives feel that the royalty rate—which was based on the number of performances and listeners rather than the number of revenue model—was too low to adequately compensate the creative efforts of the artists and the financial investments of the labels. Many webcasters declared that the per-performance approach, if attached to it, would bankrupt small operations and drain the large ones. I said then that such an outcome would be highly unfortunate not only for the webcasters but also for the artists, the labels and the consumers, who all would lose important legitimate channels to connect music and music lovers online.

On appeal, the Librarian in June, 2002, cut the rate in half, to $.07 cents per song per listener for commercial webcasters. Nevertheless, many webcasters, who had been operating during the four-year period between 1998 and 2002, were taken by surprise at the amount of their royalty liability. The retroactive fees were to be paid in full by October 20th and would have resulted in many small webcasters in particular, going out of business. In order to avoid many webcasting streams going silent on October 20, when retroactive royalty payments are due, I urged all sides to avoid more expense and time and reach a negotiated
outcome more satisfactory to all participants than the Librarian’s decision. I also monitored closely the progress of negotiations between the RIAA and webcasters. On July 31, I sent a letter with Senator HATCH to Sound Exchange, which was created by the RIAA to act as the agent for copyright owners in negotiating the voluntary licenses with webcasters under the DMCA and to serve as the receiving agent for royalties under the CARP process. The letter posed questions on the status of the reported on-going negotiations between RIAA/Sound Exchange and the smaller webcasters, the terms being proposed and considered, and how likely the outcome of those negotiations would be to produce viable deals for smaller webcasters, while still satisfying the copyright community.

Reports on the progress of these negotiations were disappointing, which makes this legislation all the more important. As a general principle, marketplace negotiations are the appropriate mechanism for determining the allocation of compensation among interested parties under copyright law. Yet, we have made exceptions to this general principle through the legislation and the very compulsory license provisions it amends.

The legislation reflects a compromise for all the parties directly affected by this amendment. Small webcasters that could not survive with the rates set by the Librarian and copyright owners and performers who under this bill will give certain eligible webcasters an alternative royalty payment scheme. This legislation does not represent a complete victory for any of these stakeholders. Artists and music labels may believe that they are forgoing significant royalties under this legislation and I appreciate that they are those in the webcasting business, who are either not covered or covered sufficiently below the bill, who believe that this legislation should do more. As one analyst at the Radio and Internet Newsletter stated, in the October 11, 2002 issue, “Clearly, the ‘Small Webcaster Amendments Act of 2002’ (a/k/a H.R. 5469) is an imperfect bill that doesn’t fix everything for everybody. . . Still, overall, does it do more good than harm for more people? My belief is that many are helped one way or the other and virtual non-one is assured of being hurt. Thus, the answer, on the whole, would be yes.”

I know that most webcasters share my belief that artists and labels should be fairly compensated for use of their creative works. This legislation provides both compensation to the copyright owners and helps to support the webcasting industry by offering more variable payment options to small webcasters than the one-size-fits-all per performance rate set out in the original CARP and Librarian decisions. The rates, terms and record-keeping provisions are applicable only to the parties that qualify for and elect to be governed by this alternative royalty structure and no broad principles should be extrapolated from the rates, terms and record-keeping provisions contained in the bill. The Copyright Office is presently engaged in a rule-making on record-keeping and this bill does not supersede that activity.

This legislation does three things to help small webcasters pay royalties and stay in business. As one Vermont webcaster told me, “Although the percentage of revenue is very high, at least we have the option. A percentage of revenue deal will enable [us] to stay in business moving forward, grow our audience, and compete.”

First, the Librarian royalty rate is based on a per performance formula, which has the unfortunate effect of requiring webcasters to pay high fees for their use of music, even before the audience of the webcaster has grown to a sufficient size to attract any appreciable advertising revenues. Without any per performance royalty (as provided by the legislation), the webcasting industry would be closed to all but those with the substantial resources necessary to subsidize the business until the advertising revenue came in. To avoid providing an artificial floor on the royalties, to assure that copyright owners and artists receive some payment for performance of their music.

Second, for noncommercial webcasters, such as college webcasters, the bill corrects an anomaly in the Librarian’s decision. Under that decision, non-profit entities held FCC licenses were given a lower per performance rate than were commercial entities. However, the decision made no such provision for noncommercial entities that were not FCC licenses. The bill extends the lower rate to all nonprofit entities.

Finally, the bill reduces the retroactive burden on many of the small commercial webcasters by allowing them to make their payments based on a percentage of revenue or percentage of expense, but also allows both small commercial and noncommercial webcasters to pay these retroactive fees in three payments over the span of a year.

To accommodate the concerns of artists and the RIAA, the bill provides for the reporting of information about which songs were played by the small commercial webcasters. This information will be used to account properly for the distribution of the royalties to the copyright holders and the artists.

A number of concerns have been raised that the rate, terms and record-keeping provisions in the bill do not constitute a fair dealing of any rates, rate structure fees, definitions, conditions or terms that would have been negotiated in the marketplace between a willing buyer and a willing seller. This concern stems from the DMCA’s statutory license fee standard directing the CARP to establish rates and terms “that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller,” rather than a determination of “reasonable copyright royalty rates” according to a set of balancing factors. This new webcasting standard may be having the unfortunate and unintended result that webcasters and copyright owners are concerned that the rates and terms of any voluntary licensing agreements will be applied industry-wide. The new webcasting standard appears to be making all sides cautious and reluctant to enter into, rather than facilitating, voluntary licensing agreements.

Passage of this legislation does not mean that our work is done. As this webcasting issue has unfolded, I have heard complaints from all sides about the fairness and completeness of procedures employed in the arbitration. Indeed, the concerns of many small webcasters were never heard, since the cost of participating in the proceedings was prohibitively expensive and their ability to participate for free was barred by procedural rules. One thing is clear: Compulsory licenses are no panacea and their implementation may only invite more congressional intervention. To avoid repeated requests for the Congress or the courts to intercede, we must make sure the procedures and standards used to establish the royalty rates for the webcasting and other compulsory licenses produce fair, workable results. Next year, we should focus attention on reforming the CARP process.

Mr. REID. Madam President, I ask unanimous consent that the Helms amendment at the desk be agreed to: the bill, as amended, be read a third time, and the motion to reconsider be laid on the table, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4955) was agreed to.

(The amendment is printed in today’s RECORD under “Text of Amendments.”)

The bill (H.R. 5469), as amended, was read the third time and passed.

MEASURE PLACED ON THE CALENDAR—H.J. RES. 124

Mr. REID. Madam President, I ask unanimous consent that H.J. Res. 124, the continuing resolution just received from the House, be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

AFGHANISTAN FREEDOM SUPPORT ACT OF 2002

Mr. REID. Madam President, I ask unanimous consent that the Senate
proceed to the consideration of Cal-
endar No. 597, S. 2712.

The PRESIDING OFFICER. The
clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2712) to authorize economic and
democratic development assistance for Af-
ghanistan and to authorize military assist-
ance for Afghanistan and certain other for-
eign countries.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee
on Foreign Relations with an amend-
ment to strike all after the enacting
clause and insert in lieu thereof the follow-
ing:

[Strike the part shown in black brackets and
insert the part printed in italic.]

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS;
DEFINITION.

(a) Short Title.—This Act may be cited as the “Afghanistan Freedom Support Act of 2002.”

(b) Table of Contents.—The table of con-
tents for this Act is as follows:

TITLE I—ECONOMIC AND DEMOCRATIC
DEVELOPMENT ASSISTANCE FOR
AFGHANISTAN
Sec. 1. Declaration of policy.
Sec. 203. Eligible foreign countries and eli-
gible international organizations.
Sec. 204. Reimbursement for assistance.
Sec. 205. Authorization of assistance.
Sec. 206. Promoting secure delivery of hu-
manitarian and other assist-
ance in Afghanistan.
Sec. 207. Sunset.

TITLE II—MILITARY ASSISTANCE FOR
AFGHANISTAN AND CERTAIN OTHER
FOREIGN COUNTRIES AND INTER-
CONTINENTAL ORGANIZATIONS
Sec. 201. Support for security during tran-
sition in Afghanistan.
Sec. 203. Eligible foreign countries and eli-
gible international organiza-
tions.
Sec. 204. Reimbursement for assistance.
Sec. 205. Authority to provide assistance.
Sec. 206. Promoting secure delivery of hu-
manitarian and other assist-
ance in Afghanistan.
Sec. 207. Sunset.

TITLE III—ADDITIONAL REQUIREMENTS
WITH RESPECT TO ASSISTANCE FOR
AFGHANISTAN
Sec. 301. Prohibition on United States in-
volvement in poppy cultivation or illicit narcotics growth, pro-
duction, or trafficking.
Sec. 302. Requirement to report by certain
United States officials.
Sec. 303. Report by the President.
(c) Definition.—In this Act, the term “Government of Afghanistan” includes—
(1) the government of any political sub-
division of Afghanistan; and
(2) any agency or Instrumentality of the Government of Afghanistan.

TITLE I—ECONOMIC AND DEMOCRATIC
DEVELOPMENT ASSISTANCE FOR
AFGHANISTAN
Sec. 101. DECLARATION OF POLICY.

(Congress makes the following declara-
tions:

(1) The United States and the inter-
national community should support efforts
that advance the development of democratic civil authorities and institutions in Afghan-
istan and the establishment of a new broad-
based, multi-ethnic, gender-sensitive, and fully representative government in Afghan-
istan.

(2) The United States, in particular, should provide its expertise to meet imme-
diate needs, fight the production and flow of illicit narcotics, and aid in the reconstruc-
tion of Afghanistan’s agriculture, health care, civil service, financial, and judicial systems.

(3) By promoting peace and security in Af-
ghanistan and preventing a return to con-
flict, the United States and the international community can help ensure that Afghan-
istan does not again become a source for international terrorism.

(4) The United States should support the objectives agreed to on December 5, 2001, in
Bonn, Germany, regarding the provisional ar-
rangement for Afghanistan as it moves to-
ward the establishment of permanent insti-
tutions and, in particular, should work in-
tensively toward ensuring the future neu-
trality of Afghanistan, establishing the prin-
ciple that neighboring countries and other countries in the region should not interfere in one another’s sovereignty, ter-
torial integrity, or political independence, including supporting diplomatic initiatives to support this goal.

(5) The special emergency situation in Af-
ghanistan, which from the perspective of the American people combines security, humani-
tarian, political, law enforcement, and devel-
opment imperatives, requires that the Presi-
dent should receive maximum flexibility in
designing, coordinating, and administering
funding with respect to assistance for Afghan-
istan and that a temporary special program of
such assistance should be established for this purpose.

(6) To foster stability and democ-
ratization and to effectively eliminate the
causes of terrorism, the United States and the
international community should also sup-
port efforts that advance the development of
democratic civil authorities and institutions in
the broader Central Asia region.

(7) The purposes of assistance authorized by this title are—

(a) to help assure the security of
the United States and the world by reducing or eliminating the violence and the
risk of harm to United States or allied forces in Afghanistan.

(b) to support the continued efforts of
the United States and the international com-
nunity to address the humanitarian crisis in
Afghanistan and among Afghan refugees in
neighboring countries.

(c) to fight the production and flow of il-
licit narcotics, to control the flow of pre-
detonated devices, to support the de-
struction of Najibullah’s secretly hoarded stocks of
heroin, and to enhance and bolster the ca-
pacities of Afghan governmental authorities
and United Nations programs that create jobs, facilitate clearance of landmines, and rebuild the agriculture
sector, the health care system, and the
educational system of Afghanistan.

(8) To include specific resources to the
Ministry for Women’s Affairs of Afghanistan
to carry out its responsibilities for legal ad-
dvocacy, education, vocational training, and
women’s health programs.

(9) TO INCLUDE SPECIFIC RESOURCES TO
THE MINISTRY FOR WOMEN’S AFFAIRS OF
AFGHANISTAN TO CARRY OUT ITS RESPONSIBILITIES FOR LEGAL ADVOCACY,
EDUCATION, VOCATIONAL TRAINING, AND WOMEN’S HEALTH PROGRAMS.

(10) TO PROVIDE ASSISTANCE TO THE
MILITARY ALLIANCE FOR AFGHANISTAN.

(11) TO PROVIDE RESOURCES TO
THE MINISTRY FOR WOMEN’S AFFAIRS OF
AFGHANISTAN TO CARRY OUT ITS RESPONSIBILITIES FOR LEGAL ADVOCACY,
EDUCATION, VOCATIONAL TRAINING, AND WOMEN’S HEALTH PROGRAMS.

(12) TO PROVIDE RESOURCES TO
THE MINISTRY FOR WOMEN’S AFFAIRS OF
AFGHANISTAN TO CARRY OUT ITS RESPONSIBILITIES FOR LEGAL ADVOCACY,
EDUCATION, VOCATIONAL TRAINING, AND WOMEN’S HEALTH PROGRAMS.
(D) family tracing and reunification services; and
(E) clearance of landmines.

(2) Repatriation and resettlement of refugees and internally displaced persons.—To assist refugees and internally displaced persons as they return to their home communities in Afghanistan and to support their reintegration into those communities, including assistance such as—
(A) assistance identified in paragraph (1);
(B) assistance to communities, including those countries that have taken in large numbers of refugees in order to rehabilitate or expand social, health, and educational services that may have suffered as a result of the influx of large numbers of refugees;
(C) assistance to international organizations and projects in maintaining security by screening refugees to ensure the exclusion of armed combatants, members of foreign terrorist organizations, and other individuals not eligible for economic assistance from the United States; and
(D) assistance for voluntary refugee repatriation and reintegration inside Afghanistan and to assist refugees who are unable or unwilling to return, and humanitarian assistance to internally displaced persons, including those persons who are unable or unwilling to return to their homes, through the United Nations High Commissioner for Refugees and other organizations charged with providing such assistance.

(3) Counternarcotics efforts.—(A) To assist in the eradication of poppy cultivation, the disruption of heroin production, and the reduction of the overall supply and demand for illicit narcotics in Afghanistan and the region, with particular emphasis on assistance to—
(i) eradicate opium poppy, establish crop substitution programs, purchase nonopium products from farmers in opium-growing areas, quick-impact public works programs to divert labor from narcotics production, develop projects directed specifically at narcotics production, processing, or trafficking areas to provide incentives to cooperation in narcotics suppression activities, and related programs;
(ii) establish or provide assistance to one or more entities within the Government of Afghanistan, including the Afghan State High Commission for Drug Control, and to provide, when necessary, assistance to international organizations, to help enforce counternarcotics laws in Afghanistan and limit illicit narcotics growth, production, and trafficking in Afghanistan;
(iii) train and provide equipment for customs, police, and other border control entities in Afghanistan and the region relating to illicit narcotics in Afghanistan, including security and anti-terrorism, to help enforce counternarcotics laws in Afghanistan and limit illicit narcotics growth, production, and trafficking in Afghanistan;
(iv) continue the annual opium crop survey and strategic studies on opium crop planting and farming in Afghanistan; and
(v) reduce demand for illicit narcotics among the people of Afghanistan, including refugees returning to Afghanistan.

(B) For each of the fiscal years 2002 through 2005, $15,000,000 of the amount made available to carry out this title is authorized to be made available for a contribution to the United Nations Drug Control Program for the purpose of carrying out activities described in subparagraph (i) through (v) of paragraph (A).

(4) Reestablishment of food security, rehabilitation of the agriculture sector, improvement in health conditions, and the reconstruction of basic infrastructure.—To assist in expanding access to markets in Afghanistan, to increase the availability of food in markets in Afghanistan, to rehabilitate the agriculture sector in Afghanistan by creating jobs for former combatants, returning refugees, and internally displaced persons, to assist in the rebuilding of basic infrastructure in Afghanistan, including assistance such as—
(A) rehabilitation of the agricultural infrastructure, including irrigation systems and rural roads;
(B) establishment of credit;
(C) provision of critical agricultural inputs, such as seeds, tools, and fertilizer, and strengthening of seed multiplication, certification, and distribution systems; and
(D) improvement in the quantity and quality of water available through, among other things, rehabilitation of existing irrigation systems and the development of local capacity to manage irrigation systems;
(E) livestock rehabilitation through market development and other mechanisms to distribute assistance and livestock lost as a result of conflict or drought;
(F) mine awareness and de-mining programs and programs to assist mine victims, war orphans, and widows;
(G) programs relating to infant and young child feeding, immunizations, vitamin A supplementation, and prevention and treatment of diarrheal diseases and respiratory infections;
(H) programs to improve maternal and child health and reduce maternal and child mortality;
(I) programs to improve hygiene and sanitation practices and for the prevention and treatment of chronic diseases, such as tuberculosis and malaria;
(J) programs to reconstitute the delivery of health care, including the reconstruction of health clinics or other basic health infrastructure, with particular emphasis on health care for children who are orphans;
(K) programs for housing, rebuilding urban infrastructure, and supporting basic urban services; and
(L) disarmament, demobilization, and reintegration of armed combatants into society, particularly child soldiers.

