The House of Representatives

The Speaker. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule 1, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The Speaker. Will the gentleman from Texas (Mr. Green) come forward and lead the House in the Pledge of Allegiance? Mr. Green of Texas led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed without amendment a concurrent resolution of the House of the following title:

H. Con. Res. 357. Concurrent Resolution permitting the use of the rotunda of the Capitol for a ceremony to award a Congressional Gold Medal to Dr. Dorothy Height.

The message also announced that the Senate has passed a concurrent resolution of the following title in which the concurrence of the House is requested:

S. Con. Res. 92. Concurrent resolution congratulating and saluting Focus: HOPE on the occasion of its 35th anniversary and for its remarkable commitment and contributions to Detroit, the State of Michigan, and the United States.

The message also announced that pursuant to Public Law 106–398, as amended by Public Law 108–7, in accordance with the qualifications specified under section 1238(b)(3)(E) of Public Law 106–398, the Chair, on behalf of the President pro tempore, and upon the recommendation of the Majority Leader, in consultation with the chairmen of the Senate Committee on Armed Services and the Senate Committee on Finance, appoints the following individual to the United States-China Economic Security Review Commission:


The message also announced that pursuant to Public Law 108–173, the Chair, on behalf of the Democratic Leader, appoints the following individual to serve as a member of the Commission on Systemic Interoperability:

Herbert Pardes, M.D., of New York.

ANNOUNCEMENT BY THE SPEAKER

The Speaker. The Chair will entertain 10 one-minutes per side.

TIME FOR MEDICAL MALPRACTICE REFORM

Mr. Pitts. Mr. Speaker, Americans pay a lot for health care, and there are a lot of reasons for the high costs. One of them is excessive awards in medical malpractice cases. In Pennsylvania alone there are $1.2 billion in payouts for medical malpractice cases a year. That is $1,000 for every man, woman and child in our Commonwealth.

People who are mistreated by medical professionals should receive the money they need to compensate for their injuries, but in my State, 40 percent of these awards go to trial attorneys. The result is out-of-control insurance premiums on doctors and higher costs for consumers.

A recent survey this year said that 70 percent of Pennsylvania's doctors have considered closing their practice because of the cost of medical malpractice insurance. Many have left, and many of the new doctors are going elsewhere. Of those that purchase coverage, the costs are going up exponentially every year, as much as 50 percent a year. The same survey reported that frivolous lawsuits are preventing them from getting specialized care for their patients. This is a big problem, and one that Congress should address.

The House has acted with commonsense reform. Now the other body should get past political games and pass reform of the medical liability lawsuit system in this country. Our doctors need it. More importantly, the American people need it. We need to pass lawsuit abuse reform.

PROTECTING SOCIAL SECURITY FOR WORKING AMERICANS

Mr. Green of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.

Mr. Green of Texas. Mr. Speaker, I rise today to express my deep disappointment in Federal Reserve Chairman Greenspan's remarks about Social
Security. For any of you who missed his shocking pronouncement. Mr. Greenspan suggested Social Security benefits be cut for retirees, that the retirement age should be raised, and the cost of living adjustment, which was a whopping 2.2 percent this year, should be modified because it is too "generous."

In 2001, President Bush inherited a strong economy and a $5.6 trillion 10-year surplus. But that has been squandered. We are now projected to have a deficit of $2.9 trillion. We got into this mess not because of the war on terror, that I think all of us support, but because of the administration's fiscally irresponsible tax cuts.

But Mr. Greenspan, who advocates permanent extension of these deficit-creating tax cuts, suggested we fix this economic disaster by raiding Social Security, not just borrowing from it like we do now.

Surely this administration does not want to pay for tax cuts on the backs of the elderly. It is pretty easy for Mr. Greenspan to sit in his ivory tower and modify Social Security to meet his economic world view, but for those people living in the real world, for folks who are hanging sheet metal, who are working on our docks and ports, working on the assembly line all day, Social Security is a critical safety net that cannot be taken away or reduced. These are not folks who have the luxury of playing the stock market, as the administration would propose, or work a few more years, as Mr. Greenspan suggests.

I hope and pray we reject his proposals and do not privatize Social Security.

