At the request of Mr. GRAHAM of South Carolina, the names of the Senator from Nebraska (Mr. HAGEL) and the Senator from New York (Mr. SCHUMER) were added as co-sponsors of S. Res. 30, a resolution expressing the sense of the Senate that the President should designate the week beginning September 14, 2003, as “National Historically Black Colleges and Universities Week.”

Amendment No. 1405

At the request of Mr. MILLER, the name of the Senator from South Carolina (Mr. ROCKEFELLER), the Senator from Oregon (Mr. WYDEN), the Senator from Maryland (Ms. MIKULSKY), the Senator from Nebraska (Mr. NELSON) and the Senator from New Jersey (Mr. LAUTENBERG) were added as co-sponsors of S. Res. 200, a resolution expressing the sense of the Senate that Congress should adopt a conference agreement containing the sense of the Senate that Congress should designate the week beginning September 14, 2003, as “National Historically Black Colleges and Universities Week.”

At the request of Mr. JOHNSON, the names of the Senator from West Virginia (Mr. ROCHEFELLER), the Senator from Oregon (Mr. WYDEN), the Senator from Maryland (Ms. MIKULSKI), the Senator from Nebraska (Mr. NELSON) and the Senator from New Jersey (Mr. LAUTENBERG) were added as co-sponsors of S. Res. 200, a resolution expressing the sense of the Senate that Congress should adopt a conference agreement containing the sense of the Senate that Congress should designate the week beginning September 14, 2003, as “National Historically Black Colleges and Universities Week.”

At the request of Mr. CAMPBELL, the name of the Senator from Ohio (Mr. DEWINE) was added as a co-sponsor of S. Res. 202, a resolution expressing the sense of the Senate regarding the genocidal Ukraine Famine of 1932-33.

At the request of Mr. BIDEN, the names of the Senator from North Carolina (Mrs. DOLE), the Senator from Texas (Mrs. CANTWELL), the Senator from New York (Mr. SCHUMER), the Senator from New Jersey (Mr. CORZINE) and the Senator from Kansas (Mr. BROWNBACK) were added as co-sponsors of S. Res. 204, a resolution designating the week of November 9 through November 15, 2003, as “National Veterans Awareness Week” to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

At the request of Mr. MILLER, the name of the Senator from Kentucky (Mr. MCCONNELL) was added as a co-sponsor of amendment No. 1405 intended to be proposed to S. 14, a bill to enhance the energy security of the United States, and for other purposes.
purchasing records of its customers simply by asserting that they want the records for a terrorism investigation.

During the last year, librarians and booksellers have become increasingly concerned by the potential for abuse of this provision of the Patriot Act, as well as by concerns that under the Patriot Act, the FBI could seize records from libraries and booksellers in order to monitor what books Americans have purchased or borrowed, or who has used a library's or bookstore's internet-computer stations, even if there is no evidence that the person is a terrorist or spy, or has any connection to a terrorist or spy.

These concerns are so strong, that some librarians across the country have taken the unusual step of destroying records of patrons' book and computer use, as well as posting signs on computer stations warning patrons that whatever they read or access on the internet could be monitored by the Federal Government.

As a librarian in California said, "We felt strongly that this had to be done. . . . The government has never had this kind of power before. It feels like Big Brother." And as the executive director of the American Library Association said, "This law is dangerous. . . . I read murder mysteries—does that make me a murderer? I read spy stories—does that mean I'm a spy? There's no clear link between a person's intellectual pursuits and their actions."

The American people do not know how many or what kind of requests federal, state or local law enforcement make to access their personal information.

But in a survey released by the University of Illinois at Urbana-Champaign, about 550 libraries around the Nation reported having received requests from Federal or local law enforcement during the post-September 11 world. About half of the libraries said they complied with the law enforcement request, and another half indicated that they had not.

Americans don't know much about these incidents, because the law also contains a provision that prohibits anyone who receives a subpoena from disclosing that fact to anyone.

David Schwartz, president of Harry W. Schwartz Bookshops, the oldest and largest independent bookseller in Milwaukee, summed up well the American people: "The FBI already has significant subpoena powers to obtain records. There is no need for the government to invade a person's privacy in this way. This is a uniquely un-American tool, and therefore be rejected. The books we read are a very private part of our lives. People could stop buying books, and they could be terrified into silence."

Afraid to read books, terrified into silence. Is that the America we want? Is that the America where we'd like to live? I don't think so. And I hope my colleagues will agree.

It is time to reconsider those provisions of the Patriot Act that are un-American and, frankly, unpatriotic. Bu my concerns with the Patriot Act go beyond library and bookseller records. Under section 215 of the Patriot Act, the FBI could seek any records pertaining to terrorism. These business records could contain sensitive, personal information—for example, medical records maintained by a doctor or hospital or credit records maintained by a credit agency. All the FBI would have to do is simply assert that the records are "sought for" its terrorism or foreign intelligence investigation.

Section 215 of the Patriot Act goes too far. Americans rightfully have a reasonable expectation of privacy in their library records, their bank records, personal financial records, or other records containing personal information. Prudent safeguards are needed to protect these legitimate privacy interests.

The Library, Bookseller, and Personal Records Privacy Act is a reasonable solution. It would restore a pre-Patriot Act requirement that the FBI make a factual, individualized showing that the records sought pertain to a suspected terrorist or spy.

My bill will not prevent the FBI from doing its job. My bill recognizes that the post-September 11 world is a different world. There are circumstances when the FBI should legitimately have access to library, bookstore, or other personal information.

I would like to take a moment to explain how the safeguard in my bill would be applied. Suppose the FBI is conducting an investigation of an international terrorist organization. It has information that a number of members of the group live in a particular neighborhood. The FBI would like to serve a subpoena on the library in the suspects' neighborhood. Under current law, the FBI could decide to ask the library for all records concerning anyone who has ever borrowed a book or used a computer, and what books were borrowed, simply by asserting that the documents are sought for a terrorism investigation. But under my bill, the FBI could not do this. The FBI would have to set forth specific and articulable facts giving reason to believe that the person to whom the records pertain is a suspected terrorist. The FBI could subpoena only those library records—such as borrowing records or computer sign-in logs—that pertain to the suspected terrorists. The FBI could not obtain library records concerning individuals who are not suspected terrorists.

So, my bill, the FBI can still obtain documents that it legitimately needs, but my bill would also protect the privacy of law-abiding Americans. I might add, that if, as the Justice Department says, the FBI is using its Patriot Act powers in a responsible manner, does not seek the records of law-abiding Americans, and only seeks the records of suspected terrorists or suspected spies, then there is no reason for the Department to object to my bill. The second part of my bill would address privacy concerns with another Federal law enforcement power expanded by the Patriot Act—the FBI's national security letter authority, or what is sometimes referred to as "administrative subpoena authority," because the FBI does not need court approval to use this power.

My bill would amend section 505 of the Patriot Act. Part of this section relates to the production of records maintained by electronic communications providers. Libraries or book stores with internet access for customers could be deemed "electronic communication providers" and therefore be subject to a request by the FBI under its administrative subpoena authority.

As I mentioned earlier, some librarians are so concerned about the potential for abuse by the FBI that they have taken the unusual step of destroying records of patrons' book and computer use, as well as posting signs on computer stations warning patrons that whatever they read or access on the internet could be monitored by the FBI. Some librarians have begun shredding on a daily basis sign-in logs and other documents relating to the public's use of library computer terminals to access the Internet.

Again, safeguards are needed to ensure that any individual who accesses the internet at a library or bookstore does not automatically give up all expectations of privacy. Like the section 215 I've discussed, my bill would require an individualized showing by the FBI of how the records of internet usage maintained by a library or bookseller pertain to a suspected terrorist or spy.

Yes, the American people want the FBI to be focused on preventing terrorism. And, yes, it makes sense to make some changes to the law to allow the FBI access to the information that it needs to prevent terrorism. But we do not need to change the values that constitute who we are as a nation in order to protect ourselves from terrorism. We can protect both our nation and our privacy and civil liberties.

An increasing number of Americans are becoming to understand that the Patriot Act went too far. Three States and thousands of cities and counties across the country have rejected resolutions expressing opposition to the Patriot Act. And it's not just the Berkeleys and Madisons of the Nation, but other States and communities with strong libertarian values, such as Alaskans and Idahoans and Montanans, have passed such resolutions.

I have many concerns with the Patriot Act. I am not seeking to repeal it, in whole or in part. My colleagues and I are only seeking to modify two provisions that pose serious potential for abuse.

The privacy of law-abiding Americans is at stake. Congress should act to
protect our privacy. And my bill is a reasonable approach to do just that.

I urge my colleagues to join me and support the Library, Bookseller, and Personal Records Privacy Act.

I ask unanimous consent that the text of the bill be printed in the Record.

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

S. 1907

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 “Library, Bookseller, and Personal Records Privacy Act”.

SEC. 2. PRIVACY PROTECTIONS ON GOVERNMENT ACCESS TO LIBRARY, BOOKSELLER, AND OTHER PERSONAL RECORDS UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) APPLICATIONS FOR ORDERS.—Subsection (b) of section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) 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 “; and”;

(3) by adding at the end the following new paragraph:

“(3) shall specify that there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power.”;

(b) ORDERS.—Subsection (c)(1) of that section is amended by striking “finds” and all that follows and inserting “finds that—

“(A) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power; and—

“(B) the application meets the other requirements of this section.”

(c) OVERTURE OF REQUESTS FOR PRODUCTION OF RECORDS.—Section 502 of that Act (50 U.S.C. 1802) is amended—

(1) in subsection (a), by striking “the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives” and all that follows through “Government Affairs Committee” and inserting “the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the Senate”;

(2) in subsection (b), by striking “On a semiannual basis,” and all that follows through “a report setting forth” and inserting “The report of the Attorney General to the Committees on the Judiciary of the House of Representatives and the Senate under subsection (a) shall set forth”.

SEC. 3. PRIVACY PROTECTIONS ON GOVERNMENT ACCESS TO INFORMATION ON COMPUTER USERS AT BOOKSELLERS AND LIBRARIES UNDER NATIONAL SECURITY AUTHORITY.

(a) IN GENERAL.—Section 209 of title 18, United States Code, is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection (e):

“(e) RECORDS OF BOOKSELLERS AND LIBRARIES.—(1) When a request under this section is made to a bookseller or library, the certification required by subsection (b) shall also specify that there are specific and articulable facts giving reason to believe that the person or entity to whom the records pertain is a foreign power or an agent of a foreign power.

“(2) In this subsection:

“(A) The term ‘bookseller’ means a person or entity engaged in the sale, rental, or delivery of books, journals, magazines, or other similar forms of communication in print or digitally.

“(B) The term ‘library’ means a library (as that term is defined in section 212(3) of the Library Services and Technology Act (20 U.S.C. 9221(2))) whose services include access to the Internet, books, journals, magazines, newspapers, or other similar forms of communication in print or digitally to patrons for their use, review, examination, or circulation.

“(C) The terms ‘foreign power’ and ‘agent of a foreign power’ shall be defined in such terms in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

(b) SUNSET OF CERTAIN MODIFICATIONS ON ACCESS.—Section 224(a) of the USA PATRIOT ACT of 2001 (Public Law 107–95: 115 Stat. 230) (hereinafter referred to as section 209 of that Act) is amended—

(1) by striking “the Department of Justice” and inserting “the Attorney General”;

(2) in paragraph (2), by striking the period at the end and inserting “; and”;

(3) by adding at the end the following new paragraph:

“(4) in paragraphs (2), (3), and (4), the provisions of paragraphs (2), (3), and (4), respectively, of section 214 shall apply to the conduct of any investigation or other proceeding or procedure under this Act, in accordance with the provisions of such paragraphs, as if such paragraphs had been added to this Act by this section.”

(c) CONCLUSION.—This Act may be cited as the “Library, Bookseller, and Personal Records Privacy Act”.

If we are to continue to provide GSEs with the framework to operate under an implied government backing, I believe that they should be held to a higher standard than private organizations and subject to more scrutiny than the private sector. Furthermore, I believe it is possible to realign oversight and operating rules for Fannie Mae and Freddie Mac without jeopardizing the strong housing market that America enjoys today.

It is my view that the Office of Federal Housing Enterprise Oversight (OFHEO) has not been sufficiently designed to provide the authority needed to effectively regulate Fannie Mae and Freddie Mac. Our legislation would create a new, stronger regulator in the Department of the Treasury. Treasury regulates banks and other financial institutions through the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS), and it has the experience and expertise needed to supervise Fannie Mae and Freddie Mac. Our bill would also provide the new regulator with enhanced regulatory flexibility and enforcement tools like those afforded to OCC and OTS. Furthermore, the bill would: give OFES oversight of Fannie Mae and Freddie Mac’s “mission” as well as safety and soundness; give OFES authority to regulate the type and amount of non-mission-related assets Fannie Mae and Freddie Mac can hold; give OFES enhanced enforcement powers much like those of other financial regulators; fund OFES through assessments instead of through Congressional appropriations; require several government studies, including one on the risk implications of GSEs purchasing their own mortgage backed securities, one on the feasibility of merging OFES with the Federal Housing Finance Board (FHFB), and one on the feasibility of consolidating OFES with the Office of Thrift Supervision (OTS).

This reform is important to restoring and maintaining the confidence that investors and the markets require. In light of the recent problems at Freddie Mac, it is even more important. I urge my colleagues to support this reform effort and invite them to cosponsor our bill.

I ask unanimous consent that the text of the bill be printed in the Record.

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

S. 1908

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Federal Enterprise Regulatory Reform Act of 2003”.

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

Sec. 1. Short title and table of contents.
TITLE I—REFORM OF REGULATION OF FANNIE MAE AND FREDDIE MAC
Subtitle A—Improvement of Supervision

SEC. 101. ESTABLISHMENT OF OFFICE OF FEDERAL ENTERPRISE SUPERVISION IN THE DEPARTMENT OF THE TREASURY.

(a) IN GENERAL.—Part 1 of Subtitle A of this title XIII of the Housing and Community Development Act of 1992 is amended by striking sections 1311 and 1312 (12 U.S.C. 4511, 4512) and inserting the following:

"SEC. 1311. ESTABLISHMENT OF OFFICE OF FEDERAL ENTERPRISE SUPERVISION.

\"(a) ESTABLISHMENT.\"—There shall be established the Office of Federal Enterprise Supervision, which shall be an office in the Department of the Treasury.

\"(b) AUTHORITY.\"—The Office shall succeed to the authority of the Director of the Office of Federal Housing Enterprise Oversight, which shall be an office in the Department of the Treasury.

\"(c) DUTIES.\"—The principal duties of the Office shall be to ensure that the enterprises—

\"(1) operate in a financially safe and sound manner;\"—(2) carry out their missions in a financially safe and sound manner and only through activities that have been authorized under, and are consistent with the purposes of, the provisions of Federal law that charter the enterprises; (c) remain adequately capitalized.

\"(2) OTHER DUTIES.\"—To the extent consistent with paragraph (1), the duties of the Director in subsection (a) include supervisory and regulatory authority over the enterprises, in accordance with this title, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), and any other provision of Federal law.

\"(b) AUTHORITY EXCLUSIVE OF SECRETARY.\"—Except as specifically provided under this Act, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any other provision of Federal law, the authority of the Director to determine that the enterprises shall not be subject to the review, approval, or intervention of the Secretary of the Treasury.

\"(c) DELEGATION OF AUTHORITY.\"—The Director may delegate to the enterprises any of the functions, powers, and duties of the Director, with respect to supervision and regulation of the enterprises, as the Director considers appropriate.

\"(d) PRIOR APPROVAL AUTHORITY FOR NEW PROGRAMS.\"—(1) The Director shall require each enterprise to submit to the Director, at least 45 days prior to the date on which the Director determines that the program is not authorized under section 304 or paragraph (2), (3), (4), or (5) of section 302(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)).

\"(2) In the case of a new program of the Federal Home Loan Mortgage Corporation, the Director determines that the program is not authorized under paragraph (1), (4), or (5) of section 302(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), or

\"(3) The Director determines that the new program is not in the public interest.

\"(b) PROCEDURE FOR PRIOR APPROVAL.\"—(1) SUBMISSION OF REQUEST.—An enterprise shall submit to the Director a written request for approval of a new program under subsection (a). The request shall describe the program in such form as prescribed by order or regulation of the Director.

\"(2) RESPONSE.\"—The Director—

\"(a) IN GENERAL.—Not later than 45 days after the date of submission of a request for approval under paragraph (1), the Director shall—

\"(ii) deny the request and submit a report explaining the reasons for the denial to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate.

\"(b) EXTENSION.—The Director may extend the time period under paragraph (a) for a single additional 15 day period only if the Director requests additional information from the enterprise.

\"(c) FAILURE TO RESPOND.—If the Director fails to approve the request or fails to submit a report under paragraph (2)(A)(ii) during the period provided, the request shall be considered to have been approved by the Director.

\"(d) REVIEW OF DISAPPROVAL.—

\"(A) SUBMISSION OF NEW INFORMATION.—If the Director denies the request for reasons stated in paragraph (2)(A)(ii), the Director may submit a request for new information.

\"(B) DUTIES AND AUTHORITY OF DIRECTOR AND HUD.\"—

\"(A) DUTY TO REPORT.\"—The Director shall report to the Secretary of the Treasury, as the Director determines appropriate, the status of the request under paragraphs (1) and (2) of section 1311C.

\"(B) AUTHORITY EXCLUSIVE OF SECRETARY.\"—Except as specifically provided under this Act, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any other provision of Federal law, the authority of the Director to determine that the enterprises shall not be subject to the review, approval, or intervention of the Secretary of the Treasury.

\"(c) DELEGATION OF AUTHORITY.\"—The Director may delegate to the enterprises any of the functions, powers, and duties of the Director, with respect to supervision and regulation of the enterprises, as the Director considers appropriate.

\"(d) PRIOR APPROVAL AUTHORITY FOR NEW PROGRAMS.\"—(1) The Director shall require each enterprise to submit to the Director, at least 45 days prior to the date on which the Director determines that the program is not authorized under section 304 or paragraph (2), (3), (4), or (5) of section 302(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)).

\"(2) In the case of a new program of the Federal Home Loan Mortgage Corporation, the Director determines that the program is not authorized under paragraph (1), (4), or (5) of section 302(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), or

\"(3) The Director determines that the new program is not in the public interest.

\"(b) PROCEDURE FOR PRIOR APPROVAL.\"—(1) SUBMISSION OF REQUEST.—An enterprise shall submit to the Director a written request for approval of a new program under subsection (a). The request shall describe the program in such form as prescribed by order or regulation of the Director.

\"(2) RESPONSE.\"—The Director—

\"(a) IN GENERAL.—Not later than 45 days after the date of submission of a request for approval under paragraph (1), the Director shall—

\"(ii) deny the request and submit a report explaining the reasons for the denial to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate.

\"(b) EXTENSION.—The Director may extend the time period under paragraph (a) for a single additional 15 day period only if the Director requests additional information from the enterprise.

\"(c) FAILURE TO RESPOND.—If the Director fails to approve the request or fails to submit a report under paragraph (2)(A)(ii) during the period provided, the request shall be considered to have been approved by the Director.

\"(d) REVIEW OF DISAPPROVAL.—

\"(A) SUBMISSION OF NEW INFORMATION.—If the Director denies the request for reasons stated in paragraph (2)(A)(ii), the Director may submit a request for new information.
(b), the Director shall allow the enterprise to submit new information in support of the request for approval.

"(B) NEW PROGRAMS NOT IN THE PUBLIC INTEREST.—The Director shall, in any such regulation, define the term ‘public interest’ as that term is defined in the Federal Financial Institutions Examination Council Regulation under paragraph (2)(A)(ii) denying a request after finding that the program is not in the public interest under subsection (b)(3), the Director shall submit a report with respect to the exercise of the authority granted by paragraph (2) during such fiscal years to the—

(i) Committee on Government Reform and the Committee on Financial Services of the House of Representatives; and

(ii) Committees on Governmental Affairs and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) CONTENTS.—The reports submitted under subparagraph (A) shall describe the changes in the hiring process authorized by paragraph (2), including relevant information related to—

(i) the quality of candidates;

(ii) the procedures used by the Director to select candidates through the streamlined hiring process;

(iii) the numbers, types, and grades of employees hired under the authority;

(iv) any benefits or shortcomings associated with the use of the authority;

(v) the effect of the exercise of the authority on the hiring of veterans and other demographic groups; and

(vi) the way in which managers were trained in the administration of the streamlined hiring system.

SEC. 104. REGULATIONS.

Section 1319H of the Housing and Community Development Act of 1992 (12 U.S.C. 4516) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) AUTHORITY.—The Director shall issue any regulations and orders necessary to carry out the duties of the Director, with respect to supervision and regulation of the enterprises, Special Enforcement Powers, and administrative responsibilities of the Director, with respect to supervision and regulation of the enterprises, that is in the competitive service.

(2) APPOINTMENT AUTHORITY.—

"(A) IN GENERAL.—The Director may appoint candidates to any position described in paragraph (2)...

(i) Compliance with the statutes, rules, and regulations governing appointments in the excepted service; and

(ii) notwithstanding any statutes, rules, and regulations governing appointments in the competitive service.

(B) RULE OF CONSTRUCTION.—The appointment of an individual under this paragraph shall not be considered to cause such position to be converted from the competitive service to the excepted service.

(R) REPORT TO CONGRESS.—The Director shall submit a report with respect to the exercise of the authority granted by paragraph (2) during such fiscal year to the—

(i) Committee on Government Reform and the Committee on Financial Services of the House of Representatives; and

(ii) Committees on Governmental Affairs and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) CONTENTS.—The reports submitted under subparagraph (A) shall describe the changes in the hiring process authorized by paragraph (2), including relevant information related to—

(i) the quality of candidates;

(ii) the procedures used by the Director to select candidates through the streamlined hiring process;

(iii) the numbers, types, and grades of employees hired under the authority;

(iv) any benefits or shortcomings associated with the use of the authority;

(v) the effect of the exercise of the authority on the hiring of veterans and other demographic groups; and

(vi) the way in which managers were trained in the administration of the streamlined hiring system.

SEC. 105. ASSESSMENTS.

Section 1319 of the Housing and Community Development Act of 1992 (12 U.S.C. 4536) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) ASSESSMENTS.—The Director shall, in any such regulation, determine the type and amount of all reasonable costs and expenses of the Director, with respect to supervision and regulation of the enterprises, Special Enforcement Powers, and administrative responsibilities of the Director, with respect to supervision and regulation of the enterprises, that is in the competitive service.

(2) EXPENSES OF OBTAINING ANY REVIEWS AND CREDITS ASSESSMENTS UNDER SUBSECTION (C) AND REGULATIONS GOVERNING APPOINTMENTS IN THE EXCEPTED SERVICE.

(A) IN GENERAL.—The Director may order an enterprise to pay pursuant to subsection (b) by an enterprise, as necessary in the discretion of the Director, to ensure that the costs of enforcement activities under subtitles B and C for an enterprise are borne only by that enterprise.

(B) RULE OF CONSTRUCTION.—The appointment of an individual under this paragraph shall not be considered to cause such position to be converted from the competitive service to the excepted service.

(C) REPORT TO CONGRESS.—The Director shall submit a report with respect to the exercise of the authority granted by paragraph (2) during such fiscal years to the—

(i) Committee on Government Reform and the Committee on Financial Services of the House of Representatives; and

(ii) Committees on Governmental Affairs and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) CONTENTS.—The reports submitted under subparagraph (A) shall describe the changes in the hiring process authorized by paragraph (2), including relevant information related to—

(i) the quality of candidates;

(ii) the procedures used by the Director to select candidates through the streamlined hiring process;

(iii) the numbers, types, and grades of employees hired under the authority;

(iv) any benefits or shortcomings associated with the use of the authority;

(v) the effect of the exercise of the authority on the hiring of veterans and other demographic groups; and

(vi) the way in which managers were trained in the administration of the streamlined hiring system.

SEC. 106. INDEPENDENCE OF DIRECTOR IN CONGRESSIONAL TESTIMONY AND RECOMMENDATIONS.

Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by inserting "the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury," after "the Federal Housing Finance Board;".

SEC. 107. LIMITATION ON NONMISCONRELATION ASSETS.

Subtitle B of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4536) is amended—

(1) by striking the subtitle designation and heading and inserting the following:

"Subtitle B—Required Capital Levels for Enterprises, Special Enforcement Powers, and Limitation on Nonmission-Related Assets;"

and

(2) by adding at the end the following:

"SEC. 136H. LIMITATION ON NONMISSION-RELATED ASSETS.

"(a) IN GENERAL.—The Director may, by regulation, determine the type and amount of nonmission-related assets that an enterprise may hold at any time. The Director shall, in any such regulation, define the term ‘nonmission-related asset’ for purposes of this section.

(b) RULE OF CONSTRUCTION.—Subsection (a) shall not be construed to authorize an enterprise to engage in any new program related to any nonmission-related asset without obtaining the prior approval of the Director in accordance with section 1338.

SEC. 108. REPORTS.

Sections 1327 and 1328 of the Housing and Community Development Act of 1992 (12 U.S.C. 4547, 4548) are amended by striking "Secretary" each place it appears and inserting "Director".

SEC. 109. RISK-BASED CAPITAL TEST FOR ENTERPRISES.

Section 1301 of the Housing and Community Development Act of 1992 (12 U.S.C. 4611) is amended—

"(a) IN GENERAL.—The Director may, by regulation, determine the type and amount of nonmission-related assets that an enterprise may hold at any time. The Director shall, in any such regulation, define the term ‘nonmission-related asset’ for purposes of this section.

(b) RULE OF CONSTRUCTION.—Subsection (a) shall not be construed to authorize an enterprise to engage in any new program related to any nonmission-related asset without obtaining the prior approval of the Director in accordance with section 1338.

SEC. 108. REPORTS.

Sections 1327 and 1328 of the Housing and Community Development Act of 1992 (12 U.S.C. 4547, 4548) are amended by striking "Secretary" each place it appears and inserting "Director".
(1) in subsection (a)(2)(A), by inserting "or change in such other manner as the Director considers appropriate," after "subparagraph (C);"

(2) in subsection (b)(1), by adding at the end the following: "Notwithstanding subsection (a), the Director may, in the sole discretion of the Director, make any assumptions regarding interest rates, home prices, and new business. Such assessment shall ensure that enterprise risk-based capital standards are, to the extent feasible, comparable to those imposed by the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) for comparable risk. The risk-based assessment relating to new business under this paragraph shall ensure that the enterprise is able to remain a viable enterprise in full compliance with all applicable risk-based capital and minimum capital standards, and that it can fulfill its role of ensuring an appropriate secondary market liquidity throughout the stress test."; and

(3) in subsection (c)(2), by inserting "or such other percentage as the Director considers appropriate" before the period at the end.

SEC. 110. MINIMUM AND CRITICAL CAPITAL LEVELS.

(a) Minimum Capital Level.—Section 1362 of the Housing and Community Development Act of 1992 (12 U.S.C. 4612) is amended—

(1) by striking paragraph (b);

(2) by striking "(a) IN GENERAL.—"; and

(3) in the matter preceding paragraph (1), by inserting before "the sum of" the following: "the amount established by the Director, by regulation or order, as such amount may be adjusted from time-to-time by the Director to achieve the purposes of this title, that is not less than".

(b) Critical Capital Level.—Section 1363 of the Housing and Community Development Act of 1992 (12 U.S.C. 4613) is amended, in the matter preceding paragraph (1), by inserting before "the sum" of the following: "the amount established by the Director, by regulation or order, as such amount may be adjusted from time-to-time by the Director to achieve the purposes of this title, that is not less than"

SEC. 111. DEFINITIONS.

Section 1363 of the Housing and Community Development Act of 1992 (12 U.S.C. 4613) is amended—

(1) paragraph (5), by striking "Federal Housing Enterprise Oversight of the Department of Housing and Urban Development" and inserting "Federal Enterprise Supervision of the Department of the Treasury";

(2) in paragraphs (8), (9), (10), and (19), by inserting "of Housing and Urban Development" after "Secretary" each place such term appears;

(3) in paragraph (14), by striking "Federal Housing Enterprise Oversight of the Department of Housing and Urban Development" and inserting "Federal Enterprise Supervision of the Department of the Treasury";

(4) by striking paragraph (15);

(5) by redesigning paragraphs (7) through (15) (as amended by the preceding provisions of this Act) as paragraphs (8) through (15), respectively; and

(6) by inserting after paragraph (6) the following:

"(7) ENTERPRISE-AFFILIATED PARTY.—The term "enterprise-affiliated party" means—

(A) any director, officer, employee, or contractor, or any stockholder of, or agent for, an enterprise;

(B) any shareholder, consultant, joint venture partner, and any other person as determined by the Director (by regulation or case-by-case) who participates in the conduct of the affairs of an enterprise; and

(C) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(i) any violation of any law or regulation; or

(ii) any fiduciary duty; or

(iii) any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the enterprise."

Subtitle B—Prompt Corrective Action

SEC. 131. CAPITAL CLASSIFICATIONS.

Section 1364 of the Housing and Community Development Act of 1992 (12 U.S.C. 4614) is amended—

(1) by striking subsection (b) and inserting the following:

"(b) DISCRETIONARY CLASSIFICATION.

(1) GROUNDS FOR RECLASSIFICATION.—The Director may reclassify an enterprise under paragraph (2) if—

(A) at any time, the Director determines in writing that an enterprise is engaging in conduct that could result in a rapid depletion of core capital or that the value of the property subject to mortgages held or secured by the enterprise has decreased significantly;

(B) after notice and an opportunity for hearing, the Director determines that an enterprise is in an unsafe or unsound condition; or

(C) pursuant to section 1371(b), the Director deems an enterprise to be engaging in an unsafe or unsound practice.

(2) RECLASSIFICATION.—In addition to any other action authorized under this title, including the reclassification of an enterprise for any reason specified in this subsection, if the Director takes any action described in paragraph (1), the Director may classify an enterprise—

(A) as undercapitalized, if the enterprise is otherwise classified as undercapitalized;

(B) as significantly undercapitalized, if the enterprise is otherwise classified as significantly undercapitalized; or

(C) as critically undercapitalized, if the enterprise is otherwise classified as critically undercapitalized.

(2) EXCEPTION.

(1) in subsection (a)

(2) in subsection (b)

(3) in subsection (c) as paragraphs (6) and (7), respectively; and

(4) by inserting after paragraph (6) the following:

"(7) ENTERPRISE-AFFILIATED PARTY.—The term "enterprise-affiliated party" means—

(A) any director, officer, employee, or contractor, or any stockholder of, or agent for, an enterprise;

(B) any shareholder, consultant, joint venture partner, and any other person as determined by the Director (by regulation or case-by-case) who participates in the conduct of the affairs of an enterprise; and

(C) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(i) any violation of any law or regulation; or

(ii) any fiduciary duty; or

(iii) any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the enterprise."

(2) in subsection (b)

(3) in subsection (c) as paragraphs (6) and (7), respectively; and

(4) by inserting after paragraph (6) the following:

"(7) ENTERPRISE-AFFILIATED PARTY.—The term "enterprise-affiliated party" means—

(A) any director, officer, employee, or contractor, or any stockholder of, or agent for, an enterprise;

(B) any shareholder, consultant, joint venture partner, and any other person as determined by the Director (by regulation or case-by-case) who participates in the conduct of the affairs of an enterprise; and

(C) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(i) any violation of any law or regulation; or

(ii) any fiduciary duty; or

(iii) any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the enterprise."

(2) in subsection (b)

(3) in subsection (c) as paragraphs (6) and (7), respectively; and

(4) by inserting after paragraph (6) the following:

"(7) ENTERPRISE-AFFILIATED PARTY.—The term "enterprise-affiliated party" means—

(A) any director, officer, employee, or contractor, or any stockholder of, or agent for, an enterprise;

(B) any shareholder, consultant, joint venture partner, and any other person as determined by the Director (by regulation or case-by-case) who participates in the conduct of the affairs of an enterprise; and

(C) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(i) any violation of any law or regulation; or

(ii) any fiduciary duty; or

(iii) any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the enterprise."

(2) in subsection (b)

(3) in subsection (c) as paragraphs (6) and (7), respectively; and

(4) by inserting after paragraph (6) the following:

"(7) ENTERPRISE-AFFILIATED PARTY.—The term "enterprise-affiliated party" means—

(A) any director, officer, employee, or contractor, or any stockholder of, or agent for, an enterprise;

(B) any shareholder, consultant, joint venture partner, and any other person as determined by the Director (by regulation or case-by-case) who participates in the conduct of the affairs of an enterprise; and

(C) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(i) any violation of any law or regulation; or

(ii) any fiduciary duty; or

(iii) any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the enterprise."

(2) in subsection (b)

(3) in subsection (c) as paragraphs (6) and (7), respectively; and

(4) by inserting after paragraph (6) the following:

"(7) ENTERPRISE-AFFILIATED PARTY.—The term "enterprise-affiliated party" means—

(A) any director, officer, employee, or contractor, or any stockholder of, or agent for, an enterprise;

(B) any shareholder, consultant, joint venture partner, and any other person as determined by the Director (by regulation or case-by-case) who participates in the conduct of the affairs of an enterprise; and

(C) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(i) any violation of any law or regulation; or

(ii) any fiduciary duty; or

(iii) any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the enterprise."
immediately before the enterprise became undercapitalized. Dismissal under this sub-
paragraph shall not be construed to be a re-
moval pursuant to the Director's enforce-
ment authority under section 1372.

2. (C) EMPLOY QUALIFIED EXECUTIVE OFFI-
CERS.—Require the enterprise to employ qualified executive officers (who, if the Di-
rector shall be subject to approval by the Director).; and

2. (E) by inserting at the end the following:

(8) OTHER ACTION.—Require the enterprise to take any other action that the Director determines will better carry out the purpose of this section than any of the actions specified in this paragraph:\n
2. (C) RESTRICTION ON COMPENSATION OF EX-
Ecutive OFFICERS.—An enterprise that is classified as significantly undercapitalized may not, without prior written approval by the Director—

2. (A) pay any bonus to any executive offi-
cer; or

2. (B) provide compensation to any execu-
tive officer in an amount in excess of the officer's average rate of compensation (excluding bo-

2. (B) section 1336 or 1337 of this title;

2. (D) a violation of, or failure to comply with, any law, rule or regulation, or any condition posted in writing by the Director in connection with the granting of any application or other request by the enterprise or any writ-
ten agreement entered into with the Direc-
tor, the Director may issue such order on any enterprise or such party a notice of charges in respect thereof.

2. (C) LIMITATIONS.—The Director may not

2. (A) any housing goal established under

2. (D) subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716m(m), (n)); or

2. (E) by striking section 307 of the Federal Home Loan Mortgage Corpora-
tion Act (12 U.S.C. 1465e), (f)).

2. (B) ISSUANCE FOR UNSATISFACTORY RAT-
ing.—If an enterprise receives, in its most re-
cent report of examination, a less-than-satis-
factory rating for asset quality, manage-
ment, earnings, or liquidity, the Director may (i) by a written notice of the Director to such party under subsection (a) with respect to such party; or

2. (B) authority to issue order.

2. (A) any enterprise-affiliated party has, di-
rectly or indirectly—

2. (A) (ii) any cease-and-desist order which has become final shall remain in effect and enforceable until

2. (E) enforcement.—In the case of viola-
tion or threatened violation of, or failure to obey, a temporary cease-and-desist order issued under this section, the Director may apply to the United States District Court for the District of Columbia or the United States district court within the jurisdiction—

2. (E) of the Director to such party under sub-
section (a) to any enterprise-affiliated party, the Director shall serve a copy of such order on any enter-
prise with which such party is affiliated at the time such order is issued.

2. (C) NOTICE, HEARING, AND ORDER.—A no-
tice of intention to remove an enterprise-affiliated party from office or from any enterprise or any enterprise-affiliated party under subsection (a) shall remain in effect and enforceable unless an earlier or a later date is set by the Director at the request of (1) such party, and for good cause shown, or (2) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Director shall find that any of the grounds specified in this section have been established, the Director may issue such or-
ders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the enterprise, as it may deem appropriate. Any such order shall become effective at the expiration of 30 days after service upon such enterprise and such party, unless in the discretion of the Director, issued upon consent, which shall become effective at the time specified therein. Such order shall remain effective and enforceable except that, if not acted on as set forth above and not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Director; or

2. (A) (A) (i) the date the Director dismisses the

2. (C) RESTRICTION ON COMPENSATION OF EX-
Ecutive OFFICERS.—An enterprise that is clas-
sified as significantly undercapitalized may not, without prior written approval by the Director—

2. (A) pay any bonus to any executive offi-
cer; or

2. (B) provide compensation to any execu-
tive officer in an amount in excess of the officer's average rate of compensation (excluding bo-

2. (B) an enterprise-affiliated party is about to violate, a

2. (A) (i) the Director has reasonable cause to believe that the enterprise or any enter-
prise-affiliated party is about to violate, a

2. (A) any enterprise-affiliated party; or

2. (A) (i) the Director has reasonable cause to believe that the enterprise or any enter-
prise-affiliated party is about to violate, a

2. (A) any enterprise-affiliated party; or

2. (A) (i) the Director has reasonable cause to believe that the enterprise or any enter-
prise-affiliated party is about to violate, a

2. (A) (i) the Director has reasonable cause to believe that the enterprise or any enter-
prise-affiliated party is about to violate, a

2. (A) (i) the Director has reasonable cause to believe that the enterprise or any enter-
prise-affiliated party is about to violate, a

2. (A) (i) the Director has reasonable cause to believe that the enterprise or any enter-
prise-affiliated party is about to violate, a
(d) Prohibition of Certain Specific Activities.—Any person subject to an order issued under this section shall not—

(1) participate in any manner in the conduct of the affairs of any enterprise; 

(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights with respect to any enterprise; 

(3) violate any voting agreement previously approved by the Director; or 

(4) act as a director, or serve or act as an enterprise-affiliated party.

(e) Industry-Wide Prohibition.—

(1) In general.—Except as provided in subparagraph (2), any violation of a written consent pursuant to an order issued under subsection (h), has been removed or suspended from office in an enterprise or prohibited from participating in the conduct of the affairs of an enterprise or prohibited from voting rights in any enterprise; 

(b) Stay of Suspension and Prohibition of Enterprise-Affiliated Party.—Within 10 days after the date of service of such order or of an order issued with the consent of the enterprise or the enterprise-affiliated party concerned, or an order issued pursuant to subsection (h) of this section, a copy of any notice under paragraph (1) (other than an order issued with the consent of the enterprise or the enterprise-affiliated party concerned, or an order issued pursuant to subsection (h) of this section) be served upon the party to the proceeding an order or orders shall be served upon the party to the proceeding an order or orders consistent with the provisions of this section that the case has been submitted to the court for final decision, the court shall render its decision (which shall include finding that the judgment is final and unreviewed) and shall issue and serve upon each party to the proceeding an order or orders prohibiting such party from further participation in any manner in the conduct of the affairs of the enterprise or voting rights in any enterprise; 

(c) Review of Order.—Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) other than an order issued with the consent of the enterprise or the enterprise-affiliated party concerned, or an order issued pursuant to subsection (h) of this section) be filed in the United States Court of Appeals for the District of Columbia Circuit or court of appeals of the United States for the circuit in which the headquarters of the enterprise described in the written consent (other than an order issued with the consent of the enterprise or the enterprise-affiliated party concerned, or an order issued pursuant to subsection (h) of this section shall be held in the District of Columbia or in the Federal judicial district in which the headquarters of the enterprise is located, unless the party forefeited the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 12 of title 28, United States Code. After such hearing, and within 90 days after the Director has notified the parties that the case has been submitted to the court for final decision, the court shall issue an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. 