(5) Reestablishment of Afghanistan as a viable nation-state.—(A) To assist in the provision of the delivery of the Government of Afghanistan to meet the needs of the people of Afghanistan through, among other things, support for the development and expansion of market-based institutions, including assistance such as—
(i) support for international organizations that provide civil advisers to the Government of Afghanistan;
(ii) support for an educated citizenry through improved access to basic education, with particular emphasis on basic education for children; and
(iii) programs to enable the Government of Afghanistan to recruit and train teachers, with special focus on the recruitment and training of female teachers;

(B) programs to enable the Government of Afghanistan to develop school curriculum that incorporates information such as landmine awareness, food security and agricultural education, human rights awareness, and civic education;
(C) support for the activities of the Government of Afghanistan to draft a new constitution, other legal frameworks, and other initiatives to promote the rule of law in Afghanistan;
(D) support to increase the transparency, accountability, and participatory nature of governmental institutions, including programs designed to combat corruption and other programs for the promotion of good governance;
(E) support for an independent media;
(F) programs that support the expanded participation of women and members of all ethnic groups in government at national, regional, and local levels;
(G) programs to strengthen civil society organizations that promote human rights and support human rights monitoring;
(H) support for national, regional, and local elections and political party development;
(I) support for the effective administration of justice at the national, regional, and local levels, including the establishment of a responsible and community-based police force; and
(J) support for establishment of a central bank and central budgeting authority.

(6) Market economy.—To support the establishment of a market economy, the establishment of private financial institutions, the adoption of policies to promote foreign direct investment, the development of a basic telecommunications infrastructure, and the development of trade and other commercial links with countries in the region and with the United States, including policies to—
(A) encourage the return of Afghanistan citizens or nationals living abroad who have marketable and business-related skills;
(B) establish financial institutions, including credit unions, cooperatives, and other entities providing microenterprise credits and other income-generation programs for the poor, with particular emphasis on women;
(C) facilitate expanded trade with countries in the region;
(D) promote and foster respect for basic workers’ rights and protections against exploitation of child labor; and
(E) provide financing programs for the reconstruction of Kabul and other major cities in Afghanistan.

(7) Limitation.—(1) IN GENERAL.—Amounts made available to carry out this title (except amounts made available for assistance under paragraphs (1) through (3) and subparagraphs (F) through (I) of paragraph (4) of subsection (a) may be provided only if the President first determines and certifies to Congress with respect to the fiscal year involved that substantial progress has been made toward adopting a constitution and establishing a democratically elected government for Afghanistan.

(2) Waiver.—(A) IN GENERAL.—The President may waive the application of paragraph (1) if the President first determines and certifies to Congress that it is important to the national interest of the United States to do so.

(8) Contents of certification.—A certification transmitted to Congress under subparagraph (A) shall include a written explanation of the basis for the determination of the President to waive the application of paragraph (1).

SEC. 105. COORDINATION OF ASSISTANCE.

(1) IN GENERAL.—The President is strongly urged to designate the Department of State, a coordinator who shall be responsible for—
...
(1) designing an overall strategy to advance United States interests in Afghanistan;
(2) ensuring program and policy coordination with the United States Government in carrying out the policies set forth in this title;
(3) pursuing coordination with other international organizations with respect to assistance to Afghanistan;
(4) ensuring that United States assistance programs for Afghanistan are consistent with this title;
(5) ensuring proper management, implementation, and oversight by agencies responsible for assistance programs for Afghanistan;
(6) resolving policy and program disputes among United States Government agencies with respect to United States assistance for Afghanistan;
(7) Rank and Status of the Coordinator—The coordinator designated under subsection (a) shall have the rank and status of ambassador.

SEC. 106. ADMINISTRATIVE PROVISIONS.

(a) Applicable Administrative Authorities.—Except to the extent inconsistent with the provisions of this title, the administrative and budgetary titles, chapters 1 and 2 of part III of the Foreign Assistance Act of 1961 shall apply to the provision of assistance under this title and in the same manner as such authorities apply to the provision of economic assistance under part I of such Act.

(b) Use of the Expertise of Afghan-Americans.—In providing assistance authorized by this title, the President shall—
(1) maximize the use, to the extent feasible, of services of Afghan-Americans who have expertise in the areas for which assistance is authorized by this title; and
(2) in the awarding of contracts and grants, implement activities authorized under this title, encourage the participation of such Afghan-Americans (including organizations employing a significant number of such Afghan-Americans).

(c) Donations of Manufacturing Equipment; Use of Land Grant Colleges and Universities.—In providing assistance authorized by this title, the President, to the maximum extent practicable, should—
(1) encourage the donation of appropriate excess or obsolete manufacturing and related equipment, from United States businesses (including small businesses) for the reconstruction of Afghanistan; and
(2) utilize research conducted by United States organizations and universities and the technical expertise of professionals within those institutions, particularly in the areas of agriculture and rural development.

(d) Administrative Expenses.—Not more than 5 percent of the amount made available to a Federal department or agency to carry out this title for a fiscal year shall be used by the department or agency for administrative expenses in connection with such assistance.

(e) Monitoring.—

(1) COMPTROLLER GENERAL.—The Comptroller General shall monitor the provision of assistance under this title.

(2) INSPECTOR GENERAL OF USAID.—

(a) IN GENERAL.—The Inspector General of the United States Agency for International Development shall conduct audits, inspections, and other activities, as appropriate, associated with the expenditure of the funds to carry out this title.

(b) FUNDING.—Not more than $1,500,000 of the amount made available to carry out this title for a fiscal year shall be made available to carry out the activities described in paragraphs (1) and (2) of this subsection.

(f) CONGRESSIONAL NOTIFICATION PROCEDURES.—Funds made available to carry out this title may not be obligated until 15 days after notification of the proposed obligation of the funds has been provided to the congressional committees specified in section 121(a) of the Foreign Assistance Act of 1961 in accordance with the procedures applicable to reprogramming notifications under that section.

SEC. 107. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the President to carry out this title $300,000,000 for each of the fiscal years 2002 through 2006 and $220,000,000 for fiscal year 2005. Amounts authorized to be appropriated pursuant to the preceding sentence for fiscal year 2002 are in addition to amounts otherwise available for assistance for Afghanistan.

(b) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under subsection (a) are—
(1) authorized to remain available until expended; and
(2) in addition to funds otherwise available for such purposes, including, with respect to food assistance under section 104(a)(1), funds available under title II of the Agricultural Trade Development and Assistance Act of 1954, the Food for Progress Act of 1965, and section 416(b) of the Agricultural Act of 1949.

TITLE II—MILITARY ASSISTANCE FOR AFGHANISTAN AND CERTAIN OTHER FOREIGN COUNTRIES AND INTERNATIONAL ORGANIZATIONS

SEC. 201. SUPPORT FOR SECURITY DURING TRANSITION IN AFGHANISTAN.

It is the sense of Congress that, during the transition to a broad-based, multi-ethnic, gender-sensitive, fully representative government in Afghanistan, the United States should support—
(1) the development of a civilian-controlled and centrally-governed standing Afghan army that respects human rights and prohibits the use of children as soldiers or combatants;
(2) the creation and training of a professional civilian police force that respects human rights; and
(3) a multinational security force in Afghanistan.

SEC. 202. AUTHORIZATION OF ASSISTANCE.

(a) TYPES OF ASSISTANCE.—

(1) IN GENERAL.—(A) To the extent that funds are appropriated in any fiscal year for assistance proposed to be provided, consistent with existing United States statutes, defense articles, defense services, counter-narcotics, crime control and police training services, and military education and training, the President may provide, consistent with existing United States statutes, defense articles, defense services, counter-narcotics, crime control and police training services, and military education and training.

(2) AUTHORITY TO ACQUIRE BY CONTRACT OR OTHERWISE.—The assistance authorized under paragraphs (1) and (2) shall be used for directly supporting the activities described in section 203.

(b) DRAWDOWN AUTHORITY.—The President is authorized to direct the drawdown of defense articles, defense services, and military education and training for the Government of Afghanistan, eligible foreign countries, and eligible international organizations.

(c) AUTHORITY TO ACQUIRE BY CONTRACT OR OTHERWISE.—The assistance authorized under paragraphs (1) and (2) shall be used for directly supporting the activities described in section 203 and activities relating to defense articles, defense services, counter-narcotics, crime control and police training services, other support, and military education and training that are acquired by contract or otherwise.

(1) AMOUNT OF ASSISTANCE.—The aggregate value (as defined in section 634A of the Foreign Assistance Act of 1961) of assistance provided under subsection (a)(2) may not exceed $300,000,000, provided that such limit may be increased by not more than $50,000,000 appropriated pursuant to the authorization of appropriations in section 208(b)(1).

SEC. 203. ELIGIBLE FOREIGN COUNTRIES AND ELIGIBLE INTERNATIONAL ORGANIZATIONS.

(a) ELIGIBILITY FOR ASSISTANCE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a foreign country or international organization shall be eligible to receive assistance under this title if such foreign country or international organization is participating in or directly supporting United States military assistance authorized under Public Law 107–40 or is participating in military, peacekeeping, or policing operations in Afghanistan aimed at restoring or maintaining peace and security in that country.

(2) EXCEPTION.—No country the government of which has been determined by the Secretary of State to have repeatedly provided support for acts of international terrorism under section 620A of the Foreign Assistance Act of 1961 (7 U.S.C. 6(j)(1)) shall be eligible to receive military assistance under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

(b) WAIVER.—The President may waive the application of subsection (a)(2) if the President determines that it is important to the national security interest of the United States to do so.

SEC. 204. REIMBURSEMENT FOR ASSISTANCE.

(a) IN GENERAL.—Defense articles, defense services, and military education and training provided under section 202 shall be made available without reimbursement to the Department of Defense except to the extent that funds are appropriated pursuant to the authorization of appropriations in subsection (b)(1).

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the President such sums as may be necessary to reimburse the applicable appropriation for the acquisition, delivery, or performance of assistance under section 202.

(2) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended, and are in addition to amounts otherwise available for the purposes described in this title.

SEC. 205. ELIGIBLE FOREIGN COUNTRIES AND ELIGIBLE INTERNATIONAL ORGANIZATIONS.

(a) AUTHORITY.—The President may provide assistance under this title to any eligible foreign country or eligible international organization if the President determines that such assistance is important to the national security interest of the United States and notifies the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate of such determination at least 15 days in advance of providing such assistance.

(b) NOTIFICATION.—The report described in subsection (a) shall be submitted in classified and unclassified form and shall include—
(1) the country or international organization to which assistance is proposed to be provided and the actions that the proposed recipient of such
assistance has taken or has committed to take.

[SEC. 206. PROMOTING SECURE DELIVERY OF HUMANITARIAN AND OTHER ASSISTANCE IN AFGHANISTAN.]

(a) FINDINGS.—Congress finds the following:

(I) The President has declared his view that the United States should provide significant assistance to Afghanistan so that it never again becomes a haven for terrorism.

(II) The delivery of humanitarian and reconstruction assistance from the international community is necessary for the safe return of refugees and is critical to the future stability of Afghanistan.

(3) Enhanced stability in Afghanistan through an improved security environment is critical to the fostering of the Afghan Interim Authority and the traditional Afghan assembly or “Loya Jirga” process, which is intended to lead to a permanent national government in Afghanistan, thereby being essential for the participation of women in Afghan society.

(4) Incidents of violence between armed factions and local and regional commanders, and serious abuses of human rights, including attacks on women and ethnic minorities throughout Afghanistan, create an insecure, volatile, and unstable environment in parts of Afghanistan, displacing thousands of Afghan civilians from their local communities.

(5) The violence and lawlessness may jeopardize the Loya Jirga process, undermine efforts to build a strong central government, severely impede reconstruction and the delivery of humanitarian assistance, and increase the likelihood that parts of Afghanistan will once again become safe havens for al-Qaeda, Taliban forces, and drug traffickers.

(6) The lack of security and lawlessness may also perpetuate the need for United States Armed Forces in Afghanistan and threaten the ability of the United States to meet its military objectives.

(7) The International Security Assistance Force in Afghanistan, currently led by Turkey, and composed of forces from other willing countries without the participation of United States Armed Forces, is deployed only in Kabul and currently does not have the capability to provide security to other parts of Afghanistan.

(8) Due to the ongoing military campaign in Afghanistan, the United States does not contribute to the International Security Assistance Force but has provided support to other countries that are doing so.

(9) The United States is providing political, financial, and other assistance to the Afghan Interim Authority as it begins to build a national army and police force to help provide security throughout Afghanistan, not meeting the immediate security needs of Afghanistan.

(10) Because of these immediate security needs, the Afghan Interim Authority, its Chairman, Hamid Karzai, and many Afghan regional leaders have called for the International Security Assistance Force, which has successfully brought stability to Kabul, to be expanded and deployed throughout the country, and this request has been strongly supported by a wide range of international humanitarian organizations, including the International Committee of the Red Cross, Catholic Relief Services, and Refugees International.

(11)(A) On January 29, 2002, the President stated that the United States should work intensively toward establishing a new broad-based, multi-ethnic, gender-sensitive, and fully representative government of Afghanistan.

(B) On March 25, 2002, the Secretary of Defense stated that “the first thing . . . you need for anything else to happen, for hospitals to happen, for roads to happen, for refugees to come back, for people to be fed and humanitarian workers to move on the country . . . (you’ve got to have security).”

(II) It should be the policy of the United States to support measures to help meet the immediate security needs of Afghanistan in order to promote safe and effective delivery of humanitarian and other assistance throughout Afghanistan, further the rule of law and civil order, and support the formation of a functioning, representative Afghan national government.

(10) PREPARATION OF STRATEGY.—Not later than 45 days after the date of the enactment of this Act, and 4 months thereafter, the President shall transmit to the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate a strategy for meeting the immediate and long-term security needs of Afghanistan in order to promote safe and effective delivery of humanitarian and other assistance throughout Afghanistan, further the rule of law and civil order, and support the formation of a functioning, representative Afghan national government.

(SEC. 207. SUNSET.]

(The authority of this title shall expire after December 31, 2004.)

[TITLE III—ADDITIONAL REQUIREMENTS WITH RESPECT TO ASSISTANCE FOR AFGHANISTAN]

[SEC. 301. PROHIBITION ON UNITED STATES INVOLVEMENT IN POPPY CULTIVATION OR ILLICIT NARCOTICS PRODUCTION, PRODUCTION, OR TRAFFICKING.]

(a) Prohibition.—No officer or employee of any Federal department or agency who is involved in the provision of assistance under this Act may knowingly encourage or participate in poppy cultivation or illicit narcotics growth, production, or trafficking in Afghanistan.

(b) Prohibition.—No person who is involved in the provision of assistance under this Act may knowingly encourage or participate in poppy cultivation or illicit narcotics growth, production, or trafficking in Afghanistan.

(SEC. 302. REQUIREMENT TO REPORT BY CERTAIN UNITED STATES OFFICIALS.]

(a) Requirement.—Each employee of any Federal department or agency who is involved in the provision of assistance under this Act and having knowledge of facts or circumstances that reasonably indicate that any agency or an individual (including an individual who exercises civil power by force over a limited region) or organization in Afghanistan, that receives assistance under this Act is involved in poppy cultivation or illicit narcotics growth, production, or trafficking in Afghanistan, shall, notwithstanding any memorandum of understanding or other agreement to the contrary, report such knowledge or facts to the appropriate official.

(b) DEFINITION.—In this section, the term “appropriate official” means the Attorney General, the Inspector General of the Federal department or agency involved, or the head of such department or agency.

(SEC. 303. REPORT BY THE PRESIDENT.]

Not later than 6 months after the date of the enactment of this Act, and annually thereafter, the President shall transmit to Congress a written report on the progress of the Government of Afghanistan toward the eradication of the production of heroin in Afghanistan, and the reduction of the overall supply and demand for illicit narcotics in Afghanistan in accordance with the provisions of this Act.

[SECTION 1. SHORT TITLE; TABLE OF CONTENTS; DEFINITION.]

(a) SHORT TITLE.—This Act may be cited as the “Afghanistan Freedom Support Act of 2002.”

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

Sec. 1. Short title; table of contents; definition.

TITLE I—ECONOMIC AND DEMOCRATIC DEVELOPMENT ASSISTANCE FOR AFGHANISTAN

Sec. 101. Declaration of policy.
Sec. 102. Purposes of assistance.
Sec. 103. Principles of assistance.
Sec. 104. Authorization of assistance.
Sec. 105. Coordination of assistance.
Sec. 106. Administrative provisions.
Sec. 107. Relationship to other authority.
Sec. 108. Authorization of appropriations.

TITLE II—MILITARY ASSISTANCE FOR AFGHANISTAN AND CERTAIN OTHER FOREIGN COUNTRIES AND INTERNATIONAL ORGANIZATIONS

Sec. 201. Support for security during transition in Afghanistan.
Sec. 203. Eligible foreign countries and eligible international organizations.
Sec. 204. Reimbursement for assistance.
Sec. 205. Congressional notification requirements.
Sec. 206. Promoting secure delivery of humanitarian and other assistance in Afghanistan.
Sec. 207. Relationship to other authority.
Sec. 209. Sunset.

(c) DEFINITION.—In this Act, the term “Government of Afghanistan” includes—

(1) the government of any political subdivision of Afghanistan; and

(2) any agency or instrumentality of the Government of Afghanistan.

TITLE I—ECONOMIC AND DEMOCRATIC DEVELOPMENT ASSISTANCE FOR AFGHANISTAN

SEC. 101. DECLARATION OF POLICY.

Congress makes the following declarations:

(1) The United States and the international community should support efforts that advance the development of democratic civil authorities and institutions in Afghanistan and the establishment of a new broad-based, multi-ethnic, gender-sensitive, and fully representative government of Afghanistan.

(2) The United States, in particular, should provide its expertise to meet immediate humanitarian and refugee needs, fight the production and flow of illicit narcotics, and aid in the reconstruction of Afghanistan.