CONTINUING THE LEGACY OF SUSAN B. ANTHONY BY SUPPORTING THE UNBORN VICTIMS OF VIOLENCE ACT

(Mrs. BLACKBURN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BLACKBURN. Mr. Speaker, today I rise to speak of a courageous woman in America's history, a woman who fought relentlessly for 69 years to establish equal rights for women, slaves, and the unborn. Her name, Susan B. Anthony.

She had a deep desire, dedication and passion that our country live up to its promise that everyone be treated equally. Her leadership helped lead to the adoption of the 19th amendment, giving women the right to vote.

On this 184th year following her birth, let us honor the woman who fought for equality for all by continuing her legacy today and voting for the Unborn Victims of Violence Act. This act recognizes the rights and values of women and unborn children, and Susan B. Anthony would be proud to see this extension of her life's work by protecting the defenseless and speaking for those who cannot speak for themselves.

THE DEFENSE OF IMPOSSIBILITY

(Mr. FRANK of Massachusetts asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FRANK of Massachusetts. Mr. Speaker, I think it was highly inappropriate for Justice Scalia to go on a hunting trip with Vice President Cheney when he was a defendant in a case, but it is inaccurate to say that this calls into question Justice Scalia's impartiality. You cannot call into question that which does not exist.

Questioning Justice Scalia's impartiality is like comparing Janet Jackson and Justin Timberlake's sense of propriety, or Saddam Hussein's weapons of mass destruction, or the President's plan to cut the budget deficit in half in 5 years.

In fact, if you read Justice Scalia's opinions, they are singularly devoid of impartiality. Here is a man of very vigorous views and prejudices, and he does not see any reason why he should not write them into various opinions.

So, I guess in some ways this is a defense of Justice Scalia. I wish he had refrained from going on that hunting trip with the Vice President, but those who accuse him of having damaged his impartiality, he has a defense of that, well-known to lawyers, it is a defense of impossibility.

IN HONOR OF SISTER CATHERINE DOMINIC

(Mr. BOOZMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOOZMAN. Mr. Speaker, I rise today to honor Sister Catherine Dominic, whose life has been devoted to helping and caring for her neighbors. Sister Catherine retiring from St. Mary's Hospital in Rogers, Arkansas, after more than 40 years of service. Her devotion and joyful spirit have given us all strength, and we are fortunate to have shared her friendship.

Throughout her career at St. Mary's, Sister Catherine served the hospital in a variety of roles, including administrator, anesthetist, surgery supervisor and nursing service director. As both a registered nurse and chaplain, Sister Catherine has split her time providing medical care and spiritual support to those in St. Mary's Hospital.

Mr. Speaker, our community will greatly miss Sister Catherine as she returns to the Dominican mother house in Springfield, Illinois. We are extremely grateful for her tireless efforts on our behalf.

I ask my colleagues today to join me in honoring this wonderful Dominican sister for her commitment and dedication to the Third District of Arkansas.

HELPING THOSE IN NEED IN HAITI

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, as many of us woke up this morning, we saw the pending violence in Port-au-Prince, Haiti; innocent people being subjected to murder and random and reckless violence.

Yesterday the Congressional Black Caucus met with the President and asked for humanitarian assistance. I am reminded of the aid that we gave to Ukraine, Albania and Kosovo when refugees fled for their lives. I think it would be a shame that with our neighbor, just 650 miles away, we turn refugees back who are fleeing because they are in fear of their lives or persecution.

It is time for this administration to share its humanitarian perspective, if you will, to those who are neighbors, who helped fight for our independence.

Let me conclude simply by saying we have another tragedy in this country as well. For anybody to suggest that Social Security should go to those who have worked long years and hard for that benefit, they should take another look. I hope that we will stand up as a Congress against the idea of taking away Social Security for those who worked so very hard and invested in this Nation, who have built this Nation. Social Security cannot be cut for those who have worked and given to this Nation.

CONTINUING THE LEGACY OF VIOLENCE ACT

Portoring the Unborn Victims

Mr. GEORGE MILLER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEORGE MILLER of California. Mr. Speaker, what a rather startling revelation by Mr. Greenspan, Chairman of the Fed, that the answer to the deficit that this administration has run up, over the longer timeframe, is to raise the basic retirement age of Social Security and to cut benefits.