(1) In general.—If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of an enterprise less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors.

(ii) Effective Period.—Any notice of suspension or order of removal issued under this subsection shall remain effective and continuing until the completion of any hearing or appeal authorized under paragraph (4) unless terminated by the Director.

(3) Authority of Remaining Board Members.—

(i) In general.—If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of an enterprise less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors.

(iii) Effect of Determined.—If, on or after the date an order is issued under this section which removes or suspends from office any enterprise-affiliated party or prohibits such party from participating in the conduct of the affairs of an enterprise; 

(4) Hearing Regarding Continuous Participation.—If, on or after the date an order is issued under this section which removes or suspends from office any enterprise-affiliated party or prohibits such party from participating in the conduct of the affairs of an enterprise; 

(i) In general.—If a judgment of conviction or acquittal shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors.

(ii) Effect of Determined.—If, on or after the date an order is issued under this section which removes or suspends from office any enterprise-affiliated party or prohibits such party from participating in the conduct of the affairs of an enterprise;
U.S.C. 4517(f)) is amended by striking "section 1379B" and inserting "section 1379D".

(2) FANNIE MAE CHARTER ACT.—The second sentence of subsection (b) of section 308 of the Federal Home Loan Mortgage Association Charter Act (12 U.S.C. 1722(b)) is amended by striking "The" and inserting "Except to the extent that action under section 1377 of the Housing and Community Development Act of 1992 temporarily results in a lesser number, the".

(3) FREDDIE MAC ACT.—The second sentence of subparagraph (A) of section 303(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)(A)) is amended by striking "The" and inserting "Except to the extent action under section 1377 of the Housing and Community Development Act of 1992 temporarily results in a lesser number, the".

SEC. 151. ENFORCEMENT AND JURISDICTION.

Section 1375 of the Housing and Community Development Act of 1992 (12 U.S.C. 4636) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) ENFORCEMENT.—The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarter of an enterprise is located for the enforcement of any effective and outstanding notice or order issued under this title, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order;" and

(2) by striking "or" and inserting "and" and inserting "1376, or 1377.

SEC. 155. CIVIL MONEY PENALTIES.

Section 1376 of the Housing and Community Development Act of 1992 (12 U.S.C. 4636) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by striking "or any executive officer of an enterprise, any enterprise-affiliated party, or any"; and

(2) by striking subsection (b) and inserting the following:

"(b) AMOUNT OF PENALTY.—

(1) FIRST TIER.—Any enterprise which, or any enterprise-affiliated party which, violates any provision of this title, shall, in the discretion of the Director, pay a fine not to exceed $10,000,000.

(A) violates any provision of this title, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), or any order, condition, rule, or regulation under any such title or Act, except that the Director may not enforce the provisions of a mortgage loan regulation established under part B of part 2 of subtitle A of this title, with section 1336 of 1377 of this title, with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(m), (n)), or with subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f));

(B) violates any final or temporary order or notice issued pursuant to this title;

(C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such enterprise;

(D) violates any written agreement between the enterprise and the Director; or

(E) engages in any conduct the Director determines to be an unsafe or unsound practice, shall forfeit and pay a civil penalty of not more than $10,000 for each day during which such violation continues.

(2) SECOND TIER.—Notwithstanding paragraph (1), the fine imposed under paragraph (1) shall be increased by not less than $10 million and an additional amount not to exceed the applicable maximum amount determined under paragraph (1) for each day during which such violation continues.

(3) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN PARAGRAPH (3).

The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is—

(A) in the case of any person other than an enterprise, an amount not to exceed $2,000,000; and

(B) in the case of any enterprise, $2,000,000; and

(3) in subsection (d)—

(A) by striking "or director" each place such term appears and inserting "director, or enterprise-affiliated party"; and

(B) in the case of any enterprise, $2,000,000; and

SEC. 156. CRIMINAL PENALTY.

Subtitle C of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4636 et seq.) is amended by inserting after section 1377 (as added by this Act) the following:

"SEC. 1378. CRIMINAL PENALTY.

"Whoever, being subject to an order in effect under section 1377, without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any enterprise required to comply with such an order, shall, notwithstanding section 3711 of title 18, be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.".

Subtitle D—Reports to Congress

SEC. 161. STUDIES AND REPORTS.

(a) INSURED DEPOSITORY INSTITUTION HOLDINGS OF ENTERPRISE DEBT AND MORTGAGE-BACKED SECURITIES.—Not later than 180 days after the date of enactment of this Act, the Enterprise Regulatory Reform Act of 2003, the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board shall jointly submit a report to Congress regarding—

(1) the extent to which obligations issued or guaranteed by the enterprises (including mortgage-backed securities) are held by federal insured depository institutions, including such extent by type of institution and such extent relative to the capital of the institution;

(2) the extent to which the unlimited holdings by federally insured depository institutions of the obligations of the enterprises could produce systemic risk issues, particularly for the stability of the banking system in the United States, in the event of default or failure by an enterprise; and

(3) the effects on the enterprises, the banking industry, and mortgage markets, if prudent limits on the holdings of enterprise obligations were placed on federally insured depository institutions.

(b) PORTFOLIO OPERATIONS, RISK MANAGEMENT, AND MISSION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Enterprise Regulatory Reform Act of 2003, the Director shall submit a report to Congress, describing the holding of the enterprises in retained mortgages and repurchased mortgage-backed securities and the use of derivatives for hedging purposes;

(2) containing an assessment of whether such holdings relate to other assets and the risk implications of such holdings; and

(3) containing an analysis of such holdings for safety and soundness or mission compliance purposes.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to Congress on the results of the study conducted under paragraph (1).

(c) STUDY OF MERGER OF FHFB WITH OFES.—

(1) IN GENERAL.—The Secretary of the Treasury, after consultation with the Secretary of Housing and Urban Development and the Board of Governors of the Federal Reserve System, shall study the feasibility and advisability of merging the Federal Housing Finance Board and the Office of Federal Enterprise Supervision of the Department of the Treasury.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to Congress on the results of the study conducted under paragraph (1).

(d) STUDY OF CONSOLIDATION OF OTS WITH FEES.—

(1) STUDY.—The Secretary of the Treasury shall study the feasibility and efficacy of consolidating the Office of Thrift Supervision with the Office of Federal Enterprise Supervision of the Department of the Treasury.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to Congress on the results of the study conducted under paragraph (1).

(e) ADDITIONAL STUDIES.—Each report submitted pursuant to this section shall include specific recommendations of appropriate
policies, limitations, regulations, legisla-
tion, or other actions to deal appropriately and
effectively with the issues addressed by
such report.

(3) DEFINITIONS.—As used in this section, the
terms ‘Director’ and ‘enterprise’ have the
meanings given those terms under section
1316 of the Community Devel-

(c) CLERICAL AMENDMENTS.—Part 3 of sub-
title A of title XIII the Housing and Commu-
nity Development Act of 1992 (106 Stat. 3699) is
amended—

(1) by striking sections 1351, 1352, and 1353 (Public
Law 102-550; 106 Stat. 3699), except that
the provisions of law amended by such
sections repealed shall not be affected by
such repeal;

(2) by striking sections 1354, 1355, and 1366

Subtitle E—General Provisions

SEC. 171. CONFORMING AND TECHNICAL AMEN-
DMENTS.

(a) AMENDMENTS TO 1992 ACT.—Title XIII of the
Housing and Community Development Act
this Act, is further amended—

(1) in section 1315 (12 U.S.C. 4515)—

(A) in subsection (a)—

(i) in the subsection heading, by striking
‘OFFICIAL PERSONNEL’ and inserting ‘IN
GENERAL’; and

(ii) by striking ‘The’ and inserting ‘Sub-
ject to title II of the Federal Enterprise
Reg-
ulations of 2003, the’; and

(B) in subsection (d)—

(i) in the subsection heading, by striking
‘HUD’ and inserting ‘DEPARTMENT OF THE
Treasury’; and

(ii) by striking ‘Housing and Urban Devel-
opment’ and inserting ‘the Department of
the Treasury’;

(2) in section 1319A (12 U.S.C. 4520)—

(A) by striking ‘(a) in GENERAL.—’; and

(B) by striking subsection (b); and

(3) in section 1319F (12 U.S.C. 4525), by striking paragraph (2);

(4) in the section heading for section 1320, by striking ‘SECRETARY’ and inserting ‘DIRECTOR’;

(5) in section 1361 (12 U.S.C. 4611)—

(A) in subsection (e)(1), by striking the first sentence and inserting the following: ‘The Director may abolish the risk-based capital test under this section by regula-
tion.’; and

(B) in subsection (f), by striking ‘the Sec-
retary’ and inserting ‘Secretary’;

(6) in section 1360(c) (12 U.S.C. 4614(c)), by striking the last sentence;

(7) in section 1367(a)(2) (12 U.S.C. 4617a)(2), by striking ‘with the written concurrence of
the Secretary of the Treasury’; and

(8) by striking section 1383.

(b) AMENDMENTS TO 1992 ACT.—Subtitle B (except in section 1361(d)(1) and 1362) of the

(A) section 303(c)(2) (12 U.S.C. 1718b(c)(2));

(B) section 309(d)(3)(B) (12 U.S.C. 1723a(d)(3)(B)); and

(C) section 309(k)(1); and

(2) in section 306(h)(2) (12 U.S.C. 1452(h)(2)), and

(A) in paragraph (1), by inserting ‘the Di-
rector of the Office of Federal Enterprise
Supervision of the Department of the Treas-
ury,’ after ‘Senate’; and

(B) in paragraph (3)(B), by striking ‘Sec-
retary’ and inserting ‘Director of the Office
of Federal Enterprise Supervision of the
Department of the Treasury’;

(c) AMENDMENTS TO FREDDIE MAC ACT.—
The Federal Home Loan Mortgage Corpora-
tion Act (12 U.S.C. 1451 et seq.) is amended
by striking the Office of Federal Housing Enterprise Oversight of the
Department of Housing and Urban Devel-

opment each place such term appears, and
inserting ‘Director of the Office of Federal
Enterprise Supervision of the Department of the Treasury’, in—

(1) section 303(b)(2) (12 U.S.C. 1452(b)(2));

(2) section 309(h)(2) (12 U.S.C. 1452(h)(2));

(3) section 307(c)(1) (12 U.S.C. 1454(c)(1));

(4) in section 309(c)(2) (12 U.S.C. 1452(c)(2)), and

(A) by striking ‘(a)’ and inserting ‘(b)’; and

section 306(c); and

(B) by striking section 106 and inserting
‘section 1316’;

(5) section 307 (12 U.S.C. 1456)—

(A) in subsection (f)—

(i) in paragraph (1), by inserting ‘the Di-
rector of the Office of Federal Enterprise
Supervision of the Department of the Treas-
ury,’ after ‘Senate’; and

(ii) by striking ‘Secretary’ and inserting
‘Director of the Office of Federal Enterprise
Supervision of the Department of the
Treasury’;

(d) AMENDMENT TO TITLE 1A, UNITED STATES
CODE.—Title 1A, United States Code, is amended by striking ‘Office of Fed-
aral Housing Enterprise Oversight’ and insert-
ing ‘Office of Federal Enterprise Super-
vision of the Department of the Treasury’;

(e) AMENDMENTS TO FLOOD DISASTER PRO-
TECTION ACT OF 1973.—Section 102(f)(A)(3) of
the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012(f)(A)(3)) is amended by adding
‘Office of Federal Enterprise Oversight Sup-
ervision of the Department of the Treasury’;

(f) AMENDMENT TO DEPARTMENT OF HOUS-
ING AND URBAN DEVELOPMENT ACT.—Section 5
of the Department of Housing and Urban Devel-
lopment Act (42 U.S.C. 3534) is amended by striking
subsection (d);

(g) AMENDMENT TO TITLE 5, UNITED STATES
CODE.—Section 5315 of title 5, United States
Code, is amended by striking the term re-

taining ‘Office of Federal Housing Enterprise
Oversight of the Department of Housing and Urban Development’ and in-

serting ‘Director of Federal Enterprise
Supervision of the Department of the Treas-
ury’;

(h) AMENDMENT TO TITLE 12, UNITED STATES
CODE.—Title 12, United States Code, is amended by striking the item relat-
ing to the Director of the Federal Home Loan
Mortgage Corporation Oversight Office of
Housing and Urban Development and in-

serting the following new item:

‘Director of the Office of Federal Enter-
prise Oversight, Department of the Treasury.’

SEC. 172. EFFECTIVE DATE.

Except as specifically provided otherwise in this title, the amendments made by this
title shall take effect on, and shall apply be-
inning on, the expiration of the 1-year pe-
riod beginning on the date of enactment of
this Act.

TITLE II—TRANSFER OF FUNCTIONS, PER-
SONNEL, AND PROPERTY

SEC. 201. ABOLITION OF OFFICE.

(a) IN GENERAL.—Effective at the end
of the 1-year period beginning on the date of
enactment of this Act, the Office of Federal Housing Enterprise Oversight of the Depart-
ment of Housing and Urban Development and
the positions of the Director and Deputy Di-
rector of such Office are abolished.

(b) TRANSFER OF FUNCTIONS.—During the 1-
year period beginning on the date of enact-
mation of this Act, the Director of the Office
of Federal Housing Enterprise Oversight shall
be responsible for winding up the affairs of the Office of Federal Housing
Enterprise Oversight—

(1) manage the employees of such Office
and provide for the payment of the com-

pensation and benefits of any such employee
which accrue before the effective date of any
transfer of such employee pursuant to sec-
tion 202 and

(2) may take any other action necessary
for the purpose of winding up the affairs of
the Office.

(c) STATUTORY REQUIREMEN
TS NOT AFFECTED.—Any provision of law applicable with respect to the Office of
Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.), or any other provision
of law with applicable with respect to such Office; and

(d) USE OF PROPERTY AND SERVICES.—Any agency, depart-
ment, or other instrumentality of the United
States, and any successor to any such agen-
cy, department, or instrumentality, which
was providing services to the Office of
Federal Housing Enterprise Oversight before the expiration of the period under sub-
section (a) in connection with functions that
are transferred to the Director of the Office of Federal Enterprise Supervision for
such time as is reasonable to facilitate the
 orderly transfer of functions under any other
 provision of this Act, or any amendment
 made by this Act to any other provision of
law.

(2) AGENCY SERVICES.—Any agency, depart-
ment, or other instrumentality of the United
States, and any successor to any such agen-
cy, department, or instrumentality, which
was providing services to the Office of
Federal Housing Enterprise Oversight before the expiration of the period under sub-
section (a) in connection with functions that
are transferred to the Director of the Office of Federal Enterprise Supervision for
such time as is reasonable to facilitate the
 orderly transfer of functions under any other
 provision of this Act, or any amendment
 made by this Act to any other provision of
law.
purposes of affording affected employees re-
shall be deemed a major reorganization for
work force is required, that reorganization
201(a), that a reorganization of the combined
on the date of the abolishment under section
the Department of the Treasury determines,
(2) the benefits or program is continued by
the Director of the Federal Enterprise
Supervision.
(2) PAYMENT OF DIFFERENTIAL.—The
difference in the costs between the benefits
which would have been provided by such
agency and those provided by this section
shall be paid by the Director of the Office of
Federal Enterprise Supervision. If any em-
ployee elects to give up the benefit or mem-
bership in the program;
and
(b) the benefit or program is continued by
the Director of the Federal Enterprise
Supervision.
S 1509. A bill to amend title 38, United States Code, to provide a gra-
uity to veterans, their spouses, and
children who contract HIV or AIDS as
a result of a blood transfusion relating
according to applicable law by such Board, any court
of competent jurisdiction, or operation of
law.
SEC. 203. TRANSFER AND RIGHTS OF EMPLOYEES
OF OFFICE.
(a) AUTHORITY TO TRANSFER.—The Director
of the Office of Federal Enterprise Sup-
ervision of the Department of the Treasury
may transfer employees of the Office of Fed-
eral Housing Enterprise Oversight to the Of-
fice of Federal Enterprise Supervision for
employment by that Office. The Director
may transfer employees under subsection (a)
of this Act, as the Director considers appropriate.
This Act and the amendments made by this Act
shall not be considered to result in the trans-
fer of any function from one agency to an-
other or the replacement of one agency by
another, for purposes of section 205 of title
5, United States Code, except to the extent
that the Director of the Office of Federal Enter-
presa Supervision specifically provides so.
(b) PROVISION FOR ELIGIBILITY FOR
SERVICE AS SENIOR EXECUTIVE SERVICE
EMPLOY-
EES.—
(1) IN GENERAL.—Subject to paragraph (2), in
the case of employees occupying positions in
the excepted service or the Senior Execu-
tive Service, any appointment authority es-
abled pursuant to law or regulations of the Office of
Personnel Management for filing
such positions shall be transferred.
(2) DECLINE OF TRANSFER.—The Director
of the Office of Federal Enterprise Supervision of the
Department of the Treasury may
cline a transfer of authority under paragraph
(1) and the employees appointed pursuant thereto
to the extent that such authority relates to positions excepted from
the excepted service because of their confidential,
policy-making, policy-determining, or pol-
icy-advocating character, and noncareer pos-
sitions in the Senior Executive Service
(within the meaning of section 3132(a)(7) of title 5, United States Code).
(c) REORGANIZATION.—If the Director of the Office of Federal Enterprise Supervision of the Department of the Treasury determines, after the end of the 1-year period beginning on the date provided by subsection (a), that a reorganization of the combined work force is required, that reorganization shall be deemed a major reorganization for purposes of the Findings and Purpose:
(2) the abolishment under section 8336(d)(2) or
8141(b)(1)(B) of title 5, United States Code.
"(C) In the case of an individual not described by paragraph (1) or (2), to the parents of the individual living at the time of payment in equal shares.

(2) If an individual described in paragraph (2) or (3) of subsection (b) who is entitled to a gratuity under subsection (a) is also entitled to payment under paragraph (1) with respect to that individual, such payment shall be payable to the individual who was lawfully married to such individual at the time of death.

(b) The term 'child' includes a recognized natural child of a parent who lives with such individual in a parent-child relationship, and an adopted child.

(C) The term 'parent' includes fathers and mothers.

(f) APPLICATION.—(1) A person seeking payment of a gratuity under subsection (a) shall submit to the Secretary an application therefor in such form and containing such information as the Secretary shall require.

(2) If an individual described in subsection (b) dies before submitting an application for a gratuity under subsection (a), such individual’s surviving spouse, or any other individual entitled to payment under subsection (e) with respect to such deceased individual may submit an application for such payment.

(g) TREATMENT OF GRATUITY FOR INSURANCE PURPOSES.—(1) A payment under this section shall not be considered by the Secretary to be a form of compensation or reimbursement for loss or loss of income or loss of receipt of income or return of premiums under the terms of any insurance policy or contract of insurance.

(2) A payment under this section shall not affect any claim against an insurance carrier with respect to insurance or against any person with respect to worker’s compensation.

(h) DEFINITIONS.—In this section:

(1) The term 'AIDS' means acquired immune deficiency syndrome.

(2) The term 'HIV' means human immunodeficiency virus.

(3) In this subsection:

(A) The term 's' means human immunodeficiency virus.

(B) The term 'Marital Partner' means one who is lawfully married to the beneficiary or who was lawfully married to the beneficiary at the time of death.

(C) The term 'Family Member' means among others, the parent of the beneficiary.

(D) The term 'Beneficiary' means the individual described in paragraph (1) or (2), to the parents of the individual.

(E) The term 'Spouse' means a current or former spouse of the beneficiary.

(F) The term 'Sibs' means the siblings of the beneficiary.

(G) The term 'Permanent Partner' means a permanent relationship with another individual.

(H) The term 'Marriage' means a marriage to another individual.

(I) The term 'Partial Parent' means a parent of the beneficiary.

(J) The term 'Parent' means a parent of the beneficiary.

(K) The term 'Permanent Partner' means a permanent relationship with another individual.

(L) The term 'Marriage' means a marriage to another individual.

(M) The term 'Partial Parent' means a parent of the beneficiary.

(N) The term 'Parent' means a parent of the beneficiary.

(2) The term 'Marital Partner' means one who is lawfully married to the beneficiary or who was lawfully married to the beneficiary at the time of death.

(3) In this subsection:

(A) The term 's' means human immunodeficiency virus.

(B) The term 'Marital Partner' means one who is lawfully married to the beneficiary or who was lawfully married to the beneficiary at the time of death.

(C) The term 'Family Member' means among others, the parent of the beneficiary.

(D) The term 'Beneficiary' means the individual described in paragraph (1) or (2), to the parents of the individual.

(E) The term 'Spouse' means a current or former spouse of the beneficiary.

(F) The term 'Sibs' means the siblings of the beneficiary.

(G) The term 'Permanent Partner' means a permanent relationship with another individual.

(H) The term 'Marriage' means a marriage to another individual.

(I) The term 'Partial Parent' means a parent of the beneficiary.

(J) The term 'Parent' means a parent of the beneficiary.

(K) The term 'Permanent Partner' means a permanent relationship with another individual.

(L) The term 'Marriage' means a marriage to another individual.

(M) The term 'Partial Parent' means a parent of the beneficiary.

(N) The term 'Parent' means a parent of the beneficiary.
amended by inserting "permanent partner," after "spouse.");
(d) TREATMENT OF FAMILY MEMBERS.—Section 203(d) (8 U.S.C. 1153(d)) is amended by inserting, by inserting "permanent partner," after "spouse" each place such term appears.

 sec. 6. PROCEDURE FOR GRANTING IMMIGRANT STATUS.

(a) CLASSIFICATION Petitions.—Section 204(a)(1) (8 U.S.C. 1154(a)(1)) is amended—
(1) in subparagraph (A)(i), by inserting "or permanent partner" after "spouse";
(2) in subparagraph (A)(ii), by inserting "permanent partner" after "spouse";
(3) in subparagraph (A)(iii), (A) by inserting "or permanent partner" after "spouse" each place such term appears; and
(B) by inserting "or permanent partner" after "spouse" each place such term appears.

(b) IMMIGRATION FRAUD PREVENTION.—Section 204(c) (8 U.S.C. 1154(c)) is amended—
(1) by inserting "or permanent partner" after "spouse" each place such term appears; and
(2) by inserting "or permanent partner" after "marriage" each place such term appears.

sec. 7. ANNUAL ADMISSION OF REFUGEES AND ADMISSION OF EMERGENCY SITUATION REFUGEES.

Section 207(c) (8 U.S.C. 1157(c)) is amended—
(1) in paragraph (2)—
(A) by inserting "permanent partner," after "spouse" each place such term appears; and
(B) by inserting "permanent partner," after "spouse" each place such term appears.

SEC. 8. ASYLUM.

Section 208(b)(3) (8 U.S.C. 1158(b)(3)) is amended by inserting "permanent partner," after "spouse."
"(I) PERMANENT PARTNERSHIP FRAUD.—An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 212(a)(1) of the Act) if the alien obtained a visa or other documentation procured on the basis of a permanent partnership entered into less than 2 years prior to such admission and which, in the alien’s knowledge, was terminated because the criteria for permanent partnership are no longer fulfilled, unless the alien establishes to the satisfaction of the Secretary of Homeland Security that such permanent partnership was not contracted for the purpose of evading any provisions of the immigration laws; or

(ii) it appears to the satisfaction of the Secretary of Homeland Security that the alien has failed or refused to fulfill the alien’s permanent partnership which in the opinion of the Secretary of Homeland Security was made for the purpose of procuring the alien’s admission as an immigrant;"

(2) in paragraph (2)(E)(ii), by inserting “or permanent partner” after “spouse” each place such term appears; and

(3) in paragraph (3)(C)(ii), by inserting “or permanent partner” after “spouse” each place such term appears.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 237(a) (8 U.S.C. 1227(a)) is amended by inserting “Secretary General” wherever it appears.

(c) ADMISSION FOR PERMANENT RESIDENCE.—Section 245(d) (8 U.S.C. 1255(d)) is amended by inserting “Secretary General” each place that term appears and inserting “Secretary of Homeland Security”.

SEC. 15. REMOVAL PROCEEDINGS.

Section 240A(e)(1) (8 U.S.C. 1229a(e)(1)) is amended by inserting “permanent partner” after “spouse”.

SEC. 16. CANCELLATION OF REMOVAL; ADJUSTMENT OF STATUS.

Section 240A(b) (8 U.S.C. 1229b(b)) is amended—

(1) in paragraph (1)(D), by inserting “permanent partner” after “spouse”; and

(2) in paragraph (2)—

(A) in the heading, by inserting “permanent partner” after “spouse”; and

(B) in subparagraph (A), by inserting “permanent partner” after “spouse” each place such term appears.

SEC. 17. ADJUSTMENT OF STATUS OF NON-IMMIGRANTS ADMITTED FOR PERMANENT RESIDENCE.

(a) PROHIBITION ON ADJUSTMENT OF STATUS.—Section 245(d) (8 U.S.C. 1255(d)) is amended by inserting “permanent partner” after “marriage”.

(b) AVOIDING IMMIGRATION FRAUD.—Section 245(e) (8 U.S.C. 1255(e)) is amended—

(1) in paragraph (1), by inserting “permanent partner” after “marriage”; and

(2) by adding at the end the following:

“(4) Paragraph (1) and section 264(g) shall not apply with respect to a permanent partnership established by clear and convincing evidence to the satisfaction of the Secretary of Homeland Security that the permanent partnership was entered into in good faith in accordance with section 101(a)(31) and the permanent partnership was not entered into for the purpose of procuring the alien’s admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 213(a) or 245(d) with respect to the alien permanent partner. In accordance with regulations, there shall be only one level of administrative appellate review for each previous sentence.

(c) ADJUSTMENT OF STATUS FOR CERTAIN ALIENS PAYING FEE.—Section 245(i)(1)(B) (8 U.S.C. 1255(i)(1)(B)) is amended by inserting “permanent partner” after “spouse”.

(d) INFORMANTS.—Section 245(i) (8 U.S.C. 1255(i)) is amended by inserting “permanent partner” after “spouse”, each place such term appears.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—Section 245(i) is amended by striking “Attorney General” each place that term appears and inserting “Secretary of Homeland Security”.

SEC. 18. MISREPRESENTATION AND CONCEALMENT OF FACTS.

Section 277a (8 U.S.C. 1327(a)) is amended by inserting “or permanent partnership” after “marriage”.

SEC. 19. REQUIREMENTS AS TO RESIDENCE, GOOD MORAL CHARACTER, ATTACHMENT TO THE PRINCIPLES OF THE CONSTITUTION.

Section 316(b) (8 U.S.C. 1427(b)) is amended, in the matter following paragraph (2), by inserting “or permanent partner” after “spouse”.

SEC. 20. FORMER CITIZENS OF UNITED STATES REGAINING UNITED STATES CITIZENSHIP.

Section 324(a) (8 U.S.C. 1430(a)) is amended, in the matter following “after September 22, 1922”, by inserting “or permanent partnership” after “marriage” each place such term appears.

SEC. 21. APPLICATION OF FAMILY UNIFICATION PROVISIONS TO PERMANENT PARTNERS OF IMMIGRANT LIFE ACT BENEFICIARIES.

Section 1504 of division B of the Miscellaneous Appropriations Act, 2001, as enacted by section 1(a) of (4) of Public Law 106-55, is amended—

(1) in the section heading, by inserting “PERMANENT PARTNERS” after “SPOUSES”;

(2) in subsection (a), by inserting “ permanent partner” after “spouse”; and

(3) in each of subsections (b) and (c)—

(A) in the subsection headings, by inserting “PERMANENT PARTNERS” after “SPOUSES”; and

(B) by inserting “permanent partner” after “spouse” each place such term appears.

Mr. KENNEDY. Mr. President, it is a privilege to join Senator LEAHY in the introduction of the Permanent Partners Immigration Act, to address the injustice in our immigration law on gay and lesbian couples.

The reunification of families is one of the cornerstones of our immigration policy. The American Dream is about opportunity and it is about family life as well. When one member of a family comes to the United States alone, we try to make it possible for their spouse, children, and siblings to join them in the future.

Every year, our immigration policy reunites hundreds of thousands of families. In 2002, almost 400,000 immigrants came to the United States to join spouses who are citizens or permanent residents. Thousands more siblings and children joined mothers, fathers, brothers and sisters.

Shameful though, our current law left thousands of other families permanently divided. Because of their sexual orientation, lesbian and gay couples are kept apart, or forced to stay together illegally, with one partner in constant fear of deportation. They are denied the half of the American Dream that we offer to other citizens and immigrants.

Our bill will remedy this injustice. It gives the same-sex permanent partners of citizens and permanent residents the opportunity to join their loved ones in our country. They must meet strict standards of eligibility, like those applicable to spouses. To gain entrance, they must prove that they are financially interdependent with their partners in the United States and that they are in a lifelong relationship.

Many of our major competitors and trading partners already grant immigration benefits to same-sex couples. Now, by bringing family reunification to all of our citizens and residents, our bill recognizes the common humanity of gay and lesbian Americans. It is time for Congress to act on this issue, and I urge my colleagues to support this important step in making our immigration laws fairer.

By Mr. KYL (for himself and Mr. MCCAIN):

S. 1511. A bill to designate the Department of Veterans Affairs Medical Center in Prescott, AZ as the ‘Bob Stump Department of Veterans Affairs Medical Center’; to the Committee on Veterans’ Affairs.

Mr. KYL. Mr. President, today Senator KOLBE and I are introducing legislation to rename the VA Medical Center in Prescott, AZ to honor our colleague Bob Stump, who died on June 20. This legislation was introduced by Congressman Jim Kolbe and the other seven Arizona House Members on July 21.

I had the pleasure of serving with Bob Stump in the House of Representatives in the late 1980s and early 1990s. He was a fine man, and a great public servant. A patriot and a hard-working legislator, he did not seek headlines or glory, preferring to work quietly, without fanfare, on behalf of Arizona’s interests— and the Nation’s.

For Bob Stump, actions were louder than words. He didn’t say much, but you always knew where he stood.

Before coming to Congress, Bob served in both houses of the Arizona legislature from 1959 to 1976— that final year as president of the Arizona State Senate. His congressional tenure culminated in his six years as Chairman of the House Committee on Veterans’ Affairs, a perch from which he improved the lives of his fellow veterans in innumerable ways. As Chairman of the House Armed Services Committee for two years, he helped to ensure America’s military readiness by advocating tirelessly for better U.S. military technology and protecting the important work underway at Arizona’s military bases.

Bob’s concern for the military, of course, was personal’s. When he entered the Navy to serve his country in time of war, he was all of 16 years old. He spent three years, 1943 to 1946, as a medic on the U.S.S. Tulagi. He was determined to protect Arlington National Cemetery and to see to it that a World War II memorial was approved for construction on the Mall here in Washington.
Bob Stump's work to promote the welfare of current and past members of the Armed Services is well-known to Arizona's veterans. By naming the Prescott VA Health Center in his honor, we will ensure that his exemplary character and contributions are remembered by all those who pass through its doors in the future.

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

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

S. 1511

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

SECTION 1. BOB STUMP DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, PRESCOTT, ARIZONA.

(a) DESIGNATION.—The Department of Veterans Affairs Medical Center located in Prescott, Arizona, is hereby designated as the "Bob Stump Department of Veterans Affairs Medical Center.

(b) REFERENCES.—Any reference to such medical center in any law, regulation, map, document, or other paper of the United States shall be considered to be a reference to the Bob Stump Department of Veterans Affairs Medical Center.

Mr. MCCAIN. Mr. President, I am proud to join Senator KYL in introducing legislation that would rename the Veterans Administration medical center in Prescott, AZ after Bob Stump.

In June of this year, Arizonans suffered a major loss with the passing of Bob Stump, a native son who made his mark for our State and our Nation. Congressman Stump had a patriot's devotion to those who served our country in uniform. He will be deeply missed by his friends, family and a grateful Nation.

Congressman Stump served his country and the residents of Arizona admirably in the United States Navy, during World War II; in the Arizona State Legislature; and in the United States Congress.

Congressman Stump's service in the House of Representatives was marked by this dedication to his constituents in Arizona. Never one for the trappings of a political office, Bob read and responded to all of his mail, he never had Press Secretary and often answered the office phone personally.

One could not overlook his leadership in Defense and Veterans issues. Serving as Chairman of the Veterans Affairs Committee, his work has so beneficial to America's veterans that a street in Arlington National Cemetery was named after him. Everywhere I travel, veterans remark to me that Bob Stump put Veterans needs first.

Bob's strong leadership of the House Armed Services Committee helped usher in many of the technological advances that characterize our modern military.

This legislation serves as a memorial to a member of Congress who left an indelible legacy.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 1512. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income any property tax abatements, provided by local governments to volunteer firefighters and emergency medical responders, to the Committee on Finance.

Mr. DODD. Mr. President, I am pleased to rise today with my colleague Senator LIEBERMAN to introduce legislation that would amend the Internal Revenue Code to exclude property tax abatements, provided by local governments to volunteer firefighters and emergency medical responders, from the definition of income and wages. Senator JOHN LARSON of Connecticut introduced identical legislation in the House.

Seventy-five percent of firefighters in our country are volunteers. Unfortunately, statistics show that the number of volunteer firefighters and emergency responders have been declining in past years at an alarming rate. The number of volunteer firefighters around the country has declined by 5 to 10 percent since 1983, while the number of emergency calls made has sharply increased.

Many municipalities throughout the country, including the State of Connecticut, offer stipends and property tax abatements of up to $1,000 per year to volunteer firefighters, emergency medical technicians, paramedics, and ambulance drivers. These incentives have helped local fire departments in their volunteer recruitment efforts throughout the country.

Last year the IRS ruled that property tax abatements to volunteers should be treated as wages and income. This ruling would undermine the efforts of localities across the country to recruit more volunteer firefighters.

The bill that Senator LIEBERMAN and I are introducing amends the Internal Revenue Code to exclude property tax abatements and stipends for volunteer firefighters and emergency medical responders from the definition of income and wages. This bill would allow local governments around the country to continue providing these incentives to their volunteer firefighters and emergency medical responders.

The President has recently called for Americans to volunteer in their communities. When both heads of household hold full-time employment, it is often too difficult for them to take time away from their families without some form of compensation. A $1,000 property tax break is not a large request for the great service these men and women provide to our communities. They risk their lives for others. The least we can do is allow States and towns to offer them modest incentives to serve.

This IRS ruling undermines the good intentions and creative efforts of many localities. If our municipalities are willing to forgo their local tax revenues in order to ensure they have enough volunteer firefighters and emergency service providers to protect their communities, and if members of the community are doing their part by volunteering, then we, as a country should do our part and support local efforts to ensure that all our communities have adequate protection. And that is what our bill will ensure.

I hope that our colleagues will join us in supporting this legislation so that we can ensure that state and local governments have the flexibility to design and implement recruiting and retention programs that benefit not only the volunteer firefighters and emergency medical providers, but also the communities they protect.

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

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

S. 1512

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

SECTION 1. EXCLUSION FROM INCOME AND EMPLOYMENT TAXES OF VOLUNTEER FIREFIGHTERS AND OTHER EMERGENCY MEDICAL RESPONDERS.

(a) EXCLUSION FROM GROSS INCOME.—

(1) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by redesignating section 140 as section 140A and by inserting after section 139 the following new section:

SEC. 140. PROPERTY TAX REBATES AND OTHER BENEFITS PROVIDED TO VOLUNTEER FIREFIGHTERS AND EMERGENCY MEDICAL RESPONDERS.

"(a) EXCLUSION.—Gross income shall not include a qualified property tax rebate or other benefit."

(b) EXCLUSION FROM EMPLOYMENT TAXES.—

(1) IN GENERAL.—The term "property tax rebate or other benefit" means a rebate of real or personal property taxes, or any other benefit, provided by a State or political subdivision on account of services performed as a member of a qualified volunteer emergency response organization.

(2) QUALIFIED VOLUNTEER EMERGENCY RESPONSE ORGANIZATION.—The term "qualified volunteer emergency response organization" means any volunteer organization—

(A) which is organized and operated to provide firefighting or emergency medical services for persons in the State or political subdivision, as the case may be, and

(B) which is required (by written agreement) by the State or political subdivision to furnish firefighting or emergency medical services in such State or political subdivision.

(2) CLERICAL AMENDMENT.—The table of sections for such part is amended by striking the last item and inserting the following new items:

"Sec. 140. Property tax rebates and other benefits provided to volunteer firefighters and emergency medical responders.

"Sec. 140A. Cross references to other Acts.".
(1) SOCIAL SECURITY TAXES.—
(A) Section 3212(a) of the Internal Revenue Code of 1986 (relating to definition of wages) is amended by striking "or" at the end of paragraph (17), by striking the period at the end of paragraph (21) and inserting "; or", and by inserting after paragraph (21) the following new paragraph:

"(22) a qualified property tax rebate or other benefit (as defined in section 140(b))."

(B) Section 204(a) of the Social Security Act is amended by striking "or" at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting "; or", and by inserting after paragraph (18) the following new paragraph:

"(19) any qualified property tax rebate or other benefit (as defined in section 140(b) of the Internal Revenue Code of 1986)."

(2) UNEMPLOYMENT TAXES.—Section 3006(b) of the Internal Revenue Code of 1986 (relating to definition of wages) is amended by striking "or" at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting "; or", and by inserting after paragraph (17) the following new paragraph:

"(20) any qualified property tax rebate or other benefit (as defined in section 140(b)) of such Code (defining wages) is amended by striking "or" at the end of paragraph (20), by striking "and" at the end of paragraph (21) and inserting "; or", and by inserting after paragraph (21) the following new paragraph:

"(21) for any qualified property tax rebate or other benefit (as defined in section 140(b))."

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

By Mrs. HUTCHISON:
S. 1514. A bill to amend the Internal Revenue Code of 1986 to reform certain excise taxes applicable to private foundations, and for other purposes; to the Committee of the Whole.

Mrs. HUTCHISON. Mr. President, I am pleased to introduce legislation to address concerns regarding the operation of charitable foundations.

Well-publicized incidents of abuse by a few foundations have raised legitimate concerns about whether these entities are properly focusing resources on their philanthropic missions. In some cases, excessive amounts have gone toward administrative costs, high executive salaries and expensive travel.

My bill will help to ensure that more money is spent on charitable activities and that those who abuse the system are properly punished.

One proposal I support is included in the House version of the CARE Act, H.R. 7, the Charitable Giving Act of 1003. It would reduce the excise tax on investment income for foundations from two percent to one percent, allowing foundations to keep more money so they can direct it to those in need.

However, we must ensure this money actually goes toward the charitable activities for which it is intended. The House bill tries to do this by preventing any administrative costs from being counted as part of the five percent annual distribution requirement foundations must meet. While the legislation moves in the right direction, the language is too broad and may inadvertently punish some foundations that are acting responsibly.

Many foundations will find it difficult to earn the returns necessary to maintain their underlying endowments and cover the implementation of any excise tax in addition to all administrative costs. This could lead to a diminished ability to fulfill their missions over time, as underlying endowments are eroded as a result of the unintended consequence. Some foundations may be at risk of defaulting this challenge by reducing important, legitimate spending such as on legal compliance.