(3) By promoting peace and security in Afghanistan and preventing a return to conflict, the United States and the international community can help ensure that Afghanistan does not again become a source for international terrorism.

(4) The United States should support the objectives agreed to on December 5, 2001, in Bonn, Germany, regarding the provisional arrangement for Afghanistan as it moves toward the establishment of permanent institutions and, in particular, should work intensively toward ensuring the future neutrality of Afghanistan, establishing the principle that neighboring countries in the region do not threaten or interfere in one another’s sovereignty, territorial integrity, or political independence, including supporting diplomatic initiatives.

(5) The special emergency situation in Afghanistan, which from the perspective of the
American people combines security, humanitarian, political, law enforcement, and development imperatives, requires that the President should receive maximum flexibility in designating, coordinating, and prioritizing efforts to support assistance to Afghanistan and that a temporary special program of such assistance should be established for this purpose:

(1) To help assuage the security of the United States and the world by reducing or eliminating the likelihood of violence against United States officials, military forces, or allied forces in Afghanistan and to reduce the chance that Afghanistan will again be a source of international terrorism;

(2) To support the continued efforts of the United States and the international community to address the humanitarian crisis in Afghanistan and among Afghan refugees in neighboring countries;

(3) To fight the production and flow of illicit narcotics, to control the flow of precursor chemicals used in the production of heroin, and to enhance the capacities of Afghan governmental authorities to control poppy cultivation and related activities;

(4) To help achieve a broad-based, multi-ethnic, gender-sensitive, and fully representative government in Afghanistan that is freely chosen by the people of Afghanistan and that respects the human rights of all Afghans, particularly women, children, and members of ethnic minorities.

b. The purposes of assistance authorized by this title are—

(1) to help assure the security of the United States and the world by reducing or eliminating the likelihood of violence against United States officials, military forces, or allied forces in Afghanistan and to reduce the chance that Afghanistan will again be a source of international terrorism;

(2) to support the continued efforts of the United States and the international community to address the humanitarian crisis in Afghanistan and among Afghan refugees in neighboring countries;

(3) to fight the production and flow of illicit narcotics, to control the flow of precursor chemicals used in the production of heroin, and to enhance the capacities of Afghan governmental authorities to control poppy cultivation and related activities;

(4) to help achieve a broad-based, multi-ethnic, gender-sensitive, and fully representative government in Afghanistan that is freely chosen by the people of Afghanistan and that respects the human rights of all Afghans, particularly women, children, and members of ethnic minorities.

The principles should guide the provision of assistance authorized by this title:

SEC. 105. DEFINITIONS.

(1) Terrorist and narcotics control.—Assistance should be designed to reduce the likelihood of harm to United States officials, military forces, or allied forces in Afghanistan and the region, the likelihood of additional acts of international terrorism emanating from Afghanistan, and the cultivation, production, trafficking, and use of illicit narcotics in Afghanistan.

(2) Role of women.—Assistance should increase the participation of women at the national, provincial, and local levels in Afghanistan whenever feasible, by enhancing the role of women in decisionmaking processes, as well as by providing support for programs that aim to expand economic and educational opportunities and health programs for women and educational programs for girls.

(3) Agro-economic assistance should build upon Afghan traditions and practices. The strong tradition of community responsibility and self-reliance in Afghanistan should be built upon by the Afghan people and institutions to participate in the reconstruction of Afghanistan.

(4) Stability.—Assistance should encourage the reintegration of security in Afghanistan, including, among other things, the disarmament, demobilization, and reintegration of combatants, and the establishment of the rule of law, including the establishment of an effective justice service and an independent judiciary.

(5) Coordination.—Assistance should be part of a larger donor effort for Afghanistan. The magnitude of the devastation—natural and man-made—to institutions and infrastructure make it imperative that there be close coordination and collaboration among donors. The United States should endeavor to assert its leadership to have the efforts of international donors help achieve the purposes established by this title.

SEC. 106. AUTHORIZATION OF ASSISTANCE.

(a) In general.—Notwithstanding any other provision of law, the President is authorized to provide assistance for Afghanistan for the following purposes:

(1) URGENT HUMANITARIAN NEEDS.—To assist in meeting the urgent humanitarian needs of the people of Afghanistan, including assistance such as—

(A) emergency food, shelter, and medical assistance;

(B) clean drinking water and sanitation;

(C) prevention and treatment of childhood vaccination, therapeutic feeding, maternal child health service, and infectious diseases surveillance and treatment;

(D) family tracing and reunification services; and

(E) clearance of landmines.

(2) REHABILITATION AND RESETTLEMENT OF REFUGEES AND INTERNALLY DISPLACED PERSONS.—To assist refugees and internally displaced persons as they return to their home communities in Afghanistan and to support their reintegration into those communities, including assistance such as—

(A) assistance identified in paragraph (1);

(B) assistance to communities, including those in need of assistance, areas in which large numbers of refugees in order to rehabilitate or expand social, health, and educational services that may have suffered as a result of the influx of large numbers of refugees;

(C) assistance to international organizations and host governments in maintaining security by screening refugees to ensure the exclusion of unregistered combatants, members of foreign terrorist organizations, and other individuals not eligible for economic assistance from the United States;

(D) assistance for voluntary refugee repatriation and reintegration inside Afghanistan and continued assistance to those refugees who are unable or unwilling to return, and humanitarian assistance to internally displaced persons, including those persons who need assistance to return to their homes, through the United Nations High Commissioner for Refugees and other organizations charged with providing such assistance.

(3) COUNTERTERRORISM EFFORTS.—(A) To assist in the eradication of poppy cultivation, the following programs and projects should receive special emphasis:

(i) programs to improve the supply and demand for illicit narcotics in Afghanistan and the region, with particular emphasis on assistance to—

(I) eradicate opium poppy, establish crop substitution programs, purchase nonopium products from farmers in opium-growing areas, quick-impact public works programs to divert labor from narcotics production, develop projects directed specifically at narcotics production, processing, or trafficking activities to provide incentives to local and provincial governments to reduce the supply of narcotics, and implement public works programs to divert labor from narcotics production and related activities; and

(ii) establish or provide assistance to one or more entities within the Government of Afghanistan, including the Afghan State High Commissioner for Drug Control, and to provide training and equipment for the entities, to help enforce counternarcotics laws in Afghanistan and limit the growth, production, and trafficking in Afghanistan;

(iii) train and provide equipment for customs, police, and other border control entities in Afghanistan and the region to combat the production and trafficking in Afghanistan;

(b) For each of the fiscal years 2002 through 2005, $15,000,000 of the amount made available to carry out this title is authorized to be made available for a contribution to the United Nations High Commissioner for Refugees to assist Afghan refugees in neighboring countries.

(4) REESTABLISHMENT OF FOOD SECURITY, REHABILITATION OF THE AGRICULTURE SECTOR, IMPROVEMENT IN HEALTH CONDITIONS, AND THE RECONSTRUCTION OF BASIC INFRASTRUCTURE.—To assist in expanding access to markets in Afghanistan, to increase the availability of food in neighboring countries, to rehabilitate the agriculture sector in Afghanistan by creating jobs for former combatants, returning refugees, and internally displaced persons, to improve health conditions, and assist in the rebuilding of basic infrastructure in Afghanistan, including assistance such as—

(A) rehabilitation of the agricultural infrastructure, including irrigation systems and rural roads;

(B) extension of credit to farmers and businesses in Afghanistan; and

(C) programs relating to infant and young child feeding, immunizations, vitamin A supplementation, and treatment and prevention of diarrheal diseases and respiratory infections;

(D) programs to improve maternal and child health and reduce maternal and child mortality;

(E) programs to improve hygienic and sanitation practices and for the prevention and treatment of infectious diseases, such as tuberculosis and malaria;

(F) programs to reconstitute the delivery of health care in Afghanistan and to support the establishment of health clinics or other basic health infrastructures, with particular emphasis on health care for children who are orphans; and

(G) programs for housing, rebuilding urban infrastructure, and supporting basic urban services; and
(L) disarmament, demobilization, and reintegration of armed combatants into society, particularly child soldiers.

(3) REESTABLISHMENT OF AFGHANISTAN AS A VIABLE NATION-STATE.—To assist in the development of the capacity of the Government of Afghanistan to meet the needs of the people of Afghanistan, among other things, support for the development and expansion of democratic and market-based institutions, including assistance such as—

(i) financial assistance to local and national governments, particularly the government of Kabul; and region;(ii) support for the development and expansion of democratic and market-based institutions, including assistance such as—

(i) the establishment, maintenance, and expansion of primary and secondary schools for girls that include mathematics, science, and languages in their primary curriculum;

(ii) the establishment, maintenance, and expansion of primary and secondary schools for girls that include mathematics, science, and languages in their primary curriculum;

(iii) the establishment, maintenance, and expansion of primary and secondary schools for girls that include mathematics, science, and languages in their primary curriculum;

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SEC. 202. AUTHORIZATION OF ASSISTANCE.

(a) DRAWDOWN AUTHORITY.—

(1) In general.—The President is authorized to direct the drawdown of defense articles, defense services, and military education and training provided under this section beginning in fiscal year 2002 and each fiscal year thereafter.

(2) Authorization to acquire by contract or otherwise.—The assistance authorized under paragraph (1) may include the supply of defense articles, defense services, counter-narcotics, crime control and police training services, other support, and military education and training that are acquired by contract or otherwise.

(b) AUTHORITY TO ACQUIRE BY CONTRACT OR OTHERWISE.—The authority to acquire by contract or otherwise under section 306(a)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) is augmented to cover the acquisition of assistance to Afghanistan.

(c) ELIGIBILITY FOR ASSISTANCE.—

(1) In general.—Assistance provided under subsection (a) may not exceed $200,000,000, except that such limitation shall be increased by any amounts appropriated pursuant to the authorization of appropriations in this Act.

(2) ELIGIBILITY FOR ASSISTANCE.—

(a) Eligibility for Assistance.—

(1) In general.—Except as provided in paragraph (2), a foreign country or international organization shall be eligible to receive assistance under this section if:

(A) such country or organization is providing support necessary for the accomplishment of military objectives in Afghanistan; and

(B) such assistance is provided specifically for such operations in Afghanistan.

(2) EXCEPTION.—No country, the government of which has been determined to be a sponsor of terrorism by the Secretary of State, is eligible to receive assistance under subsection (a) if the President determines that such assistance is not consistent with the national security interest of the United States.

SEC. 203. ELIGIBLE FOREIGN COUNTRIES AND ELIGIBLE INTERNATIONAL ORGANIZATIONS.

(a) ELIGIBILITY FOR ASSISTANCE.—

(1) In general.—Except as provided in paragraph (2), a foreign country or international organization shall be eligible to receive assistance under this section if:

(A) such country or organization is providing support necessary for the accomplishment of military objectives in Afghanistan; and

(B) such assistance is provided specifically for such operations in Afghanistan.

(2) EXCEPTION.—No country, the government of which has been determined to be a sponsor of terrorism by the Secretary of State, is eligible to receive assistance under subsection (a) if the President determines that such assistance is not consistent with the national security interest of the United States.

SEC. 204. REIMBURSEMENT FOR ASSISTANCE.

(a) AUTHORITY.—The President may provide assistance under this section to the Government of Afghanistan in order to support the military assistance programs of the United States and the costs of keeping United States forces in Afghanistan.

(b) WAIVER.—The Secretary of State may waive the application of subsections (a)(1) and (b)(1) if the President determines that it is in the national security interest of the United States to do so.

TITLE II—MILITARY ASSISTANCE FOR AFGHANISTAN AND CERTAIN OTHER FOREIGN COUNTRIES AND INTERNATIONAL ORGANIZATIONS.

SEC. 205. CONGRESSIONAL NOTIFICATION REQUIREMENTS.

(a) AUTHORITY.—The President may provide assistance to the Government of Afghanistan or a foreign country or eligible international organization if the President determines that such assistance is necessary for the national security interest of the United States and notifies the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that the President has determined that such assistance is necessary for the national security interest of the United States.

(b) NOTIFICATION.—The report described in subsection (a) shall be submitted in classified form and a confidentiality agreement should be negotiated with the recipient of assistance.

(c) STAY.—Nothing in this section shall be construed to require the withholding of funds that the President determines are necessary for the national security interest of the United States.

SEC. 206. PROMOTING SECURE DELIVERY OF HUMANITARIAN AND OTHER ASSISTANCE IN AFGHANISTAN.

(a) FINDINGS.—The President shall make the following findings:

(1) The President has declared his view that the United States should provide significant assistance to Afghanistan so that it never again becomes a base for international terrorism.

(2) The delivery of humanitarian and reconstruction assistance from the international community is necessary for the safe return of refugees and is critical to the future stability of Afghanistan.

(3) Enhanced stability in Afghanistan through improved governance is critical to the fostering of the Afghan Interim Authority and the traditional Afghan assembly on Loga Jirga’ process, which is intended to lead to a permanent national government in Afghanistan, and also is essential for the participation of women in Afghan society.

(4) Incidents of violence between armed factions and local and regional commanders, and serious abuses of human rights, including attacks on women and ethnic minorities throughout Afghanistan, create an insecure, volatile, and unpredictable environment for Afghanistan, displacing thousands of Afghan civilians from their local communities.

(5) The violence and lawlessness may jeopardize the Loga Jirga’ process, undermine efforts to build a strong central government, severely impede reconstruction and the delivery of humanitarian assistance, and increase the likelihood that parts of Afghanistan will once again become safe havens for al-Qaeda, Taliban forces, and drug traffickers.

(6) The lack of security and lawlessness may also perpetuate the need for United States Armed Forces in Afghanistan and threaten the ability of the United States to meet its military obligations.

(7) The International Security Assistance Force in Afghanistan, currently led by Turkey, and composed of forces from other willing countries, is currently deployed only in Kabul and currently does not have the mandate or the capacity to provide security to other parts of Afghanistan.

(8) Due to the ongoing military campaign in Afghanistan, the United States does not currently contribute to the International Security Assistance Force but has provided support to other countries that are doing so.

(9) The United States is providing political, financial, training, and other assistance to the Afghan Interim Authority as it begins to build a national army and police force to help provide security throughout Afghanistan, but this effort is not meeting the immediate security needs of Afghanistan.

(10) Because of these immediate security needs, the Afghan Interim Authority, its Chairmans, President Karzai, and regional leaders have called for the International Security Assistance Force, which has successfully brought stability to Kabul, to be expanded and deployed throughout the country. This request has been strongly supported by a wide range of international humanitarian organizations, including the International Committee of the Red Cross, Catholic Relief Services, and Refugees International.

(11) (A) On January 29, 2002, the President stated that “[w]e will help the new Afghan government provide the security that is the foundation of peace.”

(B) On March 25, 2002, the Secretary of Defense stated, with respect to the reconstruction of Afghanistan, “the first thing . . . you need for anything else to happen, for hospitals to happen, for roads to happen, for refugees to come back, for people to be fed and humanitarian workers to go into the country . . . [you’ve] got to have security.”

(c) STAY.—Nothing in this section shall be construed to require the withholding of funds that the President determines are necessary for the national security interest of the United States.
The bill (S. 2712), as amended, was read the third time and passed, as follows:
(The bill will be printed in a future edition of the RECORD.)

NATIONAL DAY OF PRAYER AND FASTING

Mr. REID. Madam President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Con. Res. 155, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 155) affirming the importance of a national day of prayer and fasting, and expressing the sense of Congress that November 27, 2002, should be designated as a national day of prayer and fasting:

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Madam President, I ask unanimous consent that the concurrent resolution and the preamble be printed in the RECORD.

The concurrent resolution, with its preamble, reads as follows:

The legislative clerk read as follows:

The concurrent resolution, with its preamble, reads as follows:

Whereas the President has sought the support of the international community in responding to the threat of terrorism, violent extremist organizations, and states that permit or harbor such organizations that are opposed to democratic ideals;

Whereas a united stance against terrorism and terrorist regimes will likely lead to an increased threat to the armed forces and law enforcement personnel of those states that oppose these regimes of terror and that take an active role in rooting out these enemy forces;

Whereas Congress has aided and supported a united response to acts of terrorism and violence inflicted upon the United States, our allies, and peaceful individuals all over the world;

Whereas President Abraham Lincoln, at the outbreak of the Civil War, proclaimed that the last Thursday in September 1861 should be designated as a day of humility, prayer, and fasting for all people of the Nation;

Whereas it is appropriate and fitting to seek guidance, direction, and focus from God in times of conflict and in periods of turmoil;

Whereas it is through prayer, self-reflection, and fasting that we can better examine those elements of our lives that can benefit from God’s wisdom and love;

Whereas prayer to God and the admission of human limitations and frailties begins the process of becoming both stronger and closer to God;

Whereas becoming closer to God helps provide direction, purpose, and conviction in those daily actions and decisions we must take;

Whereas our Nation, tested by civil war, military conflicts, and world wars, has always benefited from the grace and benevolence bestowed by God; and

Whereas dangers and threats to our Nation persist and in this time of peril, it is appropriate that the people of the United States, leaders and citizens alike, seek guidance, strength, and resolve through prayer and fasting: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that:

(1) November 27, 2002, should be designated as a day for humility, prayer, and fasting for all people of the United States; and

(2) all people of the United States should—

(A) observe this day as a day of prayer and fasting;

(B) seek guidance from God to achieve greater understanding;

(C) learn how we can do better in our everyday activities; and

(D) gain resolve in how to confront those challenges which we must confront.