Mr. Greenspan and the Republicans speaking for the investor class decided that average working people in this country, the ironworkers who are rebuilding the San Francisco Bay Bridge, the people who are building the skyscrapers in our major cities, who are building our transportation systems, who are working out there in snow and cold weather all through the winter to provide for their families, that they should just work a few years longer so that they will not have to pay for Social Security.

This administration has run up the largest deficit in history, and now they are using that deficit as an excuse to attack Social Security, which is the backbone of retirement for millions and millions of Americans. Maybe not for Mr. Greenspan and his friends who have stock options, who have golden parachutes, who have buyouts when they leave their corporations, but for millions of hard-working Americans it
is Social Security, and we should not cut it to take care of the Republican deficit.

EXPRESSING CONGRESSIONAL SUPPORT FOR ISRAELI SECURITY FENCE

(Ms. BERKLEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. BERKLEY. Mr. Speaker, this past weekend a Palestinian terrorist invaded Israel and detonated a suicide bomb on a bus in downtown Jerusalem. Eight innocent civilians lost their lives, and 50 more were wounded in the latest act of senseless violence perpetrated by the Palestinian terrorists against Israel.

Since September 2000, there have been over 20,000 terrorist attacks against Israel. Because of the unwillingness of the Palestinian leadership in good faith to negotiate to put an end to the violence, Israel has been forced to build a security fence to protect its citizens.

In order to protect itself and its innocent citizens, Israel is constructing a security fence. Rather than stopping the violence so that there would be no need for a security fence, the Palestinians have chosen to go to the United Nations and ask the International Court of Justice to intervene.

Mr. Speaker, I am introducing a resolution today with my colleague the gentleman from Indiana (Mr. Pence) asking that this process be stopped and that the Palestinians start negotiating in good faith with the Israelis so that there would be no need for a security fence in that region.

AFFIRMING ISRAEL'S RIGHT TO SELF-DEFENSE

(Mr. PENCE asked and was given permission to address the House for 1 minute.)

Mr. PENCE. Mr. Speaker, the right of every nation to self-defense is an inalienable right. As my colleague, the gentleman from Nevada (Ms. Berkley), just so eloquently described today, we will introduce, along with nearly 60 Republican and Democrat original cosponsors in this House, a resolution affirming Israel's right to self-defense.

Just last month, my wife, Karen, and I traveled along the fence line in Israel, the security fence itself, constructed in the wake of over 20,000 attacks over the last 3 years that have claimed over 1,000 lives. Israel is engaged in the construction of a fence in an act of self-defense, and our resolution affirms this timeless principle.

Mr. Speaker, I pray for the peace of Jerusalem, for all of the people of the region. But affirming, as this Congress should, the wisdom of the action, at the Hague and the rightness of Israel's choice to defend itself and innocent civilians is the proper course of action.

Mr. Speaker, I thank the gentlewoman from Nevada and all of our original cosponsors and urge expeditious action on our resolution supporting Israel's right to self-defense.

PLEADING FOR HELP FOR HAITI

(Ms. LEE asked and was given permission to address the House for 1 minute.)

Ms. LEE. Mr. Speaker, I rise this morning to once again plead with this administration to act before there is any more bloodshed and death in Haiti.

Now, for the past 3 months, we have been coming to this floor calling on this administration to act. Yesterday, the Congressional Black Caucus met with President Bush and he, too, said that he abhorred the violence and the loss of life in Haiti. Colin Powell, our Secretary of State, said, we cannot allow thugs and murderers to overthrown democratically elected government.

Mr. Speaker, when it comes to democracy, this country supports democracy in Haiti and come to Haiti's aid right now.

U.S. SHOULD SUPPORT ISRAEL'S SECURITY FENCE

(Mr. NADLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NADLER. Mr. Speaker, this past Sunday morning I was in Jerusalem, and I was within 100 yards of a bus on the number 14 route when a bomb was set off by the Alexia Brigades which are affiliated with the Fattah movement chaired by Chairman Arafat. The bomb attack took place, and the people on it during the rush hour when schoolchildren were going to school, when men and women were going to work. Eight people, including two high school students, were killed, 50 wounded. Chairman Arafat's group later claimed credit for this "successful military operation." That was in Arabic.