The legislation I am introducing will better address these issues. First, I agree we should reduce the excise tax on foundations from two percent to one percent. I also agree we should consider limiting which administrative expenses are counted as distributions. However, I propose doing so in a more defined manner.

My bill would exclude general overhead expenses, management salaries and excessive travel expenses from being counted as distributions. It will allow expenses directly attributable to administering grants and direct charitable giving, as well as expenses related to maintaining legal compliance, to continue to be included.

By focusing these restrictions on the expenses which tend to be the source of abuse, we can deal with the root issues while minimizing unintended consequences.

My bill also goes further than other proposals in penalizing wrongdoers. It will raise the penalty for those who abuse the system by "self-dealing" from a five percent to a 25 percent excise tax on the amounts involved.

My bill will lower the net investment tax, tighten the regulations allowing administrative expenses to be counted as distributions, and increase penalties for those abusing the system. It does so with drastic measures that could lead to a decline in our philanthropic dollars in the long-term. Together these measures will still more discipline on the foundation community and result in more money going to worthy causes.

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

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

S. 1514

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

SECTION 1. SHORT TITLE; ETC.

(A) SHORT TITLE.—This Act may be cited as the "Philanthropy Expansion and Responsibility Act of 2003.

(B) AMENDMENT OF 1986 CODE.—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 made to, or in lieu of, a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. REFORM OF CERTAIN EXCISE TAXES APPLYING TO PRIVATE FOUNDATIONS.

(A) REDUCTION OF TAX ON NET INVESTMENT INCOME.—Section 4940(a) (relating to tax-exempt foundations) is amended by striking "2 percent" and inserting "1 percent".

(B) REPEAL OF REDUCTION IN TAX WHERE PRIVATE FOUNDATION MEETS CERTAIN DISTRIBUTION REQUIREMENTS; LIMITATION ON SELF-DEALING.—The second sentence of section 4941(a)(1) (relating to initial excise tax imposed on self-dealer) is amended by striking "5 percent" and inserting "25 percent".

(C) MODIFICATION OF EXCISE TAX ON FAILURE TO DISTRIBUTE INCOME.—

(1) CERTAIN ADMINISTRATIVE EXPENSES NOT TREATED AS DISTRIBUTIONS.—

(A) IN GENERAL.—Section 4942(g)(1)(A) (defining qualifying distributions) is amended by striking "but excluding" and inserting "including that portion of reasonable and necessary administrative expenses which are directly attributable to direct charitable activities, grant selection activities, grant monitoring and administration activities, compliance with applicable Federal, State, or local law, or furthering accountability for the foundation, except as provided in paragraph (4)").

(B) LIMITATIONS.—Section 4942(g) is amended by striking paragraph (4) and inserting the following new paragraph:

"(4) LIMITATION ON ADMINISTRATIVE EXPENSES TREATED AS DISTRIBUTIONS.—For purposes of paragraph (1)(A), the following administrative expenses shall not be treated as qualifying distributions:

"(A) Any compensation paid to persons who are considered disqualified persons.

"(B) Any traveling expenses incurred for travel outside the United States.

"(C) Any traveling expenses incurred for transportation by air solely from one point in the United States to another point in the United States via first-class transportation on a commercial aircraft or via a private aircraft.

"(D) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of paragraphs (1) and (4). Such regulations shall provide that administrative expenses which are excluded from qualifying distributions solely by reason of the limitations in paragraph (1) or (4) shall not subject a private foundation to any other excise taxes imposed by this subchapter.".

(2) DISALLOWANCE NOT TO APPLY TO CERTAIN PRIVATE FOUNDATIONS.—

(A) IN GENERAL.—Section 4942(f)(3) (defining operating foundation) is amended—

(i) by striking "within the meaning of paragraph (1) or (2) of subsection (g)") each place it appears, and

(ii) by adding at the end the following new sentence: "For purposes of this paragraph, the term 'qualifying distributions' means qualifying distributions within the meaning of paragraph (1) or (2) of subsection (g) determined without regard to subsection (g)(4)."

(B) CONFORMING AMENDMENT.—Section 4942(f)(2)(C) is amended by inserting "(determined without regard to subsection (g)(4))" after "within the meaning of subsection (g)(1)(A)".

(C) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

By Mr. GREGG:
S. 1515. A bill to establish and strengthen programs and courses in the subjects of traditional American history, free institutions, and Western civilization, available to students preparing to teach...
these subjects, and to other students; to the Committee on Health, Education, Labor, and Pensions.

Mr. GREGG. Mr. President, today I am proud to introduce the Higher Education for Freedom Act. This bill will establish a competitive grant program making funds available to institutions of higher education, centers within such institutions, and associated non-profit foundations to promote programs focused on the teaching and study of traditional American history and government, and the history and achievements of Western Civilization, at both the graduate and undergraduate level, including those that serve students enrolled in K-12 teacher education programs.

Today, more than ever, it is important to preserve and defend our common heritage of freedom and civilization, and to ensure that future generations of Americans understand the importance of traditional American history and the principles of free government on which this Nation was founded. This basic knowledge is not on essential to the full participation of our citizens in America's civic life, but also to the continued success of the American experiment in self-government, binding together a diverse people into a single Nation with common purposes.

However, college students' lack of historical literacy is quite startling, and too few of today's colleges and universities are focused on the task of imparting this crucial knowledge to the next generation. One survey of students at America's top colleges reported that seniors could not identify Valley Forge, words from the Gettysburg Address, or even the basic principles of the U.S. Constitution. Given high-school level American history questions, 81 percent of the seniors would have received a D or F, the report found.

One college professor even informed me that her students did not know which side Lee was on during the Civil War, or whether the Russians were allies or enemies in World War II. A student she's even asked why anyone should care what the Founding Fathers wrote.

Thomas Jefferson once wrote, "If a nation expects to be ignorant—and free—in a state of civilization, it expects what never was and never will be." I believe the time has come for Congress to do something to promote the teaching of traditional American history at the postsecondary level, and I urge my colleagues to support this legislation.

I ask unanimous consent that the text of the bill be printed in the Record.

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

SEC. 1. SHORT TITLE. This Act may be cited as the 'Higher Education for Freedom Act'.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Given the increased threat to American ideals in the trying times in which we live, it is important to preserve and defend our common heritage of freedom and civilization and to ensure that future generations of Americans understand the importance of traditional American history and the principles of free government on which this Nation was founded in order to provide the basic knowledge that is essential to full and informed participation in civic life and to the larger vibrancy of the American experiment in self-government, binding together a diverse people into a single Nation with a common purpose.

(2) However, despite its importance, most of the Nation's colleges and universities no longer require United States history or systematic study of Western civilization and free institutions as a prerequisite to graduation.

(3) In addition, too many of our Nation's elementary and secondary school history teachers lack the training necessary to effectively teach these subjects, due largely to the inadequacy of their teacher preparation.

(4) Distinguished historians and intellectuals fear that without a common civic memory and a common understanding of the remarkable individuals, events, and ideas that have shaped our Nation and its free institutions, the people in the United States risk losing much of what it means to be an American, as well as the ability to fulfill the fundamental responsibilities of citizens in a democracy.

(b) PURPOSES.—The purposes of this Act are to promote and sustain postsecondary academic centers, institutes, and programs that offer undergraduate and graduate courses, support research, and develop teaching materials, by developing and imparting a knowledge of traditional American history, the American Founding, and the history and nature of, and threats to, free institutions, or of the nature, history, and achievements of Western Civilization, particularly for—

(1) undergraduate students who are enrolled in teacher education programs, who may consider becoming school teachers, or who wish to enhance their civic competence;

(2) elementary, middle, and secondary school teachers in need of additional training in order to effectively teach in these subject areas;

(3) graduate students and postsecondary faculty who wish to teach about these subject areas with greater knowledge and effectiveness.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) ELIGIBLE INSTITUTION.—The term 'eligible institution' means—

(A) an institution of higher education;

(B) a specific program within an institution of higher education; and

(C) a non-profit history or academic organization associated with higher education whose mission is consistent with the purposes of this Act.

(2) FREE INSTITUTION.—The term 'free institution' means an institution that emerged out of Western Civilization, such as democracy, individual rights, market economics, religious freedom and tolerance, and freedom of thought and inquiry.

(3) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the same meaning given that term under section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(4) SECRETARY.—The term 'Secretary' means the Secretary of Education.

(5) TRADITIONAL AMERICAN HISTORY.—The term 'traditional American history' means—

(A) the significant constitutional, political, intellectual, economic, and foreign policy trends and issues that have shaped the course of American history;

(B) the key episodes, turning points, and leading figures involved in the constitutional, political, intellectual, diplomatic, and economic history of the United States.

SEC. 4. GRANTS TO ELIGIBLE INSTITUTES.

(a) IN GENERAL.—From amounts appropriated to carry out this Act, the Secretary shall award grants, on a competitive basis, to eligible institutions, which grants shall be used for—

(1) history teacher preparation initiatives, that—

(A) stress content mastery in traditional American history and the principles on which the American political system is based, including the history and philosophy of free institutions, and the study of Western civilization; and

(B) provide for grantees to carry out research, planning, and coordination activities devoted to the purposes of this Act; and

(2) strengthening postsecondary programs in fields related to the American founding, free institutions, and Western civilization, particularly through—

(A) the design and implementation of courses, lecture series and symposia, the development and publication of instructional materials, and the establishment of or support of new, and supporting of existing, academic centers;

(B) research supporting the development of relevant course materials;

(C) the support of faculty teaching in undergraduate and graduate programs; and

(D) the support of graduate and postgraduate fellowships and courses for scholars related to such fields.

(b) SELECTION CRITERIA.—In selecting eligible institutions for grants under this section for any fiscal year, the Secretary shall establish criteria by regulation, which shall, at a minimum, consider the education value and relevance of the institution's programming to carrying out the purposes of this Act and the expertise of key personnel in the area of traditional American history and the principles on which the American political system is based, including the political and intellectual history and philosophy of free institutions, the American Founding, and other key events that have contributed to American freedom and the study of Western civilization.

(c) GRANT APPLICATION.—An eligible institution that desires to receive a grant under this Act shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may prescribe by regulation.
(d) Grant Review.—The Secretary shall establish procedures for reviewing and evaluating grants made under this Act.

(e) Grant Awards.

(f) Multiple Awards.

(g) Subgrants.—An eligible institution may use grant funds provided under this Act to award subgrants to other eligible institutions at the discretion of, and subject to the oversight of, the Secretary.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this Act, there are authorized to be appropriated—

(1) $140,000,000 for fiscal year 2004; and

(2) such sums as may be necessary for each of the succeeding 5 fiscal years.

By Mr. DOMENICI (for himself and Mr. CAMPBELL):

S. 1516. A bill to further the purposes of the Reclamation Projects Authorization and Adjustment Act of 1992 by directing the Secretary of the Interior, acting through the commissioner of Reclamation, to carry out an assessment and demonstration program to address potential increases in water availability for Bureau of Reclamation projects and other uses through control of salt cedar and Russian olive; to the Committee on Energy and Natural Resources.

Mr. DOMENICI. Mr. President, I rise today to reintroduce a piece of legislation that is of paramount importance to the State of New Mexico and many other western States. This bill will address the mounting pressures brought on by the growing demands throughout the west of a diminishing water supply.

This bill that I am introducing today authorizes the Department of Interior acting through the Bureau of Reclamation to carry out research and demonstration programs to help with the eradication of this non-native species on rivers in the Western United States. This bill will help develop the scientific knowledge and the experience base to build a strategy to control these invasive thieves. In addition to projects that could benefit the Pecos and the Rio Grande, the bill allows other states in the west such as Texas, Colorado, Utah, California and Arizona to develop and participate in projects as well.

Allow me to explain the importance of this bill. A water crisis has ravaged the west for four years. Drought conditions are expected to expand into the upper southwestern U.S. this year. Last year snow packs were abnormally low, causing severe drought conditions. Snow pack conditions this year were also low, but marginally better in the southwest. The rest of the west did not have promising winter snows and spring rains.

The presence of invasive species compounds the drought situation in many states. For instance, New Mexico is home to a vast amount of Salt Cedar. Salt Cedar is a water-thirsty non-native tree that continually strips massive amounts of water out of New Mexico’s two predominant water supplies the Pecos and the Rio Grande rivers.

While the Pecos and numerous catastrophic fires in our Nation’s forests including the riparian woodland—the Bosque—that runs through the heart of New Mexico’s most populous city. One of the reasons this fire ran its course was the presence of large amounts of Salt Cedar, a plant that burns as easily as it consumes water.

Estimates show that one mature Salt Cedar tree can consume as much as 200 gallons of water per day; over the growing season that is 7 acre feet of water for each acre of Salt Cedar. In addition to the excessive water consumption, Salt Cedars increase fire, increase river channelization and flood frequency, decrease water flow, and increase water and soil salinity along the river. Every problem that drought causes is exacerbated by the presence of Salt Cedar.

I know that the seriousness of the water situation in New Mexico becomes more acute every single day. This drought has affected every New Mexican and nearly everyone in the west in some way. Wells are running dry, farmers are being forced to sell livestock, many of our cities are in various stages of conservation and many, many acres have been charred by fire.

The drought and the mounting legal requirements on both the Pecos and Rio Grande rivers are forcing us toward a severe water crisis in New Mexico. Indeed, every river in the inter-mountain west seems to be facing similar problems. Therefore, we must bring to bear every tool at our disposal for dealing with the water shortages in the west.

Solving such problems is one of my top priorities and I assure this Congress that this bill will receive prompt attention by the Energy and Natural Resources Committee. Controlling water thirsty invasive species is one significant and substantial step in the right direction for the dry lands of the west.

I ask unanimous consent that the text of the bill be printed in the Record.

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

S. 1516

Became 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 “Salt Cedar Control Demonstration Act”.

SEC. 2. FINDINGS.

Congress finds that—

(1) the western United States is currently experiencing its worst drought in modern history;

(2) it is estimated that throughout the western United States salt cedar and Russian olive—

(A) occupy between 1,000,000 and 1,500,000 acres of land; and

(B) are non-beneficial users of 2,000,000 to 4,500,000 acre-feet of water per year;

(3) the quantity of beneficial use of water by salt cedar and Russian olive is greater than the quantity that valuable vegetation would use;

(4) much of the salt cedar and Russian olive infestation is located on Bureau of Land Management land or other land of the Department of the Interior;

(5) as drought conditions and legal requirements relating to water supply accelerate water shortages, innovative approaches are needed to address the increasing demand for a diminishing water supply.

SEC. 3. SALT CEDAR AND RUSSIAN OLIVE ASSESSMENT AND DEMONSTRATION PROGRAM.

(a) Establishment.—In furtherance of the purposes of the Reclamation Projects Authorization and Adjustment Act of 1992 (106 Stat. 4600), the Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this Act as the “Secretary”), shall carry out a salt cedar and Russian olive assessment and demonstration program to—

(1) assess the extent of the infestation of salt cedar and Russian olive in the western United States; and

(2) develop strategic solutions for long-term management of salt cedar and Russian olive.

(b) Assessment.—Not later than 1 year after the date on which funds are made available to carry out this Act, the Secretary shall complete an assessment of the extent of salt cedar and Russian olive infestation in the western United States. The assessment shall—

(1) consider past and ongoing research on tested and innovative methods to control salt cedar and Russian olive; and

(2) consider the feasibility of reducing water consumption;

(3) consider methods of and challenges associated with the restoration of infested land;

(4) estimate the costs of destruction of salt cedar and Russian olive, biomass removal, revegetation and maintenance of the infested land; and

(5) identify long-term management and funding strategies that could be implemented by Federal, State, and private land managers.

(c) Demonstration Projects.—The Secretary shall carry out more than 5 projects to demonstrate and evaluate the most effective methods of controlling salt cedar and Russian olive. Projects carried out under this subsection shall—

(1) monitor and document any water savings from the control of salt cedar and Russian olive;

(2) identify the quantity of, and rates at which, any water savings under paragraph (1) return to surface water supplies;

(3) assess the best approach to and tools for implementing available control methods;

(4) assess all costs and benefits associated with control methods and the restoration and maintenance of land;

(5) determine conditions under which removal of biomass is appropriate and the optimal methods for its disposal or use;

(6) define appropriate final vegetative states and optimal revegetation methods; and

(7) identify methods for preventing the regrowth and reintroduction of salt cedar and Russian olive.

(d) Control Methods.—The demonstration projects carried out under subsection (c) may implement 1 or more control methods per project, but to assess the full range of control mechanisms—
President Reagan’s order and imposing new regulations for obtaining Presidential documents. President Bush’s new order greatly restricts access to Presidential papers by forcing all requests for documents, no matter how innocuous, to be approved by both the former President and current White House. In this way the order goes against the letter and the spirit of the Presidential Records Act by requiring the NARA to make a presumption of non-disclosure, thus allowing the White House to prevent the release of records simply by inaction.

The President’s order also limits what types of papers are available by expanding the scope of executive privilege into new areas—namely communications between the President and his advisors and legal advice given to the President. Also, former Presidents can now designate third parties to exercise executive privilege on their behalf, meaning that Presidential papers could remain hidden many years after a President’s death. These expansions raise some serious constitutional questions and cause unnecessary controversy that could end up congesting our already overburdened courts. My legislation seeks to restore a legitimate, streamlined means of carrying out this body’s wishes—making Presidential records available for examination by the public and by Congress.

The administration shouldn’t fear passage of this bill. Any documents that contain sensitive national security information would remain inaccessible, as would any documents pertaining to law enforcement or the deliberative process of the executive branch. Executive privilege for both former and current Presidents would still apply to any papers the White House designates. With these safeguards in place, there is no reason to further hinder access to documents that are in some cases more than twenty years old.

By not passing this bill, the Congress would greatly limit its own ability to investigate previous administrations, not to mention limit the ability of historians and other interested parties to research the past. Knowledge of the past enriches and informs our understanding of the present, and by limiting our access to these documents we are also dooming future generations a great disservice. Numerous historians, journalists, archivists and other scholars have voiced their disapproval of Executive Order 13233 because they understand how important access to Presidential papers can be to accurately describing and learning from past events. We here in the Congress cannot afford to surrender our ability to investigate previous Presidential administrations because doing so would remove a vitally important means of ensuring Presidential accountability.

I believe it is time for these documents to become part of the public record. I believe in open, honest, and accountable government, and I do not believe in keeping secrets from the American people. The Presidential Records Act was one of this country’s most vital post-Watergate reforms and it remains vitally important today. In these times when trust in government is slipping more and more every day, we need to send a statement to the American people that we here in Washington don’t need to hide from public scrutiny—it’s not just important; it’s something we should embrace and encourage public scrutiny. This bill will send just such a message.

I ask unanimous consent that the text of the bill be printed in the Record.

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

S. 1517

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

SECTION 1. REVOCATION OF EXECUTIVE ORDER OF NOVEMBER 1, 2001.

Executive Order number 13233, dated November 1, 2001 (66 Fed. Reg. 56062), shall have no force or effect, and Executive Order number 12667, dated January 18, 1989 (54 Fed. Reg. 3408), shall apply by its terms.

By Mr. ENZI:

S. 1518. A bill to restore reliability to the medical justice system by fostering alternatives to current medical tort litigation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. ENZI. Mr. President, I rise today to introduce a bill that will help bring about a more reliable system of medical justice for all Americans.

Earlier this month, we had a robust debate on a critical issue—medical liability reform. Though a majority of the Members of this body wanted to begin working to pass the bill, we didn’t have the 60 Senators necessary to begin the real work on the legislation.

I co-sponsored that bill, the Patients First Act, and I still support it. Passing the Patients First Act would be an important short-term step to controlling the excesses in our legal system that have sent medical liability insurance premiums through the roof. Skyrocketing premiums are forcing doctors to move their practices to States with better legal environments and lower insurance premiums. This is endangering the availability of critical healthcare services in many areas of Wyoming and other states.

Throughout our debate, I heard many of my colleagues say that they wanted to work on this issue, but that they simply could not support the bill as it stood. I’d said that the bill approaches the issue from too narrow a perspective. We heard that the bill’s caps on non-economic damages are unfair to patients, despite the fact that the bill places no limits whatsoever on fair to patients, despite the fact that the bill places no limits whatsoever on medical liability reform. Though a majority of my colleagues say that they wanted to begin working on the legislation.

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S. 1518. A bill to restore reliability to the medical justice system by fostering alternatives to current medical tort litigation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.
respect their opposition. I also trust that they sincerely want to help solve our Nation's medical liability and litigation crisis.

During the debate this month, I noticed something interesting. While we argued that a system of medical liability was broken, no one stood up to defend our current system of medical litigation. Now, we heard a lot about the caps, and the insurance industry, and we heard Senators say that 'Yes, there is a problem, but the bill before us won't solve it.'

One thing we didn't hear was a rousing defense of our medical litigation system. Even some of the lawyers in this body agreed that frivolous lawsuits are a problem and that our medical litigation system needs reform.

Why didn't we hear anyone defend the merits of our current medical litigation system? It's because our system doesn't work. It simply doesn't work for patients or for healthcare providers.

Compensation to patients injured by healthcare errors is neither prompt nor fair. The randomness and delay associated with medical litigation does not contribute to timely, reasonable compensation for most injured patients. Some injured patients get huge jury awards, while many others get nothing at all.

Let's look at the facts. In 1991, a group of researchers published a study in the Journal of the American Medical Association. They reviewed the medical records of a random sample of more than 31,000 patients in New York State. They matched those records with statewide data on medical malpractice claims. They found no evidence of negligence and compensation.

As part of their study, the researchers reviewed the medical records of a random sample of more than 31,000 patients in New York State. They matched those records with statewide data on medical malpractice claims. The researchers found that nearly 30 percent of all injuries caused by medical negligence resulted in temporary disability, permanent disability or death. However, less than 2 percent of those who were injured by medical negligence filed a claim. These figures suggest that most people who suffer negligent injuries don't receive any compensation.

When a patient does decide to litigate, only a few recover anything. Only one of every ten medical malpractice cases actually goes to trial, and of those cases, plaintiffs win less than one of every five. In addition, patients who file suit and are ultimately successful must wait a long time for their compensation—the average length of a medical malpractice action filed in state court is about 30 months.

While the vast majority of malpractice cases that go to trial are settled before the court hands down a verdict, the settlements even then don't guarantee that patients are compensated fairly, particularly after legal fees are subtracted. Research shows that for every dollar paid in medical malpractice insurance premiums, about 40 cents in compensation is actually paid to the plaintiff—the rest goes for legal fees, court costs, and other administrative expenditures.

To sum up: most patients injured by negligence don't file claims or receive compensation. Many who do file claims and go to court recover anything, and those who are successful wait a long time for their compensation. And those who settle out of court end up receiving only 40 cents for every dollar that providers pay in liability insurance premiums.

It's hard to say that our medical litigation system works right by patients in light of those facts. Unfortunately, our system doesn't work for healthcare providers either.

Let's face it—our medical litigation system is broken. It doesn't work for patients or providers. Even worse, it replaces the trust in the provider-patient relationship with distrust.

Then, when courts and juries render verdicts with huge awards that bear no relation to the conduct of the defendant, this destabilizes the insurance markets and sends premiums skyrocketing. This forces many physicians to curtail, move or drop their practices, leaving patients without access to necessary medical care. This is a particular problem in states like Wyoming, where we traditionally struggle with recruiting doctors and other healthcare providers.

Perhaps we could live with this flawed system if litigation served to improve quality or safety, but it doesn't. Litigation discourages the exchange of critical information that could be used to improve the quality and safety of patient care. The constant threat of litigation also drives the inefficient, costly and even dangerous practice of "defensive medicine."

Yes, indeed, defensive medicine is dangerous. A recent study found that one of every 1200 children who receive a CAT scan may die later in life from radiation-induced cancer. Knowing this, a physician faced with anxious parents in a difficult situation. Does the physician use his or her professional judgment and tell the parents of a sick child not to worry, or does the doctor order the CAT scan and subject the child to radiation that is probably unnecessary, just to provide some protection against a possible lawsuit?

We have a medical litigation system in which many patients who are hurt by negligent actions receive no compensation for their loss. Those who do receive compensation end up with about 40 cents of every premium dollar after legal fees and other costs are subtracted. And the likelihood and the outcomes of lawsuits and settlements bear little relation to whether or not a healthcare provider was at fault.

We like to say that justice is blind. With respect to our medical litigation system, I would say that justice is absent and nowhere to be found.
During our debate on the Patients First Act, I said that the current medical liability crisis and the shortcomings of our medical litigation system make it clear that it is time for a major change. I also said that regardless of how we voted, we all should work towoward redesigning the current medical tort liability scheme with a more reliable and predictable system of medical justice.

Today, I am introducing a bill that would help achieve that goal.

Most of us are familiar with the report on medical errors from the Institute of Medicine, also known as the IOM. Many of us may be less familiar with another report that the IOM published earlier this year. That report is called “Fostering Rapid Advances in Healthcare: Learning from System Demonstrations.”

Our Secretary of Health and Human Services, Tommy Thompson, challenged the IOM to identify bold ideas that would challenge conventional thinking about some of the most vexing problems facing our healthcare system. In response, an IOM committee developed this report, which identified a set of demonstration projects that combine what felt would break new ground and yield a very high return-on-investment in terms of dollars and health.

Medical liability was one of the areas upon which the IOM committee focused. The IOM suggested that the federal government should support demonstration projects in the states. These demonstrations should be based on “replacing tort liability with a system of patient-centered and safety-focused non-judicial compensation.”

The bill I am introducing today is in the spirit of this IOM report. This bill, the Reliable Medical Justice Act, would authorize funding for States to create demonstration programs to test alternative approaches to current medical tort litigation.

The funding to States under this bill would cover planning grants for developing proposals based on the models or other innovative ideas. Funding to States would also include the initial costs of getting the alternatives up and running.

The Reliable Medical Justice Act would require participating states and the Federal Government to collaborate in conducting demonstrations of the results of the alternatives as compared to traditional tort litigation. This way, all States and the federal government can learn from new approaches.

By funding demonstration projects, I believe Congress would enable the States to experiment with and learn from ideas that could provide long-term solutions to the current medical liability and litigation crisis.

In introducing this bill, I wanted to provide Congress with innovative ideas that would contribute to the debate. As a result, the bill describes three models to which states could look in designing their alternatives.

For instance, a State could provide healthcare providers and organizations with immunity from lawsuits if they make a timely offer to compensate an injured patient for his or her actual net economic loss, plus a payment for pain and suffering if experts deem such a payment appropriate. This could give a healthcare provider who makes an honest mistake the chance to make amends financially with a patient, without the provider fearing that their honesty would land them in a lawsuit.

Another idea would be for a state to set up classes of avoidable injuries and a schedule of compensation for them, and then establish an administrative board to resolve claims related to those injuries. A scientifically rigorous process of identifying preventable injuries and setting appropriate compensation would be preferable to the randomness of the current system.

Still another option would be for a state to establish a special healthcare commission. My own State, Wyoming, had a lively demonstration of such a system, perhaps we should consider special courts for the complex and emotional issue of medical malpractice.

I believe one thing in our medical liability debate is absolutely clear—people are demanding change. Ten States have passed some liability reform in the past year, and another 17 have debated it. States are heeding this call for change, and Congress should support these efforts.

My own State, Wyoming, had a lively legislative debate on medical liability reform this year, but we have a constitutional amendment that prohibits limits on the amounts that can be recovered through lawsuits. The Wyoming Senate considered a bill to amend our State’s constitution to create a commission on healthcare errors. That commission would have had the power to review claims, decide if healthcare negligence occurred, and determine the compensation for the death or injury according to a schedule or formula provided by law. However, the bill died in a tie vote on the Wyoming Senate floor.

According to one of the sponsors of the bill, Senator Charlie Scott, one of the biggest obstacles to passage was the uncertainty surrounding this new idea. No one had any basis for knowing what a proper schedule or formula for compensation would be. No one knew how much the system might cost, or how much injured patients would recover compared to what they recover now.

Senator Scott wrote me to say that federal support for finding answers to these questions might help the bill’s sponsors sufficiently respond to the legitimate concerns of their fellow Wyoming legislators. We should be helping state legislators like Senator Scott develop thoughtful and innovative ideas such as the one he has proposed. That’s one of the reasons I am offering this bill.

Clearly, the American people and their elected representatives have identified the need to reform our current medical litigation system. The United States Senate did not vote to proceed to the Patients First Act this month, but no member of this body denied that there is a medical liability crisis, or that Congress needs to act sooner rather than later.

While we continue that debate, we ought to lend a hand to States that are working to change their current medical litigation systems and to develop creative alternatives that could work much better for patients and providers.

The States have been policy pioneers in many areas—workers’ compensation, welfare reform, and electricity de-regulation, to name three. Medical litigation should be the next item on the agenda of the laboratories of democracy that are our 50 States.

No one questions the need to restore reliability to our medical justice system. But how do we begin the process? One way is to foster innovation by encouraging States to develop more rational and predictable methods for resolving healthcare injury claims. And that is what the Reliable Medical Justice Act aims to do.

In the long run, we would all be better off with a more reliable system of medical justice than we have today. I know that my fellow Senators recognize this, so I hope my colleagues on both sides of the aisle will work with me on this legislation.

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

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

S. 1518

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 “Reliable Medical Justice Act.”

SEC. 2. PURPOSES. The purposes of this Act are—

(1) to restore reliability to the medical justice system by fostering alternatives to current medical tort litigation that promote early disclosure of health care errors and provide prompt, fair, and reasonable compensation to patients who are injured by health care errors; and

(2) to support and assist States in developing such alternatives.

SEC. 3. STATE DEMONSTRATION PROGRAMS TO EVALUATE ALTERNATIVES TO CURRENT MEDICAL TORT LITIGATION.

Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by adding at the end the following:
SEC. 3990. STATE DEMONSTRATION PROGRAM TO EVALUATE ALTERNATIVES TO CURRENT MEDICAL TORT LITIGATION.

(a) In General.—The Secretary is authorized to award demonstration grants to States for the development, implementation, and evaluation of alternatives to current medical tort litigation for resolving disputes over injuries allegedly caused by health care providers or health care organizations.

(b) Duration.—The Secretary may award up to 7 grants under subsection (a) and each grant awarded under such subsection may not exceed a period of 5 years.

(c) Conditions for Demonstration Grants.—

(I) Requirements.—Each State desiring a grant under subsection (a) shall—

(A) develop an alternative to current tort litigation for resolving disputes over injuries allegedly caused by health care providers or health care organizations that may be 1 of the models described in subsection (d); and

(B) establish procedures to allow for patient safety data related to disputes resolved under subparagraph (A) to be collected and analyzed by organizations that engage in voluntary efforts to improve patient safety and the quality of health care delivery, in accordance with guidelines established by the Secretary.

(2) Alternative to Current Tort Litigation.—Each State desiring a grant under subsection (a) shall describe the proposed alternative to current tort litigation, which may include public or private funding sources, or a combination of such sources. Funding methods may provide financial incentives for activities that improve patient safety.

(3) Sources of Compensation.—Each State desiring a grant under subsection (a) shall describe the sources from and methods by which compensation would be paid for claims resolved under the proposed alternative to current tort litigation, which may include public or private funding sources, or a combination of such sources. Funding methods may provide financial incentives for activities that improve patient safety.

(4) Scope.—Each State desiring a grant under subsection (a) may establish a scope of jurisdiction (including geographic region or a designated area of health care practice) for the proposed alternative to current tort litigation that is sufficient to evaluate the effects of the alternative.

(d) Models.—

(I) In General.—Any State desiring a grant under subsection (a) that proposes an alternative described in paragraph (2), (3), or (4) shall be deemed to meet the criteria under subsection (c)(2).

(2) Early Disclosure and Compensation Model.—In the early disclosure and compensation model, the State shall—

(A) provide immunity from tort liability (except in cases of willful or intentional harm) to any health care provider or health care organization that enters into an agreement to pay compensation to a patient for a non-criminal injury;

(B) set a limited time period during which a health care provider or health care organization may make an offer of compensation benefit to a patient described in subparagraph (A), with consideration for instances where prompt recognition of an injury is unlikely or impossible;

(C) require that the compensation provided under subparagraph (A) include—

(i) payment for the net economic loss of the patient, on a periodic basis, reduced by any payments received by the patient under—

(aa) any health or accident insurance;

(bb) any payments received by the patient under—

(iii) any disability income insurance;

(iii) payment for the patient’s pain and suffering, if appropriate for the injury, based on a capped payment schedule developed by the State in consultation with relevant experts; and

(iv) reasonable attorney’s fees;

(D) not abridge the right of an injured patient to seek redress through the State tort system if a health care provider does not enter into an agreement with the patient in accordance with subparagraph (A);

(E) prohibit a patient who accepts compensation benefits in accordance with subparagraph (A) from joining an individual under subparagraph (A) to join in the payment of the compensation benefits of any health care provider or health care organization that potentially liable, in whole or in part, for the injury.

(3) Administrative Determination of Compensation Model.—

(A) In General.—In the administrative determination of compensation model—

(I) the State shall—

(aa) designate an administrative entity (in this paragraph referred to as the ‘‘Board’’) that shall include representatives of—

(aa) State licensing boards;

(bb) patient advocacy groups;

(cc) health care providers and health care organizations; and

(dd) attorneys in relevant practice areas;

(bb) the cause of injury;

(cc) the degree of fault of the health care provider or health care organization for the injuries established under subclause (II), except in cases of avoidable injuries up to 7 grants under subsection (a) and each grant under subsection (a) shall

be used in making such determinations that includes

(c) the length of time the patient will be affected by the injury;

(dd) the degree of fault of the health care provider or health care organization; and

(ee) standards by which the Secretary may adopt and their breach; and

(III) modify tort liability, through statutes or regulations, to ensure that the States adopt emergency plans in court against health care providers and health care organizations for the classes of injuries established under subclause (II), except in cases of avoidable injuries or in cases of criminal or intentional harm; and

(IV) outline a procedure for informing patients about the modified liability system described in paragraph (C) and, in systems where participation by the health care provider, health care organization, or patient is voluntary, allow for the decision by the provider, organization, or patient whether or not to participate to be made prior to the provision of, use of, or payment for the health care service;

(V) provide for an appeals process to allow for a review of decisions; and

(VI) establish procedures to coordinate settlement payments with other sources of payment;

(B) the Board may—

(I) develop guidelines relating to—

(aa) the standard of care; and

(bb) the credentialing and disciplining of doctors; and

(II) develop a plan for updating the schedule under clause (I) to reflect new data.

(B) Appeals.—The State, in establishing the appeals process described in subparagraph (A)(ii)(V), may choose whether to allow for de novo review, review with deference, or at its option, establish an administrative entity similar to the entity described in paragraph (3)(a)(I)(V) to provide advice and guidance to the special court and health care courts.

(4) Special Health Care Court Model.—In the special health care court model, the State shall—

(A) establish a special court for adjudication of disputes over injuries allegedly caused by health care providers or health care organizations; and

(B) ensure that such court is presided over by judges with expertise in and an understanding of health care.

(C) provide authority to such judges to make binding rulings on causation, compensation, standards of care, and related issues.

(D) provide for an appeals process to allow for a review of decisions; and

(E) at its option, establish an administrative entity similar to the entity described in paragraph (3)(a)(I)(V) to provide advice and guidance to the special court and health care courts.

(5) Report.—Each State receiving a grant under subsection (a) shall submit to the Secretary an evaluation at such time, in such manner, and in such format as the Secretary may require.

(g) Technical Assistance.—The Secretary shall provide technical assistance to the States awarded grants under subsection (a). Such technical assistance shall include the development, in consultation with States, of common definitions, formats, and data collection infrastructure. States receiving grants under this section to use in reporting to facilitate aggregation and analysis of data both within and between States.

(h) Evaluation.—

(I) In General.—The Secretary shall enter into a contract with an appropriate research organization to conduct an evaluation of the effectiveness of grants awarded under subsection (a) and to annually submit a report to the appropriate committees of Congress. Such an evaluation shall begin not later than 18 years after the date of enactment of this Act.
months following the date of implementation of the first program funded by a grant under subsection (a).

(2) CONTENTS.—The evaluation under paragraph (1) shall include—

(A) an analysis of the effect of the grants awarded under subsection (a) on the number, nature, and costs of health care liability claims;

(B) a comparison of the claim and cost information of each State receiving a grant under subsection (a), and the agreement between States receiving a grant under this section and States that did not receive such a grant, matched to ensure similar legal and health care environments, and to determine the effects of the grants and subsequent reforms on—

(i) the liability environment;

(ii) health care quality; and

(iii) patient safety.

(i) OPTION TO PROVIDE FOR INITIAL PLANNING GRANTS.—Of the funds appropriated pursuant to subsection (k), the Secretary may use a portion not to exceed $500,000 per State to provide planning grants to such States for the development of demonstration proposals meeting the criteria described in subsection (c). In selecting States to receive such planning grants, the Secretary shall give preference to those States in which current law would not prohibit the adoption of an alternative to current tort litigation.

(2) HEALTH CARE SERVICES.—(A) The term ‘health care services’ means any services provided by a health care provider, or by any individual working under the supervision of a health care provider, that relate to—

(i) the diagnosis, prevention, or treatment of any human disease or impairment; or

(ii) the assessment of the health of human beings.

(B) the assessment of the health of human beings.

(2) HEALTH CARE ORGANIZATION.—(A) The term ‘health care organization’ means any individual or entity—

(A) licensed, registered, or certified under Federal or State laws or regulations to provide health care services; or

(B) required to be so licensed, registered, or certified but that is exempted by other statute or regulation.

(4) NET ECONOMIC LOSS.—The term ‘net economic loss’ means—

(A) reasonable expenses incurred for products, services, and accommodations needed for health care, training, and other remedial treatment and care of an injured individual;

(B) reasonable and appropriate expenses for remedial treatment and occupational training;

(C) 100 percent of the loss of income from work that an injured individual would have performed if not injured, reduced by any income from substitute work actually performed;

(D) reasonable expenses incurred in obtaining ordinary and necessary services to replace services an injured individual would have performed if not injured, reduced by any income from substitute work actually performed;

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.

(2) STATE ALLOCATIONS.—(A) In General.—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended to read as follows—

(iv) subject to sections 1903 and 1905(p)(4), for making medical assistance available (but only for premiums payable with respect to months during the period beginning with January 1998 and ending with December 2002) for individuals with monthly incomes from $887 and $997 for individuals and between $1,194 and $1,344 for couples. This covers Medicare beneficiaries with income between 120 and 135 percent of the Federal Poverty Level.

This amounts to a benefit of over $700 annually that many older and disabled Americans depend upon to pay for a portion of their health care costs, such as prescription drugs and supplemental Medicare. This year over 120,000 people nationwide currently rely on the QI-1 and will be hard pressed to afford Medicare coverage without this assistance. In short, to prevent the erosion of existing low-income protections, Congress must extend the QI-1 program this year.

This is a bipartisan issue as well. President Bush had included QI-1 reauthorization in his fiscal year 2003 budget. Moreover, an extension has been included in S. 1, the “Prescription Drug and Medicare Improvement Act of 2003,” but the conference is certainly not going to be completed, passed by both the House and Senate, and signed into law in time before the need for States to send out notices to beneficiaries alerting them to their forthcoming loss of cost sharing protections at the end of September.