CLARIFYING THE REQUIREMENTS FOR ELIGIBILITY IN THE AMERICAN LEGION

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of calendar No. 756, S. 2934.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 2934) to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion:

Whereas November 27, 2002, should be designated as a day for humility, prayer, and fasting for all people of the United States; and

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2934) was read the third time and passed, as follows:

The bill (S. 2934) was read the third time and passed, as follows:

The bill will be printed in a future edition of the RECORD.

AMENDING TITLE 36 U.S. CODE TO CLARIFY THE REQUIREMENT FOR ELIGIBILITY IN THE AMERICAN LEGION

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of calendar No. 758, H.R. 3988.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3988) to amend title 36, United States Code, to clarify the requirement for eligibility in the American Legion:

Whereas the President has sought the support of the international community in responding to the threat of terrorism, violent extremist organizations, and states that permit or harbor such organizations that are opposed to democratic ideals;

Whereas a united stance against terrorism and terrorist regimes will likely lead to an increased threat to the armed forces and law enforcement personnel of those states that oppose these regimes of terror and that take an active role in rooting out these enemy forces;

Whereas Congress has aided and supported a united response to acts of terrorism and violence inflicted upon the United States, our allies, and peaceful individuals all over the world;

Whereas President Abraham Lincoln, at the outbreak of the Civil War, proclaimed that the last Thursday in September 1861 should be designated as a day of humility, prayer, and fasting for all people of the Nation;

Whereas it is appropriate and fitting to seek guidance, direction, and focus from God in times of conflict and in periods of turmoil;

Whereas it is through prayer, self-reflection, and fasting that we can better examine those elements of our lives that can benefit from God’s wisdom and love;

Whereas prayer to God and the admission of human limitations and frailties begins the process of becoming both stronger and closer to God;

Whereas becoming closer to God helps provide direction, purpose, and conviction in those daily actions and decisions we must take;
The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3988) was read the third time and passed.

AUTHORIZING PAYMENT OF A GRATUITY TO TRUDY LAPIC

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 356, submitted earlier today by Mr. DAYTON.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 356) to authorize the payment of a gratuity to Trudy Lapic, the widow of Thomas Lapic, who perished in the plane crash which took the life of Senator Wellstone and others.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Madam President, I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table, and with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 356) was read the third time and passed, as follows:

S.J. Res. 53

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first regular session of the One Hundred Eighth Congress shall begin at noon on Tuesday, January 7, 2003.

AUTHORIZING APPOINTMENTS

Mr. REID. Madam President, I ask unanimous consent that the resolution be read the third time and passed, and that any statements relating to the concurrent resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 487) was agreed to.

AUTHORIZING PRINTING OF HOUSE DOCUMENT

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of H. Con. Res. 487 received from the House and which is now at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 487) authorizing the printing of a volume consisting of the transcripts of the ceremonial meeting of the House of Representatives and Senate in New York City on September 6, 2002, and a collection of statements by Members of the House of Representatives and Senate from the CONGRESSIONAL RECORD on the terrorist attacks of September 11, 2001.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Madam President, I ask unanimous consent that the concurrent resolution be agreed to; that the motion to reconsider be laid upon the table; and that any statements relating to the concurrent resolution be printed in the RECORD.
Whereas Tim Salmon made his first playoff appearance in 10 seasons as a major league baseball player, the only current player to have played that long without having reached the post-season. Whereas the spirit of Gene Autry, the “Singing Cowboy” and former owner of the Angels, was undoubtedly ever-present with the Anaheim Angels this year. As he was an inspirational force to all who played for him and knew of his legacy; and
Whereas the Anaheim Angels battled another California team deserving of acknowledgment: the San Francisco Giants; Whereas the San Francisco Giants were a worthy rival for the Anaheim Angels and set the stage for an exciting and suspenseful World Series that was watched with great interest by many Californians;

EXPRESSING SENSE OF CONGRESS
ABOUT PUBLIC AWARENESS AND EDUCATION ABOUT IMPORTANCE OF HEALTH CARE COVERAGE

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 757, S. Con. Res. 94.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 94) expressing the sense of Congress that public awareness and education about the importance of health care coverage is of the utmost priority and that a National Importance of Health Care Coverage Month should be established to promote that awareness and education.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Madam President, I ask unanimous consent that the concurrent resolution be agreed to; that the preamble be agreed to; that the motion to reconsider be laid upon the table; and that any statements relating to the concurrent resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 357) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 357

Whereas the Anaheim Angels have won the first World Championship in the 42 year history of the franchise;
Whereas the Anaheim Angels completed their best season in franchise history with 99 wins, staging one of the most significant team improvements in Major League Baseball since the 2001 season; Whereas the 2002 World Series was the Anaheim Angels’ first appearance in the Fall Classic;
Whereas the Anaheim Angels have fielded such superstars as Nolan Ryan, Rod Carew, Bobby Grich, Reggie Jackson, Jim Abbott, Wally Joyner, Brian Downing, Jim Edmonds, Gary DiSarcina, and now Troy Percival, Jarrod Washburn, Garret Anderson, Troy Glaus, and Tim Salmon;
Whereas third baseman Troy Glaus received the World Series Most Valuable Player Award for his stellar defensive plays, .385 batting average, and 3 home runs during the series;
Whereas pitcher Francisco Rodriguez became the youngest pitcher to win a World Series game and tied the postseason record for greatest number of consecutive games winning streaks; and
Whereas Manager Mike Scioscia won his first World Series title as a manager;

RESOLVED, That the Senate congratulates the Anaheim Angels on winning the 2002 Major League Baseball World Series title.
The bill (H.R. 3758) was read the third time and passed.

PROSECUTORIAL REMEDIES AND TOOLS AGAINST THE EXPLOITATION OF CHILDREN TODAY ACT OF 2002

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 759, S. 2520.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2520) to amend title 18, United States Code, with respect to the sexual exploitation of children.

There being no objection, the Senate proceeded to consider the bill which was reported by the Committee on the Judiciary with an amendment to strike all after the enacting clause, and insert in lieu thereof the following:

[S]tart the blank in black brackets and insert the part printed in italic.]

SEC. 7. CONTENTS DISCLOSURE OF STORED COMMUNICATIONS.

Section 2707 of title 18, United States Code, is amended—

(A) in paragraph (5), by striking "or" at the end; and

(B) by striking "and" and inserting "or" at the end.

SEC. 8. EXTRA-TERRITORIAL PRODUCTION OF CHILD PORNOGRAPHY FOR DISTRIBUTION IN THE UNITED STATES.

Section 2232 of title 18, United States Code, is amended—

(A) by striking "(i) who is" and inserting the following:

"(ii) who is"; and

(B) by striking "and" at the end and inserting "or"; and

(C) by inserting after paragraph (5) the following:

"(6) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or"

SEC. 9. TITLES.

In section 2251 of title 18, United States Code, the term "child pornography" is further defined as follows:

"(A) a depiction in whole or in part of a minor engaged in sexually explicit conduct;

(B) a depiction in whole or in part of a minor engaged in sexual conduct with another person;

(C) a depiction in whole or in part of a minor engaged in sexual conduct with an animal;

(D) a depiction in whole or in part of a minor engaged in sexual conduct with a robot, doll, or other object;

(E) any visual depiction in whole or in part of a minor engaged in sexual conduct with another person;

(F) any visual depiction in whole or in part of a minor engaged in sexual conduct with an animal;

(G) any visual depiction in whole or in part of a minor engaged in sexual conduct with a robot, doll, or other object;

(H) any visual depiction in whole or in part of a minor engaged in sexual conduct with another person; or

(I) any visual depiction in whole or in part of a minor engaged in sexual conduct with an animal; or

(J) any visual depiction in whole or in part of a minor engaged in sexual conduct with a robot, doll, or other object.

SEC. 10. PROGRESS REPORT.

The Attorney General shall submit to Congress an annual report on the implementation of the provisions of this act by the Attorney General and other Federal agencies.

SEC. 11. RECIPROCITY AGREEMENTS.

The Attorney General shall encourage the conclusion of mutual assistance agreements with foreign countries for the purpose of facilitating the investigation and prosecution of violations of the laws of the United States relating to the sexual exploitation of children.

SEC. 12. PROMOTING THE INTERESTS OF CHILDREN.

The Attorney General shall establish a program to promote the interests of children in international proceedings involving the sexual exploitation of children.
“(2) The circumstance referred to in paragraph (1) is that—

(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by computer or mail; or

(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by computer or mail.”

SEC. 9. CIVIL REMEDIES.

Section 2252A of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

“(f) CIVIL REMEDIES.—

(1) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) may commence a civil action for the relief set forth in paragraph (2).

(2) RELIEF.—In any action commenced in accordance with paragraph (1), the court shall award appropriate relief, including—

(A) temporary, preliminary, or permanent injunctive relief;

(B) compensatory and punitive damages; and

(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.

SEC. 10. ENHANCED PENALTIES FOR RECIDIVISTS.

Sections 2251(d), 2252(b), and 2252A(b) of title 18, United States Code, are amended by inserting “chapter 71,” before “chapter 109A.” each place it appears.

SEC. 11. SENTENCING ENHANCEMENTS FOR INTERSTATE TRAVEL TO ENGAGE IN SEXUAL ACT WITH A JUVENILE.

Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that guideline penalties are adequate and effective to deter and punish such conduct.

SEC. 12. MISCELLANEOUS PROVISIONS.

(a) APPOINTMENT OF TRIAL ATTORNEYS.—Not later than 9 months after the date of enactment of this Act, the Attorney General shall appoint 25 additional trial attorneys to prosecute child pornography offenses.

(b) REPORT TO CONGRESSIONAL COMMITTEES.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, and every 2 years thereafter, the Attorney General shall report to the Committees on Appropriations of the Congress and to the Judiciary of the Senate and the House of Representatives on the Federal enforcement actions under section 1001 of title 18, United States Code.

(2) CONTENTS.—The report required under paragraph (1) shall include—

(A) an evaluation of the prosecutions brought under chapter 1001 of title 18, United States Code;

(B) an outcome-based measurement of performance; and

(C) an analysis of the technology being used by the child pornography industry.

(b) SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 18, United States Code, in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that the guidelines are adequate to deter and punish conduct that involves a violation of paragraph (1) of section 2252A of title 18, United States Code, as created by this Act. With respect to the guidelines for section 2252A(a)(3)(B), the Commission shall have as its primary focus, the investigation of the Criminal Division of the Department of Justice, those trial attorneys shall have as their primary focus, the investigation and prosecution of Federal child pornography laws.

(c) CIVIL REMEDIES.—Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) may commence a civil action for the relief set forth in paragraph (2).

(2) RELIEF.—In any action commenced in accordance with paragraph (1), the court shall award appropriate relief, including—

(A) temporary, preliminary, or permanent injunctive relief;

(B) compensatory and punitive damages; and

(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.

SEC. 13. SEVERABILITY.

This Act may be cited as the “Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2002” or “PROTECT Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Obscenity and child pornography are not entitled to protection under the First Amendment to the United States Constitution.

(2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. “The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance.” New York v. Ferber, 458 U.S. 747, 757 (1982) (emphasis added), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain.

(3) The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. “[T]he most expedient if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product.” Ferber, 458 U.S. at 766.

(4) In 1982, when the Supreme Court decided Ferber, the statute it upheld was broader than this statute. Section 2252A of title 18, United States Code, as amended by this Act, prohibits generally any person, by any means, including by computer, to transport to the United States, its territories or possessions by any means, including by computer or mail;

(5) Evidence submitted to the Congress, including from the National Center for Missing and Exploited Children, demonstrates that technology already exists to create computer or computer-generated depictions that are indistinguishable from depictions of real children. In making the image look real.

(6) The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, and/or related media.

(7) There is no substantial evidence that any of the child pornography images being trafficked today were made other than by the abuse of real children. Nevertheless, technological advances since Ferber have led many criminal defendants to suggest that the images of child pornography they possess are not those of real children, and that the mere prospect that the technology exists to create computer or computer-generated depictions that are indistinguishable from depictions of real children will allow defendants who possessed images of real children to escape prosecution, for it threatens to create a reasonable doubt in every case of computer images even when a real child was abused. This threatens to render child pornography laws that protect real children unenforceable.

(8) To avoid this grave threat to the Government’s unquestioned compelling interest in effective enforcement of the child pornography laws that protect real children, a statute must be adopted that prohibits a narrowly-defined subcategory of images.

(a) CIVIL REMEDIES.—Any person aggrieved by reason of the conduct prohibited under section 2252A of this Act may be cited as the “Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2002” or “PROTECT Act”.

(2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. “The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance.” New York v. Ferber, 458 U.S. 747, 757 (1982) (emphasis added), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain.

(3) The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. “[T]he most expedient if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product.” Ferber, 458 U.S. at 766.

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(5) Evidence submitted to the Congress, including from the National Center for Missing and Exploited Children, demonstrates that technology already exists to create computer or computer-generated depictions that are indistinguishable from depictions of real children. In making the image look real.

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(2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. “The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance.” New York v. Ferber, 458 U.S. 747, 757 (1982) (emphasis added), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain.

(3) The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. “[T]he most expedient if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product.” Ferber, 458 U.S. at 766.

(4) In 1982, when the Supreme Court decided Ferber, the statute it upheld was broader than this statute. Section 2252A of title 18, United States Code, as amended by this Act, prohibits generally any person, by any means, including by computer, to transport to the United States, its territories or possessions by any means, including by computer or mail;

(5) Evidence submitted to the Congress, including from the National Center for Missing and Exploited Children, demonstrates that technology already exists to create computer or computer-generated depictions that are indistinguishable from depictions of real children. In making the image look real.
“(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, computer generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct—

(A) that has been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer; or

(B) that was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer; or

(C) which distribution, offer, sending, or providing is and has been accomplished by using the mails or by transmitting or causing to be transmitted any wire communication in interstate or foreign commerce, including by computer, for purposes of inducing or persuading a minor to participate in any activity that is illegal.”; (2) in subsection (b)(1), by striking “(1), (2), (3), (4), or (6)” and inserting “(1), (2), (3), (4), or (6)”; and

(3) by striking subsection (c) and inserting the following:

“(c) shall be an affirmative defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) that—

(1) (A) the alleged child pornography was produced using actual minor or minors;

(B) each such person was an adult at the time the material was produced; or

(2) if the alleged child pornography was not produced using any actual minor or minors.

No affirmative defense shall be available in any prosecution that involves obscene child pornography as described in section 2256B(8)(D). A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 10 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper notice.”

SEC. 4. ADMISSIBILITY OF EVIDENCE.

Section 2252A of title 18, United States Code, is amended by adding at the end the following:

“(e) ADMISSIBILITY OF EVIDENCE.—On motion of the government, in any prosecution under this chapter, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age, of any person who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor.”

SEC. 5. DEFINITIONS.

Section 2256 of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting before the semicolon the following: “and shall not be construed to require proof of the actual identity of the person;”;

(2) in paragraph (8)—

(A) in subparagraph (B), by inserting “is obscene and” before “is”; and

(B) in subparagraph (C), by striking “or” at the end; and

(C) by striking subparagraph (D) and inserting the following:

“(D) such visual depiction—

(i) is, or appears to be, of a minor actually engaging in bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, male-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

(ii) lacks serious literary, artistic, political, or scientific value; or

(E) the production of such visual depiction involves the use of an identifiable minor engaging in sexually explicit conduct,; and

(ii) by striking paragraph (9), and inserting the following:

“(9) ‘identifiable minor’—

(A)(i) means a person who was a minor at the time the visual depiction was created, adapted, or modified; or

(B) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

(iii) who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(ii) shall not be construed to require proof of the actual identity of the identifiable minor; or

(B) means a computer or computer generated image that is virtually indistinguishable from an actual minor; and

(10) ‘virtually indistinguishable’ means that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor.”

SEC. 6. RECORDKEEPING REQUIREMENTS.

Section 2257 of title 18, United States Code, is amended—

(1) in subsection (d)(2), by striking “of this section” and inserting “of this chapter or chapter 71”;

(2) in subsection (h)(3), by inserting “computer generated image or picture,” after “video tape”; and

(3) in subsection (i)—

(A) by striking “not more than 2 years” and inserting “not more than 5 years”; and

(B) by striking “5 years” and inserting “10 years”.

SEC. 7. SERVICE PROVIDER REPORTING OF CHILD PORNOGRAPHY AND RELATED INFORMATION.

Section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032) is amended—

(1) in subsection (c), by inserting “or pursuant to” after “to comply with”;

(2) by adding after subsection (f)(4)(D) to read as follows:

“(D) where the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law.”;

(3) by redesignating paragraph (3) of subsection (b) as paragraph (4); and

(4) by inserting after paragraph (2) of subsection (b) the following new paragraph:

“(2) In addition to forwarding such reports to those agencies designated in subsection (b)(2), the National Center for Missing and Exploited Children is authorized to forward any such report to an appropriate official of a state or subdivision of a state for the purpose of enforcing state criminal law.”

SEC. 8. CONTENTS DISCLOSURE OF STORED COMMUNICATIONS.

Section 2702 of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (5), by striking “or” at the end;

(B) in paragraph (6)—

(i) in subparagraph (A)(i), by inserting “or” at the end; and

(ii) by striking subparagraph (B); and

(iii) by redesigning subparagraph (C) as paragraph (B);

(C) by redesigning paragraph (6) as paragraph (7); and

(D) by inserting after paragraph (5) the following:

“(6) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or”; and

(2) in subsection (c)—

(A) in paragraph (4), by striking “or” at the end;

(B) by redesigning paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following:

“(5) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or”.