Later during the day, of course, he condemned it in English. Mr. Speaker, the bomber came in through a gap in the security fence which had not yet been built. The Israelis must finish that fence as a pure defensive reaction. To criticize the Israelis for building a security fence when any other country that was under the kind of sustained terror attack that Israel is under would not be building a security fence, but would be attacking with bombs and missiles, is the height of hypocrisy. Frankly, it reminds one of the criticisms of the Czeches in 1938 for endangering the peace of Europe by getting in the way of the peaceful territorial demands of Chancellor Hitler of Europe.

The Israelis should be applauded for trying to stop this carnage and the loss of life. It is not by invasion and by bombs and missiles, but simply by a security fence; and we ought to support it, and we ought to hail the Israelis for their restrained reaction instead of allowing hypocrites to, in effect, support the campaign of terror by opposing completion of the fence.

UNBORN VICTIMS OF VIOLENCE ACT OF 2003

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 529, I call up the bill (H.R. 1997) to amend title 18, United States Code, and the Uniform Code of Military Justice to protect unborn children from assault and murder, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. LINDER). Pursuant to House Resolution 529, the bill is considered read for amendment.

The text of H.R. 1997 is as follows:

H.R. 1997

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 "Unborn Victims of Violence Act of 2003" or "Laci and Conner's Law".

SEC. 2. PROTECTION OF UNBORN CHILDREN.

(a) In General.—Title 18, United States Code, is amended by inserting after chapter 100 the following:

"CHAPTER 90A—PROTECTION OF UNBORN CHILDREN

"Sec. 1841. Protection of unborn children.

"(a) Whoever engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365) to, a child, who is in utero at the time that the conduct takes place, is guilty of a separate offense under this section.

"(b) A person engaged in conduct that results in death or bodily injury to an unborn child is guilty of a separate offense under this section.

"(c) If the person engaging in the conduct thereby intentionally kills or attempts to
kill the unborn child, that person shall instead of being punished under subparagraph (A), be punished as provided under sections 111, 1112, and 1113 of this title for intentional homicide or attempting to kill a human being.

"(D) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

"(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b), 920(a), 922, 924, 926, and 928 of this title (articles 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

"(c) Nothing in this section shall be construed to permit the prosecution—

1. of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

2. of any person for any medical treatment of the pregnant woman or unborn child;

3. of any woman with respect to her unborn child.

"(d) As used in this section, the term 'unborn child' means a child in utero, and the term 'child in utero' or 'child, who is in utero' means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

"(e) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 90 the following new item:

"90A Protection of unborn children ... 1914".

SEC. 2. MILITARY JUSTICE SYSTEM.

(a) PROTECTION OF UNBORN CHILDREN.—Subchapter X of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by inserting after section 919 (article 119) the following new section:

"919a. Art. 119a. Protection of unborn children

"(a)(1) Any person subject to this chapter who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18) to a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section.

"(b) Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as the punishment provided under chapter 40 of this title for conduct that had injury or death occurred to the unborn child's mother.

"(c) An offense under this section does not require proof that—

1. the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

2. the accused intended to cause the death of, or bodily injury to, the unborn child.

(C) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall, instead of being punished under subparagraph (A), be punished as provided under sections 883, 900, 902, 903, 904, and 928 of this title (articles 118, 119(a), 119(b)(2), 120(a), 922, 924, 926, and 928 of this title (articles 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

"(d) Nothing in this section shall be construed to permit the prosecution—

1. of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

2. of any person for any medical treatment of the pregnant woman or unborn child; or

3. of any woman with respect to her unborn child.

"(e) As used in this section, the term 'unborn child' means a child in utero, and the term 'child in utero' or 'child, who is in utero' means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

"(f) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 90 the following new item:

"90A Protection of unborn children ... 1914".

SEC. 3. MILITARY JUSTICE SYSTEM.

(a) PROTECTION OF UNBORN CHILDREN.—Subchapter X of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by inserting after section 919 (article 119) the following new section:

"919a. Art. 119a. Death or injury of an unborn child

"(a)(1) Any person subject to this chapter who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18) to a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section and shall, upon conviction, be punished by such punishment, other than death, as a court-martial may direct, which shall be consistent with the punishments prescribed by the President for conduct that had injury or death occurred to the unborn child’s mother.

"(2) An offense under this section does not require proof that—

1. the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant;

2. the accused intended to cause the death of, or bodily injury to, the unborn child.