As Ron Pollack, Executive Director at Families USA notes in his letter of support for this legislation, “Without an extension, over 120,000 low-income Medicare beneficiaries will have to send out disenrollment letters to the 120,000 low-income seniors and the disabled that rely on the cost-sharing protections provided by the QI-1 program and begun to shut down their programs.

Again, this is emergency legislation that simply provisions a one-year extension of QI-1 program to prevent the cut-off of cost-sharing protections for 120,000 low-income Medicare beneficiaries. We should be engaging in improving health coverage for low-income elderly and disabled citizens rather than leaving these vulnerable Americans facing fear, uncertainty, disruption, and increasing costs.

I urge immediate passage of this legislation and ask unanimous consent that the text of the bill to be printed in the Record.

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

S. 1519

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

SECTION 1. EXTENSION OF MEDICARE COST-SHARING FOR QUALIFYING INDIVIDUALS THROUGH FISCAL YEAR 2004.

(a) IN GENERAL.—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended to read as follows:

(iv) subject to sections 1903 and 1905(p)(4), for making medical assistance available (but only for premiums payable with respect to months during the period beginning with January 1998 and ending with December 2002) for individuals with monthly incomes from $887 and $997 for individuals and between $1,194 and $1,344 for couples. This covers Medicare beneficiaries with income between 120 and 135 percent of the Federal Poverty Level.

(b) STATE ALLOCATIONS.—Section 1933(c) of the Social Security Act (42 U.S.C. 1396c-3(c)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (D), by striking “and” and

(B) in subparagraph (E)
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(i) by striking “fiscal year 2002” and inserting “each of fiscal years 2002 through 2004”; and

(ii) by striking the period and inserting “;”; and

(C) by adding at the end the following:

“(F) the first quarter of fiscal year 2005 is $100,000,000.”; and

(2) paragraph (2)(A), by striking “the sum of” and all that follows through “1902(a)(10)(E)(iv)(I) in the State; to” and inserting “twice the total number of individuals described in section 1902(a)(10)(E)(iv)(I) in the State; to”;

By Mr. GRAHAM of Florida (for himself, Mrs. FEINSTEIN, and Mr. ROCKEFELLER):

S. 1520. A bill to amend the National Security Act of 1947 to reorganize and improve the leadership of the intelligence community of the United States, to provide for the enhancement of the counterterrorism activities of the United States Government, and for other purposes; to the Select Committee on Intelligence.

Mr. ROCKEFELLER. Mr. President, I am pleased to be an original cosponsor of the Select Committee on Intelligence.

Mr. ROCKEFELLER. Mr. President, I am pleased to be an original cosponsor of the “9-11 Memorial Intelligence Reform Act” which Senator BOB GRAHAM is introducing today to implement the recommendations of the Joint September 11 Inquiry of the Senate and House Intelligence Committees.

I expect that this important legislation will be referred to the Select Committee on Intelligence, on which I serve as vice chairman, and I am committed to working with the Chairman and our colleagues to ensure that the matters addressed in the bill receive the full consideration and action that our national security requires. I expect that other committees, such as the Committee on the Judiciary, will have an interest in some matters covered by the bill, and I look forward to working with them.

The 9-11 Memorial Intelligence Reform Act covers matters ranging from the basic structure of the U.S. intelligence community to improvements in the sharing and analysis of intelligence information, reforms in domestic counterterrorism, and other issues identified in the course of the Joint Inquiry. For some matters, notably on reforming the leadership structure of the intelligence community, the bill proposes specific reforms. For various other matters, the bill calls for executive branch reports that can be the basis for subsequent congressional action.

There are two principal aspects of our work ahead.

The first is to systematically and thoroughly examine the steps that the President, the intelligence community, and other departments and agencies have taken to correct deficiencies in U.S. intelligence and counterterrorism. The Joint Inquiry’s recommendations were first announced last December. In the months ahead, we will call on the agencies of the intelligence community, and other components of the executive branch, to report on their concrete measures, both since September 11 and since our recommendations were made public, to correct deficiencies. We should then assess those reports and Administration testimony in committee hearings.

Our second task is to consider reform proposals in Senator GRAHAM’s bill. In that regard, I should make clear that the answers proposed in the bill are not the last word on any of those subjects. They are, instead, a beginning point for the Senate’s consideration of measures to correct the problems identified by the Joint 9-11 Inquiry.

As we address these important tasks, it will be essential that the Congress and the American public have the benefit of the best ideas available. We will welcome proposals by the administration, by other Members of Congress, from the National Commission on Terrorist Attacks Upon the United States, and concerned citizens.

Important ideas should not be bottled up anywhere. They should be put on the public table.

In that regard, I urge the President to release the intelligence reform recommendations that former National Security Adviser Brent Scowcroft has testified are ready. In addition to the already public testimony before our Joint Inquiry in September 2002, General Scowcroft testified, in response to a question that I asked him, that in May 2001—before September 11, the President had established a process to review the intelligence community. General Scowcroft testified that he chaired the external panel of that review, but that he could not get into much detail because his report was still classified. It is, I believe, finally to declassify that report to the extent possible. The Congress and the American public should have the benefit of that distinguished public servant’s insights about intelligence community reform.

By Mr. REID (for himself and Mr. ENNSIGN):

S. 1521. A bill to direct the Secretary of the Interior to convey certain land to the Edward H. McDaniel American Legion Post No. 22 in Pahrump, Nevada, for the construction of a post building and memorial park for use by the American Legion, other veterans’ groups, and the local community; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today for myself and Senator ENNSIGN to introduce the Pahrump American Legion Post Land Conveyance Act. This Act will transfer approximately five acres of BLM land in Pahrump, Nevada, to the American Legion for the purpose of constructing a post home and other facilities that will benefit veterans’ groups and the local community.

The American Legion and other nonprofit organizations that represent veterans’ interests in the vicinity of Pahrump, Nevada, have grown immensely in the last 10 years. The local memberships of the American Legion, the Veterans of Foreign Wars, and the Disabled American Veterans will soon exceed 1000 members, and will continue to expand with the rest of the fast-growing local community.

The existing facility used by the veterans in Pahrump was built by the Veterans of Foreign Wars in the 1960s. It is too small and not at all adequate for the veterans’ current needs. The nearest facility that can accommodate them is located in Las Vegas, more than 60 miles away.

The Pahrump American Legion would like to build a post building, veterans’ garden, and memorial park. These new facilities would benefit not only the local veterans, but would be made available—at no cost—for community activities. The American Legion has tried for over six years to acquire a suitable tract of land to provide a home for a new veterans center. The Legion started a pledge campaign and raised over $16,000 for the building fund before the parcel of land they sought to acquire was removed from consideration by the BLM. Unfortunately, other tracts of land that might represent alternative sites in Pahrump are not suitable.

Mr. President, this situation is intolerable. Without a home, the Pahrump American Legion Post can’t offer the kind of services and programs that the veterans in the area deserve. Our veterans aren’t the only ones who are suffering, either. All across the United States, the American Legion is deservedly famous for supporting community activities like the Boy Scouts and Girl Scouts, as well as the National Oratorical Contest, American Legion Baseball, Girls and Boys State, and other activities for young people. All of these worthy groups and projects would benefit from the construction of a new post home.

Our bill simply directs the Secretary of the Interior to convey this property from the Bureau of Land Management to American Legion “Edward H. McDaniel” Post No. 22 in Pahrump. Because of the great public benefit such a facility will provide, we ask that the land be conveyed for free, but that the American Legion cover the costs of the transaction.

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

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

S. 1521

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 “Edward H. McDaniel American Legion Post No. 22 Land Conveyance Act.”

SEC. 2..Findings.

Congress finds that—

(1) the membership of the American Legion and other nonprofit organizations that represent veterans’ interests in Pahrump, Nevada, has grown immensely in the last 10 years;
By Mr. SMITH (for himself, Mr. JEFFORDS, and Mr. CONRAD):
S. 1523. A bill to amend part A of title IV of the Social Security Act to allow a State to treat an individual with a disability, including a substance abuse problem, as being engaged in rehabilitative services and who is increasing participation in core work activities as being engaged in work for purposes of the temporary assistance for needy families program, and to the extent that an individual needs rehabilitative services beyond six months, that individual would need to be engaged in core work activities for at least 15 hours per week to get full credit, with the remaining 15 hours spent in rehabilitative services.

This approach is appealing for many reasons. First, it allows States to design a system in which a person can move progressively over time from receiving TANF to work by allowing States to use a range of strategies to help these families. Second, it creates a structure for individuals with disabilities and addictions who may otherwise fall out of the system either through sanction or discouragement, despite their need for financial support. Finally, this approach is appealing because it is designed to work within the structure of the final TANF reauthorization bill.

The second provision in the bill would allow States the option of counting as work activity the time that an individual spends caring for a child with a disability or an adult relative who is in need of care. The studies reflect that these people often cannot find care for their relative so they can work. They are often forced into the impossible choice of caring for their child with a disability, or leaving that child to go to work in order to continue receiving their TANF grant. This is not a choice a parent should ever have to make.

In order to be able to count the care provided by the TANF recipient as work activity, the State would first be required to determine that the child or adult with a disability is, in fact, truly disabled, and that the person needs substantial ongoing care. Then, the State must decide that the TANF recipient is the most appropriate means for providing the needed care. The State would also have to conduct regular periodic evaluations to determine that the child or adult with a disability continues to be engaged by the TANF recipient. Nothing in the provision prevents a State from determining that the TANF recipient can...
work outside the home or engage in other work-related training or other activities that will help the person eventually move to work on a full- or part-time basis.

I would like to submit for the record a letter to forty national organizations that are members of the Consortium for Citizens with Disabilities supporting this legislation, as well as a letter of support from my home State of Oregon. I look forward to working with my co-sponsors, Senators MOSBACHER and JEFFORDS, and with the Chairman of the Finance Committee on these important provisions in the upcoming months, and I urge my colleagues to join us in support of this legislation.

I ask unanimous consent that the text of the bill and letters of support be printed in the RECORD.

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

S. 523

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 "Pathways to Independence Act of 2003.

SEC. 2. STATE OPTION TO COUNT REHABILITATION SERVICES FOR CERTAIN INDIVIDUALS AS WORK FOR PURPOSES OF THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM.

(a) In General.—Section 407(c)(2) of the Social Security Act (42 U.S.C. 607(c)(2)), as amended by adding at the end the following:

"(III) DETERMINATION OF CREDIT.—(I) IN GENERAL.—Subject to clause (ii), for purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b), a State may count the number of hours per week in which a recipient engages in substantial ongoing care for a child or adult dependent for care with a physical or mental impairment if the State determines that—

(i) the child or adult dependent for care has been verified through a medically acceptable clinical or laboratory diagnostic technique as having a physical or mental impairment or combination of impairments that substantially limits 1 or more major life activities.

(ii) the recipient providing such care is the most appropriate means, as determined by the State, by which the care can be provided to the child or adult dependent for care;

(iii) for each month in which this subparagraph applies to the recipient, the recipient is in compliance with the requirements of the recipient's self-sufficiency plan; and

(iv) the recipient is unable to participate fully in work activities, after consideration of medical and employment services available to the family for the care of the child or adult dependent for care.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on Oct. 1, 2003.

SEC. 3. STATE OPTION TO COUNT CARING FOR A CHILD OR ADULT DEPENDENT FOR CARE WITH A PHYSICAL OR MENTAL IMPAIRMENT AS MEETING ALL OR PART OF THE WORK REQUIREMENT.

(a) In General.—Section 407(c)(2) of the Social Security Act (42 U.S.C. 607(c)(2)), as amended by section 2, is amended by adding at the end the following:

"(F) RECIPIENT CARRYING FOR A CHILD OR ADULT DEPENDENT FOR CARE WITH A PHYSICAL OR MENTAL IMPAIRMENT DEEMED TO BE MEETING ALL OR PART OF THE WORK REQUIREMENT FOR A MONTH.—

"(I) IN GENERAL.—Subject to clause (ii), for purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b), a State may count the number of hours per week in which a recipient engages in substantial ongoing care for a child or adult dependent for care with a physical or mental impairment if the State determines that—

(i) the child or adult dependent for care has been verified through a medically acceptable clinical or laboratory diagnostic technique as having a physical or mental impairment or combination of impairments that substantially limits 1 or more major life activities.

(ii) the recipient providing such care is the most appropriate means, as determined by the State, by which the care can be provided to the child or adult dependent for care;

(iii) for each month in which this subparagraph applies to the recipient, the recipient is in compliance with the requirements of the recipient's self-sufficiency plan; and

(iv) the recipient is unable to participate fully in work activities, after consideration of medical and employment services available to the family for the care of the child or adult dependent for care.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on Oct. 1, 2003.

CONGRESS OF CITIZENS WITH DISABILITIES,

Hon. GORDON SMITH, U.S. Senate, Washington, DC.

Hon. JAMES M. JEFFORDS, U.S. Senate, Washington, DC.

Hon. KENT CONRAD, U.S. Senate, Washington, DC.

DEAR SENATORS SMITH, CONRAD AND JEFFORDS:

We are writing to thank you for introducing legislation that addresses two key problems facing TANF families with a parent or child with a disability. We believe that these provisions, if included in a larger TANF reauthorization bill, will significantly improve the lives of these families and help them successfully move from welfare toward work while also ensuring that the needs of family members with disabilities are met.

The Consortium for Citizens with Disabilities (CCD) is a coalition of national consumer, advocacy, provider and professional organizations headquartered in Washington, DC. We work together to advocate for national public policy that ensures the self determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The CCD TANF Task Force seeks to ensure that families that include persons with disabilities are afforded equal opportunities and appropriate accommodations under the Temporary Assistance for Needy Families (TANF) block grant.

The research is clear that many TANF families include a parent or a child with a disability, and in some families, there is both a child and a parent with a disability. The numbers are high—GAO has found that as many as 44 percent of TANF families have a child or a parent with a disability—and need to be addressed in the policy choices Congress makes in TANF reauthorization. We believe that, by designing policies that take into account the needs of families with a member with a disability, Congress can help the states provide the millions of members of these families off of welfare and toward greater independence.
supports, however, and through no fault of their own, these families sometimes fall at work activity and are often subject to inappropriate sanctioning and the crises that flow from abrupt—and often prolonged—loss of income.

Your bill could provide low-income families with disabilities with opportunities to achieve self-sufficiency in two significant ways, if included in larger TANF reauthorization legislation:

Allow states to count individuals participating in rehabilitative services beyond three months, while the individual progressively engages in work activity. Under the reauthorization law, the provision simply allows states to utilize a broader range of activities to help recipients with barriers move into work. In short, this is a way to make the TANF program work for parents with disabilities and substance abuse problems. The provision also allows states to receive work credit for the time that a parent spends caring for a child with a disability or an adult relative with a disability.

It is very difficult to find safe, accessible, and appropriate child care for a child with a disability. This is often the case regardless of the nature of some children’s disabilities and health conditions means that parents are called from work regularly to assist a child with the child’s special needs or medical appointments. At the same time, many parents would like to work as much as possible or receive the training they will need to secure a good job when they are no longer needed in the home to care for their children with disabilities.

Your bill will allow states to receive work credit for the time that a parent spends caring for a child with a disability, if the state has determined that this is the best way to secure the child’s care. The provision also would apply to providing care for an adult relative with a disability. This would help to address the bind that some TANF recipients face when they are told they must work away from home, but leave an elderly parent or other relative in need of care without the care they need to continue to live in the community. Nothing in the provision would prevent a state from designing a plan with the parent that combines some amount of in-home care as work activity with other activities that will help the parent prepare to enter the workforce at a time that is appropriate in meeting the needs of the child or adult relative with a disability.

Thank you again for introducing this legislation and your leadership on these very important issues. We look forward to working with you and your staffs to ensure that these provisions become law.

Sincerely,

them the support necessary to become truly independent.

In Vermont, approximately 15 percent of the welfare caseload is diagnosed with a disability and receives services through the Department of Vocational Rehabilitation. However, that treatment is not included in the “core activities” allowed under welfare reform. So the State receives no credit for moving these individuals to independence. This is wrong.

If we truly want welfare to be an initiative that helps people to become independent and self-sufficient, then we must be willing to take the steps necessary to get them there. This legislation would give States the tools necessary to assist them in that effort.

Here is how it would work. The bill will allow States to count people with disabilities or substance abuse problems as working, provided that they are meeting certain criteria. First, a State or County must designate someone as working for three months if they are involved in a treatment program. At the end of this three-month period, the State can re-evaluate the status of the individual and decide to continue treatment for another three months. Now, the individual must be engaged in work or work preparation activities in addition to their continuing treatment program. At the end of 6 months, the State can continue treatment with the individual as long as the individual is meeting half of the required work or work preparation activities in addition to their continuing treatment program.

This is a common sense proposal. It is consistent with what we know about providing effective support programs to people with disabilities and effective treatment programs for people struggling with substance abuse. Allowing States to count these people in the “working” category provides the States with the necessary incentives to engage core welfare recipients in meaningful interventions. It will allow the States to truly place people with disabilities and substance abuse problems on a pathway to independence.

In addition, this bill includes a provision first put forward by Senator Conrad that will allow States to exempt people who need to care for a child or family member with a disability. This is a proposal that was part of last year’s Senate Finance Committee Work, Opportunity and Responsibility for Kids (WORK) bill, and I applaud Senator Conrad for his consistent support of that proposal.

It is unclear when a full reauthoriza-

tion of welfare will occur. It is clear however, that The Pathways to Independence Act of 2003 should be a part of any welfare reform package. I would like to thank the Consortium for Citizens with Disabilities for their help in developing this legislation and their strong and effective support. I especially want to thank my colleagues from Oregon, Senator Smith, and my colleague from North Dakota, Senator Conrad and their staff for all of the hard work that has gone into producing this proposal.

By Mr. Santorum (for himself, Mr. Allen, Mr. Bunning, Mrs. Dodd, and Mr. Grassley).

S. 1524. A bill to amend the Internal Revenue Code of 1986 to allow a 7-year applicable recovery period for depreciation of motorsports entertainment complexes, to the Committee on Finance.

Mr. Santorum. Mr. President, today I am introducing the Motorsports Facilities Fairness Act. This bill would clarify the tax treatment of a large and growing industry that contributes to the economies of communities across the country.

The Motorsports Facilities Fairness Act would provide certainty to track and speedway operators regarding the depreciation treatment used by facility owners. For decades, motorsports facilities were classified as “theme and amusement facilities” for depreciation. This long-standing treatment was widely applied and accepted, until now.

Over the years, relying on this understanding of the tax law, facility owners and operators invested hundreds of millions of dollars in building and upgrading these properties.

Pennsylvania is home to many of these facilities, including Pocono Raceway, Nazareth Speedway, Erie Speedway, Jennerstown Speedway, Big Diamond Raceway and Motorodrome Speedway. These tracks and others boost their local economies. Larger races can draw tens of thousands of fans, some from hundreds of miles away. These facilities are an important part of the fabric of our national economy.

As motorsports continue to grow as a national pastime, we must ensure that Federal policy does not unnecessarily impede its contribution to the economy.

To that end I have introduced the Motorsports Facilities Fairness Act. This legislation would simply codify the well-understood, long-standing and widely-accepted treatment of motorsports facilities for depreciation purposes. While modest in scope, it will provide needed clarity to the hundreds of tracks throughout the United States.

I urge my colleagues to join me in supporting the Motorsports Facilities Fairness Act.

By Mr. Campbell (for himself and Mr. Inouye).

S. 1524. A bill to amend the Internal Revenue Code of 1986 to provide for the treatment of Indian tribal governments as State governments for purposes of issuing tax-exempt governmental bonds, and for other purposes; to the Committee on Finance.

Mr. Campbell. Mr. President, I am pleased to be joined by Senator Inouye in introducing the Tribal Government Tax Exempt Bond Fairness Act of 2003.

This bill will assist Indian tribes raise capital in the private markets for purposes of job creation and economic development. The bill complements the other economic development initiative I am introducing today to discipline Federal programs aimed to help tribes strengthen their economies.

While making modest adjustments in current law, this bill will have far-reaching and positive effects for tribal governments and their members around the Nation.

The fact is that like State governments, tribal governments are responsible for a host of services not only to their members but to non-members who live on or near these lands. These services include fire, police and ambulance service, road and bridge maintenance, and a host of social services.

Unlike State governments, however, tribal governments face severe restrictions in their ability to finance development through debt instruments.

The law forbids tribes from issuing tax-exempt bonds for any project unless it can meet the “essential government function” test.

That is, in order for the holder of a tribal bond issue to receive income from that bond exempt from Federal tax, it must be issued for activities that are “governmental” in nature.

Examples of the kinds of projects that have been ruled by the Internal Revenue Service as falling outside this test are tribal convention centers, hotels and golf courses.

State governments are not limited by the “essential government function” test when they issue tax-exempt debt. The bill I am introducing today will eliminate the disparate treatment tribes now receive.

Armed with this bonding authority, tribal governments will strengthen their economies, provide for their members and others, and lessen their reliance on Federal programs and services.

These are all worthy goals and I urge my colleagues to join me in supporting this bill.

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

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

S. 1526

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the “Tribal Government Tax-Exempt Bond Fairness Act of 2003.”

SEC. 2. DECLARATIONS AND AFFIRMATIONS.

Congress declares and affirms that—

(1) The United States Constitution, United States Federal court decisions, and United States statutes recognize that Indian tribes are governments, retaining sovereign authority over their lands.

(2) Through treaties, statutes, and Executive orders, the United States set aside Indian reservations to be used as “permanent homelands” for Indian tribes.

(3) As governments, Indian tribes have the responsibility and authority to provide governmental services, develop tribal economies, and build community infrastructure to
ensure that Indian reservation lands serve as livable "permanent homelands".

(4) Congress is vested with the authority to regulate commerce with Indian tribes, and hereby authorizes that authority and affirms the United States government-to-government relationship with Indian tribes.

SEC. 3. MODIFICATIONS OF AUTHORITY OF INDIAN TRIBAL GOVERNMENTS TO ISSUE TAX-EXEMPT BONDS.

(a) IN GENERAL.—Subsection (c) of section 7871 of the Internal Revenue Code of 1986 (relating to Indian tribe governmental bonds) is amended by inserting "or subdivision thereof" after "government".

(b) such obligation is part of an issue 95 percent or more of the obligations proceeds of which are to be used to finance any facility located on an Indian reservation, or

(2) such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of any essential governmental function.

(2) EXCLUSION OF GAMING.—An obligation described in subparagraph (A) or (B) of paragraph (1) is not to be used to finance any portion of a building in which class II or III gaming (as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2702)) is conducted or housed.

(3) DEFINITIONS.—For purposes of this subsection—

(A) INDIAN TRIBE.—The term "Indian tribe" means an Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(B) INDIAN RESERVATION.—The term "Indian reservation" means—

(i) a reservation, as defined in section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and

(ii) lands held under the provisions of the Alaska Indian Claims Settlement Act (43 U.S.C. 1601 et seq.) by a Native corporation as defined in section 3(m) of such Act (43 U.S.C. 1602(m)).

SEC. 4. EXEMPTION FROM REGISTRATION REQUIREMENTS.

The first sentence of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by inserting "or by any Indian tribal government (or subdivision thereof) as States for certain purposes) is amended to read as follows:

(c) ADDITIONAL REQUIREMENTS FOR TAX-EXEMPT BONDS.—

(1) IN GENERAL.—Subsection (a) of section 103 shall apply to any obligation issued by an Indian tribal government (or subdivision thereof) only if—

(A) such obligation is part of an issue 95 percent or more of the net proceeds of which are to be used to finance any facility located on an Indian reservation, or

(2) the meaning of section 7871 of the Internal Revenue Code of 1986 shall be construed to include any act, event, or occurrence which takes place between the Indian tribe and the Indian tribe government (or subdivision thereof).
(1) assure interagency coordination and communication and minimize overlap regarding efforts to address tick-borne disorders;
(2) identify opportunities to coordinate efforts with other Federal agencies and private organizations addressing tick-borne disorders; and
(3) develop informed responses to constituency groups regarding the Department of Health and Human Services' efforts and programs.

(c) MEMBERSHIP.—

(1) APPOINTED MEMBERS.—(A) IN GENERAL.—The Secretary of Health and Human Services shall appoint voting members to the Committee from among the following membership groups:
(i) Scientific community members.
(ii) Representatives of tick-borne disorder voluntary organizations.
(iii) Health care providers.
(iv) Patient representatives who are individuals who have been diagnosed with tick-borne illnesses or who have had an immediate family member diagnosed with such illness.
(v) Representatives of State and local health departments and national organizations who represent State and local health professionals.

(B) REQUIREMENT.—The Secretary shall ensure that an equal number of individuals are appointed to the Committee from each of the membership groups described in clauses (i) through (v) of subparagraph (A).

(C) EX OFFICIO MEMBERS.—The Committee shall have nonvoting ex officio members determined appropriate by the Secretary.

(d) CONAIRPERSONS.—(1) The Assistant Secretary of Health shall serve as the co-chairperson of the Committee with a public co-chairperson chosen by the members described in subparagraphs (A) and (C) of the public co-chairperson shall serve a 2-year term and retain all voting rights.

(e) TERM OF APPOINTMENT.—All members shall be appointed to serve on the Committee for 4-year terms.

(f) VACANCY.—If there is a vacancy on the Committee, such position shall be filled in the same manner as the original appointment. Any member appointed to fill an unexpired term shall be appointed for the remainder of such term. Members may serve after the expiration of their terms until their successors have taken office.

(g) MEETINGS.—The Committee shall hold public meetings, except as otherwise determined by the Secretary, giving notice to the public of such, and meet at least twice a year appropriate in consultation with the Director of the Centers for Disease Control and Prevention, the Director of the National Institutes of Health, the Committee, and other agencies, should consider carrying out the following:

(1) FIVE-YEAR PLAN.—It is the sense of the Senate that the Secretary should consider the establishment of a plan that, for the five fiscal years following the enactment of this Act, provides for the activities to be carried out during such fiscal years toward achieving the goals under paragraphs (2), (3), and (4) of subsection (a) that are appropriate to such goals, provide for the coordination of programs and activities regarding Lyme disease and other tick-borne disorders that are conducted or supported by the Federal Government.

(2) FIRST GOAL: DIAGNOSTIC TEST.—The goal described in this paragraph is to develop a diagnostic test for Lyme disease and other tick-borne disorders for use in clinical testing.

(3) SECOND GOAL: SURVEILLANCE AND REPORTING OF LYME DISEASE AND OTHER TICK-BORNE DISORDERS.—The goal described in this paragraph is to accurately determine the prevalence of Lyme disease and other tick-borne disorders in the United States.

(4) THIRD GOAL: PREVENTION OF LYME DISEASE AND OTHER TICK-BORNE DISORDERS.—The goal described in this paragraph is to develop the capacity of the Department of Health and Human Services to design and implement improved strategies for the prevention and control of Lyme disease and other tick-borne diseases. Such diseases may include Masters' disease, ehrlichiosis, babesiosis, other bacterial, viral and rickettsial diseases such as tularemia, tick-borne encephalitis, Rocky Mountain spotted fever, and bartonela, respectively.

Mr. DODD. Mr. President, it is with great pleasure that I rise today to introduce legislation for the research, prevention, and treatment of Lyme disease. This bipartisan legislation works toward the goal of eradicating Lyme disease—a devastating disease that has particularly impacted those of us from Connecticut and the Northeast. The Senate showed its strong support for this legislation when it passed in the last Congress by Unanimous Consent. It is my hope that the Senate will show this same support again to ensure the goals of this legislation are achieved.

Lyme disease can be devastating to those it affects. The disease first achieved prominence in the 1980s in the state of Connecticut and got its name from the town of Lyme, CT. Today, Connecticut residents have the unfortunate distinction of being 10 times more likely to contract Lyme disease than the rest of the nation. However, the incidence of Lyme disease nationwide is on the rise. In fact, cases of Lyme disease have been reported by 49 states and the District of Columbia. Since 1982, the number of Lyme disease cases reported to health officials has exceeded 200,000. Even more concerning are reports indicating that the actual incidence of Lyme disease may be significantly greater than what is reported.

Those infected with Lyme disease may experience a number of health problems including facial paralysis, joint swelling, loss of coordination, irregular heartbeat, liver malfunction, depression, and memory loss. Unfortunately, this devastating disease can often be misdiagnosed, due to the fact that the symptoms presented by Lyme disease often look similar to other conditions. The misdiagnosis of this often debilitating illness can result in prolonged pain and suffering, unnecessary tests, expensive treatments, as well as severe emotional consequences for victims and their families.

It is my hope that the Senate will show strong support for this legislation and pass it quickly. The legislation will provide what is necessary to continue the effort to research, prevent and treat Lyme disease and other tick-borne disorders.

A critical component of this legislation is the creation of a federal advisory committee on Lyme disease and other tick-borne disorders. This advisory committee, the first of its kind, will include members of the scientific community, health care providers, and most directly impacted by the disease, Lyme patients and their families. Among its activities, the committee will identify opportunities for coordination and communication between Federal agencies and private organizations in their efforts to combat Lyme disease.

This legislation also includes other key elements designed to conquer Lyme disease and other tick-borne disorders. It provides a framework for the government to establish clear goals in the areas of research, treatment, and prevention of Lyme disease. Crucial to activities in each of these areas, is the fact that this legislation authorizes $10 million in annual funding for federal activities related to the elimination of Lyme disease.
support of this important initiative. I look forward to continuing to work with Senator Santorum, my other colleagues, and the Lyme disease community to strengthen our efforts to eradicate Lyme disease. This legislation provides an important step toward reaching this laudable goal.

By Mr. Campbell (for himself and Mr. Inouye):

S. 1528. A bill to establish a procedure to authorize the integration and coordination of Federal funding dedicated to the community, business, and economic development of Native American communities; to the Committee on Indian Affairs.

Mr. Campbell. Mr. President, I am pleased to be joined by Senator Inouye in introducing a bill to assist Indian tribes in their efforts to strengthen their economies.

Despite recent success some Indian tribes have had with gaming, tourism and natural resource development, the fact is that most tribes still suffer high unemployment, intense poverty and a lack of physical infrastructure.

Most tribal economies continue to perform poorly. Despite the expenditure of hundreds of millions—even billions—of Federal dollars over the years by the Departments of Agriculture, Commerce, Defense, Interior, Labor, and others.

The core problem is not the amount of dollars, but rather how they are being spent.

Numerous hearings by the Committee on Indian Affairs and several General Accounting Office (GAO) reports show that most Federal efforts are poorly timed and coordinated and lack the kind of tribal decision-making to make the efforts succeed.

The bill we are introducing today will go a long way in fixing these problems.

The principles that guide the bill are not new. In 1970 President Nixon issued his “Special Message to Congress on Indian Affairs” that called for significant changes in Federal Indian policy. Nixon saw that Indians were not in command of the Federal programs and services that were available to them. He launched a quiet revolution in Federal Indian policy.

The Indian Self-Determination and Education Assistance Act of 1975 authorized, and the Indian Self-Determination Act of 1988 further developed, a project by project approach to Indian affairs. Rather than having money conditioned by Federal agencies on a disbursement-by-disbursement basis, it authorizes the tribes to apply for funds to accomplish objectives that they and the Federal government have determined together.

This bill will expand the principles of Indian self-determination to have the tribes—not the Federal bureaucracy—determine which programs and services should be brought to bear in an integrated and coordinated way to bring hope, jobs, and strengthened economies to their communities.

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

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

S. 1528

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

SEC. 1. TITLE.
The Act may be cited as the "Indian Tribal Development Consolidated Funding Act of 2003".

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) a unique legal and political relationship exists between the United States and Indian tribes that is reflected in article I, section 8, clause 3 of the Constitution, various treaties, Federal statutes, Supreme Court decisions, executive agreements, and course of dealing;

(2) despite the infusion of a substantial amount of Federal resources into Native American communities over several decades, the majority of Native Americans remain mired in poverty, unemployment, and despair;

(3) the existence of multiple programs and agencies results in a failure to foster community, economic, and business development in Native American communities and have been hampered by fragmentation of authority, responsibility, and performance, and lack of timeliness and coordination in resource and decision-making; and

(4) the effectiveness of Federal and tribal efforts in increasing employment opportunities and bringing value-added activities and economic growth to Native American communities depends on cooperative arrangements among the various Federal agencies and Indian tribes.

(b) PURPOSES.—The purposes of this Act are—

(1) to enable Indian tribes and tribal organizations to use available Federal assistance more effectively and efficiently;

(2) to adapt and target such assistance more readily to particular needs through wider use of projects that are supported by more than one agency, assistance program, or appropriation of the Federal Government;

(3) to encourage Federal-tribal arrangements under which Indian tribes and tribal organizations may more effectively and efficiently combine Federal and tribal resources to support economic projects;

(4) to promote the coordination of Native American economic programs to maximize the benefits of those programs to encourage a more consolidated, national policy for economic development; and

(5) to establish a procedure to aid Indian tribes in obtaining Federal resources and in more readily developing those resources for the furtherance of tribal self-government and self-determination.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPLICANT.—The term "applicant" means an Indian tribe or tribal organization, or a consortium of Indian tribes or tribal organizations, that has submitted an application under this Act for assistance in carrying out a project.

(2) ASSISTANCE.—The term "assistance" means the transfer of anything of value for a public purpose, support, or stimulation that is—

(A) authorized by a law of the United States;

(B) provided by the Federal Government through grant or contractual arrangements (including technical assistance programs providing assistance by loan, loan guarantee, or insurance); and

(C) authorized to Indian Indian tribes or tribal organization, or a consortium of Indian tribes or tribal organizations, as eligible for receipt of funds under a statutory or administrative formula for the purposes of promoting community, economic, or business development.

(3) ASSISTANCE PROGRAM.—The term "assistance program" means any program of the Federal Government that provides assistance for which Indian tribes or tribal organizations are eligible.

(4) INDIAN TRIBE.—The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) PROJECT.—The term "project" means a community, economic, or business development undertaking that includes components that contribute materially to carrying out a purpose or closely related purposes that are proposed or approved for assistance under more than 1 Federal Government program.

(6) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(7) TRIBAL ORGANIZATION.—The term "tribal organization" has the meaning given in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

SEC. 4. LEAD AGENCY.
The Department of the Interior shall be the lead agency for purposes of carrying out this Act.

SEC. 5. SELECTION OF PARTICIPATING TRIBES.

(a) PARTICIPANTS.—

(1) IN GENERAL.—The Secretary may select from the applicant pool described in subsection (b) Indian tribes or tribal organizations that have not exceeded 24 in number to submit an application to carry out a project under this Act.

(b) APPLICANT POOL.—The applicant pool described in this subsection shall consist of each Indian tribe or tribal organization that—

(1) successfully completes the planning phase described in subsection (c);

(2) requests participation in a project under this Act through a resolution or other official action of the tribal governing body; and

(3) demonstrates, for the 3 fiscal years immediately preceding the fiscal year for which participation is requested, financial stability and financial management capability as demonstrated by a showing by the Indian tribe or tribal organization that there were no material audit exceptions in the required annual audit of the self-determination contracts of the Indian tribe or tribal organization.

(c) PLANNING PHASE.—Each applicant—

(1) shall complete a planning phase that includes—

(A) legal and budgetary research; and

(B) internal tribal government and organizational preparation; and
(a) **Requirements.**—An applicant shall submit to the head of the Federal agency responsible for administering the primary Federal program to be affected by the project an application on or before the date of receipt of the application.

(b) **In General.**—If an application is made later than 90 days after the date of receipt of the application, the head of the Federal agency shall—

1. take all appropriate actions to carry out this Act when administering an assistance program; and
2. consult and cooperate with the head of other Federal agencies and Indian tribes as necessary to provide joint financing to support a specific project or class of projects.

(c) **Application.**—An application under this section shall include—

1. a description of the project to be financed; and
2. a description of the Federal and non-Federal financial assistance to be provided by the applicant and others.

(d) **Disapproval.**—If an application is not approved by the head of the Federal agency, the application shall be returned with the reasons for the disapproval.

SEC. 8. **PROCEEDINGS FOR JOINT FINANCING.**

(a) **In General.**—In providing support for a project to be financed in accordance with this Act, the head of a Federal agency shall take all appropriate actions to ensure that—

1. required reviews and approvals are handled expeditiously; and
2. complete account is taken of special considerations of timing that are made consistent with the head of the Federal agency by the applicant that would affect the feasibility of a jointly financed project.

(b) **Scope of Coverage.**—The Federal agencies that are directly involved in the project in a single budget shall be eligible for joint assistance under the Act.

(c) **Activities.**—Notwithstanding any other provision of law, the head of a Federal agency, acting alone or jointly through an agreement with another Federal agency, may—

1. identify related Federal programs that are suitable for providing joint financing of specific kinds of projects with respect to Indian tribes or tribal organizations; and
2. assist in planning and developing such projects to be financed through different Federal programs.

(d) **Approval.**—The head of each Federal agency shall approve or disapprove an application for joint assistance for a project.

(e) **Disapproval.**—If an application is not approved by the head of the Federal agency, the application shall be returned with the reasons for the disapproval.

SEC. 9. **UNIFORM ADMINISTRATIVE PROCEDURES.**

(a) **In General.**—To make participation in a project simpler than would otherwise be practicable because of the application of inconsistent or conflicting technical or administrative regulations or procedures that are not specifically required by the statute that governs the Federal program under which the project is funded, or because of the application by the Federal agency of any Federal statutory provision, regulation, policy, or procedure, that the project is funded, or because of the application by the Federal agency of any Federal statutory provision, regulation, policy, or procedure, that the project is funded, or because of the application by the Federal agency of any Federal statutory provision, regulation, policy, or procedure, that the project is funded, or because of the application by the Federal agency of any Federal statutory provision,
S. 1529. A bill to amend the Indian Gaming Regulatory Act to include provisions relating to the payment and administration of gaming fees, and for other purposes; to the Committee on Indian Affairs.

Mr. CAMPBELL. Mr. President, today I am pleased to be joined by Senator INOUYE in introducing the Indian Gaming Regulatory Act Amendments of 2003 to amend and update the act.

In amending the Indian Gaming Regulatory Act of 1988 (IGRA) it is important to keep in mind the twin aims of the act: to ensure that gaming continues to be a tool for Indian economic development; and to ensure that the gaming industry is kept free from corrupting forces to maintain the integrity of the industry.

This bill will update the IGRA by clarifying how vacancies in the National Indian Gaming Commission (NIGC) are filled; revising the NIGC statutory rates of pay to correspond with other current Federal rates of pay; and expanding the NIGC's reporting requirements to Congress.

The bill also requires background checks on contractors, management employees, and gaming commissioners. When the IGRA was enacted in 1988, Indian gaming was mainly high stakes bingo operations, known as “class II” gaming, with virtually no one thought that gaming would be the $14.5 billion dollar industry that it is today, providing tribes with resources for development and employment opportunities where none previously existed.

In response to this success, questions have been raised—some legitimate, some not—about the efficacy of regulation within the industry. This bill requires that the NIGC and the gaming tribes develop and implement a system of minimum internal control, background investigation and licensing standards for all tribes that operate class II and class III gaming.

The bill also requires that the NIGC be given the tools needed to fulfill its regulatory duties by increasing the fee cap 50 percent over the next six years. With that budgetary increase, and prior to levying any fees, the NIGC would be required to determine and take into account the nature and level of any tribal or joint tribal-state regulatory activities and to reduce the fees assessed accordingly.