SEC. 9. EXTRATERRITORIAL PRODUCTION OF CHILD PORNOGRAPHY FOR DISTRIBUTION IN THE UNITED STATES.

Section 2251 of title 18, United States Code, as amended by this Act is amended by—

(1) by striking “subsection”(d)” each place that term appears and inserting “subsection”(c)”;

(2) by redesigning subsections (c) and (d) as subsections (d) and (e), respectively; and

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

“(1) Any person who, in a circumstance described in paragraph (2), employs, uses, procures, arranges, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

“(2) The circumstances referred to in paragraph (1) is that—

(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by computer or mail; or

(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by computer or mail.”

SEC. 10. CIVIL REMEDIES.

Section 2252A of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

“(f) CIVIL REMEDIES.—

“(1) IN GENERAL.—Any person aggrieved by a violation of the conduct prohibited under subsection (a) or (b) may commence a civil action for the relief set forth in paragraph (2).

“(2) RELIEF.—In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including—

(A) temporary, preliminary, or permanent injunctive relief;

(B) compensatory and punitive damages; and

(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.”.

SEC. 11. ENHANCED PENALTIES FOR RECIDIVISTS.

Sections 2251(d), 2252(b), and 2252A(b) of title 18, United States Code, are amended by inserting “or chapter 71,” before “chapter 109A,” each place it appears.

SEC. 12. SENTENCING ENHANCEMENTS FOR INTERSTATE TRAVEL TO ENGAGE IN SEXUAL ACTS WITH MINORS.

Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall revise and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that guideline
penalties are adequate in cases that involve interstate travel with the intent to engage in a sexual act with a juvenile in violation of section 2243 of title 18, United States Code, to deter and punish such offenses.

SEC. 12. MISCELLANEOUS PROVISIONS.

(a) APPOINTMENT OF TRIAL ATTORNEYS.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall appoint 25 additional trial attorneys to the Child Exploitation and Obscenity Section of the Criminal Division of the Department of Justice to attend the trial attorneys offices of the United States Attorneys and to represent the United States in such matters as may be necessary to carry out this subsection.

(b) REPORT TO CONGRESSIONAL COMMITTEES.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, and every 2 years thereafter, the Attorney General shall report to the Chairpersons and Ranking Members of the Committees on the Judiciary of the Senate and the House of Representatives on the Federal enforcement actions under chapter 110 of title 18, United States Code.

(2) CONTENTS.—The report required under paragraph (1) shall include—

(A) an evaluation of the prosecutions brought under chapter 110 of title 18, United States Code;

(B) an outcome-based measurement of performance; and

(C) an analysis of the technology being used by the child pornography industry.

(c) SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 18, United States Code, the United States Sentencing Commission shall review, and, as appropriate, amend the sentencing guidelines and policy statements with respect to the guidelines that are adequate to deter and punish conduct that involves a violation of paragraph (3)(B) or (6) of section 2252A(a) of title 18, United States Code, as created by this Act. With respect to the guidelines for section 2252A(a)(3)(B), the Commission shall consider the relative culpability of promoting, presenting, describing, or distributing material in violation of such a statute as compared with its illegality.

SEC. 14. SEVERABILITY.

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

Mr. REID. I ask unanimous consent that the joint resolution be read three times, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating thereto be printed in the RECORD, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2869) to facilitate the ability of certain spectrum auction winners to pursue alternative measures required in the public interest to meet the needs of wireless telecommunications consumers.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I understand that Senators KERRY, BROWNBACK, and HOLLINGS have an amendment at the desk. I ask unanimous consent that it be considered and agreed to; the motion to reconsider be laid upon the table; that the bill, as amended, be read three times, passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4957) was agreed to as follows:

(Purpose: To authorize the Federal Communications Commission to refund deposits and downpayments made by Auction 35 winning bidders who elect to withdraw their bids)

Strike out all after the enacting clause and insert the following:

SECTION 1. RELIEF FROM CONTINUING OBLIGATIONS.

A winning bidder to which this Commission has not granted an Auction 35 license may irrevocably elect to relinquish any right, title, or interest in that license and the associated license application by formal notice to the Commission. Such an election may only be made within 30 days after the date of enactment of this Act. A winning bidder that makes such an election shall be free of any obligation the winning bidder would otherwise have with respect to that license, the associated license application, and the closing of the winning bid, including the obligation to pay the amount of its winning bid that would be otherwise due for such license.

SEC. 2. RETURN OF DEPOSITS AND DOWNPAYMENTS.

Within 30 days after receiving an election that meets the requirements of section 3
from an Auction 35 winning bidder that has made the election described in section 1, the Commission shall refund deposit or downpayment made with respect to a winning bidder for the license that is the subject of the election.

SEC. 3. COMMISSION TO ISSUE PUBLIC NOTICE.

(a) PUBLIC NOTICE.—Within 5 days after the date of enactment of this Act, the Commission shall issue, in public notice specifying the form and the process for the return of deposits and downpayments under section 2.

(b) TIME FOR ELECTIO—An election under this section is not valid unless it is made within 30 days after the date of enactment of this Act.

SEC. 4. WAIVER OF PAPERWORK REDUCTION ACT REQUIREMENTS.

Section 3507 of title 44, United States Code, shall not apply to the Commission’s implementation of this Act.

SEC. 5. NO INFERENC WITH RESPECT TO NEXTWAVE CASE.

It is the sense of the Congress that no inference with respect to any issue of law or fact in Federal Communications Commission v. NextWave Personal Communications, Inc., et al. (Supreme Court Docket No. 01–653) should be drawn from the introduction, amendment, defeat, or enactment of this Act.

SEC. 6. DEFINITIONS.

In this Act:

(1) AUCTION 35.—The term ‘‘Auction 35’’ means the C and F block broadband personal communications service spectrum auction of the Commission that began on December 1, 2000, and ended on January 6, 2001, insofar as that auction related to spectrum previously licensed to NextWave Personal Communications, Inc., et al. (Supreme Court Docket No. 01–653) shall be drawn from the introduction, amendment, defeat, or enactment of this Act.

(2) WINNING BIDDER.—The term ‘‘winning bidder’’ means any person who is entitled under Commission order FCC 02–99 (released March 27, 2002), to a refund of a substantial portion of the deposit for a spectrum license that was formerly licensed to NextWave and Urban Comm as defined in that order.

The bill (S. 2869), as amended, was read the third time and passed.

DAM SAFETY AND SECURITY ACT OF 2002

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to Calendar No. 617, H.R. 4727.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4727) was read the third time and passed.

NORTH AMERICAN WETLANDS CONSERVATION REAUTHORIZATION ACT

Mr. REID. Madam President, I ask unanimous consent the Senate proceed to Calendar No. 692, H.R. 3908.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill, as follows:

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

I. SHORT TITLE.

This Act may be cited as the ‘‘North American Wetlands Conservation Reauthorization Act’’.

II. AMENDMENT OF NORTH AMERICAN WETLANDS CONSERVATION ACT.

Except as otherwise provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the North American Wetlands Conservation Act (16 U.S.C. 4401 et seq.).

III. FINDINGS AND STATEMENT OF PURPOSE.

(a) PURPOSES.—Section 2(b) (16 U.S.C. 4401(b)) is amended by striking ‘‘and associated habitats’’ and inserting ‘‘and associated habitats for wetland dependent migratory birds and associated wetland ecosystems’’.

(b) PURPOSES.—Section 2(b) (16 U.S.C. 4401(b)) is amended—

(1) in paragraph (1) by striking ‘‘and other habitats for migratory birds’’ and inserting ‘‘and other habitats for wetland dependent migratory birds and associated wetland ecosystems’’;

(2) in paragraph (2) by inserting ‘‘wetland dependent associated’’ before ‘‘migratory bird’’;

(3) in paragraph—

(A) by inserting ‘‘wetland dependent associated’’ before ‘‘migratory bird’’;

(B) by inserting ‘‘the United States Shorebird Conservation Plan, the North American Waterbird Conservation Plan, the Partners in Flight Conservation Plans, and the North American Waterfowl Management Plan’’.

IV. REAUTHORIZATION.

Section 7(c) (16 U.S.C. 4406(c)) is amended by striking ‘‘not to exceed’’ and all that follows and inserting ‘‘not to exceed—’’;

(1) $55,000,000 for fiscal year 2002;

(2) $60,000,000 for fiscal year 2003;

(3) $65,000,000 for fiscal year 2004;

(4) $70,000,000 for fiscal year 2005; and

(5) $75,000,000 for fiscal year 2007.’’.

V. ALLOCATION.

Section 8(a) (16 U.S.C. 4407(a)) is amended—

(1) in paragraph (1)—

(A) by striking ‘‘(but at least 50 percent and not more than 70 percent thereof)’’ and inserting ‘‘(but at least 25 percent and not more than 50 percent thereof)’’;

(B) by striking ‘‘4 percent’’ and inserting ‘‘4 percent’’.

In section 2(a) (16 U.S.C. 4401(a)(2)), by striking ‘‘but at least 30 percent and not more than 50 percent thereof’’ and inserting ‘‘but at least 50 percent and not more than 75 percent thereof’’ (but at least 40 percent and not more than 70 percent)’’.

VI. CLARIFICATION OF NON-FEDERAL SHARE OF THE COST OF APPROVED WETLANDS CONSERVATION PROJECTS.

Section 8(b) (16 U.S.C. 4407(b)) is amended by striking so much as precedes the second sentence and inserting the following:

‘‘(C) COST SHARING.—Except as provided in paragraph (2), as a condition of providing assistance under this Act for any approved wetlands conservation project, the Secretary shall require that the portion of the costs of the project paid with amounts provided by non-Federal United States sources is equal to at least the amount allocated under subsection (a) that is used for the project.

‘‘(2) Federal moneys allocated under subsection (a) may be used to pay 100 percent of the costs of such projects located on Federal lands and waters, including the acquisition of inholdings within such lands and waters.’’.

VII. TECHNICAL CORRECTIONS.

(a) The North American Wetlands Conservation Act is amended as follows:

1. In section 2(a)(10) (16 U.S.C. 4401(a)(10)), by inserting ‘‘of 1973’’ after ‘‘Species Act’’.

2. In section 2(a)(12) (16 U.S.C. 4401(a)(12)), by inserting ‘‘and in 1994 by the Secretary of Sedesol for Mexico’’ after ‘‘United States’’.

(b) In section 3(2) (16 U.S.C. 4402(2)), by striking ‘‘Committee on Merchant Marine and Fisheries of the United States House of Representatives’’ and inserting ‘‘Committee on Resources of the House of Representatives’’.

(c) In section 3(3) (16 U.S.C. 4402(3)), by inserting ‘‘of 1973’’ after ‘‘Species Act’’.

(d) In section 3(6) (16 U.S.C. 4402(6)), by inserting ‘‘in 1986’’ where it appears before the Senate.

(e) In section 5(a)(5) (16 U.S.C. 4404(a)(5)), by inserting ‘‘of 1973’’ after ‘‘Species Act’’.

2. In section 5(b) (16 U.S.C. 4404(b)), by striking ‘‘January 1 of each year, and’’ and inserting ‘‘each year’’.

3. In section 5(d) (16 U.S.C. 4404(d)), by striking ‘‘one Council member’’ and inserting ‘‘2 Council members’’.

4. In section 5(f) (16 U.S.C. 4404(f)), by striking ‘‘subsection (d)’’ and inserting ‘‘subsection (e)’’.

5. In section 10(1)(C) (16 U.S.C. 4409(1)(C)), by striking ‘‘western hemisphere pursuant to section 17 of this Act and is not required to submit a report to the Western Hemisphere pursuant to section 16’’.

6. In section 10(1)(D) (16 U.S.C. 4409(1)(D)), by striking the period and inserting ‘‘;’’.

7. In section 16(a) (16 U.S.C. 4413), by striking ‘‘western hemisphere’’ and inserting ‘‘Western Hemisphere’’.

8. Section 112(1) of title 16, USC 101–593 (104 Stat. 2962) is amended by striking ‘‘and before the period’’.
were the forerunners of the standards-based school reform movement embraced throughout the Nation today and most recently in the new No Child Left Behind Act governing nearly all federal elementary and secondary education programs.

We can and should build on NSF's record in improving the lives of millions of Americans. The 20th Century was the era of the industrial age, and the 21st Century will be the era of information technology and the life sciences.

The bill before us doubles NSF's budget authority over the next five years. It matches the growth of the National Institutes of Health over the last five years. We double budget authority for research and development in the physical sciences and theoretical mathematics, because they support advances in the health sciences and because they are valuable in their own right.

I am particularly proud that the legislation before us authorizes a new secondary school systemic initiative at NSF that will develop model school reforms to improve high school student math and science performance and better prepare students for college-level and technical work. For too long, federal policy has paid scant attention to the needs of secondary school students. Senator Jeffords and I have been working extensively in this area. We commend the leadership and look forward to continued work with him on the needs of secondary students.

The bill before us supports model math and science partnerships between institutions of higher education and local school districts to improve the knowledge and teaching techniques of current and future math and science teachers. The math and science partnerships provisions are based on proposals offered by the Administration, Senator Frist, Senator Roberts, Senator Rockefeller, and Senator Bingaman. They track a strong body of educational research that emphasizes the importance of training math and science teachers to improve student performance in those important subject areas.

This legislation supports institutions of higher education in increasing the number of students, particularly from minority students who are poorly served and obtain degrees in science, math, engineering, and technology. Senator Lieberman, Senator Mikulski, and Senator Bond are leaders on this issue, and I commend them as well. We have an economic need and a national security imperative to increase the number and quality of students studying science, math, engineering, and technology at the post-secondary level.

Finally, the bill before us reforms NSF's program on major research and facilities equipment, to help prioritize projects and guard against cost overruns and approval of proposals that have not received adequate analysis. This is an area of concern for Senator Clinton, Senator Bond, and Senator Mikulski, and I commend them for this initiative. Quality and merit should be the touchstones of our Nation's investment in the sciences.

The National Science Foundation Doubling Act is a thoughtful piece of bipartisan legislation that prepares us for the future. I urge my colleagues to support it.

Mr. Hollings: Madam President, today, the Senate will to its legislation that authorizes the doubling of the National Science Foundation budget by fiscal year 2007. As you all know, NSF is the nation's premier federal science agency that invests in basic research across all disciplines. We rely on NSF research to open new frontiers of science, and I am proud that we can pass this important legislation today.

We have approached this legislation in concert with our friends on the Health, Education, Labor, and Pensions Committee, Senators Kennedy and Gregg. Once again, it has been a pleasure to work with Chairman Boren and ranking member Ralph Hall of the House Science Committee. Obviously, we would not have produced this product without Senator McCain, Senator Rockefeller, and the other members of the Commerce Committee. We were also pleased to work with our friends, Senators Bond and Mikulski, what have been leaders on this initiative. The doubling bill is vital. The Hart-Rudman Commission on National Security, and former speaker Newt Gingrich, warned that our failure to invest in science and to reform math and science education was the second biggest threat to our national security. NSF is well positioned to address this threat. After all, NSF invests in math and science education from kindergarten all the way to the postdoctoral level and beyond. This bill authorizes the doubling of the National Science Foundation investment, while reaffirming our commitment to women, minorities, and people with disabilities. These underrepresented groups, together, make up more than half of our nation's workforce and are only increasing. Letting these groups fall by the wayside would not only threaten our economic competitiveness, but also our national security.

It is often said that more than one-half of our nation's economic growth since World War I has stemmed from technology driven by science. Let me give just one example of how NSF's investments can spur our economy. NSF is the leading agency in the National Nanotechnology Initiative. Nanotechnology—which is the science of manipulating matter at the atomic and molecular level—will cut across every scientific discipline, including materials and manufacturing, healthcare and medicine, energy and the environment, agriculture, biootechnology, information technology, and national security. Worldwide, the market for nanotechnology is expected...
to be $1 trillion annually within 10 to 15 years. NSF’s cross-disciplinary approach, which includes groundbreaking research into the way society and this new technology will interact, will help this nation take advantage of nanotechnology sooner, better, and with greater precision.

Finally, I want to note that NSF is responsible for the overall health and well-being of the research enterprise in this country. Congress is now completing its 5-year commitment to double funding for the National Institutes of Health. We made that investment because we want to cure and prevent disease. But increasingly, it’s not just the biomedical research that NIH supports that brings us breakthroughs. Recent advances in biomedical science have relied on advances in fields such as computer science, physics, and chemistry. For example, the sequencing of the human genome was enabled by powerful computers networked in innovative ways. The commitment that we are making today to science at NSF will build our base knowledge in non-medical fields to complement the research done at NIH.

NSF research is not just for large universities. The Foundation’s continued support for the EPSScor program supports the development of the science and technology resources of individual states like South Carolina, through partnerships that involve the state’s industry, government, and the Federal research and development enterprise. These partnerships put researchers in these states in a better position to compete and win NSF grants.

Mr. President, I think these arguments are solid, simple, and straightforward. We can talk about NSF’s past outstanding contributions to science. We can talk about the future and the importance of science and technology to our economy. But, Mr. President, where the rubber meets the road, we have to stop talking and invest, with real money, in the science and engineering enterprise that will guarantee the health, economic viability, and security of our future. I, for one, appreciate the hard work that NSF has done over the past 52 years promoting the progress of science, and I thank my Senate colleagues for supporting me in providing this agency the resources needed to succeed.

Mr. LIEBERMAN. Madam President, I am proud with my Senate colleagues, particularly Senators KENNEDY, GREGG, and HOLLINGS, in expressing support for this historic legislation, which will help ensure that our country continues to be a leader in scientific and technological innovation. I also want to extend my appreciation to Chairman BOEHLELT of the House Science Committee for his leadership in moving this strongly bipartisan legislation.

The reality is that technological and scientific innovation is now widely understood to be the major driver of economic growth, not to mention a critical factor in our military superiority. Education is essential to ensuring that the American workforce possesses the skills necessary to meet these innovation needs. The provisions included in this legislation will help give univer-

Studies show that the number of jobs requiring significant technical skills is projected to grow by more than 50 percent in the United States over the next ten years. But outside of the life sciences, the number of degrees awarded in science and engineering has been flat or declining. This has helped fuel a well-chronicled shortage of qualified New Economy workers.

We have tried to temporarily plug this human capital hole with a stopgap of foreign workers. Unfortunately, there is a broad consensus among high-tech leaders and policymakers that it would be a serious mistake to prolong this dependence and essentially render our GDP contingent on the supply of H-1 B visa holders.

Now, most answers to serious economic challenges flow from the private sector, which is where growth must occur. But there are things that the Federal Government can do to help, particularly when it comes to education and training. We can provide leadership, focus, and not least of all resources, and that was the purpose of the Tech Talent Act as introduced, and STEP as is included in this NSF legislation.

Specifically, the Tech Talent program aims to fix a critical link in this “tech talent” gap—undergraduate education in science, math, engineering, and technology. As established in our bill, it would provide competitive grants to institutions of higher learning, from universities to community colleges, to encourage them to find creative methods for increasing the number of graduates in these disciplines. This is not another scholarship program, but a targeted, results-driven initiative that goes straight to the gatekeepers. We’re not asking them to change their admissions policies, but, in effect, to design new programs. Come up with effective ideas, and we will provide the dollars to make them work.

For example, institutions could propose to add or strengthen the interdisciplinary components of undergraduate science education. Or they could establish targeted support programs for women and minorities, who are 54 percent of our total workforce, but only 22 percent of scientists and engineers, to increase enrollment and graduation numbers in these fields. Or they could partner with local technology companies to provide summer industry internships for ongoing research experience.

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This initiative was conceived with strong bipartisan, bicameral support. The Tech Talent Act, as noted, was introduced last year by Senators Mikulski, Bond, Frist, Domenici, and myself; the House companion bill, H.R. 3230, was introduced by House Science Committee Chairman Coburn and Representative Larson. By the end of the year, Congress had agreed to appropriate $5 million for this fiscal year to jumpstart the program in the form of NSF’s STEP, even though our authorizing legislation had not yet been passed. Most recently, the Senate VA-HUD Committee Appropriations bill for fiscal year 2003 included $20 million for the program.

The program also has extremely broad support outside the Congress. The Administration has supported Tech Talent as a priority, including funding for it in its budget request for FY 2003. In addition, the response from leaders in industry, academia, and educational communities, also has been tremendous, we have received letters of support from TechNet, Semiconductor Industry Association, National Alliance of Business, K–12 Science, Mathematics, Engineering & Technology Coalition, State Association of State Colleges and Universities, Texas Instruments, and the American Society for Engineering Education, to name but a few.

Even more encouraging are the preliminary results from NSF’s STEP. NSF received 177 applications requesting a total of $50.9 million in aid, clear evidence of the vast interest in, and need for, the Tech Talent program among undergraduate institutions seeking to implement reforms in science and math education. In its first year, the program has awarded 16 grants to colleges and universities.

The NSF Authorization Act passed today will do much to enhance the efforts of the Texas and many other STEP programs. NSF’s STEP, H.R. 4664, expressed in section 8(a)(7)(A), is to prioritize funding for programs in fields of science, mathematics, engineering, and technology that have witnessed a period of stagnant or declining enrollment and degree conferrals, especially where such declines have resulted, or are likely to result, in adverse social, economic, technological, or military costs. It deserves clarification that a declining trend can be indicated not only through an absolute decrease in the number of students enrolling or graduating in a particular field, but through a relative decrease in the proportion that students of a particular field constitute relative to the total number of students enrolled or graduating across all fields.

For example, statistics from the National Science Foundation, NSF, demonstrate that between 1985 and 2000, the number of bachelor’s degrees awarded declined from 77,572 to 59,536 in engineering, and from 16,270 to 14,580 in the physical sciences. Furthermore, the NSF predicts that the number of jobs requiring skills and background in engineering will vastly outstrip the number of people capable of filling such positions over the next decade. The negative consequences of such trends with respect to economic growth, technological innovation, and qualified employment have been widely documented and should represent near to medium-term priorities for Tech talent funding.

In emphasizing the need to remediate stagnant or declining trends, we recognize and appreciate previous criticisms regarding the difficulty of accurately modeling future employment scenarios and of forecasting areas of societal need. Nevertheless, we believe that investments matching or correlating to desired outcomes if limited funds are to be allocated intelligently. The NSF is therefore expected to undertake efforts to the best extent it can to identify and account for broader social considerations, including generally anticipated imbalances between the number of students graduating across different fields, in determining fields appropriate for prioritization. To this end, the NSF may require applicants to specify the potential or targeted objectives addressed by their proposals and to articulate how such proposals would further the remediation of targeted needs.

The fundamental goal of the Technology Talent Act as introduced was to increase the number of graduates with expertise in math, science, technology and engineering to meet the critical needs of our U.S. businesses, industries, research community and military. As such, the intent of sections 8(a)(7)(D)(i) and (ii) of H.R. 4664 is to require applicants to clearly establish measurable targets to both increase the number of students studying toward degrees in science, mathematics, technology, and engineering, and to increase the number of students who have completed degrees, concentrations, or certificates in these fields. Therefore, it is intended that applicants that fail to establish goals for both enrollment and completion shall be considered inadequate. Likewise under section 8(a)(7)(D)(ii), it is intended that the Director shall terminate funding in the case of a grantee that has failed to make substantial progress toward meeting the targets established in section 8(a)(7)(D)(i) for increasing the number of students completing degrees, concentrations or certificates in science, mathematics, technology and engineering. However, I would encourage the Director to work with grantees to remediate unforeseen problems, and to help ensure that grantees make substantial progress during the first three years of the grant toward meeting the targets established in 8(a)(7)(D)(i) and to achieve such targets by the end of the grant period. I further believe that it is inherent in this legislation that grantees that successfully meet their targets established in 8(a)(7)(D)(i) shall be eligible to compete for subsequent grants.

I believe that this NSF bill provides a real boost to efforts that are being undertaken in parts of the country to address our technical workforce challenges. As such, it is the intention that the innovative consortia between institutions of higher education and non-profits, industry or state or local governments are eligible to compete for grants under the STEP program per section 8(a)(7)(F). In particular, I believe that legislation under 8(a)(7)(F)(iii) allows for non-profits established on behalf of such high-quality and proven consortia to apply directly for grants.

For example, the State of Texas passed legislation last year that created a consortium—the Texas Engineering and Technical Consortium, TETC, among private industry and 32 colleges and universities to increase the number of students graduating from Texas institutions in electrical engineering and computer science. Grants are awarded to universities and colleges to support curriculum changes, bridge programs, and various forms of student and faculty support to help increase the retention rate of students pursuing degrees in these areas and to attract and retain more underrepresented groups. This collaborative effort has received funding from Advance Micro Devices, Texas Instruments, Hewlett Packard, Motorola, Intel, Applied Materials and Sabre, with in-kind support from AEA and TechNet. The state matches private and other contributions up to $5 million per year.

Section 8(a)(7)(F) allows grants of $5.3 million to be awarded to fund 33 projects as 23 institutions. The appeal of this program is that industry, academia and the state are working cooperatively and collaboratively to address a pressing workforce need, rather than on a school-by-school or company-by-company basis. While it is still too early to determine the success of these projects, which were funded at 64 percent of the potential grant amount, the institutional projects are projected to increase in total student numbers in these programs for fall 2003. If fully funded, that increase could go as high as 28 percent. This is just the type of innovation that the Tech Talent is meant to encourage.

Finally, the real success of the version of the “Tech Talent” program encompassed in this legislation will be based on the successful replication and expansion of model programs supported through this grant program at all of our higher education institutions. Therefore, I believe it is critical that the Director follow the intent of the original language as introduced in S.
1549, section (5)(a), and H.R. 3130, section (4)(d), and select an independent evaluative organization to develop metrics for measuring the impact of the program, particularly on the number of students enrolled, academic performance of students, persistence to degree completion, and employment in post-graduate education or career pathways, and to identify the program approaches assisted under this program that are the most effective in increasing the number of students obtaining degrees in science, mathematics, technology and engineering.

In addition, both S. 1549 and H.R. 3130 intend for the Director to regularly disseminate information on the activities conducted by grantees and the results of programs assisted under this grant program, including best practices, to participating institutions of higher education and other interested institutions of higher education. Similarly, I believe it is imperative to share the findings and results of our STEP grants with Congress through interim and final reports so that we may make better policy decisions to enhance our nation's standing as a scientific and technological leader.

We all realize that solving the undergraduate problem is not going to single handedly close our talent gap. At the same time, we should also realize that the talent gap cannot be closed without first solving the problem at the undergraduate level. Therefore, I am pleased by the Senate’s unanimous support today for the NSF Authorization Act of 2002, and the STEP, or Tech Talent, provisions encompassed therein. In doing so, we will be helping to ensure that the young minds of today will be capable of mastering and fueling the high-tech economies of tomorrow.

Ms. MIKULSKI. Madam President, I rise today to join with Senator KENNEDY, Senator HOLLINGS, Senator GREGG, Senator BOND, and Senator KIT BOND to urge passage of the National Science Foundation Doubling Act.

On July 12, 2002, Senator KIT BOND and I joined together and called on our Senate colleagues to join us in an effort to double the budget of the National Science Foundation over five years. We said at that time, that just as we worked collectively to double the NIH budget, now was the time for a parallel effort on behalf of the fundamental research supported by the NSF.

NSF’s impact over the past half century has been monumental—especially in the field of medical technologies and research. The investments have also spawned not only new products, but entire industries such as biotechnology, the internet, and e-commerce. Medical technologies such as magnetic resonance imaging, ultrasound, digital mammography and genome research could not have occurred, and cannot now improve to the next level of proficiency, without underlying knowledge from NSF-supported work in biology, physics, chemistry, mathematics, engineering, and computer sciences.

Today, with this bill, we take an important step to ensure the well-being of this Nation and its citizens with passage of this bill to double the funding for the National Science Education activities of the National Science Foundation over the next five years.

Some might ask, “Why should we do this now?” Let me try and answer that question.

We have seen some dramatic increases in research and development investments during the past decade, largely from industry. These investments have contributed to this country's standing as a global economic powerhouse.

However, according to the National Science Board—in its latest report on science indicators—developments abroad could affect U.S. preeminence in the future. The Board says that the United States finances 44 percent of the total worldwide investment in R&D—equal to the combined total of Japan, the United Kingdom, Canada, France, Germany and Italy.

But other countries are increasing their R&D investments and focusing on areas such as physical sciences and engineering, which receive comparatively less funding in the United States. Those changes could lead to the creation of a U.S. technology and engineering excellence abroad, which will encourage many of those who have come here from other countries and have become a part of our science enterprise to return home.

The fact is that this country’s future competitiveness rests on our ability to develop a U.S. work force that has the skills necessary to meet the increased competition coming from abroad.

In this country, R&D investments by U.S. industry have contributed to a steady stream of innovations and economic growth. We are seeing new partnerships develop that connect firms and universities, nonprofit organizations and government.

Meanwhile, the balance of R&D investments continues to shift. As industry R&D grew to nearly 75 percent of the national total by 2000, Federal expenditures remained essentially flat over the past decade.

At the same time, federal research expenditures in life sciences have grown, from 41 to 47 percent of the federal total between 1990 and 2000. However, the combined share of physical sciences and engineering in federal research total dropped from 37 to 29 percent in the same period.

Changes in the U.S. economy have spilled into the workforce. Information- and technology-based changes in the economy have created new opportunities for highly trained workers in basic research.

Science and engineering occupational fields are growing faster than the overall growth of the American work force, the Bureau of Labor Statistics predicts that during this decade, hi-tech occupations will grow by 47 percent, compared to 15 percent for the labor force as a whole.

Despite many state and national reforms initiated during the last decade, the quality of mathematics and science education at the precollege level is not where it should be. America’s high school students continue to lag behind in international achievement measures in science and math. And high school students taking physics lag behind students in Norway, Sweden, the Russian Federation, Denmark, Germany, Australia and seven other countries.

A persistent issue in science and mathematics education remains the size and adequacy of the teaching force. According to the National Commission on Mathematics and Science Teaching for the 21st Century, the nation’s schools will need to hire 2.2 million teachers, including 240,000 middle and high school mathematics and science teachers, in the next decade.

The need for teachers is most pronounced in urban areas and within specific disciplines and grade levels of mathematics and science. A survey of urban school districts, by the Council of the Great City Schools and Recruiting New Teachers, Inc., in 1998–99 indicated that up to 50 percent of our urban school districts had an immediate demand for high school science and mathematics teachers.

A high percentage of science and mathematics teachers lack even a minor in their teaching field, with 56 percent of public secondary students receiving instruction in the physical sciences from teachers without a major or minor in the physical sciences. And as many as 50 percent of new teachers in urban school districts leave the teaching profession within their first three years, further exacerbating shortages.

Solving the problem of producing more high-quality, homegrown scientists and engineers—and a well educated workforce—depends upon solving the math and science education problems we have at the elementary and secondary levels of our school system. The bill before us today authorizes substantial growth in all areas of basic research—including the physical, engineering, biological, and computer sciences—fields vital for progress in just about every other area of science including biomedical research. The bill also puts a high priority on cutting edge programs such as information technology, nanotechnology and plant genome research.

Under this bill, the NSF budget would grow from today’s level of $5 billion to nearly $10 billion by fiscal year 2007 which should allow for substantial growth in both the size of the average award as well increasing the number of awards. NSF is able to make. Increasing the size of the grants will benefit those currently conducting research. Increasing the number of awards should help
those individuals who are just starting their careers in science as well as attract more women and minorities into our science and technology enterprise.

In the area of math and science education, the bill firmly establishes the President's evening science and engineering—-all in an effort to help meet today's and tomorrow's workforce needs.

The funding in this bill will also help increase the graduate student stipends in both the NSF fellowship programs as well as in the support graduate students receive as research assistants on the NSF research grants. Under this bill, NSF's entire education and human resources would grow from $875 million in fiscal year 2002 to almost $1.8 billion by fiscal year 2007.

Finally, this bill includes two provisions that relate to the National Science Board. These are "good government" provisions that give the National Science Board, the policy making body of the Foundation, the authority and funding to hire its own staff. Our rationale is to ensure that the Board and the NSF from continuing to work closely together as they have over the years such as in the staffing of NSB committees, subcommittees, and task forces and the development of the biennial Science and Engineering Indicators report.

As a nation, we have a big challenge ahead of us as we enter the new millennium. Our world has changed and we must do what is necessary to meet the challenges that will surely come our way. The sustained and effective investment in our nation's research and education enterprise is one of the keys to meeting those challenges. I urge all my colleagues to join us in enacting this important investment in the future of our country.

NSF REAUTHORIZATION: NSF DOUBLING ACT

Mr. HARKIN. Will the Senator yield for a question?

Mr. KENNEDY. I would be happy to yield to the Senator from Iowa.

Mr. HARKIN. I see that in this legislation, there is an authorization for the Plant Genome Project, a program that had previously been authorized only in appropriations acts.

Mr. KENNEDY. That is correct.

Mr. HARKIN. Is the intent of the managers in including this provision merely to provide a permanent authorization for the Plant Genome Project, and not to state a preference by the Senate for plant genomics over other agricultural genomics programs when it comes to additional funding provided through appropriations?

Mr. KENNEDY. The Senator is correct. The language included in the NSF doubling legislations is only to establish an authorization, it does not state a preference for plant genomics over other agricultural genomics programs that might be provided through later appropriations acts.

Mr. HARKIN. I thank the Senator. I think that is an important point because Senator LUGAR and I worked hard in the Agricultural Research, Extension, and Education Reform Act of 1998 to authorize an agricultural genomics program administered by the National Science Foundation because we felt a balanced genomics program was essential to keeping U.S. agriculture productive and competitive.

While I think the plant genomics program is an excellent one, I sincerely hope that any further increases provided for agricultural genomics be open to animal and microbial research as well, not just plants. We need a balanced portfolio of agricultural research to best capitalize on the resources devoted to agriculture-related genomics research. I would hope anyone to think that the Senate was now backtracking on the progress we made with the passage of the 1998 agricultural research legislation.

Mr. KENNEDY. It is certainly not the manager's intent to limit the Agricultural, Research, Extension, and Education Reform Act of 1998.

Mr. HARKIN. I thank the Senator for that. I thank the Senator for yielding.

Mr. REID. I understand Senators Kennedy, Gregg, and Hollings have a substitute amendment at the desk; I ask that that amendment be considered and agreed to, the motion to reconsider be laid upon the table; the bill, as amended, be read three times and passed; the motion to reconsider be laid upon the table; the title amendment be agreed to; and any statements be printed in the RECORD with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4958) was agreed to.

(The amendment is printed in today's RECORD under "Text of the Amendments.")

The bill (H.R. 4644), as amended, was read the third time and passed.

The amendment (No. 4959) was agreed to, as follows:

Mr. BAUCUS. I thank my good friend from Iowa.