The bill will ensure the NIGC to provide technical assistance and training to Indian tribes. The NIGC would be authorized to expend the civil fines it recoups for violations of the IGRA for these purposes.

The last substantive reform in the bill goes to the very heart of the act—economic development for Indian tribes. Because of gaming, some tribes have been very successful, employing thousands of people, both Indian and non-Indian, and reducing poverty and the welfare rolls in their areas.

This bill has attracted the attention of other governments, cash-strapped and hungry for new revenues. Many States are looking to gaming tribes to help eliminate their deficits, and some States are reportedly refusing to enter or re-enter compacts required under IGRA until tribes agree to revenue-sharing provisions.

Congress never envisioned that kind of pressure would be applied to tribes and, keeping these facts and the goals of IGRA in mind, the bill includes provisions to ensure that tribal gaming revenues are first used to meet the needs of tribal governments and their members. Only after satisfying those needs, would States and tribes be able to negotiate a revenue-sharing agreement.

To encourage States and tribes to negotiate, the bill requires the Secretary to perform her existing responsibilities under the act within 90 days and, at the back end, when existing compacts are up for renewal, the bill provides for a 180 day grace period beyond the expiration date of compacts to encourage tribal-State agreements.

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

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

S. 1529

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 Gaming Regulatory Act Amendments of 2003'.

SEC. 2. PAYMENT AND ADMINISTRATION OF GAMING FEES.

(a) DEFINITIONS.—Section 4(7) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(7)) is amended by adding at the end the following:

(b) NATIONAL INDIAN GAMING COMMISSION.—Section 5 of the Indian Gaming Regulatory Act (25 U.S.C. 2704) is amended—

(b) NATIONAL INDIAN GAMING COMMISSION.—Section 5 of the Indian Gaming Regulatory Act (25 U.S.C. 2704) is amended—
“(I) in general.—A vacancy on the Commission shall be filled in the same manner as the original appointment.

(2) Successors.—Unless a member of the Commission has been removed for cause under subsection (b)(6), the member may—

(A) be reappointed; and

(B) serve after the expiration of the term of the member until a successor is appointed.; and

(2) in subsection (e), in the last sentence, by inserting ‘‘or disability’’ after ‘‘in the absence’’.

(c) POWERS OF CHAIRMAN.—Section 6 of the Indian Gaming Regulatory Act (25 U.S.C. 2706) is amended by adding at the end the following:

“(C) DELEGATION.—The Chairman may delegate to an individual Commissioner any of the authorities removed for cause under subsection (a).”.

(d) APPLICABLE AUTHORITY.—In carrying out any function under this section, a Commissioner serving in the capacity of the Chairman shall be governed by—

“(1) such general policies as are formally adopted by the Commission; and

“(2) such regulatory decisions, findings, and determinations as are made by the Commission.”.

(2) Such general policies, decisions, findings, and determinations as are made by the Commission shall include—

“(1) in the case of apportionment with local governments, the total amount of net revenues exceeds the amounts necessary to meet the requirements of clauses (i) and (ii) of subsection (b)(2)(B) and clause (ii) of this subparagraph, if applicable; and

“(ii) to the extent that the excess revenues reflect the actual costs incurred by affected local governments as a result of the operation of gaming activities described in this section, the Commission shall establish a schedule of fees to be paid annually to the Commission by the Indian tribes that impose such a tax, fee, charge, or other assessment on any Indian tribe or any other person or entity authorized by an Indian tribe to engage in a class III gaming activity that the Indian tribe may engage under section 11(b)(1) of this Act.”.

(b) by redesigning subsection (c) as subsection (d); and

(c) by inserting after paragraph (b) the following:

“(c) STRATEGIC PLAN.—

“(I) IN GENERAL.—The Commission shall develop a strategic plan for use in carrying out activities of the Commission.

“(2) REQUIREMENTS.—The strategic plan shall include—

“(A) a comprehensive mission statement describing the major functions and operations of the Commission;

“(B) a description of the goals and objectives of the Commission;

“(C) a description of the means by which those goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to achieve those goals and objectives;

“(D) a performance plan for achievement of those goals and objectives that is consistent with—

“(i) other components of the strategic plan; and

“(ii) section 1115 of title 31, United States Code;”

“(E) an identification of the key factors that are external to, or beyond the control of, the Commission that could significantly affect the achievement of those goals and objectives described in subparagraphs (A) through (D);”

“(F) a description of the program evaluations used in establishing or revising those goals and objectives, including a schedule for future evaluations.

“(3) BIENNAL PLAN.—

“(A) PERIOD COVERED.—The strategic plan shall cover a period of not less than 5 fiscal years, beginning with the fiscal year in which the plan is submitted.

“(B) UPDATES AND REVISIONS.—The strategic plan shall be updated and revised biennially, and in such other instances as the Secretary determines to be necessary.

“(4) in subsection (d) (as redesignated by paragraph (2))—

“(A) in paragraph (3), by striking “and” at the end of

“(B) by redesigning paragraph (4) as paragraph (5); and

“(C) by inserting after paragraph (3) the following:

“(d) the strategic plan for activities of the Commission described in subsection (c); and

“(e) COMMISSION STAFFING.—Section 8 of the Indian Gaming Regulatory Act (25 U.S.C. 2707) is amended—

“(1) in subsection (a), by striking ‘‘GS-18 of the General Schedule under section 5332’’ and inserting ‘‘level IV of the Executive Schedule under section 5318’’;

“(2) in subsection (b)—

“(A) by striking ‘‘(B) The Chairman’’ and inserting the following:

“(B) STAFF.—

“(I) IN GENERAL.—The Chairman shall be appointed for a term of 4 years beginning with the first fiscal year after the date of enactment of this Act, and shall serve at the pleasure of the President.

“(II) COMMISSION STAFF.—The Commission staff shall be selected in accordance with chapter 51 and subchapter III of title 5, United States Code, and shall be subject to the provisions of chapter 73 of title 5, United States Code.

“(II) in subsection (c) and inserting the following:

“(C) IN GENERAL.—Staff appointed under paragraph (1) shall be paid not to exceed the daily rate payable for level IV of the Executive Schedule under section 5318 of title 5, United States Code.

“(3) by striking subsection (c) and inserting the following:

“(c) TEMPORARY SERVICES.—

“(1) IN GENERAL.—The Chairman may procure temporary and intermittent services under section 3109 of title 5, United States Code.

“(2) MAXIMUM RATE OF PAY.—The rate of pay for an individual appointed under paragraph (1) shall not exceed the rate payable for level IV of the Executive Schedule under section 5318 of title 5, United States Code.

“(B) in subsection (e), in the last sentence,

“(c) MANAGEMENT CONTRACTS.—Section 12 of the Indian Gaming Regulatory Act (25 U.S.C. 2711) is amended—

“(1) in subsections (b)(2)(F), by striking clause (i) and inserting the following:

“(I) The Indian tribe may engage in under section 11(b)(1) of this Act, and shall remain in effect for up to 180 days after expiration of the Tribal-State compact if—

“(A) the Indian tribe certifies to the Secretary that the Indian tribe requested a new compact not later than 90 days before expiration of the compact; and

“(B) a new compact has not been agreed on.”;

“(2) by redesigning paragraph (7)(B)(ii) as follows:

“(B) by redesigning paragraph (7)(B)(ii), by inserting ‘‘not later than 90 days after notification is made’’ after “the Secretary shall prescribe’’; and

“(C) by adding at the end the following:

“(10) EXTENSION OF TERM OF TRIBAL-STATE COMPACT.—Any Tribal-State compact approved by the Secretary in accordance with paragraph (8) shall remain in effect for a period of not less than 180 days or compact term, whichever is longer, and any compact shall be renewed on the same terms and conditions as the compact originally approved by the Secretary unless the Secretary determines to the contrary.

“(d) TRIBAL GAMING ORDINANCES.—Section 11 of the Indian Gaming Regulatory Act (25 U.S.C. 2711) is amended—

“(1) in subsection (b)(4) (as redesignated by paragraph (2)), by striking “‘except as otherwise provided by the Secretary’” and inserting “‘except as otherwise provided in accordance with the Secretary’s regulations’”.

“(e) MANAGEMENT CONTRACTS.—Section 12 of the Indian Gaming Regulatory Act (25 U.S.C. 2711) is amended—

“(1) by striking the section heading and all that follows through ‘Subject’ in subsection (a)(1) and inserting the following:

“(SEC. 12. MANAGEMENT CONTRACTS.—

“(1) general provisions.—

“(A) the total amount of net revenues that are apportionable to the Indian tribes that are the subject of a management agreement, to the extent that the excess revenues reflect the actual costs incurred by affected local governments as a result of the operation of gaming activities described in this section, the Commission shall establish a schedule of fees to be paid annually to the Commission by the Indian tribes that impose such a tax, fee, charge, or other assessment on any Indian tribe or any other person or entity authorized by an Indian tribe to engage in a class III gaming activity that the Indian tribe may engage under section 11(b)(1) of this Act, and shall remain in effect for up to 180 days after expiration of the Tribal-State compact if—

“(A) the Indian tribe certifies to the Secretary that the Indian tribe requested a new compact not later than 90 days before expiration of the compact; and

“(B) a new compact has not been agreed on.”;

“(d) TRIBAL REGULATIONS.—Section 6 of the Indian Gaming Regulatory Act (25 U.S.C. 2706) is amended—

“(A) BACKGROUND INVESTIGATIONS.—In the case of apportionment with local governments, the total amount of net revenues exceeds the amounts necessary to meet the requirements of clauses (i) and (ii) of subsection (b)(2)(B) and clause (ii) of this subparagraph, if applicable; and

“(ii) to the extent that the excess revenues reflect the actual costs incurred by affected local governments as a result of the operation of gaming activities described in this section, the Commission shall establish a schedule of fees to be paid annually to the Commission by the Indian tribes that impose such a tax, fee, charge, or other assessment on any Indian tribe or any other person or entity authorized by an Indian tribe to engage in a class III gaming activity that the Indian tribe may engage under section 11(b)(1) or a class III gaming activity in which the Indian tribe may engage under section 11(d).”.

“(f) COMMISSION FUNDING.—Section 18 of the Indian Gaming Regulatory Act (25 U.S.C. 2717) is amended—

“(1) in subsection (a) (as added by section 8 of this Act), by striking paragraphs (1) through (3) and inserting the following:

“(1) SCHEDULE OF FEES.—

(A) in general.—Except as provided in this section, the Commission shall establish a schedule of fees to be paid annually to the Commission, on a quarterly basis, by each gaming operation that conducts a class II gaming or class III gaming activity that is regulated, in whole or in part, by this Act.

(B) RATES.—The rates of fees under the schedule established under subparagraph (A) that are imposed on the gross revenues from each operation that conducts a class II gaming or class III gaming activity described in that paragraph shall be (as determined by the Commission)—

(i) a progressive rate structure levied on the gross revenues in excess of $1,500,000 from...
each operation that conducts a class II gaming or class III gaming activity; or

“(ii) a flat fee levied on the gross revenues from each operation that conducts a class II gaming or class III gaming activity.

“(C) TOTAL AMOUNT.—The total amount of all fees imposed during any fiscal year under the schedule established under subparagraph (A) shall not exceed $10,000,000 for each of fiscal years 2004 and 2005; $12,000,000 for each of fiscal years 2006 and 2007; and $18,000,000 for each of fiscal years 2008 and 2009.”

“(b) by redesigning paragraphs (4) through (6) as paragraphs (2) through (4), respectively;

“(b) by redesigning subsection (b) as subsection (d);”

“(3) in paragraph (2) of subsection (d) as redesignated by paragraph (2), by striking “section 19 of this Act” and inserting “section 28;” and

“(4) by inserting after subsection (a) the following:

“(b) FEE PROCEDURES.—

“(1) IN GENERAL.—By a vote of not less than 2 members of the Commission, the Commission shall adopt the schedule of fees provided for under this section.

“(2) IN ASSESSING AND COLLECTING FEES UNDER THIS SECTION, THE COMMISSION SHALL TAKE INTO ACCOUNT THE DUTIES OF, AND SERVICES PROVIDED BY, THE COMMISSION UNDER THIS ACT.

“(3) REGULATIONS.—The Commission shall promulgate such regulations as are necessary to carry out this subsection.

“(4) FEE REDUCTION PROGRAM.—

“(1) IN GENERAL.—In making a determination of the amount of fees to be assessed for any class II gaming or class III gaming activity under the schedule of fees under this section, the Commission may provide for a reduction in the amount of fees that otherwise would be imposed on the basis of—

“(A) the extent and quality of regulation of the gaming activity provided by a State or Indian tribe; and

“(B) the extent and quality of self-regulating activities covered by this Act that are conducted by an Indian tribe or by a State.

“(2) FACTORS DETERMINED BY THE COMMISSION, INCLUDING—

“(i) the unique nature of tribal gaming as compared with commercial gaming, other governmental gaming, and charitable gaming;

“(ii) the broad variations in the scale, and size of tribal gaming activity;

“(iii) the inherent sovereign rights of Indian tribes with respect to regulating the affairs of Indian tribes;

“(iv) the findings and purposes under sections 2 and 3.

“(A) the amount of interest or investment income derived from the Indian gaming regulatory accounts; and

“(B) any other matter that is consistent with the purposes under section 3.

“(2) RULEMAKING.—The Commission shall promulgate such regulations as are necessary to carry out this subsection.

“(i) ADDITIONAL AMENDMENTS.—The Indian Gaming Regulatory Act is amended—

“(1) by striking section 19 (25 U.S.C. 2719); and

“(2) by redesigning sections 20 through 24 (25 U.S.C. 2719 through 2723) as sections 23 through 27, respectively;

“(3) by inserting after section 18 (25 U.S.C. 2717) the following:

“SEC. 19. INDIAN GAMING REGULATION ACCOUNTS.

“(a) IN GENERAL.—All fees and civil forfeitures collected by the Commission in accordance with this Act shall—

“(1) be maintained in separate, segregated accounts; and

“(2) be expended only for purposes described in this Act.

“(B) INVESTMENTS.—

“(1) IN GENERAL.—The Commission shall invest such portion of the accounts maintained under subsection (a) as are not, in the judgment of the Commission, required to meet immediate expenses.

“(2) TYPES OF INVESTMENTS.—Investments may be made only in interest-bearing obligations issued by the United States that are in effect as of the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003 that are guaranteed as to both principal and interest by the United States.

“(C) SALE OF OBLIGATIONS.—Any obligation acquired with funds in an account maintained under subsection (a)(1) except special obligations issued exclusively to those accounts, which may be redeemed at par plus accrued interest may be sold by the Commission at the market price.

“(D) CREDITS TO INDIAN GAMING REGULATORY ACCOUNTS.—The interest on, and proceeds from, the sale or redemption of any obligation held in an account maintained under subsection (a)(1) shall be credited to and form a part of the account.

“(sec. 20. MINIMUM STANDARDS.

“(a) CLASS I GAMING.—Notwithstanding any other provision of law, class I gaming on Indian land—

“(1) shall remain within the exclusive jurisdiction of the Indian tribe having jurisdiction over the Indian land; and

“(2) shall not be subject to this Act.

“(b) CLASS II GAMING.—

“(1) IN GENERAL.—Subject to paragraph (2), an Indian tribe shall retain primary jurisdiction over regulation of class II gaming activities conducted by an Indian tribe.

“(2) CONDUCT OF CLASS II GAMING.—Any class II gaming activity shall be conducted in accordance with—

“(A) section 11; and

“(B) regulations promulgated under subsection (d).

“(c) CLASS III GAMING.—

“(1) IN GENERAL.—Subject to paragraph (2), an Indian tribe shall retain primary jurisdiction over regulation of class III gaming activities conducted by an Indian tribe.

“(2) CONDUCT OF CLASS III GAMING.—Any class III gaming activity operated by an Indian tribe under this Act shall be conducted in accordance with—

“(A) section 11; and

“(B) regulations promulgated under subsection (d).

“(d) RULEMAKING.—

“(1) IN GENERAL.—

“(A) PROMULGATION.—Not later than 180 days after the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003, the Commission shall develop procedures under subchapter III of chapter 5 of title 5, United States Code, to negotiate and promulgate regulations relating to—

“(i) the monitoring and regulation of tribal gaming;

“(ii) the establishment and regulation of internal control systems; and

“(iii) the conduct of background investigations.

“(B) PUBLICATION OF PROPOSED REGULATIONS.—Not later than 1 year after the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003, the Commission shall publish in the Federal Register proposed regulations developed by a negotiated rulemaking committee in accordance with this section.

“(2) COMMITTEE.—A negotiated rulemaking committee established in accordance with section 550 of the United States Code, shall carry out this subsection shall be composed only of Federal and Indian tribal government representatives, a majority of whom shall be nominated by and be representative of Indian tribes that conduct gaming in accordance with this Act.

“(E) ELIMINATION OF EXISTING REGULATIONS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), as of the date that is 1 year after the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003, regulations establishing minimum internal control standards promulgated by the Commission that are in effect as of the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003 shall have no force or effect.

“(2) EXCEPTION FOR AFFIRMATION OF EXISTING REGULATIONS.—Notwithstanding paragraph (1), if, before the date of enactment of the Indian Gaming Regulatory Act Amendments of 2003, the Commission promulgates regulations that establish minimum internal control standards that meet the requirements of subsection (d)(1)(A) and were developed in consultation with affected Indian tribes, the regulations shall—

“(A) be considered to satisfy the requirements of paragraph (3); and

“(B) remain in full force and effect.

“(SEC. 21. USE OF NATIONAL INDIAN GAMING COMMISSION FINE.

“(a) ACCOUNT.—Amounts collected by the Commission under section 14 shall—

“(1) be deposited in a separate Indian gaming regulation account established under section 19(b)(1)(A).

“(2) be available to the Commission, as provided for in advance in Acts of appropriation, for use in carrying out this Act.

“(b) USE OF FUNDS.—A grant or financial assistance provided under paragraph (1) may be used only to—

“(1) provide technical training and other assistance to an Indian tribe to strengthen the regulatory integrity of Indian gaming;

“(2) provide assistance to an Indian tribe to assess the feasibility of conducting nongaming economic development activities on Indian land;

“(3) provide assistance to an Indian tribe to devise and implement programs and treatment services for individuals diagnosed as problem gamblers; or

“(4) provide to an Indian tribe 1 or more other forms of assistance that are not inconsistent with this Act.

“(c) SOURCE OF FUNDS.—Amounts used to carry out subsection (b) may be derived only from—

“(1) collected by the Commission under section 14; and

“(2) authorized for use in advance by an Act of appropriation.

“(d) REGULATIONS.—The Commission may promulgate such regulations as are necessary to carry out this section.

“(sec. 22. TRIBAL CONtinuity.

“In carrying out this Act, the Secretary of the Interior, Secretary of the Treasury, and Chairman of the Commission shall involve and consult with Indian tribes to the maximum extent practicable, as appropriate, in a manner that is consistent with the Federal trust and the government-to-government relationship that exists between Indian tribes and the Federal Government.” and

“(4) by inserting after section 27 (as redesignated by paragraph (2)) the following:
"SEC. 28. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Subject to section 18, there is authorized to be appropriated to carry out this Act, for fiscal year 1996 and each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 18(a).

(b) AMOUNT.—Notwithstanding section 18, in addition to amounts authorized to be appropriated by subsection (a), there are authorized to be appropriated $2,000,000 for each fiscal year thereafter to carry out this Act.

SEC. 29. TREATY WITH THE LOWER BRULE AND CROW CREEK SIOUX TRIBES.

This section was enacted by the St. Lawrence Seaway Treaty of December 18, 1954, which gives compensation to the Lower Brule and Crow Creek Sioux Tribes for losses from the Pick-Sloan projects along the Missouri River.

By Mr. DASCHLE:
S. 1530. A bill to provide compensation to the Lower Brule and Crow Creek Sioux Tribes for losses from the Pick-Sloan projects along the Missouri River; to the Committee on Indian Affairs.

Mr. DASCHLE. Mr. President, I am pleased to introduce the Lower Brule and Crow Creek Sioux Tribal Parity Act of 2003.

This legislation is intended to provide additional and final compensation to the Lower Brule Sioux and Crow Creek Sioux Tribes for losses from the Pick-Sloan Missouri River Basin Program, commonly known as the "Flood Control Act of 1944".

The Pick-Sloan Program inundated the fertile bottom land of the Lower Brule and Crow Creek Sioux Tribes, which greatly damaged the economy and cultural resources of the Tribe. Congress has provided compensation to several South Dakota Indian tribes, including the Lower Brule and Crow Creek Sioux Tribes, which greatly damaged the economy and cultural resources of the Tribes.

This legislation is intended to provide additional and final compensation to several Indian tribes, including the Lower Brule and Crow Creek Sioux Tribes, which greatly damaged the economy and cultural resources of the Tribes.

(3) the Fort Randall and Big Bend projects; (4) Congress, in determining the compensation for the Lower Brule and Crow Creek Sioux Tribes, which greatly damaged the economy and cultural resources of the Tribes;

(4) Congress, in determining the compensation for the Lower Brule and Crow Creek Sioux Tribes, which greatly damaged the economy and cultural resources of the Tribes; (5) the compensation provided to those Indian tribes has not been consistent;

(6) Missouri River Indian tribes that suffered injury as a result of 1 or more Pick-Sloan Projects should be adequately compensated for those injuries, and that compensation should be consistent among the Tribes;

(7) the Lower Brule Sioux Tribe and the Crow Creek Sioux Tribe, based on methodology determined appropriate by the General Accounting Office, are entitled to receive additional compensation for injures described in paragraph (6), so as to provide parity among compensation received by all Missouri River Indian tribes.

SEC. 3. LOWER BRULE SIOUX TRIBE.

Section 4(b) of the Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act of 1996 (Public Law 104-223; 110 Stat. 2635) is amended by striking "$39,300,000" and inserting "$100,244,040".

sec. 4. CROW CREEK SIOUX TRIBE.

Section 4(b) of the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996 (Public Law 104-223; 110 Stat. 3027) is amended by striking "$27,500,000" and inserting "$100,244,040".

By Mr. HATCH (for himself, Mr. LEAHY, Mr. WARNER, Mr. BINGAMAN, Mr. ALLEN, Mr. NELSON of Nebraska, Mr. COCHRAN, Mr. LUTZENBERGER, Mr. BOND, Mr. HARKIN, Mr. DOMENICI, Mr. JEFFORDS, Mr. CHAMBLLIS, Mr. ROCKEFELLER, Mrs. DOLE, and Mr. BREAUER):

S. 1530.—A bill to require the Secretary of the Treasury to mint coins in commemoration of Chief Justice John Marshall; to the Committee on Banking, Housing, and Urban Affairs.

Mr. HATCH. Mr. President, I rise today in support of S. 1530, the John Marshall Commemorative Coin Act. This bill authorizes the Treasury Department to mint and issue coins bearing the likeness of Chief Justice John Marshall for the purpose of supporting the Supreme Court Historical Society. Sales of the coins constiutute voluntary contributions to raising funds for the Society; also cover all of the costs of mintage and issuing these coins, so that the American taxpayer would not bear any cost whatsoever if this legislation were enacted.

Justice Oliver Wendell Holmes once called John Marshall “the great Chief Justice.” After 34 years on the bench, from 1801–1835, Marshall earned that title by establishing many of the constitutional doctrines we revere today. Writing over 500 opinions, he truly made the third branch of government co-equal with the legislative and executive branches.

His greatness lay in his ability to figure out how to put in practice the concept of checks and balances. In powerfully written decisions, the Marshall Court established several constitutional doctrines, forming the bedrock of contemporary jurisprudence including: establishing the independence of the judiciary, prohibiting State taxation of the Federal Government, making the federal supreme court final arbiter of decisions issued by State supreme courts, and ex-pounding the limits of the contracts and commerce clauses. Indeed, he solidified early Federalist ideas by defining the relationships between the Federal Government and the States; a position that was forgotten and is only very recently re-emerging in our jurisprudence.

Born in 1755, Marshall was a key player in the founding generation who established our constitutional government. He was an early and active member in the revolutionary cause, joining the revolutionary army and fighting as one of George Washington’s Officers in at least four major battles and enduring the winter at Valley Forge. Marshall later served as a member of Congress and as Secretary of State before his ascension to the Supreme Court.

There is no more fitting likeness for a coin that would support the efforts of the Supreme Court Historical Society. The Society is a non-profit organization whose purpose is to preserve and disseminate the history of the Supreme Court of the United States. Founded by Chief Justice Warren Burger, the Society’s mission is to provide information and historical research on our Nations highest court. The Society fulfills this mission through conducting programs, publishing books, supporting historical research and collecting antiques and artifacts related to the Court’s history.

Recent research includes efforts to capture the history of the Court during the Franklin D. Roosevelt period, the Civil War, and the evolution of the Chief Justice’s role on the court. Lectures and programs are open to the public as well as Society members. Additionally, the Society seeks to acquire the private papers, period furnishings, and art work relating to court history.

For all of these reasons, I urge my colleagues to join me in this effort to memorialize the great Chief Justice John Marshall and assist a worthwhile organization like the Supreme Court Historical Society.

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

Mr. LEAHY. Mr. President, I join my Judiciary Committee colleague Senator HATCH and others in introducing a bill to authorize the minting of a commemorative coin in honor of United States
other important contributions to American constitutional law. For example, Marshall advocated that judges, as ultimate guardians of the Constitution, should be above politics and that the role of the Nation’s courts was to mitigate the effects of factional politics. Marshall espoused an approach to constitutional interpretation termed “fair construction” which struck a middle ground between an overly restrictive, and an overly broad, reading of the Constitution because he feared that an over-construction would ultimately weaken the Constitution and, in due course, the Nation.

In closing, it is difficult to overstate Chief Justice Marshall’s contributions to our Nation. Many years ago, when I read Marshall’s opinions in my first year of law school, I admired the Chief Justice. Now, having served in Congress and worked within the principles Marshall established, I find him all the more admirable. A commemorative coin in his honor would be a fitting tribute to “the Great Chief Justice.”

I ask unanimous consent that the text of bill be printed in the RECORD. There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1533
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 “Chief Justice John Marshall Commemorative Coin Act.”

SEC. 2. FINDINGS. Congress finds that—
(1) John Marshall served as the Chief Justice of the Supreme Court of the United States from 1801 to 1835, the longest tenure of any Chief Justice in the Nation’s history; and
(2) Under Marshall’s leadership, the Supreme Court evolved into a powerful institution and assumed its role as guardian of the Constitution, and as the arbiter of disputes between the Federal government and the States. As one legal scholar commented: “It is not inconceivable that the Supreme Court would have remained a minor appendage of our government, and our constitutional development taken a distinctly different course, but for the fact that John Marshall occupied the Chief Justice’s chair during the first three decades of the nineteenth century.”

Marshall is considered the founding father of American Constitutional law. To name just a few of Marshall’s contributions, in Marbury v. Madison the first instance in which the Supreme Court pronounced an act of Congress unconstitutional is the leading precedent for the Court’s power to judge the constitutionality of legislative and executive acts. In McCulloch v. Maryland, Marshall asserted the right of the Supreme Court to decide questions involving the conflicting powers of the Federal and State governments, affirmed Congress authority to act in one of its enumerated powers, and established the standard for determining when the exercise of a Federal power limits the otherwise sovereign power of a State. In Cohens v. Virginia, Marshall established the authority of the Federal judiciary to review decisions of the highest State courts. As a final illustration of Marshall’s many important judicial opinions, in Gibbons v. Ogden, he set forth Congress’ power to regulate commerce among the States and with foreign nations.

Aside from the specific constitutional principles Marshall established while on the Court, he made many
(1) full payment for the coin;
(2) security satisfactory to the Secretary to indemnify the Federal Government for full payment; or
(3) an offer of full payment satisfactory to the Secretary from a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, the Federal Housing and Loan Insurance Corporation, or the National Credit Union Administration Board.

By Ms. STABENOW (for herself, Mr. ENZI, Mr. JOHNSON, Mr. HAGEL, Mr. SCHUMER, Mr. BAYH, Mr. CARPER, and Mr. CORZINE):
S. 1532. A bill to establish the Financial Literacy Commission, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Ms. STABENOW. Mr. President, I rise today to introduce the Financial Literacy Community Outreach Act of 2003. This bill, which I am proud to introduce with my colleague and friend, Mr. Enzi, is the product of several months of work. We have reached out to financial literacy advocates, financial institutions, Federal agencies, and other interested parties to craft a comprehensive bill to streamline, augment, and enhance the Government’s approach to financial literacy.

The need for this legislation is clear. Studies show alarming shortcomings in the state of financial literacy in America. For example, in a survey of consumers 18 years and older conducted by the American Association of Retired Persons in late 1998, only 11 percent of respondents correctly answered 4 basic financial questions. A study by the Jumpstart Coalition for Personal Financial Literacy found that in 2002, on average, high school seniors could correctly answer only about 50 percent of a set of financial answers put to them a failing grade.

In addition, from 1990 to 2000, the outstanding credit card debt among households more than tripled from $200 billion to $600 billion. And, a 2002 study by John Hancock found that, in a study it did, 50 percent of respondents said they spend half an hour or less per month managing their retirement funds.

These are all very concerning statistics and, just a few examples of why I feel the need to act to improve our government’s approach to this problem. We need a clear and effective strategy to address these issues.

The Federal Government understands that financial literacy is essential to a healthy economy and the protection of consumers. That is why many Federal departments and agencies have employed their resources and expertise to educate the public about how to accomplish such goals as realizing the dreams of homeownership, saving for a child’s college education, and planning for a secure retirement. These agencies do this through grant programs, special training, and by developing financial literacy materials. Unfortunately, what Mr. Enzi and I, as well as others active on this issue, have come to realize is that these programs are uncoordinated and, in some places, duplicative. There is no mechanism for these agencies to interact and assess the good work they are doing. That is why, in our legislation, we set up a Federal Financial Literacy Commission.

Made up of Federal decision makers with jurisdiction over one or more financial literacy programs, including the Federal Reserve, the FDIC, the Treasury Department, Housing and Urban Development, the Securities and Exchange Commission, and the Small Business Administration, our Commission, and its constituent members, will take all necessary steps to coordinate, streamline and improve existing programs. The Commission will also make recommendations to Congress in legislation that may be needed to improve financial education.

I am pleased to say that this new Commission will operate as a nexus for all Federal financial literacy materials, grants, and information; spearhead efforts to reach out to the public with financial literacy messages; manage grants to agencies; operate a website promoting financial literacy and highlighting Federal grants, materials, and programs; and, it may feature private and non-profit resources available to the public.

Improving the state of financial literacy is a common sense thing to do. It is something that we can do through cooperation and strategic thinking about our Federal resources. And, it can be done with the input of all concerned interests. Many people in the Senate have worked diligently on the subject of financial literacy, including Mr. SARBANES, the Ranking Member of the Banking, Housing, and Urban Affairs Committee who has done important work to date.

I am pleased that Mr. Enzi is the lead Republican sponsor of this legislation; he is a true leader and cares passionately about this issue. And, I appreciate the leadership of the bipartisan group of Senators who have agreed to cosponsor our bill: Mr. HAGEL, Mr. JOHNSON, Mr. SCHUMER, Mr. BAYH, Mr. CARPER, and Mr. CORZINE. I look forward to working with them and all of my other colleagues in the Senate to ensure that we have an effective, coordinated, and comprehensive Federal approach to improving financial literacy in our country.

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

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

S. 1532

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 “Financial Literacy Community Outreach Act”.

SEC. 2. FINDINGS. Congress finds that—

(1) although the evolution of our financial system has offered families in the United States many new opportunities to build wealth and security, the ready availability of low-cost credit and increased access to investment and savings options, and the shifting of responsibility for retirement savings from employer to employee has made the understanding of personal finance ever more important;

(2) many young adults within the United States have demonstrated difficulty understanding basic financial decisions, such as savings, debt, and the effects of investment and saving on their future income;

(3) in surveys of high school seniors conducted by the Jumpstart Coalition for Personal Financial Literacy—

(A) in 1997 participants, on average, failed, and answered only 57 percent of the questions correctly;

(B) in 2000, the average score fell to 51 percent; and

(C) in 2002, disturbingly, on average, only 50 percent of the questions were answered correctly;

(4) in a survey of consumers 18 years and older conducted by the American Association of Retired Persons in late 1998, only 11 percent of respondents correctly answered 4 basic financial questions.

(5) a similar survey of 800 defined benefit contribution plan participants conducted by John Hancock in 2002 found that 50 percent of respondents said they spend half an hour or less per month managing their retirement funds;

(6) households in the United States are not saving their full potential in financial management, and as a result—

(A) the personal savings rate fell to only 1.6 percent of disposable income in 2001;

(B) in 1990 to 2000, outstanding credit card debt among households more than tripled from $200 billion, 000,000,000 to $600 billion, 000,000,000;

(C) in 2001, the total household debt exceeded total household disposable income by nearly 10 percent;

(D) less than half of all households hold stock in any form, including mutual funds and 401(k)-style pension plans; and

(E) almost half of all workers have accumulated less than $50,000 for their retirement, and 25 have saved less than $10,000;

(7) many Government agencies recognize that the people of the United States lack expertise in financial literacy and are working to help them, including efforts by—

(A) the Department of Labor and the Federal Deposit Insurance Corporation, which have joined together to create “Money Smart”, a training program to help adults enhance their money management skills;

(B) the Department of the Treasury, which has formed the “Financial Services Education Council”, and has published a guide called “Helping People in Your Community Understand Basic Financial Services”;

(C) the Department of the Treasury in promoting a middle school curriculum called “Smart Money, Smart Kids”;

(D) the Federal Trade Commission, which publishes information about credit, including “Credit Matters: How to qualify for credit, keep a good credit history, and protect your credit”;

(E) the Department of Agriculture, which runs the “Family Economics Program” to assist educators who deliver basic consumer education and teach personal financial management skills to young people;

(F) the Securities and Exchange Commission, which has an Office of Investor Education and Assistance;

(G) the Board of Governors of the Federal Reserve System, which has developed materials to train money management skills responsibly, obtain a mortgage, build wealth, and lease a car;
(H) the Department of Housing and Urban Development in funding housing counseling agencies nationwide that provide advice on how to save for and buy a home; and
(i) the Comptroller of the Currency Administration in hosting the Federal Consumer Information Center, which has an electronic catalogue of information about Federal financial literacy programs.
(b) there is very little coordination among Federal programs, resulting in duplication of effort and a confusing array of information spread among various agencies;
(c) there is a serious problem with financial illiteracy among many low-income consumers, who often—
(A) have no idea or idea of how to save and how to save for higher yielding, yet secure savings vehicles; and
(B) lack experience and information about personal finance; and
(C) are ill-prepared to make informed financial decisions;
(D) many people in the United States—
(A) are in a precarious financial position because they lack an understanding of economic and financial fundamentals and of financial planning;
(B) are forgoing opportunities to build wealth because they get their investments to higher yielding, yet secure savings vehicles; and
(C) are failing to adequately plan and save for retirement;
(1) financial literacy is the foundation that supports—
(A) economic independence for the citizens of the United States; and
(B) the functioning of our free market economy.

SEC. 3. DEFINITIONS.

As used in this Act—
(1) the term ‘‘Commission’’ means the Financial Literacy Commission established under section 101; and
(2) the term ‘‘Financial Literacy’’ means basic personal income and household money management and planning skills, including—
(A) saving and investing;
(B) building wealth;
(C) managing spending, credit, and debt effectively;
(D) tax and estate planning;
(E) the ability to ascertain fair and favorable credit terms and avoid abusive, predatory, or deceptive credit offers;
(F) the ability to understand, evaluate, and compare cost of goods, products, services, and opportunities; and
(G) all other related skills.

TITLE I—FINANCIAL LITERACY COMMISSION

SEC. 101. ESTABLISHMENT OF FINANCIAL LITERACY COMMISSION.

(a) IN GENERAL.—There is established a Commission to be known as the Financial Literacy Commission.

(b) PURPOSE.—The Commission shall serve to improve the financial literacy of persons in the United States by overseeing, implementing, and reporting upon the effects of the performance of the duties of the Commission set forth in section 102.

(c) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of not more than 19 members, including—
(A) the Comptroller of the Currency;
(B) the Secretary of Agriculture of the Department of Agriculture;
(C) the Secretary of Education of the Department of Education;
(D) the Secretary of Housing and Urban Development of the Department of Housing and Urban Development;
(E) the Attorney General of the Department of Labor;
(F) the Secretary of the Treasury;
(G) the Chairman of the Federal Deposit Insurance Corporation;
(H) the Chairman of the Board of Governors of the Federal Reserve System;
(I) the Comptroller of the Currency Trade Commission;
(J) the Administrator of General Services of the General Services Administration;
(K) the Commissioner of the Internal Revenue Service;
(L) the Chairman of the National Credit Union Administration Board;
(M) the Director of the Office of Thrift Supervision;
(N) the Chairman of the Securities and Exchange Commission;
(O) the Commissioner of the Small Business Administration;
(P) the Commissioner of the Social Security Administration;
(Q) the Secretary of Labor of the Department of Labor;
(R) the Secretary of Housing and Urban Development;
(S) the Chairman of the Federal Trade Commission;
(T) the Secretary of Commerce; and
(U) the Secretary of the Treasury.

(b) in the judgment of the Commission, other public or private entities.

(c) in the judgment of the Commission, other public or private entities.

(d) in the judgment of the Commission, other public or private entities.

(e) in the judgment of the Commission, other public or private entities.

(f) in the judgment of the Commission, other public or private entities.

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(z) in the judgment of the Commission, other public or private entities.
materials, and grants of the Federal Government.

(2) ANNUAL REPORT.—

(A) IN GENERAL.—Not later than November 30 of each year, the Commission 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 detailing the activities of the Commission during the preceding fiscal year, and making recommendations on ways to enhance financial literacy in the United States.

(B) CONTENTS.—The report required under subparagraph (a) shall include—

(i) information concerning the content and public availability of the website established under subsection (b);

(ii) information concerning the usage of the toll-free telephone number established under subsection (c);

(iii) summaries of the financial literacy materials developed under subsection (d), and data regarding the dissemination of such materials;

(iv) information about the activities of the Commission planned for the next fiscal year;

(v) a summary of all Federal efforts to reach rural communities that have historically lacked access to financial literacy materials and education; and

(vi) such other materials relating to the duties of the Commission as the Commission deems appropriate.

(3) PERIODIC STUDIES.—The Commission may conduct periodic studies regarding the state of financial literacy in the United States, as the Commission determines appropriate.

SEC. 103. POWERS OF THE COMMISSION.

(A) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable in the performance of this Act.

(B) ADVISORY COMMITTEES.—The Commission shall establish not fewer than 1 advisory committee, consisting of representatives of lending institutions, financial literacy nonprofit organizations, consumer advocates, State and local governments, and such other individuals that the Commission believes could contribute to the work of the Commission.

(C) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from a Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission.

(D) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 104. COMMISSION PERSONNEL MATTERS.

(A) COMPENSATION OF MEMBERS.—Each member of the Commission shall serve without compensation in addition to that received for their service as an officer or employee of the United States.

(B) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(C) STAFF.—

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

(II) COMPENSATION.—The Chairperson of the Commission shall be paid a salary equal to the rate of pay of an executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate of pay of an executive or supervisory employee in grade IV of the Executive Schedule under section 5316 of title 5, United States Code.