Mr. HARKIN. Madam President, I am pleased that we are passing the Armed Services Tax Fairness Act that will make a number of useful tax changes benefiting our military personnel including the National Guard and Reserve. It includes a provision that I introduced that broadens the allowable membership of veterans organizations so ancestors and descendants can be members. This will allow veterans organizations, particularly at the local chapter level to preserve as tax exempt a variety of their activities which otherwise would be subject to tax as the number of veterans who are members decline.

Unfortunately, because of opposition from the House, this measure does not include a provision passed by the Senate on an earlier version of the Armed Services Tax Fairness Act that I feel very strongly about. I introduced it earlier this year. It was companion to a measure introduced by Congressman RANGEL.

My bill blocks the ability of the very rich to reduce their taxes by renouncing their U.S. citizenship. The Joint Tax Committee has estimated that it will raise $656 million from a very few people who I call Benedict Arnolds. These are people who turn their back on their country which provided so well for them so they can avoid paying their fair share of U.S. taxes.

Under current law, there are special rules that apply to these former citizens that appear to recover funds lost to the Treasury. But, they are full of holes. Under the current regime, for 10 years after a U.S. citizen renounces his or her citizenship with a principal purpose of avoiding U.S. taxes, the person is taxed at the rates that would have applied had he or she remained a citizen. Actually the tax is nominally on a broader base of income and on more types of transactions. In addition, if the expatriate dies within 10 years of the expatriation, more types of assets are included in his or her estate. But, the reality is that taxes are very often not paid.

The reality is that once a person has expatriated and removed U.S. assets from U.S. jurisdiction, it is extremely difficult to enforce the current rules, particularly for an entire decade after the citizenship is renounced. The measure I introduced simply provides that the very act of renouncing ones citizenship triggers the recognition of tax. So, rather than collecting tax every time an asset is sold over the next decade, my bill treats all of the assets of an expatriate as having been sold the day prior to when the person renounces their citizenship. The taxes are due up front rather than over time. In regard to estate taxes, rather than attempting to collect the tax from the estate of an expatriate not in U.S. jurisdiction, my measure taxes the inheritance of an heir remaining in the U.S. in such a way as to remove any tax benefit from the renouncement of citizenship.

Madam President, $656 million in revenue from these very few former citizens is a lot of revenue that must be made up by loyal Americans or in higher debt that Americans will face. I intend to reintroduce my measure at the beginning of the next Congress and will be working hard for its passage at the earliest possible point.

Mr. REID. I ask unanimous consent that the Baucus amendment at the desk be agreed to, the bill be read three times and passed, the motion to reconsider be laid on the table, and any statements be printed in the RECORD, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4961) was agreed to. (The amendment is printed in today’s RECORD under “Text of the Amendments.”)

The bill (H.R. 5557), as amended, was read the third time and passed.

PROGRAM

Mr. REID. Madam President, I announce that a motion to proceed to the terrorism insurance conference report is possible at about 10 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.
Thursday, November 14, 2002

Daily Digest

HIGHLIGHTS

Senate agreed to the conference report on S. 1214, Port and Maritime Security Act.

The House passed H.R. 5708, to reduce preexisting PAGO balances.

The House agreed to Senate amendments with amendments to H.R. 5063, to extend Temporary Assistance for Needy Families (TANF) and Temporary Extended Unemployment Compensation.

The House agreed to the conference report to accompany H.R. 3210, Terrorism Risk Insurance Act.

The House agreed to the conference report to accompany S. 1214, Port and Maritime Security Act clearing the measure for the President.


The House agreed to the Senate amendment to H.R. 333, Bankruptcy Reform Act, with an amendment.

Senate

Chamber Action

Routine Proceedings, pages S10973–S11160

Measures Introduced: Fourteen bills and three resolutions were introduced, as follows: S. 3156–3169, S.J. Res. 53, and S. Res. 356–357.

Measures Reported:

H.R. 3180, to consent to certain amendments to the New Hampshire-Vermont Interstate School Compact.

H.R. 3988, to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion.

S. 1655, to amend title 18, United States Code, to prohibit certain interstate conduct relating to exotic animals, with an amendment in the nature of a substitute.

S. 2480, to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from state laws prohibiting the carrying of concealed handguns, with amendments.

S. 2520, to amend title 18, United States Code, with respect to the sexual exploitation of children, with an amendment in the nature of a substitute.

S. 2541, to amend title 18, United States Code, to establish penalties for aggravated identity theft.

S. 2934, to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion.

S. Con. Res. 94, expressing the sense of Congress that public awareness and education about the importance of health care coverage is of the utmost priority and that a National Importance of Health Care Coverage Month should be established to promote that awareness and education.

Measures Passed:

Wellstone Community Center: Senate passed S. 3156, to provide a grant for the construction of a new community center in St. Paul, Minnesota, in honor of the late Senator Paul Wellstone and his beloved wife, Sheila.

Restore Your Identity Act: Senate passed S. 1742, to prevent the crime of identity theft, and mitigate the harm to individuals victimized by identity theft, after agreeing to a committee amendment in the nature of a substitute, and the following amendment proposed thereto:

Reid (for Cantwell) Amendment No. 4954, in the nature of a substitute.
Unemployment Compensation Extension: Senate passed H.R. 3529, to provide tax incentives for economic recovery and assistance to displaced workers, after agreeing to the following amendment proposed thereto:

Reid (for Hagel) Amendment No. 4956, to make managers’ amendments.

Webcasting Licensing: Senate passed H.R. 5469, to amend title 17, United States Code, with respect to the statutory license for webcasting, after agreeing to the following amendment proposed thereto:

Clinton Amendment No. 4960, in the nature of a substitute.

Afghanistan Freedom Support Act: Senate passed S. 2712, to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries, after agreeing to a committee amendment in the nature of a substitute, and the following amendment proposed thereto:

Reid (for Helms) Amendment No. 4955, in the nature of a substitute.

American Legion Eligibility: Senate passed S. 2934, to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion.

American Legion Eligibility: Senate passed H.R. 3988, to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion.

Senate Compensation: Senate agreed to S. Res. 356, paying a gratuity to Trudy Lapie.

Armed Forces Domestic Security Act: Senate passed H.R. 5590, to amend title 10, United States Code, to provide for the enforcement and effectiveness of civilian orders of protection on military installations, clearing the measure for the President.

Relative to 108th Congress: Senate agreed to S.J. Res. 53, relative to the convening of the first session of the One Hundred Eighth Congress.


Commending Anaheim Angels: Senate agreed to S. Res. 357, commending and congratulating the Anaheim Angels for their remarkable spirit, resilience, and athletic discipline in winning the 2002 World Series.

Health Care Coverage: Senate agreed to S. Con. Res. 94, expressing the sense of Congress that public awareness and education about the importance of health care coverage is of the utmost priority and that a National Importance of Health Care Coverage Month should be established to promote that awareness and education.

Private Relief: Senate passed H.R. 3758, for the relief of So Hyun Jun, clearing the measure for the President.

Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act: Senate passed S. 2520, to amend title 18, United States Code, with respect to the sexual exploitation of children, after agreeing to a committee amendment in the nature of a substitute.

Commending Sail Boston/Maritime Heritage of Nations: Committee on Commerce, Science, and Transportation was discharged from further consideration of S.J. Res. 42, commending Sail Boston for its continuing advancement of the maritime heritage of nations, its commemoration of the nautical history of the United States, and its promotion, encouragement, and support of young cadets through training, and the resolution was then passed.

Wireless Telecommunication Alternatives: Committee on Commerce, Science, and Transportation was discharged from further consideration of S. 2869, to facilitate the ability of certain spectrum auction winners to pursue alternative measures required in the public interest to meet the needs of wireless telecommunications consumers, and the bill was then passed, after agreeing to the following amendment proposed thereto:

Reid (for Kerry) Amendment No. 4957, in the nature of a substitute.

Dam Safety and Security Act: Senate passed H.R. 4727, to reauthorize the national dam safety program, clearing the measure for the President.
**North American Wetlands Conservation Reauthorization Act:** Senate passed H.R. 3908, to reauthorize the North American Wetlands Conservation Act, after agreeing to committee amendments.

Pages S11154–55

**NSF Authorization:** Committee on Health, Education, Labor and Pensions was discharged from further consideration of H.R. 4664, to authorize appropriations for fiscal years, 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and the bill was then passed, after agreeing to the following amendments proposed thereto:

Reid (for Kennedy) Amendment No. 4958, in the nature of a substitute.

Page S11159

Reid (for Kennedy) Amendment No. 4959, to amend the title.

Page S11159

**Armed Forces Tax Fairness Act:** Senate passed H.R. 5557, to amend the Internal Revenue Code of 1986 to provide a special rule for members of uniformed services and Foreign Service in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, after agreeing to the following amendment proposed thereto:

Reid (for Baucus) Amendment No. 4961, to provide additional tax equity for military personnel.

Pages S11159–60

**Homeland Security Act:** Senate continued consideration of H.R. 5005, to establish the Department of Homeland Security, taking action on the following amendments proposed thereto:

Withdrawn:

Durbin Amendment No. 4906 (to Amendment No. 4902), to provide for the development of a comprehensive enterprise architecture for information systems to achieve interoperability within and between agencies with responsibility for homeland security.

Pages S11002–30, S11033–45

Pending:

Thompson (for Gramm) Amendment No. 4901, in the nature of a substitute.

Pages S1102–30, S11033–45

Lieberman/McCain Amendment No. 4902 (to Amendment No. 4901), to establish within the legislative branch the National Commission on Terrorist Attacks Upon the United States.

Pages S1102–30, S11033–45

Dodd Amendment No. 4951 (to Amendment No. 4902), to provide for workforce enhancement grants to fire departments.

Page S11024, S11033–45

Senate will continue consideration of the bill on Friday, November 15, 2002, with a vote to invoke cloture on Thompson (for Gramm) Amendment No. 4901, listed above.

**Port and Maritime Security Act—Conference Report:** By a unanimous vote of 95 yeas (Vote 243), Senate agreed to the conference report on S. 1214, to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports.

Pages S10974–93

**Appointments to Commission—Agreement:** A unanimous-consent was reached providing that notwithstanding the sine die adjournment of the Senate, the President of the Senate, the President of the Senate pro tempore, and the majority and minority leaders be authorized to make appointments to commissions, committees, boards, conferences, or inter-parliamentary conferences authorized by law, by concurrent action of the two Houses, or by order of the Senate.

Page S11148

**Removal of Injunction of Secrecy:** The junction of secrecy was removed from the following treaties:

Convention with Great Britain and Northern Ireland regarding Double Taxation and Prevention of Fiscal Evasion (Treaty Doc. No. 107–19); and


The treaties were transmitted to the Senate today, considered as having been read for the first time, and referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed.

Page S11057

**Treaties Approved:** The following treaties having passed through their various parliamentary stages, up to and including the presentation of the resolution of ratification, upon division, two-thirds of the Senators present and having voted in the affirmative, the resolutions of ratification were agreed to:

- Treaty with Honduras for Return of Stolen, Robbed, and Embezzled Vehicles and Aircraft, with Annexes and Exchange of Notes (Treaty Doc. 107–15);

  Extradition Treaty with Peru (Treaty Doc. 107–6), with one understanding and one condition;

  Extradition Treaty with Lithuania (Treaty Doc. 107–4), with one condition;

  Second Protocol Amending Extradition Treaty with Canada (Treaty Doc. 107–11);

  Treaty with Belize on Mutual Legal Assistance in Criminal Matters (Treaty Doc. 107–13), with one understanding and two conditions;

  Treaty with India on Mutual Legal Assistance In Criminal Matters (Treaty Doc. 107–3), with one understanding and two conditions;
Treaty with Ireland on Mutual Legal Assistance in Criminal Matters (Treaty Doc. 107–9), with one understanding and two conditions; and
Treaty with Liechtenstein on Mutual Legal Assistance in Criminal Matters (Treaty Doc. 107–16), with one understanding and two conditions.

Pages S11057–59

Executive Session—Motion to Proceed: The motion to proceed to Executive Session to consider the nomination of Eugene Scalia, of Virginia, to be Solicitor for the Department of Labor, as not agreed to.

Nominations Confirmed: Senate confirmed the following nominations:

Dennis P. Walsh, of Maryland, to be a Member of the National Labor Relations Board for the term of five years expiring December 16, 2004.

Collister Johnson, Jr., of Virginia, to be a Member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 2004. (Reappointment)

John M. Rogers, of Kentucky, to be United States Circuit Judge for the Sixth Circuit.

Stanley R. Chesler, of New Jersey, to be United States District Judge for the District of New Jersey.

William J. Martini, of New Jersey, to be United States District Judge for the District of New Jersey.

Ronald B. Leighton, of Washington, to be United States District Judge for the Western District of Washington.

David Gelernter, of Connecticut, to be a Member of the National Council on the Arts for a term expiring September 3, 2006.

Rene Acosta, of Virginia, to be a Member of the National Labor Relations Board for the remainder of the term expiring August 27, 2003.

Phyllis K. Fong, of Maryland, to be Inspector General, Department of Agriculture.

Juan R. Olivarez, of Michigan, to be a Member of the National Institute for Literacy Advisory Board for a term of one year. (New Position)

Carol C. Gambill, of Tennessee, to be a Member of the National Institute for Literacy Advisory Board for a term of three years. (New Position)

Kyle E. McSlarrow, of Virginia, to be Deputy Secretary of Energy.

David McQueen Laney, of Texas, to be a Member of the Reform Board (Amtrak) for a term of five years.

Peter Schaumber, of the District of Columbia, to be a Member of the National Labor Relations Board for the term of five years expiring August 27, 2005.

John Randle Hamilton, of North Carolina, to be Ambassador to the Republic of Guatemala.

Rebecca Dye, of North Carolina, to be a Federal Maritime Commissioner for the term expiring June 30, 2005.

Nancy C. Pellett, of Iowa, to be a Member of the Farm Credit Administration Board, Farm Credit Administration for a term expiring May 31, 2008.

Ellen R. Sauerbrey, of Maryland, for the rank of Ambassador during her tenure of service as the Representative of the United States of America on the Commission on the Status of Women of the Economic and Social Council of the United Nations.

Daniel L. Hovland, of North Dakota, to be United States District Judge for the District of North Dakota.

Thomas W. Phillips, of Tennessee, to be United States District Judge for the Eastern District of Tennessee.

Linda R. Reade, of Iowa, to be United States District Judge for the Northern District of Iowa.

Quanah Crossland Stamps, of Virginia, to be Commissioner of the Administration for Native Americans, Department of Health and Human Services.

Jonathan Steven Adelstein, of South Dakota, to be a Member of the Federal Communications Commission for the remainder of the term expiring June 30, 2003.

Alia M. Ludlum, of Texas, to be United States District Judge for the Western District of Texas.

Joel Kahn, of Ohio, to be a Member of the National Council on Disability for a term expiring September 17, 2004.

Patricia Pound, of Texas, to be a Member of the National Council on Disability for a term expiring September 17, 2005. (Reappointment)

Linda Weters, of Ohio, to be a Member of the National Council on Disability for a term expiring September 17, 2003.

Roger P. Nober, of Maryland, to be a Member of the Surface Transportation Board for a term expiring December 31, 2005.

Robert G. Klausner, of California, to be United States District Judge for the Central District of California.

James E. Kinkeade, of Texas, to be United States District Judge for the Northern District of Texas.

William E. Smith, of Rhode Island, to be United States District Judge for the District of Rhode Island.

Peggy Goldwater-Clay, of California, to be a Member of the Board of Trustees of the Barry Goldwater Scholarship and Excellence in Education Foundation for a term expiring June 5, 2006. (Reappointment)
Jeffrey S. White, of California, to be United States District Judge for the Northern District of California.

Kent A. Jordan, of Delaware, to be United States District Judge for the District of Delaware.

Otis Webb Brawley, Jr., of Georgia, to be a Member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 2003.

Wayne Abernathy, of Virginia, to be an Assistant Secretary of the Treasury.

Mark E. Fuller, of Alabama, to be United States District Judge for the Middle District of Alabama.

Rosemary M. Collyer, of Maryland, to be United States District Judge for the District of Columbia.

Robert B. Kugler, of New Jersey, to be United States District Judge for the District of New Jersey.

Jose L. Linares, of New Jersey, to be United States District Judge for the District of New Jersey.

Freda L. Wolfson, of New Jersey, to be United States District Judge for the District of New Jersey.

John F. Keane, of Virginia, to be Ambassador to the Republic of Paraguay.

Kim R. Holmes, of Maryland, to be an Assistant Secretary of State (International Organizations).

Irene B. Brooks, of Pennsylvania, to be a Commissioner on the part of the United States on the International Joint Commission, United States and Canada.

Allen I. Olson, of Minnesota, to be a Commissioner on the part of the United States on the International Joint Commission, United States and Canada.

Philip N. Hogen, of South Dakota, to be Chairman of the National Indian Gaming Commission for the term of three years.

Judith Ann Rapanos, of Michigan, to be a Member of the National Museum Services Board for a term expiring December 6, 2002.

Judith Ann Rapanos, of Michigan, to be a Member of the National Museum Services Board for a term expiring December 6, 2007. (Reappointment)

Beth Walkup, of Arizona, to be a Member of the National Museum Services Board for a term expiring December 6, 2003.

Nancy S. Dwight, of New Hampshire, to be a Member of the National Services Board for a term expiring December 6, 2005.