(D) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal employee of the United States may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(E) TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 301(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for a GS-5 employee at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(F) TERMINATION.—The Commission shall terminate on September 30, 2013.

SEC. 105. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this Act, including administrative expenses of the Commission.

Mr. ENZI. Mr. President, the U.S. economy is still the greatest economy in the world and our credit markets have helped to make that happen. During the recent past, credit markets have taken advantage of technology and innovation in order to provide more consumers with more timely credit approvals and with more financing options. Nowhere is there a better example of this than our housing market.

Today, the time it takes to review a mortgage application and approve it has been cut drastically by our financial institutions. Consumers find that they have a wide array of financing options. Nowhere is there a better example of this than our housing market.

Although there are many pluses to the availability of credit there is also a downside. Individuals may get in over their heads when too much credit is made available to them. In addition, identity theft is a bigger problem than it has been before. Consumers need to educate themselves about the potential problems they might face and how to avoid them. Increasing consumer financial literacy is not just about providing information, however, it is about giving families the proper informational tools so that they can guide their affairs in order.

Today, my friend and colleague, Senator STABENOW and I are introducing the "Financial Literacy Community Outreach Act" to help to bring together all of the federal government's financial literacy programs under one roof.

The Department of Treasury, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Securities and Exchange Commission, the Department of Housing and Urban Development, and the Department of Labor are just a few of the many federal agencies that have established excellent financial literacy programs and initiatives. These programs cover a wide variety of topics ranging from how to save, spend, and invest to programs that provide guidance on how to prepare for retirement, select a pension plan, or purchase a home. Still others help individuals avoid the threat of identity theft.

Unfortunately, consumers attempting to find financial literacy information from their federal government may find that information scattered throughout the government. Our bill would provide a one-stop-shop where consumers could find the appropriate financial literacy programs for their needs.

In addition, the bill establishes the Financial Literacy Commission, a body comprised of the heads of the federal agencies with financial literacy programs. The Commission will ensure that the federal government has a cohesive and coordinated federal policy on financial literacy programs.

Mr. President, today's bill has been discussed in the Senate by the Bank and Housing Committee, the Finance Committee, and the Commerce Committee.

One such partnership is thriving in my home state of Wyoming. The Wyoming Department of Housing and Urban Development, Fannie Mae, and a Community Development Authority, includes local banks, real estate agents, the University of Wyoming, the U.S. Department of Agriculture, the U.S. Department of Housing and Urban Development, and Fannie Mae's effort to provide distance learning to potential home-buyers through the use of compressed video technology. This training program is perfect for a state like Wyoming in that home-buyers in rural communities have access to all of the essential elements of the home buying experience just like their urban community counterparts.

To date, more than 3,000 individuals have completed the training program and it has led to making the home-buying process easier and more understandable for rural and urban families alike.

I strongly believe that this bill will help millions of families find the appropriate financial literacy materials they need to make better credit and investment decisions.
It is my pleasure to be cosponsoring this bill with Senator S N E Z N B E K because of our shared concern about making financial literacy available to more families across the country. In addition, I would like to recognize Senator S N T A B E N O W and other important Senate colleagues on the Committee and in the full Senate to ensure that we expand and build upon the government’s present financial literacy efforts to help individuals and families increase their knowledge of and access to our credit and investment markets.

By Ms. C A N T W E L L (for herself and Mr. E N Z I):

S. 1533. A bill to prevent the crime of identity theft and to provide the harmed individuals throughout the Nation who have been victimized by identity theft, and for other purposes; to the Committee on the Judiciary.

Ms. C A N T W E L L. Mr. President, I rise to introduce legislation critical to helping victims of identity theft. This legislation, the Identity Theft Victims Assistance Act, passed the Senate by unanimous consent in the 107th Congress, and I look forward to its passage in the 108th Congress. Last year, the legislation had strong bipartisan support, as evidenced by the fact that Senator M I K E E N Z I is cosponsoring it again. The bill has broad support from law enforcement, consumers’ groups, and privacy advocates. Last year, in my home state of Idaho, and for the Victims of Crime, the Fraternal Order of Police, Consumers Union, Identity Theft Resource Center, U.S. Public Interest Group, Police Executive Forum, Privacy Rights Clearinghouse, and Amazon.com supported the bill. Twenty-two state Attorneys General signed a letter supporting the legislation.

Identity theft is the fastest-growing crime in the country. The Federal Trade Commission found that complaints of identity theft increased 87 percent between 2001 and 2002, and over 161,000 complaints were received by the agency last year. A July 2003 study by Gartner Inc. found that there was a 79 percent increase in identity theft in the past year. The Identity Theft new accounts for 43 percent of consumer fraud complaints and leads the list of consumer fraud. It is an insidious crime because it often occurs without the victim’s knowledge, yet leaves scars on their financial record that can last for years, and cost thousands of dollars to repair.

The Secret Service has estimated that consumers lose $745 million to the problem each year, and this number is clearly growing as the number of identity thefts increases. When a victim realizes that his or her identity was stolen it’s just the beginning of their troubles. The FTC estimates that it costs the average victim $1,284 to resolve an identity theft, this number includes costs such as lost wages, property, and credit restoration. The Secret Service estimates that the average person loses $3,229 in identity theft, and the average person spends 150 hours to repair the damage.

But the costs are not confined to consumers—identity theft hits businesses and the economy, too. Identity theft-related losses suffered by MasterCard and Visa jumped from $79.9 million in 1996 to $144.3 million in 2000. One study estimates that by 2006 identity theft will cost the financial institution sector alone $8 billion per year.

To take just one of many examples from my home state, Jenni D’Avis of Mill Creek, Washington, had her Social Security number stolen when a thief took her mail and found the number listed on a letter from her community college. The criminal used the number to obtain and use a credit card in turn used that to get credit. In just 23 days, the thief ran up $100,000 in bad debt— all in Jenni’s name. Once she became aware of the problem, she had to become a “Nancy Drew,” and track down sources where she was reluctant to give her the information she needed to determine the extent of the problem and clear her name and credit record. She is still repairing the damage.

Sadly, Jenni’s story is not unique. Victims of identity theft have difficulty restoring their credit and regaining control of their identity, in part, because they have no simple means to show creditors and credit reporting agencies that they are who they say they are. In order to prove they are not the victim of fraud, a victim often needs copies of creditors records, such as applications and information, and records from the companies the identity thief did business with. Ironically, victims have difficulty obtaining these business records because the victim’s personal identifying information does not match the information on file with the business.

This bill fixes that problem. The Identity Theft Victims Assistance Act creates a standardized national process for a person to establish he or she is a victim of identity theft for purposes of tracing fraudulent credit transactions and obtaining the evidence to repair them. It requires the Federal Trade Commission to make available a simple certificate that, when notarized, provides certainty to businesses and financial institutions that the person is who they claim to be, is a victim of identity theft. In order to prove identity theft, victims are entitled to claim the burden of proving their innocence to the government issued photo ID must demonstrate that the person has been victimized by identity theft, together with a police report and a government issued photo ID must demonstrate that the person has been victimized by identity theft, together with a police report and a

The need for a national system is readily apparent, as identity theft is increasingly a crime that crosses state lines. One of the greatest challenges identity theft presents to law enforcement is that a stolen identity is used in many different localities in many different states. Although identity theft is a federal crime, most often, state and local law enforcement agencies are responsible for investigating and prosecuting the crime. Yet law enforcement has to fully recognize the serious nature of the problem or to develop a coordinated investigative strategy. For example, in the case of Michael Calip of Centralia, Washington, identity thieves not only ran up $60,000 in debts, they also committed crimes using his name—trashing his credit record and creating a criminal record. Michael tracked the thieves to Wyoming, but had difficulty convincing local authorities there to pursue his case.

My bill for the first time also permits a victim to designate the investigating agency, either local or state law enforcement or federal investigators, to act as their agents in obtaining evidence. The legislation also requires the burden on the victim and aids police in investigating suspected identity theft rings. In addition it requires the existing Identity Theft Coordinating Committee to consult with state and local enforcement agencies.

Acquiring the evidence of the fraudulent use of identity currently can be an enormous and time-consuming problem for victims. The Identity Theft Victims Assistance Act makes this job easier by establishing that any business presented with the FTC certificate identifying the person as a victim of identity theft, together with a police report and a government issued photo ID must deliver copies of all the financial records that document the fraud to the victim. This includes credit reports and other important change from current law because it guarantees that victims will be able to obtain the evidence they need while also providing businesses more certainty that they are not violating someone’s privacy or providing sensitive information to the wrong parties. It also provides new liability protections for businesses that make a good faith effort to assist victims of identity theft.

The greatest harm to consumers victimized by theft of their identity is often a bad credit rating or a poor credit score that results from fraudulent use of the consumer’s identity. According to the FTC, it often takes about a year for people to discover someone is using personal information to the wrong parties. It also provides new liability protections for businesses that make a good faith effort to assist victims of identity theft.
My bill again requires that presentation of the FTC certificate, police report and photo identification establish that the person is in fact a victim of identity theft and requires credit-reporting agencies to block information that is on their credit report as a result of the identity theft. It also changes current law that requires individuals to bring suit against a credit reporting agency within two years from the time the agency commits a violation of laws on the consumer’s credit report. This makes little sense, since it may be years before a misrepresentation comes to the attention of a victim of identity theft. The bill requires that the statute of limitations begin ticking from the time when a consumer discovers or has reason to know that a misrepresentation by a credit reporting agency has occurred.

The bill leaves in place state laws that are more stringent and provides that either federal prosecutors or State attorneys general may enforce this law.

Jenni and Michael’s stories illustrate the unique problems victims of identity theft face. Although penalties exist to punish those convicted, no remedies are available for their victims. The scope of the problem is made worse because it’s too easy for a criminal to steal someone’s identity and cause serious harm before the theft is even discovered. These criminals cross state lines, it can be even harder for victims to trace the problem and repair the damage. For these reasons, it’s imperative that we pass federal legislation for the victims of identity theft.

The government, creditors and credit reporting agencies have a shared responsibility to assist identity theft victims mitigate the harm that results from frauds perpetrated in the victim’s name. We need to build up the law enforcement apparatus already started by the Federal Trade Commission and other federal agencies under the Identity Theft and Assumption Deterrence Act of 1998. We need to further improve law enforcement coordination, particularly between the various local and state jurisdictions combating identity theft and the associated crimes.

We also need to provide better and timelier information to businesses so they can head off fraud before it happens. That is why my bill also expands the jurisdiction of the interagency coordinating committee established under the Internet False Identification Act of 2000. Currently, the coordination committee has the mandate to study and report to Congress on the criminal investigation and enforcement of identity theft crimes. The Identity Theft Victims Assistance Act broadens the mandate for the coordinating committee to consider state and local enforcement of identity theft law. It further specifically requires the committee to examine and recommend what assistance the federal government can provide state and local law enforcement agencies to better coordinate in the battle against identity theft.

Mr. President, there is no doubt about the scope of the problem: identity theft is already a major problem, and it’s getting worse. We must provide victims of identity theft with the tools they need to regain control of their lives. The Identity Theft Victims Assistance of 2003 will help victims of identity theft recover their identity and restore their good credit. I look forward to working with my colleagues to promptly enact this bill into law.

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

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

S. 1533

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 “Identity Theft Victims Assistance Act of 2003.”

SEC. 2. FINDINGS.

Congress finds the following:

(1) The crime of identity theft is the fastest growing crime in the United States. According to a recent estimate, 7,000,000 Americans were victims of identity theft in the past year, a 79 percent increase over previous estimates.

(2) Stolen identities are often used to perpetrate crimes in many cities and States, making it more difficult for consumers to re-store their identities.

(3) Identity theft cost consumers more than $745,000,000 in 1998 and has increased dramatically in the last few years. The credit card industry alone lost an estimated $143.3 million in 2000.

(4) Identity theft is ruinous to the good name and credit of consumers whose identities are misappropriated, and consumers may be denied otherwise deserved credit and may have to spend enormous time, effort, and money to restore their respective identities.

(5) Victims are often required to contact numerous Federal, State, and local law enforcement agencies and creditors over many years as each event of fraud arises.

(6) As of the date of enactment of this Act, a national mechanism does not exist to assist identity theft victims to obtain evidence of identity theft, restore their credit, and regain control of their respective identities.

(7) Victims of identity theft need a nationally standardized means of—

(A) establishing their true identities and claims of identity theft to all business entities, credit reporting agencies, and Federal and State law enforcement agencies;

(B) that have information documenting fraudulent transactions from business entities;

(C) reporting identity theft to consumer credit reporting agencies.

(8) 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, most often, State and local law enforcement agencies are responsible for investigating and prosecuting the crimes.

(9) Law enforcement, business entities, credit reporting agencies, and government agencies have a shared responsibility to assist victims of identity theft to mitigate the harm caused by any fraud perpetrated in the name of the victims.

SEC. 3. TREATMENT OF IDENTITY THEFT MITIGATION.

(a) IN GENERAL. —Chapter 47 of 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 unincorporated 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 utilities, or other order.

(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 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809); and

(c) codes, passwords, numbers, tax identification numbers, State identifier 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;

(f) the term ‘identity theft’ means a violation of section 1028 or any other similar provision of applicable 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 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 with the intent to aid or abet, an identity theft; and

(8) the terms not defined in this section or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (18 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(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, or offered, for consideration, products, goods, or services, accepted payment, otherwise entered into a commercial transaction for consideration with a person that has made unauthorized use of the means of identification of the victim, or possesses information relating to such transaction, shall, not later than 20 days after the receipt of a written request by the victim, meeting the requirements of subsection (c), provide, without charge, a copy of all application and business transaction information related to the transaction being alleged as an identity theft to—

(A) the victim;

(B) any Federal, State, or local law enforcement agency that has been notified by the victim in such a request; or

(C) any law enforcement agency investigating the identity theft and authorized by the victim to take an excerpt of records provided under this section.

(2) RULE OF CONSTRUCTION.—
must establish by a preponderance of the evidence for a business entity to file an affidavit or answer stating that—

(1) the business entity has made a reasonable search of its available business records; and

(2) the records requested under this section do not exist or are not available.

(b) Notice of the Request.—Nothing in this section shall be construed to provide a private right of action or claim for relief.

(i) Enforcement.—

(i) INJUNCTIVE ACTIONS BY THE ATTORNEY GENERAL.—

(A) IN GENERAL.—Whenever it appears that a business entity to which this section applies has engaged, is engaging, or is about to engage, in an act constituting a violation of this section, the Attorney General of the United States may bring a civil action in an appropriate district court of the United States for—

(i) enjoin such act or practice;

(ii) enforce compliance with this section; and

(iii) obtain such other equitable relief as the court determines to be appropriate.

(B) OTHER INJUNCTIVE RELIEF.—Upon a proper showing in the action under subparagraph (A), a violation of this section shall be deemed an unfair or deceptive act or practice for a business entity to file an affidavit or answer stating that

(i) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818)—

(1) by the Office of the Comptroller of the Currency (other than national banks, and Federal branches and Federal agencies of foreign banks (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

(2) by the Board of Governors of the Federal Reserve System, with respect to member banks of the Federal Reserve System (other than branches), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25A of the Federal Reserve Act (12 U.S.C. 621 et seq. and 611 et seq.);

(3) by the Board of Directors of the Federal Deposit Insurance Corporation, with respect to banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), insured State branches of foreign banks, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(4) the Board of the National Credit Union Administration, under the Federal Credit Union Act (12 U.S.C. 1751 et seq.), with respect to any federally insured credit union, and any subsidiaries of such credit unions;

(5) by the Securities and Exchange Commission, under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), with respect to any broker or dealer;

(6) by the Securities and Exchange Commission, under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), with respect to investment companies;

(7) by the Secretary of Transportation, under title IV of title 49, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

(8) by the Secretary of Transportation, under part A of title VII of title 49, with respect to any air carrier or any foreign air carrier subject to that part; and

(9) by the Secretary of Agriculture, under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), as provided in section 406 of that Act (7 U.S.C. 226, 2271), with respect to any activities subject to that Act.

(C) AGENCY POWERS.—

(i) IN GENERAL.—A violation of any requirement imposed under this section shall be deemed to be a violation of a requirement imposed under any other Act referred to in subparagraph (B), for the purpose of the exercise by any agency referred to under subparagraph (B) of its powers under any such Act.

(ii) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prevent a Federal agency from exercising the powers conferred upon such agency by Federal law to—

(i) conduct investigations;

(ii) administer oaths or affirmations;

(iii) compel the attendance of witnesses or the production of documentary or other evidence.

(3) PARENS PATRIA AUTHORITY.—

(A) CIVIL ACTIONS.—In any case in which the Attorney General believes that a Federal agency has been, or is threatened to be, adversely affected by a violation of this section by any business entity, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States for appropriate jurisdiction to —

(i) enjoin such act or practice;

(ii) enforce compliance with this section;

(iii) obtain damages; and

(iv) obtain such other equitable relief as the court may consider to be appropriate.

(B) NOTICE.—Before filing an action under subparagraph (A), the Attorney General shall provide notice of any general or specific finding or belief concerning such case to the Attorney General of the United States, and make available to any other Federal agency with the authority to enforce this section under paragraph (2) —

(i) a written notice of the action; and

(ii) a copy of the complaint for the action.

(4) INJUNCTION.—

(A) IN GENERAL.—On receiving notice of an action under paragraph (3), the Attorney General shall—

(i) serve notice on such person as he determines appropriate; and

(ii) request the court to issue an order restraining such person from violating the order of the court.
General of the United States, and any Federal agency with authority to enforce this section under paragraph (2), shall have the right to intervene in that action.

(a) Right of Attorney General.—(1) Except as provided in subsection (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 disclosed to an individual under this title, and the information misreprented is material to the determination 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) IDENTIFICATION THEFT.—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.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect 2 years after the date of enactment of this Act.

SEC. 5. COORDINATING COMMITTEE STUDY OF COORDINATION BETWEEN FEDERAL, STATE, AND LOCAL AUTHORITIES IN ENFORCING IDENTITY THEFT LAWS.

(a) MEMBERSHIP; TERM.—Section 2 of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) is amended—

(1) 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 28, 2005.”

(b) CONSULTATION.—Section 2 of the Internet False Identification 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.—In discharging its duties, the coordinating committee shall consult with interested parties, including State and local law enforcement agencies, representatives of business entities (as that term is defined in section 4 of the Identity Theft Victims Assistance Act of 2003), including telecommunications and utility companies, and organizations representing consumers.”.

(c) REPORT DISTRIBUTION AND CONTENTS.—Section 4 of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) is amended—

(1) by redesignating subsection (b) as subsection (a); and

(2) 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, or upon the request of the coordinating committee, shall report on the activities of the coordinating committee to—
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"(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 subparagraph (E), by striking "and"
at the end; and
(3) by striking subparagraph (F) and inserting the following:
"(F) a comprehensive description of Federal assistance provided to State and local law enforcement agencies to address identity theft;
(G) a comprehensive description of coordination activities between Federal, State, and local law enforcement agencies that address identity theft; and
(H) recommendations in the discretion of the President, if any, for legislative or administrative changes that would—
(i) facilitate more effective investigation and prosecution involving—
"(1) identity theft; and
(ii) the creation and distribution of false identification documents;
(iii) simplify efforts by a person necessary to rectify the harm that results from the theft of the identity of such person.

The problem with identity theft is
the fastest growing crime in America today. It affects Americans from every walk of life from coast to coast. Some Americans may discover that someone else has been using their social security number to obtain fraudulent employment, while others learn that people have been using fraudulent identification cards to obtain lines of credit and then leaving innocent victims to deal with the bills they left behind.

People from small States like Wyoming are not immune to this new crime wave. Although there are only 493,000 people in Wyoming, we have the same rate of identity theft per capita as is present anywhere else in the United States. That is why we have to approach this issue from every angle, taking a systemic approach that includes prevention, enforcement and assistance to victims of identity theft.

Today, we will take the first step with victim's assistance for this crime. I believe we have to provide some real options for our constituents who are trying to recover from the trauma that identity theft has caused in their lives. That is why my colleague from Washington and I are introducing legislation that will make it easier for victims to get the information they need to begin reversing the damage and lasting effects of this crime. The Identity Theft Victim's Assistance Act of 2003, is very similar to a bill we offered last year that passed the Senate unanimously in November. I expect and hope for the same result this year since this is a growing problem and the need for action on this issue grows more urgent with each passing day.

Our bill includes key provisions that would allow victims to work with businesses to obtain information related to cases of identity theft and then contact credit reporting agencies to block false information on credit reports. In drafting this legislation we worked with all of the stakeholders to ensure a balance between the needs of consumers and the needs of financial institutions, banks and other credit agencies.

The reintroduction of this bill is timely given the recent hearings in the Senate Banking and Commerce Committees and recent action by both the House and Administration.

Earlier this month, the House Financial Services Subcommittee reported a bill called the Fair and Accurate Credit Transactions Act. Also known as the FACT Act, the bill includes a provision that is nearly identical to Section 4 of our bill. Section 4 of our bill requires consumer credit reporting agencies to block false information that appears on a victim's credit report as a result of identity theft, provided the victim did not knowingly obtain goods, services or money as a result of the blocked transaction.

Our provision, which amends the Fair Credit Reporting Act, was also addressed in a recent hearing before the Senate Banking Committee. In July 10, the Chairman of the Federal Trade Commission testified that "blocking would mitigate the harm to consumers' credit record that can result from identity theft" and recommended that this practice be codified.

I am also encouraged by similar recommendations from the Treasury Department that would require credit reporting agencies to cease reporting allegedly fraudulent account information. When the consumer submits a police report or similar document, unless there is a reason to believe the report is false.

Providing consumers with the tools necessary to recover from identity theft is the first step in providing real relief to the hundreds of thousands of individuals whose lives have already been turned upside down by identity theft. I urge my colleagues to work with me as we move forward on this important issue and make progress on the reauthorization of critical legislation like the Fair Credit Reporting Act. We must take action this year before the crime of identity theft hurts the hundreds of thousands of working families and individuals who are expected to become victims this year.

By Mr. REID:
S. 1534. A bill to limit the closing and consolidation of certain rural post offices in rural communities, and for other purposes; to the Committee on Governmental Affairs.

Mr. REID. Mr. President, I am pleased today to introduce the Rural Post Office and Community Preservation Act of 2003.

My legislation would prohibit the Postal Service from closing post offices in our Nation's small rural communities. Where the Postal Service has closed a rural post office, my legislation directs the Postal Service to provide a plan for the rehabilitation and economic development of such closed offices in consultation with the local community affected. It also authorizes $10 million in grants to local communities to assist in such rehabilitation.

Finally, it provides that the Postal Service shall transfer the closed post office in Ely, NV, to White Pine County for such rehabilitation.

All across the Nation, the Postal Service is closing, consolidating, and moving post offices in our rural communities. Oftentimes, the Postal Service sells off centrally located and in many cases historic post offices in favor of moving the office to cheaper land on the outskirts of town. While this may result in a short-term economic gain to the Postal Service, there is both an immediate and long-term negative impact on the community. A 1993 study by the National Trust for Historic Preservation tells us what we intuitively already know. That is, in rural communities, the post office is often the economic and social anchor of the town. When post offices are closed in our rural communities, nearby businesses suffer and the small-town character of the community is diminished.

Nevada knows the harm caused by closing rural post offices first hand.
Take the small town of Ely, NV, where roughly 3,700 Nevadans make their home. Located in northeastern Nevada, Ely is a charming small town surrounded by beautiful mountains and the cleanest air in America. Decades ago, Ely was a main stopover for public officials and people traveling through the West, and was briefly the hometown of Pat Nixon who later became Pat Nixon, the First Lady of the United States. At the time, Ely’s six-story Hotel Nevada was the tallest structure in the entire State of Nevada. Near the Hotel Nevada, Ely had a quaint post office that helped form the center of town. Today if you go to Ely, you will still find the Hotel Nevada. The mountains are just as beautiful. But you won’t find the Ely Post Office in the center of town. Last year, over my objection and the objection of the people of Ely, the Postal Service closed the office.

My legislation introduced today would help prevent future rural post office closings like the one in Ely. It would also give the closed post office in Ely to the local community.

My legislation is not intended to be a criticism of the Postal Service. Many fine postal workers work there. In fact, my bill is really a testament to the importance of our post offices and the local post office has become a land border and expanded it to allow for greater safety. The National Highway Borders and Trade Act of 2003 also helps facilitate establishing reverse inspection stations and other facilities in our neighboring countries, so we can more efficiently manage border traffic and check for dangerous materials before vehicles enter our country. This will also help facilitate establishing reverse inspections at certain border crossings.

The bill would also focus the corridors program on roads connecting to our neighboring countries, so we can more efficiently manage border traffic and check for dangerous materials before vehicles enter our country. This will also help facilitate establishing reverse inspections at certain border crossings.
These changes will increase the number of eligible roads but also preserve the purpose of the program as facilitating international trade. Water ports play a very important role in international trade. For many sectors of the economy that value majority of their supplies are shipped through these ports. The growth in truck traffic at the intermodal ports is taking a toll on the connecting highways. Many of these intermodal road connectors are in a state of severe deterioration.

The latest 50-54 States have received funding from the corridors program. Because goods imported from Canada and Mexico end up in virtually every place in the U.S., improving the Borders and Corridors program will benefit every State and the nation’s economy as a whole. Our bill will grant eligibility to roads in all 50 States.

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

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

SEC. 2. COORDINATED BORDER INFRASTRUCTURE PROGRAM.

Subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

§165. Coordinated border infrastructure program

(a) DEFINITIONS.—In this section—

(1) BORDER REGION.—The term ‘border region’ means the portion of a border State that located within 100 kilometers of a land border crossing with Canada or Mexico.

(2) BORDER STATE.—The term ‘border State’ means any State that has a boundary with Canada and Mexico.

(3) COMMERCIAL VEHICLE.—The term ‘commercial vehicle’ means a vehicle that is used for the primary purpose of transporting goods at or across the border between the United States and a border State.

(4) PASSENGER VEHICLE.—The term ‘passenger vehicle’ means a vehicle that is used for the primary purpose of transporting individual passengers.

(5) PROGRAM.—The Secretary shall establish and implement a coordinated border infrastructure program under which the Secretary shall make allocations to border States for projects within a border region to improve the safe movement of people and goods at or across the border between the United States and a border State.

(b) ELIGIBLE USES.—Allocations to States under this section may only be used in a border region to—

(1) improvements to transportation and supporting infrastructure that facilitate cross-border vehicle and cargo movements;

(2) construction of highways and related safety and safety enforcement facilities that will facilitate vehicle and cargo movements relating to international trade;

(3) operational improvements, including improvements relating to electronic data interchange and use of telecommunications, to expedite cross-border vehicle and cargo movements;

(4) international coordination of planning, programming, and border operation with Canada and Mexico relating to expediting cross-border vehicle and cargo movements;

(5) projects in Canada or Mexico proposed by one or more border States that directly and significantly facilitate vehicle and commercial cargo movements at the international gateways or ports of entry into a border State;

(6) planning and environmental studies.

(c) MANDATORY AND DISCRETIONARY PROGRAMS.—

(1) MANDATORY PROGRAM.—

(A) IN GENERAL.—For each fiscal year, the Secretary shall allocate among border States, in accordance with the formula described in subsection (b), funds to be used in accordance with subsection (c).

(B) FORMULA.—Subject to subparagraph (C), the amount allocated to a border State under this paragraph shall be determined by the Secretary, as follows:

(i) 25 percent in the ratio that—

(ii) the average annual weight of all cargo entering the border State by commercial vehicle across the international border with Canada or Mexico, as the case may be; bears to

(iii) the number of commercial vehicles annually entering all border States by commercial vehicle across the international borders with Canada and Mexico.

(iv) 25 percent in the ratio that—

(v) the number of passenger vehicles annually entering the border State by commercial vehicle across the international border with Canada or Mexico, as the case may be; bears to

(vi) the number of commercial vehicles annually entering all border States across the international borders with Canada and Mexico.

(vii) 25 percent in the ratio that—

(viii) the average annual weight of all cargo imported into the border State and all cargo exported from all border States by commercial vehicle across the international borders with Canada and Mexico.

(d) TRANSFER OF FUNDS TO THE ADMINISTRATOR OF GENERAL SERVICES.—

(1) IN GENERAL.—At the request of a State, funds allocated to the State under this section shall be transferred to the Administrator of General Services for the purpose of funding a project under the administrative jurisdiction of the Administrator in a border State if the Administrator determines, after consultation with the State transportation department, that—

(A) the project is consistent with the purposes of this section; and

(B) the Administrator agrees to use the funds to carry out the project.

(2) NO AUGMENTATION OF APPROPRIATIONS.—Funds transferred under paragraph (1) shall not be deemed to be an augmentation of the amount of appropriations made to the General Services Administration.

(e) COST SHARING.—Funds transferred under paragraph (1) shall be administered in accordance with the procedures applicable to the General Services Administration, except that funds shall be available for obligation in the same manner and amount as other funds appropriated under this chapter.

(f) TRANSFER OF OBLIGATION AUTHORITY.—Funds transferred under paragraph (1) shall be administered in accordance with the administrative jurisdiction of the General Services Administration.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Highway Trust Fund (other than the Special Project Trust Account) for each of fiscal years 2004 through 2009, of which—

(A) $100,000,000 shall be used to carry out subsection (d)(1); and

(B) $100,000,000 shall be used to carry out subsection (d)(2).
 ``(2) Obligation authority.—Funds made available to carry out this section shall be available for obligation as if the funds were apportioned in accordance with section 104.

 ``(3) Calculation of minimum guarantee.—The Secretary shall calculate the amounts to be allocated to the States under section 105 without regard to amounts made available to the States under this subsection.

 SEC. 3. NATIONAL TRADE CORRIDOR PROGRAM.

 Subchapter I of chapter 1 of title 23, United States Code (as amended by section 2), is amended by adding at the end the following:

 ``(a) Definition of intermodal road connector.—The term 'intermodal road connector' means a connector highway that provides motor vehicle access between a route on the National Highway System and 1 or more major intermodal water port facilities at least 1 of which accepts at least 50,000 20-foot equivalent units of container traffic (or 200,000 tons of container or non-container traffic) per year of international trade or trade between Alaska or Hawaii and the 48 contiguous States.

 ``(b) Program.—

 ``(1) In general.—The Secretary shall carry out a program to allocate funds to States to be used for coordinated planning, design, and construction of corridors of national significance.

 ``(2) Applications.—A State that seeks to receive an allocation under this section shall submit to the Secretary an application in such form, and containing such information, as the Secretary may request.

 ``(c) Eligibility of corridors.—The Secretary may allocate funds under this section with respect to—

 ``(1) a high priority corridor in a State—

 ``(A) that is identified in section 1101(c) of the Intermodal Surface Transportation Eficiency Act of 1991 (105 Stat. 2031); and

 ``(B) any part of which is located in a border region (as defined in section 1101(a)); and

 ``(2) an intermodal road connector.

 ``(d) Eligible uses of funds.—A State may use an allocation under this section to carry out—

 ``(1) a feasibility study;

 ``(2) a comprehensive corridor planning and design activity; and

 ``(3) a location and routing study.

 ``(e) Multistate and intrastate coordination for each corridor.

 ``(f) Environmental review; and

 ``(g) Construction.

 ``(h) Allocation formula.—

 ``(1) In general.—Subject to paragraph (2), the Secretary shall allocate funds among States under this section in accordance with a formula determined by the Secretary after taking into consideration, with respect to the application—

 ``(A) the average annual weight of freight transported on the corridor;

 ``(B) the percentage by which freight traffic increased in the most recent 5-year period for which data are available, on the corridor; and

 ``(C) the annual average number of tractor-trailer trucks that use the corridor to access other States.

 ``(2) Maximum allocation.—Not more than 10 percent of the funds made available for a fiscal year for allocation under this section may be allocated to any State for the fiscal year.

 ``(i) Coordination of planning.—Planning with respect to a corridor for which an allocation is made under this section shall be coordinated with—

 ``(1) transportation planning being carried out by the States and metropolitan planning organizations along the corridor; and

 ``(2) to the extent appropriate, transportation planning being carried out by—

 ``(A) Federal land management agencies; and

 ``(B) tribal governments; and

 ``(C) government agencies in Mexico or Canada.

 ``(j) Cost sharing.—The Federal share of the cost of a project carried out using funds allocated under this section shall not exceed 80 percent.

 ``(k) Funding.—

 ``(1) Application of appropriations.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $200,000,000 for each of fiscal years 2004 through 2009.

 ``(2) Obligation authority.—Funds made available to carry out this section shall be available for obligation as if the funds were apportioned in accordance with section 104.

 SEC. 4. CONFORMING AMENDMENTS.

 (a) Section 1101(a) of the Transportation Equity Act for the 21st Century (112 Stat. 112) is amended by striking paragraph (9) and inserting the following:

 ``(9) Coordinated border infrastructure program and national trade corridor program.—There is authorized to be appropriated for the National Trade Corridor Program and the Coordinated Border Infrastructure Program $400,000,000 for each of fiscal years 2004 through 2009.

 (b) Sections 1118 and 1119 of the Transportation Equity Act for the 21st Century (112 Stat. 136) are repealed.

 (c) The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by inserting after the item relating to section 114 the following:

 ``(166) Coordinated border infrastructure program.

 ``(167) National trade corridor program.

 By Mr. EDWARDS (for himself and Mr. EFFORDS):

 S. 1536. A bill to provide for compassionate payments with regard to individuals who contracted human immunodeficiency virus due to the provision of a contaminated blood transfusion, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

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

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

 S. 1536 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, 

 SECTION 1. CONVEYANCE OF PROPERTY IN POPE COUNTY, ARKANSAS.

 (a) Conveyance on condition subsequent.—Not later than 90 days after the date of enactment of this Act, subject to valid existing rights and the condition stated in subsection (c), the Secretary of Agriculture, acting through the Chief of the Forest Service (referred to in this section as the "Secretary"), shall convey to the New Hope Cemetery Association certain land in the State of Arkansas for use as a cemetery; to the Committee on Agriculture, Nutrition, and Forestry.

 By Mrs. LINCOLN:

 S. 1537. A bill to direct the Secretary of Agriculture to convey to the New Hope Cemetery Association certain land in the State of Arkansas for use as a cemetery; to the Committee on Agriculture, Nutrition, and Forestry.

 By Mrs. LINCOLN:

 S. 1537. A bill to direct the Secretary of Agriculture to convey to the New Hope Cemetery Association certain land in the State of Arkansas for use as a cemetery; to the Committee on Agriculture, Nutrition, and Forestry.

 SEC. 3. EMISSIONS TESTING.

 (a) In general.—The Secretary of Transportation shall conduct an emissions testing program to determine whether any person or entity is in violation of this Act.

 (b) Violation.—If the Secretary determines that any person or entity is in violation of this Act, the Secretary shall impose an administrative penalty in accordance with section 319 of this Act.

 (c) Civil rights.—Nothing in this Act shall be construed to authorize the Secretary to engage in any activity that violates any provision of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.).

 SEC. 4. FUNDING.

 (a) In general.—Funds made available under this Act shall be used to—

 (1) acquire, construct, and maintain facilities; and

 (2) carry out research and development.

 (b) Priority.—The Secretary shall give priority to projects that—

 (1) have the highest potential for reducing emissions; and

 (2) are consistent with the national goals for emissions reduction.

 SEC. 5. REPORT.

 The Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the implementation of this Act.
for a hearing, makes a finding that the association has used or permitted the use of the parcel for any purpose other than the purpose specified in paragraph (1), and the association has used or permitted the use of the parcel shall, at the option of the Secretary, revert to the United States, to be administered by the Secretary.

By Mr. REED (for himself, Mr. Voinovich, Mr. Sarbanes, Ms. Snowe, Mr. Jeffords, Mr. Levin, and Mr. Harkin):

S. 1539 would amend the Federal Water Pollution Control Act to establish a National Clean and Safe Water Fund and to authorize the Administrator of the Environmental Protection Agency to use amounts in the Fund to carry out projects to promote the recovery of waters of the United States from damage resulting from violations of that Act and the Safe Drinking Water Act, and for other purposes; to the Committee on Environment and Public Works.

Mr. REED. Mr. President, we often don't think about how important water is to our everyday lives, for our health and for our economy. As Americans, we take for granted that when we turn on the tap that clean and safe water will flow from the tap. However, the United States has made substantial progress in reducing the pollution flowing into our waters and safeguarding drinking water resources for our communities. Despite our progress, we still face many challenges.

Population growth is increasing demand for water, and pollution from point and nonpoint sources threaten the quality and quantity of water available to us. According to EPA, the overwhelming majority of the population of the United States—218 million people—live within 10 miles of a polluted river, lake, or coastal water. Nearly 40 percent of these waters are not safe for fishing, swimming, boating, drinking water, or other needs. And while overall water pollution levels decreased dramatically over the last 30 years, recent data may be revealing a disturbing trend. Indeed, EPA's most recent National Water Quality Inventory found that the number of polluted rivers and estuaries increased between 1998 and 2000. Water pollution represents a real and daily threat to public health and to the wildlife that depend on clean water. This year, we are celebrating the Year of Clean Water. To honor our national commitment to reduce the pollution flowing into our waters and provide safe drinking water for our communities, I am introducing the National Clean and Safe Water Act of 2003. The legislation, cosponsored by Senators Voinovich, Sarbanes, Snowe, Jeffords, Levin and Harkin will create a fund to carry out projects to protect water quality and to protect watersheds and aquifers. It would establish a fund whose sole purpose is to advance the restoration of U.S. waters, particularly in the watersheds where these violations occurred. The bill is supported by a wide variety of organizations, including: the Narragansett Bay Commission, the Association of Metropolitan Water Agencies, American Rivers, Environmental Integrity Project, Friends of the Earth, National Audubon Society, Natural Resources Defense Council, The Ocean Conservancy and the U.S. Public Interest Research Group. I asked unanimous consent that the bill and letters of support be included in the record following my statement.

Last year, the Federal Government collected $52 million in civil and criminal penalties from violations of the Clean Water Act and Safe Drinking Water Acts. The money was deposited in the Treasury with no guarantee that the fines collected would be used to correct the water pollution for which the penalties were levied. Our legislation would make these funds available to local communities, tribes, States and non-point source water quality protection and preservation. The legislation would target this money to worthy projects, such as wetland protection and stream buffers. The legislation we are introducing today will correct the water pollution for which the fines were levied. Our legislation would make these funds available to local communities, tribes, States and non-point source projects to protect and preserve watersheds and aquifers and to improve water quality.

This legislation would target this money to worthy projects, such as wetland protection and stream buffers to land acquisition and control measures to protect watershed and aquifers; best management practices to prevent pollution in the first place; and, treatment control combined sewer or sanitary sewer overflows. Our legislation will continue progress to reduce the number of impaired waterways in our Nation, and to reduce, or better yet, prevent contamination of groundwater and drinking water sources.

It is imperative that we increase Federal investment in clean water and drinking water infrastructure and devote greater resources and attention to protecting, improving and preserving our watersheds and aquifers. The Congressional Budget Office released a report that estimated the spending gap for clean water needs could reach as high as $388 billion and the spending gap for drinking water needs could reach $362 billion over 20 years. The CBO concluded the current funding from all levels of government and current revenue generated from ratepayers will not be sufficient to meet the Nation's demand for water infrastructure. Yet, despite these grim statistics, the Federal Government is investing only $1.35 billion in Clean Water infrastructure each year and $850 million in Drinking Water infrastructure. And, unfortunately, the President's budget proposes to cut this funding by $500 million this year.

Given the tremendous need in our communities, and the importance of water infrastructure to our economy, it is vital that the Federal Government maintain a strong partnership with States and local governments to avert this massive funding gap. We need to find new funding sources for watershed and aquifer protection. Clean, safe and abundant drinking water can no longer be taken for granted.

The costs of building new reservoirs and treatment facilities threaten to overburden our ability to pay, especially during the current fiscal crisis. Technology also has limitations in its ability to treat polluted water. Many water agencies are focusing on protecting watersheds and aquifers and conserving valuable water resources. In my State, the Providence Water Supply Board collects 1 cent per 100 gallons in a water usage tax to fund watershed acquisition. This may be our best and cheapest way to guarantee water quality and quantity.

Congress needs to increase support for efforts to protect our water resources. Polluted runoff from urban and agricultural land is now the most significant source of water pollution in the nation and the greatest threat to our drinking water. Our greatest future gains in pollution control will, therefore, come from reducing non-point source pollution.

There are cost-effective and environmentally sound projects that could help reduce this pollution, but currently, many non-point source projects cannot participate in the State revolving loan programs since they often do not have a guaranteed source of revenue. Also, without making new Federal resources available it is unlikely we will be able to support increased investment in clean infrastructure projects such as wetland conservation and stream buffers. The legislation that we are introducing today will make greater funding available for water quality projects.

I hope that my colleagues will join Senators Voinovich, Sarbanes, Snowe, Jeffords, Levin, Harkin and me in supporting this legislation. Creating this fund will help further the Nation's goals of providing safe and clean water for our communities and restoring water quality for watershed protection. Mr. President, I ask unanimous consent that the text of bill and letters of support be printed in the RECORD. There being no objection, the material ordered to be printed in the RECORD, as follows:

S. 1539

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Clean and Safe Water Fund Act of 2003.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Administrator of the Environmental Protection Agency has determined that more than 40 percent of the assessed water of the United States does not meet applicable water quality standards established by States, territories, and Indian tribes;

(2) the water described in paragraph (1) includes approximately 300,000 miles of rivers and shorelines, and approximately 5,000,000 acres of lakes, that are polluted by sediments, excess nutrients, and harmful microorganisms;
(3) Congress enacted—
(A) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) to maintain the chemical, physical, and biological integrity of water bodies and waters of the United States; and
(B) the Safe Drinking Water Act (42 U.S.C. 300f et seq.) to protect public health by regulating the public drinking water supply of the United States.

(4) because criminal, civil, and administrative penalties assessed under the Acts referred to in paragraph (3) are returned to the Treasury, those amounts are not available to protect, preserve, or enhance the quality of water in watersheds in which violations of those Acts occur; and

(5) the establishment of a national clean and safe water fund would help States in achieving the goals described in paragraph (1) by providing funding to protect and improve watersheds and aquifers.

SEC. 3. NATIONAL CLEAN AND SAFE WATER FUND.

Section 309 of the Federal Water Pollution Control Act (33 U.S.C. 1319) is amended by adding at the end the following:

(h) NATIONAL CLEAN AND SAFE WATER FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury a fund to be known as the ‘‘National Clean and Safe Water Fund’’ (referred to in this subsection as the ‘‘Fund’’) consisting of amounts transferred to the Fund under paragraph (2) and amounts credited to the Fund under paragraph (3).

(2) TRANSFER OF AMOUNTS.—Notwithstanding any other provision of law, for fiscal year 2003 and each fiscal year thereafter, the Secretary of the Treasury shall transfer to the Fund an amount determined by the Secretary to be equal to the total amount deposited in the general fund of the Treasury in the United States fiscal year from fines, penalties, and other funds collected as a result of enforcement actions brought under this section or the Safe Drinking Water Act (42 U.S.C. 300f et seq.), for which an enforcement action was brought that resulted in the payment of any amount into the general fund of the Treasury.

(3) INVESTMENT OF AMOUNTS.—

(A) IN GENERAL.—The obligations shall be credited to the Fund under paragraph (2) and amounts credited to the Fund under paragraph (3).

(B) ADMINISTRATION.—The obligations shall be acquired and sold and interest on, and the proceeds from the sale or redemption of, the obligations shall be credited to the Fund in accordance with section 9602 of the Internal Revenue Code of 1986.

(4) USE OF AMOUNTS FOR WATER QUALITY PROJECTS.—

(A) IN GENERAL.—Amounts in the Fund shall be available to the Administrator, subject to appropriation, to carry out projects the primary purpose of which is water quality maintenance or improvement, including—

(i) water conservation projects;

(ii) wetland protection and restoration projects;

(iii) contaminated sediment projects;

(iv) drinking water source protection projects;

(v) projects consisting of best management practices that reduce pollutant loads in an impaired or threatened body of water;

(vi) centralized stormwater or wastewater treatment projects, including low-impact development practices;

(vii) projects consisting of conservation easements or land acquisition for water quality projects;

(viii) projects consisting of construction or maintenance of stream buffers; and

(ix) projects for planning, design, and construction of treatment works to remediate or control combined or sanitary sewer overflows; and

(x) such other similar projects as the Administrator determines to be appropriate.

(B) LIMITATIONS ON USE OF FUNDS.—

(i) Amounts in the Fund shall be used only to carry out projects described in subparagraph (A); and

(ii) shall not be used by the Administrator to pay the cost of any legal or administrative expenses incurred by the Administrator (except a legal or administrative expense relating to administration of the Fund); and

(iii) shall be in addition to any amount made available to carry out projects described in subparagraph (A) under any other provision of law.

(5) SELECTION OF PROJECTS.—

(A) PRIORITY.—In selecting among projects eligible for assistance under this subsection, the Administrator shall give priority to a project described in paragraph (4) that is located in a watershed in a State in which there has occurred a violation under this Act or the Safe Drinking Water Act (42 U.S.C. 300f et seq.), for which an enforcement action was brought that resulted in the payment of an amount into the general fund of the Treasury.

(B) SELECTION CRITERIA.—The Administrator, in consultation with the United States Geological Survey, and other appropriate Federal and private agencies, shall establish criteria that maximize water quality improvement in watersheds and aquifers for use in selecting projects to carry out under this subsection.

(C) COORDINATION WITH STATES.—In selecting a project to carry out under this subsection, the Administrator shall coordinate with the States in which the Administrator is considering carrying out the project.

(D) IMPLEMENTATION.—

(A) IN GENERAL.—Subject to subparagraph (B), the Administrator may carry out a project under this subsection making grants to—

(i) another Federal agency;

(ii) a State agency;

(iii) a political subdivision of a State;

(iv) a publicly-owned treatment works; or

(v) a nonprofit entity.

(B) ADMINISTRATION.—

(i) a public water system (as defined in section 1252 of the Safe Drinking Water Act (42 U.S.C. 300f)); and

(ii) a Federal interstate water compact commission;

(iii) Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)); or

(iv) a local tribe (as defined in section 12 of the Native Hawaiian Health Care Improvement Act (42 U.S.C. 11710)).

(ii) shall be in addition to any amount made available to carry out projects described in subparagraph (A) under any other provision of law, and

(iii) shall be in addition to any amount made available to carry out projects described in subparagraph (A) under any other provision of law.

(F) NO EFFECT ON OBLIGATION TO COMPLY.—

Nothing in this subsection affects the obligation of any person subject to this Act or the Safe Drinking Water Act (42 U.S.C. 300f et seq.) to comply with any of the provisions of this Act or the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(6) NO EFFECT ON OBLIGATION TO COMPLY.—

(a) IN GENERAL.—Section 309(d) of the Federal Water Pollution Control Act (33 U.S.C. 1319(d)) is amended by inserting after the second sentence the following: ‘‘The court may order that a penalty assessed under this Act or the Safe Drinking Water Act (42 U.S.C. 300f et seq.) (other than a civil penalty that would otherwise be deposited in the Oil Spill Liability Trust Fund under section 9009 of the Internal Revenue Code of 1986) be used to carry out 1 or more projects in accordance with clauses (i) through (iv) of subparagraph (A).’’

(b) CONFORMING AMENDMENT.—Section 505(a) of the Federal Water Pollution Control Act (33 U.S.C. 1365(a)) is amended in the last sentence by inserting before the period at the end the following: ‘‘, including ordering the use of a civil penalty for compliance with any provisions of this Act.’’

ASSOCIATION OF METROPOLITAN WATER AGENCIES,


Hon. Jack Reed, U.S. Senator, Washington, D.C.

DEAR SENATOR REED: I write today to express the support of the Association of Metropolitan Water Agencies (AMWA) for your National Clean and Safe Water Fund Act of 2003.

AMWA is an association of the nation’s largest publicly owned drinking water systems. AMWA members serve safe drinking water to more than 110 million Americans. Funded with fines collected due to violations of the Clean Water Act and the Safe Drinking Water Act, the National Clean and Safe Water Fund could provide much-needed resources to improve the rivers and lakes that serve as sources of drinking water for millions of Americans.

Sincerely,

DIANE VANDE HEI,
Executive Director.

THE NARRAGANSETT BAY COMMISSION,


Hon. Jack Reed, U.S. Senator, Senate Hart Office Building, Washington, D.C.

DEAR SENATOR REED: On behalf of the Narragansett Bay Commission, I am writing to express support for the Clean and Safe Water Fund Legislation, as proposed by you and Senators Voinovich and Sarbanes.

According to the Congressional Budget Office, and the Water Infrastructure Network, the nation faces a funding gap as
high as $46 billion per year for necessary and mandated water and wastewater infrastructure projects. The burden of paying for these mandated projects currently falls almost exclusively on municipalities. This legislation will be an important first step in moving toward a national trust fund for water and wastewater infrastructure.

We applaud you and your fellow Senator for your recognition of the importance of a dedicated funding source for water and wastewater infrastructure and we are pleased to support this bill.

Sincerely,

Paul Pinault, P.E.,
Executive Director.

AMERICAN RIVERS ENVIRONMENTAL INTEGRITY PROJECT, FRIENDS OF THE EARTH, NATIONAL AUDUBON SOCIETY, NATURAL RESOURCES DEFENSE COUNCIL, THE OCEAN CONSERVANCY, U.S. PUBLIC INTEREST RESEARCH GROUP,

July 2003.

DEAR SENATOR REED: On behalf of our organizations and the millions of members we represent, we are writing to express our support for your new legislation, the National Clean and Safe Water Fund Act of 2003. Currently, funds collected from Clean Water Act and Safe Drinking Water Act go into the general Treasury, and are not specified for use for the protection and enhancement of water quality. This legislation would establish a fund whose sole purpose is to advance the restoration of U.S. waters, particularly in the areas in which violations of those acts occur.

This year marks the 30th anniversary of the Clean Water Act. A great deal has happened since 1972, but unfortunately, we remain far behind the goals of the authors of the Act. The Environmental Protection Agency acknowledges that over 40 percent of our nation’s waters remain unfit for fishing and swimming. We need to do a better job of enforcing the laws that are already on the books, as well as adopting new strategies to ensure that penalties from violations of clean water laws are used to restore the impacted watersheds. The National Clean and Safe Water Fund Act of 2003 outlines many projects for which penalties collected from violators of the Clean Water Act and Safe Drinking Water Act would go towards, including drinking water source protection, wetland protection and restoration, and stormwater and wastewater treatment projects.

We appreciate your leadership in introducing this legislation, and look forward to working with you to see it passed into law.

Sara Zober,
Director, Legislative, Friends of the Earth.

By Mr. DASCHLE:

S. 1540. A bill to provide for the payment of amounts owed to Indian Tribes and individual Indian money account holders; to the Committee on Indian Affairs.

Mr. DASCHLE. Mr. President, the legislation I am introducing today should be important to all Americans—Indians and non-Indians alike. The primary goal of the “Indian Trust Payment Equity Act of 2003” is to start a process for repaying the debt owed by the United States of America to Indian tribes and individual American Indians.

For over one hundred years, the Department of Interior has managed a trust fund containing the proceeds of leasing of oil, gas, land and mineral rights on Indian lands for the benefit of Indian people. Today, far from enjoying a sense of security about the investment of these assets, tribal and individual Indian account holders cannot even get answers about the balances that the Department of Interior claims are in their accounts. It is estimated that the trust fund may owe anywhere from $10 billion to over $100 billion to Indian tribes and Indian people. The Department of the Interior agrees that the money is rightfully theirs and desperately needed to address a host of human needs.

There is little disagreement that the Interior Department’s stewardship of the trust fund, through administrations of both political parties, has been a colossal failure. Rather than just continue the debate over how best to reorganize the Department of Interior, this legislation is intended to jumpstart the process of repayment by establishing an Equity Payment Trust Fund.

The Indian Trust Payment Equity Act calls for appropriating $10 billion to the trust fund over five years, as $10 billion is an undeniably low estimate of what is owed by the United States. If an account holder accepts the results of a certified audit of their account, then the Equity Payment Trust Fund would provide for a partial payment until a full accounting is satisfied. Indian tribes would be able to voluntarily contract with the Secretary to assist in the audit process. This bill provides a means for tribes to assist individual allottees to obtain an accounting and a more prompt settlement than any proposal put forward to date.

Tribal nations entered into by the United States constitute a significant element of the law of the land. Unfortunately, the United States has abridged its treaty obligations by grossly mismanaging the trust fund it holds as trustee for Indian tribes and individual Indian allottees. This is money that everyone agrees is rightfully theirs and desperately needed to address a host of human needs.

This bill provides a vehicle to assist Indian Tribes and Indian people. Today, far from enjoying a sense of security about the investment of these assets, tribal and individual Indian account holders cannot even get answers about the balances that the Department of Interior claims are in their accounts. It is estimated that the trust fund may owe anywhere from $10 billion to over $100 billion to Indian tribes and Indian people. The Department of the Interior agrees that the money is rightfully theirs and desperately needed to address a host of human needs.

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the House, Education, Labor and Pensions Committee on which I serve, is in the process of reauthorizing the Workforce Investment Act. WIA re-authorization provides a valuable opportunity for Congress to improve our Nation's workforce development system to effectively serve immigrants and Limited English Proficient (LEP) individuals.

I look forward to working with Senator ENSIGN and Senator Smith, who have introduced two major immigration bills in New York, to act on these recommendations. The bills before us provide an opportunity to address the needs of LEP workers and their families.

There is no question that English proficiency is critical to economic advancement and improved quality of life for LEP workers and their families. Workers who are fluent in oral and written English earn about 24 percent more than those who lack fluency, regardless of their qualifications. These individuals are better able to participate in the civic life of their communities.

By Mr. FEINGOLD:

S. 1544. A bill to provide for data-mining reports to Congress; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, I am pleased today to offer the Data-Mining Reporting Act of 2003. The test run and contentious intelligence procedure, known as data-mining, is capable of maintaining extensive files containing both public and private records on every American. Almost weekly, we learn about a new data-mining program under development like the newly named Terrorism Information Awareness program. Congress should not be learning the details about these programs after millions of dollars are spent and the technology tested on unsuspecting Americans.

I am pleased today to offer the Data-Mining Reporting Act of 2003. This Act provides information to training providers to serve these individuals. It will also make programs that integrate job training and language acquisition more accessible. Employers that integrate programs offer a significant return on their investment because they improve productivity, reduce attendance problems, increase job retention rates, and promote overall quality control. Limited English Proficient persons also benefit from integrated training through improved job security, increased job advancement, and a greater ability to participate in society.

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I look forward to continuing the work with Senator Smith and Senator Bingaman to improve job training services for immigrants and LEP individuals.

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By Mr. FEINGOLD:

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of the public without payment of a fee, or databases of judicial and administrative opinions.

SEC. 3. REPORTS ON DATA-MINING ACTIVITIES.

(a) REQUIREMENT FOR REPORT.—The head of each department or agency under the jurisdiction of that department or agency under the jurisdiction of that official.

(b) CONTENT OF REPORT.—A report submitted by the head of each department or agency under the jurisdiction of that department or agency under the jurisdiction of that official shall include:

(1) A thorough description of the data-mining technology and the data that will be used.

(2) A thorough discussion of the plans for the use of such technology and the target dates for the deployment of the data-mining technology.

(3) An assessment of the likely efficacy of the data-mining technology in providing accurate and valuable information consistent with the stated plans for the use of the technology.

(4) An assessment of the likely impact of the implementation of the data-mining technology on privacy and civil liberties.

(5) A list and analysis of the laws and regulations that govern the information to be collected, reviewed, gathered, and analyzed with the data-mining technology and a description of any modifications of such laws that will be required to use the information in the manner proposed under such program.

(6) A thorough discussion of the policies, procedures, and guidelines that are to be developed to use the data-mining technology in order to—

(A) protect the privacy and due process rights of individuals; and

(B) ensure that only accurate information is collected and used.

(7) A thorough discussion of the procedures allowing individuals whose personal information will be used in the data-mining technology to be informed of the use of their personal information and what procedures are in place to allow for individuals to opt out of the technology.

(c) TIME FOR REPORT.—Each report required under subsection (a) shall be submitted—

(1) not later than 90 days after the date of the enactment of this Act; and

(2) updated once a year and include any new data-mining technologies.

By Mr. HATCH (for himself, Mr. DURBIN, Mr. LUGAR, Mr. LEAHY, Mr. CRAIG, Mr. FEINGOLD, Mr. CASSIDY, and Mr. GRASSLEY):

S. 1545. A bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the collection of remedial and adaptive skills of certain alien children who are in the United States; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise today to introduce legislation that will help make the American dream a reality for many young people. "The Development, Relief and Education for Alien Minors Act," or "The DREAM Act," provides a legal status that will allow undocumented immigrants who have been raised here since they were eight years old to stay in the United States, to attend college, and to support their families.

As Mr. King wrote to me, "Danny is a natural born leader with charisma and intelligence and a drive that will take him wherever he wants to go. But this will not be possible if Danny is unable to obtain permanent residency."

Our laws should not discourage those with bright young minds from seeking higher education. We should instead assist and encourage the many " Dannys" who are in the United States and who have the dedication and drive to support their families.

First, the DREAM Act repeals the provision of Federal law that prevents States from granting in-State tuition to undocumented aliens, leaving this issue at the discretion of the States.

My own State of Utah passed a law that will allow in-State tuition for aliens who have been residents in Utah for at least three years. My States have either passed or are considering the passage of similar legislation.

But the fact of the matter is that college tuition at public colleges, no matter how beneficial for these young people, will not solve the larger problem: their illegal immigration status. While I do not advocate granting unchecked amnesty to illegal immigrants, I am concerned that programs providing children—children who did not make the decision to enter the United States illegally—the opportunity to earn the privilege of remaining here legally. The DREAM Act will do just that.

The bill I am introducing today will extend DREAM Act benefits to a group of people who were excluded from a similar bill negotiated during the 107th Congress. Today's bill removes the age ceiling so that no one will be arbitrarily cut-off from benefits. Moreover, while the version from the last Congress requires high school graduation as a provision for obtaining legal status, the bill I am introducing today contains a provision that allows high school students who have been apprehended while in school, and who have not yet graduated from high school, to obtain conditional resident status. This provision enables these high school students to get an earlier start on procuring the necessary funds for financing their education.

Of course, we have to be mindful that the opportunity provided by the DREAM Act is a privilege and not an entitlement. We must make sure that those who reap the benefits of the Act are, in fact, deserving of those benefits. For this reason, the bill I am introducing today tightens certain requirements and eliminates waivers for those
who have serious criminal records that would qualify them for deportation.

In addition, while I always want to encourage educational advancement, I recognize that not everyone’s circumstances allow for full-time attendance at a four-year college. For this reason, the DREAM Act provides for certain alternatives like attending community college, trade school, serving in our armed forces, or performing community service.

The purpose of the DREAM Act is to create incentives for out-of-status youngsters to achieve as much as they can in life and to contribute to the greatness of the United States. I recognize that if the bill’s requirements are so high that they simply operate as barriers to legalizing status, the bill defeats its own stated purpose. That is why I am committed to ensuring that the requirements imposed by this bill are reasonable and can be met by youngsters who are willing to work hard. The DREAM Act will enable young people who have ambition and motivation to obtain permanent legal status.

During the 107th Congress, I introduced a version of the DREAM Act, S. 1291. Since then, it has been replaced in favor of the Durbin/Hatch/Kennedy/Brownback substitute. The substitute was part of the Senate calendar but did not receive a vote. The House Judiciary Committee debated identical legislation during the last Congress but it was defeated. The House Judiciary Committee has not yet moved similar legislation.

It is crucial to make sure that the DREAM Act we introduce in the 108th Congress will not die in the hopper as it did in the House last year.

By introducing this bill, I know I am subjecting myself to criticism from both sides of the aisle on my immigration policy. Some proponents of strict immigration enforcement argue that the DREAM Act will encourage illegal entry into the United States. However, the DREAM Act was carefully drafted to avoid this precise problem. The Act specifically limits eligibility to those who entered the United States five years or more prior to the bill’s enactment. It applies to a limited number of people who already reside in the United States and who have demonstrated favorable equities in and significant ties to the United States. Anyone who entered the United States less than five years prior to the bill’s enactment will not be eligible.

The bill would also provide an earned opportunity to reach their potential. I also want to point out that everyone who was eligible for benefits under last year’s bill will be eligible again this year. In fact, as I explained earlier, those benefits are included in this year’s bill. The only difference is that now the applicant has to contribute more to American society before transitioning from conditional resident status to permanent resident status.

I believe the DREAM Act will live up to its name. It will allow these illegal immigrant children the opportunity to not only dream of the infinite possibilities that their futures may hold in the United States but also afford them the opportunity to realize their dreams. With the passage of the DREAM Act, the United States stands to benefit enormously. Once these children become legal residents of this Nation, they will prove to be motivated, hard-working, and educated contributors to our society.

By Mr. McCONNELL (for himself and Mr. LIEBERMAN):

S. 1546. A bill to provide small businesses certain protection from litigation excesses and to limit the product liability of non-manufacturer product sellers; to the Committee on the Judiciary.

Mr. McCONNELL. Mr. President, today Senator LIEBERMAN and I introduced the “Small Business Liability Reform Act of 2003,” which aims to restore common sense to the way our civil litigation system treats small businesses. Small businesses form the backbone of America’s economy. But in our legal system, small businesses are often forced to defend themselves in court for actions they did not commit and pay damages for harms they did not cause.

The bill would also provide an earned adjustment mechanism by which young people who are long-term U.S. residents may become legal permanent residents.

Approving this bill would give accomplished young people the opportunity to pursue the American dream. I urge my colleagues to support it.
threaten the very existence of many small businesses, and when American small businesses go under, our economy is harmed as new products are not developed, produced, or sold, and employers cannot retain employees or hire new ones.

Small businesses—those with 25 or fewer full-time employees—employ almost 60 percent of the American workforce. Because the majority of small business owners earn less than $50,000 a year, they often lack the resources to fight unfair lawsuits which could put them out of business. When faced with such a lawsuit, many of these entrepreneurs must either risk a lengthy battle in court, in which they may be subjected to large damage awards, or settle the dispute out of court for a significant amount. Either way, our current system jeopardizes the livelihood and futures of small business owners and their employees.

The Small Business Liability Reform Act of 2003 would remedy these ills with three common-sense solutions, all of which protect our nation’s entrepreneurs from unfair lawsuits and excessive damage awards. First, it would allow punitive damages only against a small business only upon clear and convincing evidence, rather than upon a simple preponderance of the evidence, and it would set reasonable limits on the size of punitive damage awards—less than $250,000 or three times compensatory damages.

Second, our bill would restore basic fairness to the law by eliminating joint and several liability for small businesses for non-economic damages, such as pain and suffering, so a small defendant is not forced to pay for harms it did not cause. Under the current joint and several liability rules, if a small business is found liable with other defendants, the small business may be forced to pay a disproportionate share of the damages it is “deep pockets” relative to the other responsible parties. For example, a small business that was found responsible for only 10 percent of the harm in a case may have to pay half, two-thirds or even all of the damages. This legislation would prevent this unfair situation, but it would not change a small business’s joint and several liability for economic damages, such as medical expenses and lost wages; because a small business may be responsible for all economic damages, regardless of its degree of fault, plaintiffs will still be able to recover all of their out-of-pocket costs. By protecting small businesses from having to pay non-economic damages for which they are not responsible, though, the Small Business Liability Reform Act of 2003 partially relieves a potentially unfair situation.

Third, our bill addresses some of the injustices facing non-manufacturing product sellers. Currently, a person who has nothing to do with a defective and harmful product other than simply selling it can be sued with the manufacturer. Under the reforms in the Small Business Liability Reform Act of 2003, however, a product seller can only be held liable for harms caused by his own negligence, intentional wrongdoing, or breach of his own warranty.

This bill would provide much needed protection and relief to small business owners, workers, and consumers. By making our legal system reasonable and fair to small businesses, we will remove one of the greatest barriers to starting and maintaining a small business: the threat of excessive, and unfair lawsuits. That means increased competition, better and more affordable goods, and more jobs at a time when America could use them all.

The Small Business Liability Reform Act of 2003 is a win for all Americans, and it is my hope that the Senate will pass this bipartisan bill. Finally, I would ask unanimous consent that letters in support of this legislation from the National Federation of Independent Business, the National Association of Wholesale-Distributors, the Motorcycle Industry Council, and the Small Business Legal Reform Coalition be printed in the RECORD.

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

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

Hon. MITCH MCCONNELL, U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: On behalf of the Small Business Legal Reform Coalition, we are writing to thank you for sponsoring the Small Business Liability Reform Act of 2003, and to express our strong support for its passage. We commend you for your efforts to restore common sense to our civil justice system—one that takes a particularly heavy toll on the smallest of America’s businesses.

The frequent and crushing cost of litigation is a matter of growing concern to small businesses across the country. Today’s civil justice system presents a significant disincentive to small businesses to continue operations. If sued, business owners know they have to choose between a long and costly trial or an expensive settlement. Business owners who are losing their livelihood, their employees and their future every time they are confronted with an unnecessary lawsuit.

The Small Business Liability Reform Act of 2003 would make two reforms that have topped the small business community’s agenda for years: cap punitive damages and abolish joint and several liability for damages for those with fewer than 25 employees. These reforms have been among the recommendations of the White House Conference on Small Business in the early 1980s—and the time has come to protect the smallest of small businesses from excessive damage awards and frivolous suits.

This legislation would also hold non-manufacturing product sellers liable in product liability cases when their own wrongful conduct is responsible for the harm and thus reduce the exposure of innocent product sellers, lessors and renters to lawsuits when they are simply present in a product’s chain of distribution or solely due to product owner negligence. If the seller wins the judgment-proof, the product seller would be responsible for any damage award, ensuring that deserving claimants recover fully for their injuries.

In the end, we believe that enactment of the Small Business Liability Reform Act of 2003 will inject more fairness into our legal system and reduce unnecessary litigation and legal costs. We also believe that it protects the rights of those with legitimate claims. We thank you for your support of these common sense reforms and look forward to working with you to ensure the success of this important legislation.

Sincerely,

American Automotive Leasing Association.
American Council of Engineering Companies.
American Insurance Association.
American Rental Association.
Associated Builders and Contractors.
Associated Equipment Distributors.
Society of Parts and Service Alliance.
Citizens for Civil Justice Reform.
Coalition for Uniform Product Liability Law.
Equipment Leasing Association.
Independent Insurance Agents and Brokers of America.
International Housewares Association.
International Mass Retail Association.
Motorcycle Industry Council.
National Association of Convenience Stores.
National Association of Manufacturers.
National Association of Wholesale-Distributors.
National Federation of Independent Business.
National Grocers Association.
National Restaurant Association.
National Retail Federation.
National Small Business United.
NPES—Association for Suppliers of Printing, Publishing & Converting Technologies.
Small Business Legislative Council.
Specialty Equipment Market Association.
Tire Industry Association.
Truck Renting and Leasing Association.
U.S. Chamber of Commerce.


Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: On behalf of the approximately 300 members of the Motorcycle Industry Council (MIC), I want to express our strong support for the “Small Business Liability Reform Act of 2003” and extend sincere thanks for your sponsorship of this important legislation. MIC is a nonprofit national trade association that represents manufacturers and distributors of motorcycle parts and accessories, and members of allied trades. A large number of our member companies are small businesses. This Act, which would cap punitive damages and abolish joint liability for non-economic damages for businesses with fewer than 25 employees, is a common sense approach to sustaining the health of America’s small businesses. It would hold non-manufacturing product sellers liable in product liability cases when their own wrongful conduct is responsible for the harm and thus reduce the exposure of innocent product sellers to lawsuits when they are simply present in a product’s chain of distribution. Should the manufacturer be judgment-proof, the product seller would be responsible for any damage award, ensuring that deserving claimants recover fully for their injuries.

July 31, 2003
CONGRESSIONAL RECORD—SENATE S10675
The frequency and high cost of litigation is a matter of great concern to the business community. Few companies have been left unmarked by the steep increases in product liability costs or the decline in availability of product liability insurance. The impact on small businesses is especially burdensome, the current civil justice system puts owners across the country in jeopardy of losing their livelihood, their employees and their futures when faced with unfounded lawsuits through no fault of their own. This Act would serve to help protect these businesses from excessive damage awards and the costs of defending against frivolous suits.

Sensible reform brings predictability to the product liability process, stabilizes product liability insurance rates and reduces the overall costs related to product liability litigation imposed on manufacturers, sellers, and ultimately, consumers. This legislation is an important step in alleviating the devastating effects that the current system can have on small businesses and their millions of employees, which continue to ensure that businesses remain accountable for negligence, wrongdoing and that consumers have full access to the court system for redress.

Again, thank you for your sponsorship of this Act. It is so important to our small business member companies.

Sincerely,

KATHY R. VAN KLECK
Vice President—Government Relations

NATIONAL ASSOCIATION
OF WHOLESALER-DISTRIBUTORS

Hon. MITCH MCCONNELL
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: On behalf of the 600,000 members of the National Federation of Independent Business (NFIB), I would like to express our strong support for the Small Business Liability Reform Act of 2003. NFIB strongly supports this legislation which would make two reforms that have topped the small business community’s agenda for years: cap punitive damages and abolish joint liability for non-economic damages for those with fewer than 25 employees. These reforms have been part of the recommendations of the White House Conference on Small Business since the early 1990s—and the time has come to protect the smallest of small businesses from excessive damage awards and frivolous suits.

This bill would also abolish non-manufacturing product sellers liable in product liability cases when their own wrongful conduct is responsible for the harm and thus reward the exposure of innocent sellers, lessors and tenants to lawsuits when they are simply present in a product’s chain of distribution or solely due to product ownership. Should the manufacturer be judgment-proof, the product seller would be responsible for any damage award, ensuring that deserving claimants recover fully for their injuries.

In the end, we believe that enactment of the Small Business Liability Reform Act will inject fairness into the legal system and reduce unnecessary litigation and legal costs. We also believe that it protects the rights of those with legitimate claims. We thank you for your consideration of this commonsense reform which will serve to work with you to ensure the success of this important legislation.

Sincerely,

JAMES A. ANDERSON, Jr.
Vice President—Government Relations

NATIONAL FEDERATION
OF INDEPENDENT BUSINESS

Hon. MITCH MCCONNELL
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: On behalf of the 600,000 members of the National Federation of Independent Business (NFIB), I would like to express our strong support for the Small Business Liability Reform Act of 2003. NFIB strongly supports this legislation which would make two reforms that have topped the small business community’s agenda for years: cap punitive damages and abolish joint liability for non-economic damages for those with fewer than 25 employees. These reforms have been part of the recommendations of the White House Conference on Small Business since the early 1990s—and the time has come to protect the smallest of small businesses from excessive damage awards and frivolous suits.

This bill would also abolish non-manufacturing product sellers liable in product liability cases when their own wrongful conduct is responsible for the harm and thus reward the exposure of innocent sellers, lessors and tenants to lawsuits when they are simply present in a product’s chain of distribution or solely due to product ownership. Should the manufacturer be judgment-proof, the product seller would be responsible for any damage award, ensuring that deserving claimants recover fully for their injuries.

In the end, we believe that enactment of the Small Business Liability Reform Act will inject fairness into the legal system and reduce unnecessary litigation and legal costs. We also believe that it protects the rights of those with legitimate claims. We thank you for your consideration of this commonsense reform which will serve to work with you to ensure the success of this important legislation.

Sincerely,

JAMES A. ANDERSON, Jr.
Vice President—Government Relations

NATIONAL FEDERATION
OF INDEPENDENT BUSINESS
Section 102. Definitions.

In this title:

(1) Crime of violence.—The term ‘‘crime of violence’’ has the same meaning as in section 16 of title 18, United States Code.

(2) Drug.—The term ‘‘drug’’ means any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) that was not illegally prescribed for use by the defendant or that was taken by the defendant other than in accordance with any terms of a lawfully issued prescription.

(3) Economic loss.—The term ‘‘economic loss’’ means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(4) Harm.—The term ‘‘harm’’ means any physical injury, illness, disease, or death or any economic loss; or

(5) Hate crime.—The term ‘‘hate crime’’ means a crime described under section 5 of the Hate Crime Statistics Act (28 U.S.C. 534 note).

(6) International terrorism.—The term ‘‘international terrorism’’ has the same meaning as in section 2331 of title 18, United States Code.

(7) Nondamages loss.—The term ‘‘nondamages loss’’ means any physical injury, emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), injury to reputation, or any other nonpecuniary loss of any kind or nature.

(8) Person.—The term ‘‘person’’ means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any government or political subdivision of any State) acting on behalf such an action is brought. If such an action is brought, the term ‘‘person’’ includes any parent corporation, any subsidiary corporation, and any other person responsible for the harm to the claimant, with respect to which that defendant is liable; and

(9) Punitive damages.—The term ‘‘punitive damages’’ means damages awarded against any person or entity to punish or deter that person or entity, or other persons engaging in similar behavior in the future. Such term does not include any civil penalties, fines, or treble damages that are as assessed by an agency of State or Federal government pursuant to a State or Federal statute.

(10) Small business.—The term ‘‘small business’’ means any unincorporated business, or any partnership, corporation, association, or other business in which the number of employees of a wholly owned corporation includes the employees of—

(1) a parent corporation; and

(2) any other subsidiary corporation of that parent corporation.

(11) State.—The term ‘‘State’’ means each of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, commonwealth, territory, or possession.

Section 103. Limitation on Punitive Damages for Small Businesses.

(a) General Rule.—Except as provided in section 105, in an action against a small business, punitive damages may, to the extent permitted by applicable Federal or State law, be awarded against the small business only if the plaintiff establishes by clear and convincing evidence that conduct carried out by that defendant with a conscious, flagrant indifference to the rights or safety of others was the proximate cause of the harm that is the subject of the action.

(b) Limitation on Amount.—In any civil action against a small business, punitive damages awarded against a small business shall not exceed the lesser of—

(1) three times the total amount awarded to the claimant for economic and nondamages losses; or

(2) $250,000,

except that the court may make this subsection inapplicable if the court finds that in accordance with clear and convincing evidence that the defendant acted with specific intent to cause the type of harm for which the action was brought.

(c) Application by the Court.—The limitation prescribed by this section shall be applied by the court and shall not be disclosed to the jury.

Section 104. Limitation on Joint and Several Liability for Nondamages Loss for Small Businesses.

(a) General Rule.—Except as provided in section 105, in any civil action against a small business, the liability of each defendant that is a small business, or the agent of a small business, for nondamages loss shall be determined in accordance with subsection (b).

(b) Amount of Liability.—

(1) In General.—In any civil action described in subsection (a)—

(A) each defendant described in that subsection shall be liable only for the amount of nondamages loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable; and

(B) the court shall render a separate judgment against each defendant described in that subsection in an amount determined under subparagraph (A).

(2) Percentage of Responsibility.—For purposes of this section, the percentage of responsibility of each person responsible for the harm to the claimant, regardless of whether or not the person is a party to the action.

Section 105. Exceptions to Limitations on Liability for Small Businesses.

The limitations on liability under sections 103 and 104 do not apply—

(1) to any defendant whose misconduct—

(a) constitutes a crime of violence; or

(b) results in liability for damages relating to the injury to, destruction of, loss of, or loss of use of, natural resources described in—

(i) section 102(a)(2)(A) of the Oil Pollution Act of 1990 (33 U.S.C. 2702(a)(2)(A)); or


(C) involves—

(i) a sexual offense, as defined by applicable State law; or

(ii) a violation of a Federal or State civil rights law; or

(D) occurred at the time the defendant was under the influence (as determined under applicable State law) of intoxicating alcohol or a drug, and the fact that the defendant was under the influence was the cause of any harm alleged by the plaintiff in the subject action; or

(2) to any cause of action which is brought under provisions of title 31, United States Code, relating to false claims (31 U.S.C. 3729 through 3733) or to any other cause of action brought by the United States under a similar law.

Section 106. Preemption and Election of State Nondamages Loss Liability.

(a) Preemption.—Subject to subsection (b), this title does not apply to any action in a State court against a small business in which all parties are citizens of the State, and the action is predicated solely on the plaintiff's status as a small business, or on any other person responsible for the harm to the claimant, if the State has enacted a law that—

(1) citing the authority of this subsection; and

(2) declaring the election of such State law as the law applicable to such actions in the State.

(b) Election of State Nondamages Loss Liability.—This title does not apply to any action in a State court against a small business in which all parties are citizens of the State, and the action is predicated solely on the plaintiff's status as a small business, or on any other person responsible for the harm to the claimant, if the State has enacted a law that—

(1) citing the authority of this subsection; and

(2) declaring the election of such State law as the law applicable to such actions in the State.

Title II—Product Seller Fair Treatment

Section 201. Findings; Purposes.

(a) Findings.—The Congress finds that—

(1) although damage awards in product liability actions may encourage the production of safer products, they may also have a direct effect on interstate commerce and consumers of the United States by increasing the cost of, and decreasing the availability of, products.

(2) some of the rules of law governing product liability actions are inconsistent with and among the States, resulting in differences in State laws that may be inequitable with respect to plaintiffs and defendants and may impose burdens on interstate commerce.

(3) Product liability awards may jeopardize the ability of smaller businesses, particularly the small businesses of the United States;

(4) because the product liability laws of a State may have adverse effects on consumers and businesses in many other States, it is appropriate for the Federal Government to enact national, uniform product liability laws that preempt State laws; and

(5) under clause 3 of section 8 of article I of the United States Constitution, the Congress has the constitutional authority to eliminate barriers to interstate commerce.

(b) Purposes.—The purposes of this title, based on the powers of the United States under clause 3 of section 8 of article I of the United States Constitution, are to—

(1) establish certain uniform legal principles that protect product liability awards and achieve a fair balance among the interests of all parties in the chain of production, distribution, and use of products; and

(2) reduce the unacceptable costs and delays in product liability actions caused by excessive litigation that harms both plaintiffs and defendants.
action is brought through or on behalf of an estate, the term includes the claimant’s decedent. If such an action is brought through or on behalf of a minor or incompetent, the term includes the claimant’s legal guardian.