A. Wilson Greene, of Virginia to be a Member of the National Museum Services Board for a term expiring December 6, 2004.

Maria Mercedes Guillemard, of Puerto Rico, to be a Member of the National Museum Services Board for a term expiring December 6, 2005.

Peter Hero, of California, to be a Member of the National Museum Services Board for a term expiring December 6, 2006.

Thomas E. Lorentzen, of California, to be a Member of the National Museum Services Board for a term expiring December 6, 2006.

David N. Greenlee, of Maryland, to be Ambassador to the Republic of Bolivia.

James M. Stephens, of Virginia, to be a Member of the Occupational Safety and Health Review Commission for a term expiring April 27, 2005.

Maura Ann Marty, of Florida, to be an Assistant Secretary of State (Consular Affairs).

Peter DeShazo, of Florida, Career Member of the Senior Foreign Service, Class of Minister-Counselor, for the rank of Ambassador during tenure of service as Deputy Permanent Representative of the United States of America to the Organization of American States.

John L. Morrison, of Minnesota, to be a Member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 2004.

John Portman Higgins, of Virginia, to be Inspector General, Department of Education.

Philip Merrill, of Maryland, to be President of the Export-Import Bank of the United States for the remainder of the term expiring January 20, 2005.

Robert J. Battista, of Michigan, to be a Member of the National Labor Relations Board for the term of five years expiring December 16, 2007.

Wilma B. Liebman, of the District of Columbia, to be a Member of the National Labor Relations Board for the term of five years expiring August 27, 2006.

J. Cofer Black, of Virginia, to be Coordinator for Counterterrorism with the rank and status of Ambassador at Large.

Blanquita Walsh Cullum, of Virginia, to be a Member of the Broadcasting Board of Governors for a term expiring August 13, 2005.

Routine lists in the Coast Guard, which were discharged from the Committee on Commerce, Science, and Transportation, and in the Foreign Service.

Nominations Received: Senate received the following nominations:

Harlon Eugene Costner, of North Carolina, to be United States Marshal for the Middle District of North Carolina for the term of four years.

Richard Zenos Winget, of Nevada, to be United States Marshal for the District of Nevada.

Daniel Pearson, of Minnesota, to be a Member of the United States International Trade Commission for the term expiring June 16, 2011.
James M. Loy, of Virginia, to be Under Secretary of Transportation for Security for a term of five years.

1 Army nomination in the rank of general.

Routine lists in the Army, Navy.

Messages From the House: Pages S11076
Measures Placed on Calendar: Pages S11076
Executive Communications: Pages S11076–78
Executive Reports of Committees: Pages S11079
Additional Cosponsors: Pages S11079–80
Statements on Introduced Bills/Resolutions: Pages S11080–86
Additional Statements: Pages S11075–76
Amendments Submitted: Pages S11086–S11137
Authority for Committees to Meet: Pages S11137–38
Privilege of the Floor: Page S11138
Record Votes: One record vote was taken today. (Total—243) Pages S10992–93
Adjournment: Senate met at 9:30 a.m., and adjourned at 10:46 p.m., on Friday, November 15, 2002. (For Senate’s program, see the remarks of the Acting Majority Leader in today’s Record on page S11160).

Committee Meetings

(Committees not listed did not meet)

NOMINATION

Committee on Foreign Relations: Committee concluded hearings on the nominations of Mary Carlin Yates, of Oregon, to be Ambassador to the Republic of Ghana, after the nominee testified and answered questions in her own behalf.

BUSINESS MEETING

Committee on the Judiciary: Committee ordered favorably reported the following business items: The nominations of Dennis W. Shedd, of South Carolina, to be United States Circuit Judge for the Fourth Circuit, Michael W. McConnell, of Utah, to be United States Circuit Judge for the Tenth Circuit, and Kevin J. O’Connor, to be United States Attorney for the District of Connecticut;

S. 2480, to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from state laws prohibiting the carrying of concealed handguns, with amendments;

S. 1655, to amend title 18, United States Code, to prohibit certain interstate conduct relating to exotic animals, with an amendment in the nature of a substitute;

S. 2934, to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion;

H.R. 3988, to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion;

S. 2541, to amend title 18, United States Code, to establish penalties for aggravated identity theft;

H.R. 3180, to consent to certain amendments to the New Hampshire-Vermont Interstate School Compact;

S. 2520, to amend title 18, United States Code, with respect to the sexual exploitation of children, with an amendment in the nature of a substitute; and

S. Con. Res. 94, expressing the sense of Congress that public awareness and education about the importance of health care coverage is of the utmost priority and that a National Importance of Health Care Coverage Month should be established to promote that awareness and education.

TERRORISM REPORT

Chamber Action

Measures Introduced: 30 public bills, H.R. 5728–5757; and 8 resolutions, H.J. Res. 125; H. Con. Res. 518–520, and H. Res. 613–616, were introduced.

Reports Filed: Reports were filed today as follows:

H.R. 1452, to amend the Immigration and Nationality Act to permit certain long-term permanent resident aliens to seek cancellation of removal under such Act, amended (H. Rept. 107–785);

H.R. 5334, to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits (H. Rept. 107–786);

H.R. 2458, to enhance the management and promotion of electronic Government services and processes by establishing a Federal Chief Information Officer within the Office of Management and Budget, and by establishing a broad framework of measures that require using Internet-based information technology to enhance citizen access to Government information and services, amended (H. Rept. 107–787, part 1);

Report of the Joint Economic Committee on the 2002 Economic Report of the President (H. Rept. 107–788); and


Private Calendar: On the call of the Private Calendar the House passed over without prejudice H.R. 392, for the relief of Nancy B. Wilson. Subsequently the House passed H.R. 3758, for the relief of So Hyun Jun.

Recess: the House recessed at 1:58 p.m. and reconvened at 3:15 p.m.

Reduction of Preexisting PAGO Balances: The House passed H.R. 5708, to reduce preexisting PAGO balances by recorded vote by 366 ayes to 19 noes, Roll No. 482.

Rejected the Moore motion to recommit the bill to the Committee on the Budget with instructions to report it back to the House forthwith with an amendment that reduces balances in fiscal years 2002 and 2003 and further reduces all balances in succeeding fiscal years if the President submits a budget that projects an on-budget balance or an on-budget surplus by fiscal year 2008 by recorded vote of 187 ayes to 201 noes, Roll No. 481.

H. Res. 602, the rule that provided for consideration of the bill was agreed to on Nov. 13.

Technical Amendments to the Social Security Act—Extensions of Temporary Assistance for Needy Families (TANF) and Temporary Extended Unemployment Compensation: The House agreed to the motion to concur in the Senate amendments with amendments to H.R. 5063, to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services. The text amendment in the nature of a substitute was printed in H. Rept. 107–784, the report accompanying the rule. The title was amended so as to read: "An Act to make technical amendments to the Social Security Act and related Acts.”

Agreed to H. Res. 609, the rule that provided for consideration of the Senate amendments with amendments by recorded vote of 245 ayes to 137 noes, Roll No. 480. Earlier agreed to order the previous question by a yea-and-nay vote of 207 yeas to 198 nays, Roll No. 479.

Terrorism Risk Insurance Act: The House agreed to the conference report to accompany H.R. 3210, to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

Earlier, agreed to H. Res. 607, the rule that waived points of order against the conference report by voice vote.

Port and Maritime Security Conference Report: The House agreed to the conference report to accompany S. 1214, to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports—clearing the measure for the President.

Earlier, agreed to H. Res. 605, the rule that waived points of order against the conference report by voice vote.

Recess: The House recessed at 10:08 p.m. and reconvened at 11:10 p.m.

Intelligence Authorization Conference Report: The House agreed to the conference report to accompany H.R. 4628, a bill to authorize appropriations
for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, by a yea-and-nay vote of 366 yeas to 3 nays, Roll No. 483.

The conference report was considered by unanimous consent.

Point of Order Sustained Against Bankruptcy Conference Report: The Chair sustained the Blunt point of order under clause 9 of rule 22 that the conference report to accompany H.R. 333, to amend title 11, United States Code, included matter outside the scope of the differences between the two Houses that were committed to the conference committee for resolution. Representative Blunt specifically cited section 331 of the conference report, which was described in the joint explanatory statement of the managers as having no counterpart in either the House bill or Senate amendment.

Earlier, the House failed to agree to H. Res. 606, the rule that sought to waive points of order against the conference report to accompany H.R. 333, and against its consideration, by a yea-and-nay vote of 172 yeas to 243 nays, Roll No. 478.

Bankruptcy Reform: The House agreed to the Senate amendment to H.R. 333, to amend title 11, United States Code, with an amendment by a recorded vote of 244 yes to 116 noes, Roll No. 484. Earlier, Representative Gekas moved that the House recede from disagreement to the Senate amendment to the bill, and concur therein with an amendment that, in lieu of the matter proposed to be inserted by the Senate amendment, inserts the matter after the enacting clause in H.R. 5745, to amend title 11 of the United States Code, as introduced on November 14, 2002.

Committee on Rules Resolutions: H. Res. 586, 587, 601, 603, and 608 were laid on the table.

National Park Service Design Commission: The House agreed to H. Res. 591, expressing the sense of the House of Representatives that the National Park Service should form a committee for the purpose of establishing guidelines to launch a national design competition.

Commemorative Work to Honor President John Adams: The House passed H.J. Res. 117, approving the location of the commemorative work in the District of Columbia honoring former President John Adams.

Bainbridge Island Study: The House passed H.R. 3747, to direct the Secretary of the Interior to conduct a study of the site commonly known as Eaglesdale Ferry Dock at Taylor Avenue in the State of Washington for potential inclusion in the National Park System.


Salt River Bay Park Boundary: The House passed H.R. 5097, amended, to adjust the boundaries of the Salt River Bay National Historical Park and Ecological Preserve located in St. Croix, Virgin Islands.

Mount Rainier Boundary Adjustment: The House passed H.R. 5512, amended, to provide for an adjustment of the boundaries of Mount Rainier National Park.

Yavapai Indians Land Exchange: The House passed H.R. 5513, amended, to authorize and direct the exchange of certain land in the State of Arizona between the Secretary of Agriculture and Yavapai Ranch Limited Partnership. Agreed to amend the title.

Pittman-Robertson Wildlife Conservation et al.: The House passed S. 990, amended, to amend the Pittman-Robertson Wildlife Restoration Act to improve the provisions relating to wildlife conservation and restoration programs.

POW/MIA Flag Display: The House passed S. 1226, to require the display of the POW/MIA flag at the World War II memorial, the Korean War Veterans Memorial, and the Vietnam Veterans Memorial—clearing the measure for the President.

Haines, Oregon Land Exchange: The House passed S. 1907, to direct the Secretary of the Interior to convey certain land to the city of Haines, Oregon—clearing the measure for the President.

Old Spanish Trail: The House passed S. 2017, amended, to amend the Old Spanish Trail as a National Historic Trail—clearing the measure for the President.


Big Sur Wilderness: The House passed H.R. 4750, amended, to designate certain lands in the State of
California as components of the National Wilderness Preservation System.

Consideration of Compound Request: The Chair announced that he would entertain the following compound request under the Speaker’s Guidelines as recorded on page 712 of the House Rules and Manual with assurances that it has been cleared by the bipartisan floor and committee leadership. It was then agreed by unanimous consent that the House be considered to have:
2. Taken from the Speaker’s table and passed S. 2712, S. 3044, and S. 3156 clearing the measures for the President;
4. Discharged from committee, amended and passed S. 1843, in the form placed at the desk;
5. Passed H.R. 5504, amended;
6. Passed H.R. 3429, amended;
7. Discharged from committee, amended and agreed to H. Con. Res. 466 in the form placed at the desk;
8. Taken from the Speaker’s table and concurred in the respective Senate amendments to H.R. 4664, H.R. 2621, H.R. 3609, H.R. 5469, and H.R. 3833—clearing the measures for the President;
9. Taken from the Speaker’s table and amended S. 2237, in the form placed at the desk; and
10. That the committees being discharged be printed in the Record, the texts of each measure and any amendment thereto be considered as read and printed in the Record, and that motions to reconsider each of these actions be laid upon the table. Further the Clerk was authorized to make technical corrections and conforming changes in the engrossment of the bills.


Committee to Notify the President: The House agreed to H. Res. 615, providing for a committee of two members to be appointed by the House to inform the President. Subsequently the Chair appointed Representatives Armey and Gephardt to the Committee.

Resignations—Appointments: Agreed that notwithstanding the adjournment of the Second Session of the One Hundred Seventh Congress, the Speaker, Majority Leader, and Minority Leader be authorized to accept resignations and to make appointments authorized by law or by the House.

Extension of Remarks for Committee Leadership: Agreed that the chairman and ranking minority member of each standing committee and each subcommittee be permitted to extend their remarks in the record, up to and including the record’s last publication, and to include a summary of the work of that committee or subcommittee.

Extension of Remarks for House Members: Agreed that members have until publication of the last edition of the Congressional Record authorized for the Second Session of the One Hundred Seventh Congress by the Joint Committee on Printing to revise and extend their remarks and to include brief, related extraneous material on any matter occurring before the adjournment of the Second Session Sine Die.

Convening of the First Session of the One Hundred Eighth Congress: The House passed S.J. Res. 53, relative to the convening of the first session of the One Hundred Eighth Congress at noon on Tuesday, January 7, 2003.

Meeting Hour—Tuesday, Nov. 19: Agreed that when the House adjourns today, it adjourn to meet at noon on Tuesday, Nov. 19.

Speaker Pro Tempore: Read a letter from the Speaker wherein he appointed Representative Gilchrest or Tom Davis of Virginia to sign enrolled bills and joint resolutions through the remainder of the One Hundred Seventh Congress.

National Science Foundation Authorization: The House agreed to the Senate amendment to H.R. 4664, to authorize appropriations for fiscal years 2003, 2004, and 2005 for the National Science Foundation clearing the measure for the President.


Senate Message: Messages received from the Senate today appear on pages H8735–36, H8757, H8887, and H9008.

Referrals: S. 958, was referred to the Committee on Resources, S. 2845 was referred to the Committee on the Judiciary, S. 3067 was referred to the Committee on Government Reform. S. 1742 was referred to the Committees on the Judiciary and financial Services. S.J. Res. 42 was referred to the Committees on
Transportation and Infrastructure and International Relations. S. 3044, S. 3156, S. 2712, S. 2934, S. 2520, and S. Con. Res. 155 were held at the desk.

Pages H9018–19

Quorum Calls—Votes: Three yea-and-nay votes and four recorded vote developed during the proceedings of the House today and appear on pages H8756–57, H8763, H8763–64, H8792–93, H8793–94, H8822, and H8876–77. There were no quorum calls

Adjournment: The House met at 1 p.m. and adjourned at 3:05 a.m. on Friday, Nov. 15.

Committee Meetings

GILMORE COMMISSION

Committee on Armed Services: Subcommittee on Military Procurement, hearing on the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction pending the release of its fourth report. Testimony was heard from James Gilmore, Chairman, Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction.

MERCURY—IN DENTAL AMALGAMS AND VACCINES

Committee on Government Reform: Held a hearing titled “Mercury in Dental Amalgams and Vaccines: An Examination of the Science.” Testimony was heard from the following officials of the Department of Health and Human Services: Lawrence A. Tabak, D.D.S., Director, National Institute of Dental and Craniofascial Research, NIH; and David W. Feigal, M.D., Director, Center for Devices and Radiological Health, FDA; and public witnesses.

AQUATIC INVASIVE SPECIES

Committee on Resources: Subcommittee on Fisheries Conservation, Wildlife and Oceans and the Subcommittee on Environment, Technology and Standards of the Committee on Science held a joint hearing on the following bills: H.R. 5395, Aquatic Invasive Species Research Act; and H.R. 5396, National Aquatic Invasive Species Act of 2002. Testimony was heard from Steve Williams, Director, U.S. Fish and Wildlife Service, Department of the Interior; Timothy R. E. Keeney, Deputy Assistant Secretary, Oceans and Atmosphere, NOAA, Department of Commerce; Capt. Michael W. Brown, USCG, Chief, Office of Operating and Environmental Standards, U.S. Coast Guard, Department of Transportation; Gregory M. Ruiz, Senior Scientist, Environmental Research Center, Smithsonian Institution; and public witnesses.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, p. D1136)


S. 2690, to reaffirm the reference to one Nation under God in the Pledge of Allegiance. Signed on November 13, 2002. (Public Law 107–293)

COMMITTEE MEETINGS FOR FRIDAY, NOVEMBER 15, 2002

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Governmental Affairs: to hold hearings to examine the nominations of Alejandro Modesto Sanchez, of Florida, and Andrew Saul and Gordon Whiting, both of New York, each to be a Member of the Federal Retirement Thrift Investment Board, 10 a.m., SD–342.

House

No Committee meetings are scheduled.
**Next Meeting of the SENATE**

9:45 a.m., Friday, November 15

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**Senate Chamber**

Program for Friday: After the transaction of any morning business (not to extend beyond 10 a.m.), the Majority Leader or his designee will be recognized.

Also, at approximately 10 a.m., Senate may vote on the motion to proceed to the conference report on H.R. 3210, Terrorism Risk Protection Act; following which, Senate will continue consideration of H.R. 5005, Homeland Security Act, with a vote on the motion to invoke cloture on Thompson (for Gramm) Amendment No. 4901, in the nature of a substitute, to occur at 10:45 a.m.

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**Next Meeting of the HOUSE OF REPRESENTATIVES**

12 noon, Tuesday, November 19

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**House Chamber**

Program for Monday: Pro forma session.