(3) COMMERCIAL LOSS.—The term “commercial loss” means—

(A) any loss or damage solely to a product itself;

(B) loss relating to a dispute over the value of a product; or

(C) consequential economic loss, the recovery of which is governed by applicable State commercial or contract laws that are similar to the Uniform Commercial Code.

(4) DAMAGES.—The term “damages” means damages awarded for economic and noneconomic losses.

(5) DRAWSHOP.—The term “drawshop” means a drinking establishment where alcoholic beverages are sold to be consumed on the premises.

(6) ECONOMIC LOSS.—The term “economic loss” means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expenses, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for that loss is allowed under applicable State law.

(7) HARM.—The term “harm” means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss.

(8) MANUFACTURER.—The term “manufacturer” means—

(A) any person who—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient; or

(ii) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSION.—The term “product” does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are governed by applicable State law, to a standard of liability other than negligence; or

(ii) electricity, water delivered by a utility, natural gas, or steam.

(12) PRODUCT LIABILITY ACTION.—

(A) GENERAL RULE.—Except as provided in paragraph (B), the term “product liability action” means any action brought on any theory for a claim for any physical injury, illness, disease, death, or damage to property that is caused by a product.

(B) EXCLUSION.—The following claims are not included in the term “product liability action”:

(i) NEGLIGENCE ENTRUSTMENT.—A claim for negligent entrustment.

(ii) NEGLIGENCE PER SE.—A claim brought under a theory of negligence per se.

(iii) DRAWSHOP.—A claim brought under a theory of drawshop or third-party liability in connection with the sale or providing of an alcoholic product to an intoxicated person or minor.

(13) PRODUCT SELLER.—

(A) IN GENERAL.—The term “product seller” means a person who—

(i) sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term “product seller” does not include—

(i) a seller or lessor of real property; or

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(A) the failure occurred because there was no reasonable opportunity to inspect the product; or

(B) the inspection, in the exercise of reasonable care, would not have revealed the aspect of the product that allegedly caused the harm.

(14) STATE.—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, commonwealth, territory, or possession.

SEC. 204. LIABILITY RULE APPLICABLE TO PRODUCT SELLERS, RENTERS, AND LESSORS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action covered under this title, a product seller other than a manufacturer shall be liable to a claimant only if the claimant establishes that—

(A) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(B) the product seller failed to exercise reasonable care with respect to the product; and

(C) the failure to exercise reasonable care was a proximate cause of the harm to the claimant;

(2) STATUTE OF LIMITATIONS.—For purposes of paragraph (1)(A)(i), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect the product, if—

(A) the failure occurred because there was no reasonable opportunity to inspect the product; or

(B) the inspection, in the exercise of reasonable care, would not have revealed the aspect of the product that allegedly caused the claimant’s harm.

(b) SPECIAL RULE.—

(1) IN GENERAL.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product, if—

(A) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(B) the court determines that the claimant is or would be unable to enforce a judgment against the manufacturer.

STATEMENT OF LIMITATIONS.—For purposes of this subsection only, the statute of limitations applicable to claims asserting liability
of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer.

(c) RENTED OR LEASED PRODUCTS.—

(1) DEFINITION.—For purposes of paragraph (2), and for determining the applicability of this subsection, in the context in which this paragraph is used, the term ‘‘product liability action’’ means a civil action brought on any theory for harm caused by a product or product use.

(2) LIABILITY.—Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of ‘‘seller’’ under section 1315(b)) shall not have jurisdiction under this title to base a product liability action on section 1331 or 1337 of title 28, United States Code.

SEC. 205. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction under this title based on section 1331 or 1337 of title 28, United States Code.

TITLE III—EFFECTIVE DATE

SEC. 301. EFFECTIVE DATE.

This Act shall take effect with respect to any civil action commenced after the date of the enactment of this Act without regard to whether the harm that is the subject of the action occurred before such date.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 1547. A bill to amend title XXI of the Social Security Act to make a technical correction with respect to the definition of qualifying State; considered and passed.

Mr. BINGAMAN. Mr. President, last evening, I introduced two bills with Senator DOMENICI and yet another one today to address a technical, but very important problem that the State of New Mexico and a number of other States, including the Majority Leader, have faced with respect to the Children’s Health Insurance Program, or CHIP. When CHIP was established by President Clinton and the Congress in 1997, an inequity was built into the program whereby certain states that had been more progressive and had expanded coverage to children through Medicaid prior to the enactment of the bill were penalized.

In the last Congress and again this year, I introduced the “Children’s Health Equity Act of 2003” to address this problem for a number of States, including New Mexico, Vermont, Washington, and Tennessee. Our states have been unable to fully access Federal CHIP dollars because the previous expansion of Medicaid to children was not recognized or “grandfathered,” while certain other States such as New York, Florida, and Pennsylvania were explicitly “grandfathered” in and their State expansions to children were allowed to be covered with CHIP dollars.

The National Governors’ Association has long recognized this inequity and has, in fact, a policy that read, “The Governors believe that it is critical that innovative states not be penalized for having expanded coverage to children before the enactment of S–CHIP, which provides enhanced funding to meet these goals. To this end, the Governors support providing additional funding flexibility to states that had already expanded coverage to the majority of uninsured children in their states.”

S. 621, the “Children’s Health Equity Act,” did precisely that and the critical language was included in S. 312 by Senators Rockefeller and Chafee, which addressed both expired and expiring CHIP funds and the problem addressed by S. 621. We appreciated their recognition of that issue and supported the passage of that legislation after an extensive set of negotiations and compromises on the language.

For New Mexico, an important issue is that our State expanded coverage up to 185 percent of poverty prior to the passage of this Act. As a result of this, the children in our State between 100 percent and 185 percent of poverty are ineligible for CHIP. Thus, New Mexico has been allocated $266 million from CHIP between fiscal years 1998 and 2002, to be spent over the five years but has been able to spend slightly over $26 million as of the end of the last fiscal year. In other words, New Mexico has been allowed to spend less than 10 percent of its Federal CHIP allocations. This, despite the fact our State ranks 2nd in the Nation in the percentage of children who are uninsured.

It is a travesty that money set–aside for New Mexico to address our children’s coverage problem is not available to be spent and is thereby redistributed to other States who have far lower uninsured rates and whose children between 100 and 185 percent of poverty are eligible for Federal CHIP dollars. The children in those States are certainly no more worthy of health insurance coverage than the children of New Mexico.

The consequences for the children of New Mexico are enormous. According to the Census Bureau, New Mexico has an estimated 114,000 uninsured children. Put another way, almost 21 percent of all the children in New Mexico are uninsured, despite the fact New Mexico has expanded coverage all the way to 235 percent of poverty. Again, this is the 2nd highest rate of uninsured children in the Nation.

This is a result of the fact that an estimated 80 percent of the uninsured children in New Mexico are below 200 percent of poverty. These children are often eligible for either Medicaid or CHIP but currently unenrolled. With the exception of those few children between 185 and 200 percent of poverty who are eligible for the enhanced Federal CHIP dollars, all of the remaining children below 185 percent of poverty in New Mexico have unlimited CHIP funding despite their need.

For New Mexico, the Senate language that was in S. 621 and included in S. 312 would have allowed New Mexico to spend up to 20 percent of its Federal CHIP allotments on children enrolled between 150 and 185 percent of poverty. Unfortunately, the House of Representatives chose to modify the Senate language in such a manner through the introduction and passage of H.R. 2854 that New Mexico may no longer be eligible.

The House of Representatives, which did not include language addressing New Mexico’s issue, placed the first place, chose to edit the Senate language that “grandfathered” States that had previous expanded coverage “up to” 185 percent of poverty and above and replaced it with language that the State had to have expanded coverage to “at least” 185 percent of poverty.

This sounds rather technical, but this slight difference may ironically allow in the short run States such as Vermont and Washington, to be “grandfathered” but not New Mexico. It is my contention, after reviewing the materials from the floor of the Senate, that our State expanded coverage to 185 percent of poverty and operates a full Medicaid benefit at 185 percent of poverty and therefore should qualify as a State to be “grandfathered.” Unfortunately, the language change has left the Centers for Medicare and Medicaid Services, or CMS, uncertain of our State’s eligibility, as some believe the State has only some up to 185 percent of poverty, or just short of that level, and therefore does not meet the test of “at least” 185 percent of poverty.

For six long years, the States of Washington, New Mexico, Vermont, and others have sought to fix the inequity in CHIP. Senator Baucus of Vermont had the original legislation to fix this problem and I picked up, modified, and reintroduced that legislation in the last two sessions of Congress. After six long years, to now find that New Mexico is the only State excluded by the House change of 0.0001 percentage points, is both outrageous and unacceptable.

I contend that the Centers for Medicare and Medicaid Services, or CMS, can still make a determination that New Mexico meets this revised standard under H.R. 2854 and urge them to do so as soon possible.

However, in the meantime, since New Mexico’s status is now in question, I introduced another one today with Senator DOMENICI that all clarify that New Mexico qualifies. The first includes New Mexico as a “qualified state” explicitly. This would leave open the question all the second bill clarifies that a State found to be a partial percentage point below 185 percent of poverty would round up to the nearest number, that being 185 percent of poverty, and be eligible. That would also undoubtedly ensure New Mexico’s status.

In order to hold. I have asked that the bill I introduced changing the percentage that a qualified state must be changed from 185 to
The Children of New Mexico Deserve Better Than Poverty

Senator PETE DOMENICI,

ment of the Senate Finance Committee and the House Energy and Commerce Committee to fix this problem and therefore urge the passage of both H.R. 2854 and the original legislation that I introduced today. I ask unanimous consent that the letter I referred to be printed in the Record. With no objection, the letter was ordered to be printed in the Record, as follows:

July 31, 2003

Senator JEFF BINGAMAN, Chairmen Baucus, Mr. Frist, Mr. Daschle, Mr. Domenici, Mr. Bingaman, Mr. Inhofe, Mr. Edwards, Mr. Thomas, Mr. Voisinich, Mr. Conrad, Mrs. Lincoln, Mr. Coleman, Mr. Dorgan, Mr. Bond, Mr. Harkin, Mr. Dayton, Mr. Durbin, Mr. Talent, Mr. Nelson of Nebraska, and Mr. Brownback)

S. 1588, entitled External Revenue Code of 1996 to provide incentives for the production of renewable fuels and to simplify the administration of the Highway Trust Fund. A number of issues have been raised to my attention by leaders of the Senate and the House of Representatives and signed into law by the President. I have received a letter from Chairman Tauzin, and Ranking Member Dingle of the House Energy and Commerce Committee ensuring the intent of H.R. 2854 is to include New Mexico and provides their commitment that they will ensure that the technical problem our State has with the language will be fixed immediately upon return from the August recess. I thank them for their commitment to New Mexico.

Once again, many States are accessing their CHIP allotments to cover kids at poverty levels far below New Mexico's current or past eligibility levels. The children in those states are certainly no more worthy and the children of New Mexico deserve better than they are getting from the Federal Government. I accept the commitment made by the leadership of the Senate Finance Committee and the House Energy and Commerce Committee to fix this problem and therefore urge the passage of both H.R. 2854 and the original legislation that I introduced today. I ask unanimous consent that the letter I referred to be printed in the Record. With no objection, the letter was ordered to be printed in the Record, as follows:

July 31, 2003

Senator JEFF BINGAMAN, Senator PETER DOMENICI, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATORS BINGAMAN AND DOMENICI: We are writing to provide our commitment to pass a technical corrections bill in September that will provide the proper technical fix that will allow New Mexico to use 20% of their SCHIP allotments to pay for certain Medicaid eligible children. Prior to House passage of H.R. 2854, CMS had provided technical assistance that indicated that New Mexico would be covered under the language in the bill. The authors of the bill intended that New Mexico would be covered, and drafted the language accordingly, based on the information provided by CMS. We have subsequently learned that New Mexico may not be able to use the 20% because of potential flaws in the language contained in H.R. 2854. This was not our intent, and we are committing to pass a technical corrections bill in September that will allow New Mexico to use these funds.

Sincerely,

CONGRESSMAN BILLY TAUZIN,
Chairman of the House Committee on Energy & Commerce.

CONGRESSMAN J OHN D. DINGLE,
Ranking Member of the House Committee on Energy & Commerce.

By Mr. GRASSLEY (for himself, Mr. BAUCCUS, Mr. FRIST, Mr. DASCHE, Mr. DOMENICI, Mr. BINGAMAN, Mr. INHOFE, Mr. JEFFORDS, Mr. THOMAS, Mr. VOINOVICH, Mr. CONRAD, Mrs. LINCOLN, Mr. COLEMAN, Mr. DORGAN, Mr. BOND, Mr. HARKIN, Mr. DAYTON, Mr. DURBIN, Mr. TALENT, Mr. NELSON of NEBRASKA, and Mr. BROWNBACK): S. 1588, entitled External Revenue Code of 1996 to provide incentives for the production of renewable fuels and to simplify the administration of the Highway Trust Fund. A number of issues have been raised to my attention by leaders of the Senate and the House of Representatives and signed into law by the President. I have received a letter from Chairman Tauzin, and Ranking Member Dingle of the House Energy and Commerce Committee ensuring the intent of H.R. 2854 is to include New Mexico and provides their commitment that they will ensure that the technical problem our State has with the language will be fixed immediately upon return from the August recess. I thank them for their commitment to New Mexico.

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Sincerely,

CONGRESSMAN BILLY TAUZIN,
Chairman of the House Committee on Energy & Commerce.

CONGRESSMAN J OHN D. DINGLE,
Ranking Member of the House Committee on Energy & Commerce.
No affect on the Highway Trust Fund—the biodiesel tax credit will be paid for out of the “General fund” not the “Highway Trust Fund.”

Eliminate the E85 AMT issue: any taxpayer eligible for the alcohol fuels tax credit will be able to use the volume ethanol excise tax credit system, which means they will be able to file for a refund for every gallon of ethanol in the marketplace without regard to the income of the taxpayer or whether the ethanol is used in a taxexempt fuel.

Allow the alcohol fuels tax credit to be claimed in both taxable and nontaxable markets.

Streamline the tax refund system for below the rack blenders to allow a tax refund of the alcohol fuels credit on each gallon of ethanol blended with gasoline to be paid within 20 days of blending.

I feel strongly about the legislation because it eliminates the tax infrastructure, and fuel delivery impediments that have been problematic throughout the history of the renewable fuels industry and encourage you to join us in working to enact this legislation for the benefit of this Congress.

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

S. 1548

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the “Renewable Diesel Ethanol Excise Tax Credit (VEETC) Act of 2003.”

(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.

SEC. 2. INCENTIVES FOR BIODIESEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter B of chapter 1 (relating to business-related credits), as amended by this Act, is amended by inserting after section 39A the following new section:

“Sec. 40B. Biodiesel used as fuel.

(a) General rule.—For purposes of this Act, biodiesel means [(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and
(ii) for taxable year in which such sale or use occurs,

(b) Casual off-farm production not eligible.—No credit shall be allowed under this section with respect to any casual off-farm production of qualified biodiesel mixture.

(2) Biodiesel credit.—

(A) IN GENERAL.—The biodiesel credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel which is not in a mixture with fuel diesel and which during the taxable year—

(i) is used by the taxpayer as a fuel in a trade or business, or

(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person’s vehicle.

(B) User credit not to apply to biodiesel sold at retail.—No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

(3) Credit for agri-biodiesel.—

(A) IN GENERAL.—Subject to subparagraph (B), biodiesel means biodiesel derived from agricultural products, including—

(i) vegetable oil from corn, soybeans, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds, and from animal fats, coffee, and olive oil

(ii) without separate mixing use the mixture other than as a fuel.

then there is hereby imposed on such person an excise tax equal to the product of the rate applicable under subsection (b)(1)(A) and the number of gallons of the mixture.

(B) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) as if such tax were imposed by section 4081 and not by this chapter.

(6) Passthrough in the case of estates and trusts.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(e) Termination.—This section shall not apply to any fuel sold after December 31, 2005.

(6) Credit treated as part of general business credit.—Section 40B(b)(1) (relating to current year business credit), as amended by this Act, is amended by striking the period at the end of paragraph (16) and inserting “, plus”, and by adding at the end the following new paragraph:

“(17) the biodiesel fuels credit determined under section 40B(a).”

(c) Conforming amendments.—

(1) Section 39(d), as amended by this Act, is amended by adding at the end the following new paragraph:

“(12) No carryback of biodiesel fuels credit before effective date.—No portion of the unused business credit for any taxable year which is attributable to the biodiesel fuels credit determined under section 40B may be carried back to a taxable year ending on or before the date of the enactment of section 40B.”

(2)(A) Section 87, as amended by this Act, is amended—

(i) by striking “and” at the end of paragraph (1),

(ii) by striking the period at the end of paragraph (2) and inserting “; and”, and

(iii) by adding at the end the following new paragraph:

“(3) the biodiesel fuels credit determined with respect to the taxable year under section 40B(“a).”, and

(iv) by striking “FUEL CREDIT” in the heading and inserting “AND BIODIESEL FUELS CREDITS.”

(B) The item relating to section 87 in the table of sections for part II of subchapter B of chapter 1 is amended by striking “fuel credit” and inserting “and biodiesel fuels credits”.

(3) Section 96(c) is amended by striking “and” at the end of paragraph (9), by striking the period at the end of paragraph (10) and inserting “, plus”, and by adding at the end the following new paragraph:

“(11) the biodiesel fuels credit determined under section 40B(a).”

(4) The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding after the item relating to section 40A the following new item:

“Sec. 40B. Biodiesel used as fuel.”

(d) Effective date.—No portion of the unused business credit for any taxable year which is attributable to the biodiesel fuels credit determined under section 40B may be carried back to a taxable year ending on or before the date of the enactment of section 40B.

SEC. 3. ALCOHOL FUEL AND BIODIESEL MIXTURES EXCISE TAX CREDIT.

(a) IN GENERAL.—Subchapter B of chapter 1 (relating to special rules for business-related credits), as amended by this Act, is amended—

(1) by adding the following new section:

“Sec. 42B. Credit for alcohol fuel and biodiesel mixtures.

(a) Allowance of credits.—There shall be allowed as a credit against the tax imposed by this section an amount equal to the sum of—

(i) the alcohol fuel credit, plus

(ii) the biodiesel fuel credit, plus

(b) Alcohol fuel credit.”

(2) In general.—For purposes of this section, the alcohol fuel mixture credit is the
applicable amount for each gallon of alcohol used by the taxpayer in producing an alcohol fuel mixture.

(2) APPLICABLE AMOUNT.—For purposes of this section, the applicable amount is 52 cents (5 cents in the case of any sale or use after December 31, 2010).

(B) MIXTURES NOT CONTAINING ETHANOL.—In the case of a mixture of ethanol which consists of alcohol other than petroleum, natural gas, or coal (including peat), or alcohol with a proof of less than 190 (determined without regard to any added denatured alcohol), the term ‘alcohol mixture’ means the aggregate rate of tax imposed by section 4091 determined without regard to subsection (c) thereof.

(3) ALCOHOL FUEL MIXTURE.—For purposes of this section, the term ‘alcohol fuel mixture’ is a mixture which—

(A) consists of alcohol and a taxable fuel, and

(B) is sold for use as a fuel by the taxpayer producing the mixture.

(4) OTHER DEFINITIONS.—For purposes of this subsection—

(A) ALCOHOL.—The term ‘alcohol’ includes methanol and ethanol but does not include—

(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

(ii) alcohol with a proof of less than 190 (determined without regard to any added denatured alcohol).

Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

(B) TAXABLE FUEL.—The term ‘taxable fuel’ has the meaning given such term by section 4083(a)(1).

(5) TERMINATION.—This subsection shall not apply to any sale or use for any period after December 31, 2010.

(c) BIODIESEL MIXTURE CREDIT.—

(1) IN GENERAL.—For purposes of this section, a biodiesel mixture credit is the product of the applicable amount and the number of gallons of biodiesel used by the taxpayer in producing any qualified biodiesel mixture.

(2) DEFINITION OF BIODIESEL.—(A) IN GENERAL.—Subject to clause (ii), in the case of any biodiesel which is agri-biodiesel, the applicable amount is $1.00.

(B) DEFINITION FOR AGRI-BIODIESEL.—Clause (ii) shall apply only if the taxpayer described in paragraph (1) obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the agri-biodiesel which identifies the product produced.

(3) DEFINITIONS.—Any term used in this subsection which is also used in section 408 shall have the meaning given such term by section 408.

(4) TERMINATION.—This subsection shall not apply to any sale or use for any period after December 31, 2005.

(d) MIXTURE NOT USED AS A FUEL, ETC.—(1) IMPOSITION OF TAX.—(A) Any credit was determined under this section with respect to any mixture of alcohol or biodiesel (as defined in section 408(d)(1)) or alcohol (as defined in section 6426(b)(4)(A)) after 4091.

(2) FORMING AMENDMENTS.—(A) In section 40(c) is amended by striking ‘‘section 4091(c), or section 4091(c)’’ and inserting ‘‘section 4091(c), section 4062, section 6426, section 6427(e), or section 6427(f)’’.

(B) In section 4041(b)(1)(B) is amended by striking ‘‘or 4081(c)’’.

(3) Section 4041(b)(2)(B) is amended by striking ‘‘a substance other than petroleum or natural gas’’ and inserting ‘‘coal (including peat)’’.

(4) Paragraph (1) of section 4041(k) is amended to read as follows:

(a) In general.—(1) In general, under regulations prescribed by the Secretary, in the case of the sale or use of any liquid at least 10 percent of which consists of alcohol (as defined in section 4041(b)(1)), the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(c)(1).

(b) Section 4041(b) is amended by striking subsection (c).

(5) Paragraph (2) of section 4041(a) is amended to read as follows:

(a) In general.—(1) In general, under regulations prescribed by the Secretary, in the case of the sale or use of any liquid at least 10 percent of which consists of alcohol (as defined in section 4041(b)(1)) or a denaturant of alcohol (as defined in section 6426(b)(4)(A), and

(B) includes, to the extent prescribed in regulations—

(i) any gasoline blend stock, and

(ii) any product commonly used as an additive in gasoline.

For purposes of subparagraph (B)(i), the term ‘gasoline blend stock’ means any petroleum product component of gasoline.

(6) Section 4274 is amended by inserting ‘‘section 4091(c)(1)’’ after ‘‘section 4091(c)(1)’’ and in the last sentence of subsection (k), if any aviation fuel on which tax was imposed by section 4091 at the regular tax rate is used by any person in producing a mixture described in section 4091(c)(1)(A) which is sold or used in such person’s trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

(b) BETWEEN 2005 AND 2010.—(1) DECREASE.—The term ‘regular tax rate’ means the aggregate rate of tax imposed by section 4091 determined without regard to subsection (c) thereof.

(2) INCENTIVE TAX RATE.—The term ‘incentive tax rate’ means the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c) thereof.

(3) HYDROGENATED FATTY ACID ESTERS.—No amount shall be payable under paragraph (1) with respect to any aviation fuel with respect to which an amount is payable under subsection (d) or (i).

(e) TERMINATION.—This subsection shall not apply with respect to any mixture sold or used after September 30, 2007.

(f) OUTLIER PROVISIONS.—(1) Any tax is imposed by section 4091 determined without regard to subsection (c) thereof.

(2) INCENTIVE TAX RATE.—The term ‘incentive tax rate’ means the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c) thereof.

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(j) OUTLIER PROVISIONS.—(1) Any tax is imposed by section 4091 determined without regard to subsection (c) thereof.

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(3) HYDROGENATED FATTY ACID ESTERS.—No amount shall be payable under paragraph (1) with respect to any aviation fuel with respect to which an amount is payable under subsection (d) or (i).

(4) TERMINATION.—This subsection shall not apply with respect to any mixture sold or used after September 30, 2007.
Both for collective bargaining and corporate financial planning purposes, a new fix needs to be in place this summer.

In a nutshell, the Pension Stability Act, the legislation I am introducing today, does four things. First, it extends the temporary fix for a longer period of time—five years—in order to give Congress time to craft a permanent solution. The five year period is important because businesses and their unions need time to plan ahead and to make commitments that they can live up to.

Second, the bill temporarily switches form the old Treas ury bond as the benchmark rate and adopts for this five-year period a rate based on a high-quality corporate bond index or composite of indices. In shifting to this rate, the legislation assumes that the highest permissible rate of interest is 105 percent of the four-year-weighted average of that rate for the first two years—2004 and 2005. For the remaining three years—so as not to permit long term underfunding of pensions—the highest permissible rate of interest drops down to 100 percent of the weighted average.

Third, the legislation incorporates a smooth transition from the out-of-date 30-year Treasury Bond rate to the composite rate that will be used for determining funding obligations. No change in the lump sum distribution rate is made for the first two years. Then, in 20 percent increments, the new rate is phased in. My bill does not take the interest rate to 100 percent of the composite rate, as most commentators assert is the appropriate rate. But my bill makes significant progress toward that goal, and gives Congress time to make informed decisions on this important issue that affects very many lives.

Finally, the Pension Stability Act acknowledges that reasonable people can differ on the best permanent solution to the pension issues. The amendment calls for the creation of an independent commission to consider all of the issues relevant to funding of pensions, and making concrete recommendations to Congress. The goal is to take controversy and politics out of the deliberation.

The issues confronting our pension system are too important, and the dollar figures too large, for an internal commission to bear the weight of our nation's confidence. The best solution to the pension crisis is to construct a permanent, bipartisan, independent commission to address the problem. A commission that includes business, union and pension rights groups. A panel would be able to address both the funding issues presented here, including the "private yield curve" approach, and evaluate other ideas for revitalizing the defined benefit system.

I urge my colleagues to support this amendment.

By Mr. McCain.

S. 1551. A bill to provide educational opportunities for low-income children, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. MCCAIN. Mr. President, today, I am pleased to reintroduce legislation to authorize a three-year nation-wide school choice demonstration program targeted at children from economically disadvantaged families. The Excellence Through Choice to Elevate Learning Act, or the EXCEL Act, will expand educational opportunities for low-income children by providing parents and students the freedom to choose the best school for their unique academic needs while encouraging schools to be creative and responsive to the needs of all students.

This bill authorizes $1.8 billion annually for fiscal years 2004 through 2007 to be used to provide school choice vouchers to economically disadvantaged children throughout the nation. The funds allocated by the bill will be distributed among states based upon the number of children they have enrolled in public schools. States will then conduct a lottery among low-income children who attend the public schools with the lowest academic performance in their State. Each child selected in the lottery would receive $2,000 per year for three years to be used to pay tuition at any school of their choice in the State, including private or religious schools. The money could also be used to pay for transportation to the school or supplementary educational services to meet the unique needs of the individual student.

In total, this bill authorizes $5.4 billion for the three-year school choice demonstration program, as well as an evaluation of the program. The legislation is before the General Accounting Office. The cost of this important test of school vouchers is fully offset by eliminating more than $5.4 billion in unnecessary pork and inequitable corporate tax loopholes.

We all know that one of the most important issues facing our nation is the education of our children. We must strive to develop and implement initiatives which strengthen and improve our education system thereby ensuring that our children are provided with the essential academic tools for succeeding professionally, economically and personally. I am sure we all agree that increasing the academic performance and skills of all our nation's students must be the single most important goal of any education reform we implement.

School vouchers are a viable method of allowing all American children access to high-quality schools, including private and religious schools. Every parent, not just the wealthy should be able to choose the high quality education for their children. Tuition vouchers would provide low-income children trapped in poor or mediocre
schools the same educational choices as children of economic privilege.

Some of my colleagues may argue that vouchers would divert money away from our Nation's public schools. They will claim it is better to pour more money into poor performing public schools, rather than promote competition in our school systems. I respectfully disagree. While I support strengthening financial support for education in our nation, the solution to what ails our system is not money alone.

Currently our nation spends significantly more money on education than most countries and yet our students consistently score lower than their peers. Students in countries which are struggling economically, socially, and politically, such as Russia, outscore U.S. children in critical subjects such as math and physics. Clearly, we must make significant change beyond blindly throwing money into the current structure in order to improve our children's academic performance in order to maintain a viable force in the world economy.

It is shameful that we are failing to provide many of our children with adequate quality and preparation for the real world. The number of college freshmen who require remedial courses in reading, writing, and mathematics when they begin their higher education is unacceptably high, and it will do us little well for our future economy if the majority of workers are not prepared with the basic skills to engage in a competitive global marketplace.

I concede that school vouchers are not the magic bullet for eradicating all that is wrong with our current educational system, but they are an important opportunity for providing improved academic opportunities for all children, not just the wealthy. Examination of the limited voucher programs scattered around our country reveals high levels of parent and student satisfaction, an increase in parental involvement, and a definite improvement in attendance and discipline at the participating schools. Vouchers encourage struggling economically, socially, and politically, such as Russia, outscore U.S. children in critical subjects such as math and physics. Clearly, we must make significant change beyond blindly throwing money into the current structure in order to improve our children's academic performance in order to maintain a viable force in the world economy.

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Mr. CRAIG. Mr. President, today I introduce legislation to amend title 18, United States Code, to combat, deter, and punish individuals and enterprises engaged in organized retail theft; to amend the title on the judiciary.

Mr. CRAIG. Mr. President, today I introduce legislation to respond to a growing criminal activity that is harming honest businesses, endangering public health, and dragging down our economy.

The problem I am talking about is organized retail theft. Organized retail theft is a quantum leap in criminality beyond petty shoplifting. It involves professional gangs or theft rings that move quickly from one store to the next to community, and across State lines to pilfer large amounts of merchandise that can be easily sold through fencing operations, flea markets, swap meets and by storefronts or webs.

This type of criminal activity is a growing problem throughout the United States, harming many segments of the retail community, including supermarkets, chain drug stores, independent pharmacies, convenience stores, large discount operations, mass merchandisers, and specialty shops, among others. Organized retail theft has become the most pressing security problem confronting retailers and their owners to change the core business.

The legislation that I am introducing addresses both retailers and consumers in a variety of ways. For example, because theft by professional gangs has become so rampant in certain product categories, such as infant formula, many retailers are taking the products off the shelves and placing them behind the counter or under lock and key. In some cases, products are simply unavailable due to high pilferage rates. Let me commend the Federal Bureau of Investigation, and the Department of Justice for their work in this area. I know the Department has successfully prosecuted a number of cases against professional shoplifting rings. However, retail organizations and individual consumers are counting on us to do more, because this type of criminal activity is escalating, and there is no federal statute that specifically addresses organized retail theft. I believe more can be done to help in the investigation, apprehension, and prosecution of these criminal gangs.

The legislation that I am introducing is in response to the concerns that...
have been brought to my attention by the retailing community. I hope my colleagues will join me in this effort. While this bill is not a cure-all, I hope it will help to highlight the magnitude of the problem so that we can begin to take a coordinated approach with all interested parties, including our federal law enforcement agencies, on how to effectively combat and deter organized retail theft in the future. I ask unanimous consent that the text of the Organized Retail Theft Act be printed in the RECORD.

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

S. 1553

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 "Organized Retail Theft Act of 2003.

SEC. 2. PROHIBITIONS AGAINST ORGANIZED RETAIL THEFT.

(a) IN GENERAL. Chapter 103 of title 18, United States Code, is amended by adding at the end the following—

"§2120. Organized retail theft.

"(a) IN GENERAL.—Whoever in any material way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by taking possession of, carrying away, or transferring or causing to be carried away, with intent to steal, any goods offered for retail sale with a total value exceeding $1,000, but not exceeding $5,000, during any 180-day period shall be fined not more than $1,000, imprisoned not more than 1 year, or both.

(b) HIGH VALUE.—Whoever in any material way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by taking possession of, carrying away, or transferring or causing to be carried away, with intent to steal, any goods offered for retail sale with a total value exceeding $5,000, during any 180-day period shall be fined not more than $10,000, imprisoned not less than 10 years, or both.

(c) RECEIPT AND DISPOSAL. Whoever receives, possesses, conceals, stores, barters, sells, disposes of, travels in interstate or foreign commerce, with the intent to distribute, any property which the person knows, or should know has been taken or stolen in violation of subsection (a) or (b), or who travels in interstate or foreign commerce, with the intent to distribute the proceeds of goods which the person knows, or should know, to be the proceeds of an offense described in subsection (a) or (b), or to otherwise knowingly promote, manage, carry on, or facilitate an offense described in subsection (a) or (b), shall be fined not more than $10,000, imprisoned not more than 10 years, or both.

(d) ENHANCED PENALTIES.—

(1) ASSAULT.—Whoever, in committing, or in attempting to commit, any offense described in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined under this title and imprisoned not more than 25 years, or both.

(2) DEATH AND KIDNAPPING.—Whoever, in committing any offense under this section, or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing himself or attempting to free himself from arrest or confinement for such offense, kills any person, or forces any person to accompany him without the consent of such person, shall be imprisoned not less than 10 years, or if death results shall be punished by death or life imprisonment.

(2) FORFEITURE AND DISPOSITION OF GOODS.—

(1) IN GENERAL.—Whoever violates this section shall forfeit to the United States, irrespective of any provision of State law any interest in the retail goods the person knows, or in avoiding or attempting to avoid capture, prosecution under this subsection, upon motion of the United States, the court may—

(i) grant 1 or more temporary, preliminary, or permanent injunctions on such terms as the court determines to be reasonable to prevent or restrain the alleged violation; and

(ii) at any time during the proceedings, order the impounding on such terms as the court determines to be reasonable, of any good that the court has reasonable cause to believe was involved in the violation.

(2) FORFEITURE AND DISPOSITION OF GOODS.—Upon conviction of any person of a violation under this subsection, the court shall—

(i) order the forfeiture of any good involved in the violation or that has been impounded under subparagraph (A)(i); and

(ii) at any time during the proceedings, order the impounding on such terms as the court determines to be reasonable, of any good that the court has reasonable cause to believe was involved in the violation.

(3) damages.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 103 of title 18, United States Code, is amended by inserting at the end the following:

"2120. Organized retail theft."

SEC. 3. COMMISSION OF ORGANIZED RETAIL THEFT A PREJUDICE FOR RICO CLAIM.

Section 1963(1) of title 18, United States Code, is amended by adding "", section 2120 (relating to organized retail theft)"", before ";

SEC. 4. FLEA MARKETS.

(a) PROHIBITIONS.—No person at a flea market shall sell, offer for sale, or knowingly permit the sale of any of the following products:

(1) Baby food, infant formula, or similar products used as a sole or major source of nutrition, manufactured and packaged for sale to consumers primarily by children under 3 years of age.

(2) Any drug, food for special dietary use, cosmetic, or device, as such terms are defined in the Federal Food, Drug, and Cosmetic Act and regulations issued under that Act.

(b) EXCLUSION.—Nothing in this section shall prohibit a person from engaging in activity otherwise prohibited by subsection (a), in the case of a product described in subsection (a)(2), if that person maintains for public inspection written documentation identifying the person as an authorized representative of the manufacturer or distributor of that product.

(c) FLEA MARKET DEFINED.—

(1) IN GENERAL.—As used in this section, the term "flea market" means any physical location, other than a permanent retail store or in which space is otherwise made available to others for the conduct of business as transient or limited vendors.

(2) EXCLUSION.—For purposes of paragraph (1), transient or limited vendors shall not include those persons who sell by sample or catalog for future delivery to the purchaser.
Beginning with the first year after the date of enactment of this Act, the Attorney General shall report to the Congress on the activities taken by the Department of Justice pursuant to section 522 of title 18, United States Code, as added by this Act, including—

(1) the number of open investigations;
(2) the number of cases referred by the United States Customs Service;
(3) the number of cases referred by other agencies or sources; and
(4) the number and outcome, including settlements, sentences, recoveries, and penalties, of all prosecutions brought under section 2120 of title 18, United States Code.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 208—EX-PRESSING THE SENSE OF THE SENATE IN SUPPORT OF IM-PROVING AMERICAN DEFENSES AGAINST THE SPREAD OF INFECTIONOUS DISEASES

Whereas the Centers for Disease Control and Prevention (CDC), the WHO, and the World Health Organization, WHO, World Health Report 2002 estimates that infectious diseases costed for more than 11 million deaths in 2001; whereas the NIE noted the number of infectious diseases related deaths within the United States had increased, having doubled to 170,000 since 1990; whereas the general accounting office noted in August 2001 report, Global Health: Challenges in Improving Infectious Disease Surveillance System, that most of the infectious disease deaths occur in the developing world, but that infectious diseases poses a threat to people in all parts of the world; whereas the NIE noted that infectious diseases is spreading quick around the globe, often in less time than the incubation period of most diseases; whereas the NIE also noted the increase in international travel and trade will “dramatically increase the prospects,” that infectious diseases will “spread quickly around the globe, often in less time than the incubation period of most diseases.”

Whereas the NIE noted that global health and wellness of the U.S. population; whereas the NIE noted that infectious diseases are a leading cause of death worldwide and that “New and reemerging infectious diseases will pose a rising global health threat and will complicate U.S. and global security over the next 20 years.” It has been concerned about the bio-terrorist threat to this country for some time. In 2001, as chairman of the Senate Governmental Affairs Subcommittee on International Security, Proliferation, and Federal Services, I chaired hearings that addressed the Nation’s preparedness to respond to a bioterrorist attack. Sadly, the SARS outbreak demonstrated that naturally occurring infectious diseases can be spread extremely quickly, without geographic boundaries.

Whereas the work of the FETPs is critical to establishing a first line of defense overseas to protect the health of American citizens: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Centers for Disease Control and Prevention’s Field Epidemiology Training Programs and related epidemic services and global surveillance programs should receive full support;
(2) the President should require an annual National Intelligence Estimate on the global infectious diseases threat and its implications for the United States;
(3) the President should propose to the G-8 that the G-8 develop and implement a program to train foreign epidemiological specialists in the developing world; and
(4) the international community should increase funding for the World Health Organization global disease surveillance capability.

Mr. AKAKA. Mr. President, I rise to submit a sense of the Senate resolution that the Senate supports improving American defenses against the spread of infectious diseases around the world. The United States and other nations have a serious global problem in confronting the natural outbreak or deliberate spread of infectious diseases. The Central Intelligence Agency’s January 2000 National Intelligence Estimate, NIE, The Global Infectious Disease Threat and Its Implications for the United States found that infectious diseases are a leading cause of death worldwide and that “New and reemerging infectious diseases will pose a rising global health threat and will complicate U.S. and global security over the next 20 years.”

Whereas the NIE remarked that the infectious diseases are a threat to the health and welfare of the U.S. population; whereas the NIE noted that infectious diseases are a leading cause of death worldwide and that “New and reemerging infectious diseases will pose a rising global health threat and will complicate U.S. and global security over the next 20 years.”

Whereas the rapid and easy transport of infectious diseases to the United States underscores that infectious diseases are a threat to the health and welfare of the U.S. population; whereas the NIE noted that infectious diseases are a leading cause of death worldwide and that “New and reemerging infectious diseases will pose a rising global health threat and will complicate U.S. and global security over the next 20 years.”

Whereas the NIE noted that infectious diseases are a threat to the health and welfare of the U.S. population; whereas the NIE noted that infectious diseases are a leading cause of death worldwide and that “New and reemerging infectious diseases will pose a rising global health threat and will complicate U.S. and global security over the next 20 years.”

Whereas the NIE noted that infectious diseases are a threat to the health and welfare of the U.S. population; whereas the NIE noted that infectious diseases are a leading cause of death worldwide and that “New and reemerging infectious diseases will pose a rising global health threat and will complicate U.S. and global security over the next 20 years.”

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