3. the accused engaged in conduct that thereby intentionally kills or attempts to kill the unborn child, that person shall, instead of being punished under paragraph (1), be punished as provided under section 922 of this title (articles 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

4. Nothing in this title shall be construed to permit the prosecution—

1. of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law.
(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

(3) of any woman with respect to her unborn child.

(d) In this section, the term 'unborn child' means a child in utero, and the term 'child in utero' or 'child, who is in utero' means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 119a the following new item:

'119a. Death or injury of an unborn child'.

The SPEAKER pro tempore. After 2 hours of debate on the bill, as amended, it shall be in order to consider a further amendment printed in part B of the report, if offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) or her designee, which shall be considered read, and shall be debatable for 1 hour, equally divided and controlled by the proponent and an opponent.

The gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from New York (Mr. NADLER) each will control 1 hour of debate on the bill.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous materials from H.R. 997 currently under consideration.

The SPEAKER pro tempore. Is there objection to the gentleman from Wisconsin?

There was no objection.

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

Mr. Speaker, on January 7, 18-year-old Ashley Lyons and her unborn son, Landon, were murdered in Scott County, Kentucky. Current Kentucky law regards a defendant charged with only a single victim. But Carol Lyons, Ashley's mother and Landon's grandmother, said, "Nobody can tell me that there were not two victims. I placed Landon in his mother's arms, wrapped in a baby blanket that I had sewn for him, just before I kissed my daughter goodbye for the last time and closed the casket." We are here today to tell Carol Lyons she is right. There were two victims that day.

This Congress has recently acted to recognize Landon as a victim under Kentucky law, and Kentucky's Governor is going to sign that legislation. But today, Congress has yet to pass legislation recognizing unborn victims of violence under Federal law. The House has done so twice by large margins, but the Senate has failed to act.

The Unborn Victims of Violence Act provides that if an unborn child is injured or killed during the commission of crime of violence already defined under Federal law, prosecutors can bring two charges, one on behalf of the mother and the second on behalf of the unborn victim. Indeed, the House of Representatives in the 106th Congress, by a unanimous 417 to nothing vote, passed the Innocent Child Protection Act, a bill only two sentences long, that banned the Federal execution of a 'woman who is in utero.' 'Child in utero' is defined in that bill exactly, to the word, as it is in this bill, namely, as "a member of the species homo sapiens, at any stage of development, who is carried in the womb.'

Now, opponents of H.R. 997 will argue that harm to an unborn victim should simply be considered an additional harm to the mother, not an independent harm to another human being. Yet, a vote for the Innocent Child Protection Act two Congresses ago cannot be defended on the grounds that executing a pregnant woman would cause her to suffer additional harm because there can be no additional harm exceeding the ultimate harm because of the crime. Since in abortion cases the only logical rationale for the support of the Innocent Child Protection Act was to prevent the killing of an innocent unborn child, H.R. 1997, which also recognizes unborn victims, should have similar bipartisan support. We shall see.

The legislation before us now requires us to reflect on the goals and purposes of the criminal law. Ultimately, the criminal law is not a schedule of punishments. It is an expression of society's values. It is an expression of society's values. Anything less than the legislation before us today simply does not resonate with society's sense of justice. The tragic murders of Laci and Conner Peterson in California have drawn national attention to unborn victims and the American people have overwhelmingly responded with more than 80 percent support for bringing two separate charges against their murderers.

The Unborn Victims of Violence Act protects the right of a mother to choose to bring her wanted and loved child to term, safe from the violent hands of criminals who would brutally deny her that right. This bill, however, has nothing to do with abortion. Let me repeat that. The bill has nothing to do with abortion. That fact could not be expressed more clearly in the legislation which explicitly excludes abortion-related conduct. In the Supreme Court, in Webster v. Reproductive Health Services, has already refused to strike down Missouri's unborn victims of violence law, stating that it "does not by its terms regulate abortion."

Mr. Speaker, H.R. 997, just like the Missouri law, that the Supreme Court refused to strike down, does not by its terms regulate abortion and, indeed, H.R. 997 includes provisions that specifically exclude abortion-related conduct.

Both before and since the Webster decision, every single unborn victims law passed by State legislatures that has been challenged in court has been upheld. Anyone who claims this bill has anything to do with abortion and opposes it on those grounds is inviting this body to focus not on unborn child victims, but on red herrings.

Tracy Marciniak, whose unborn child was murdered by her husband, told Congress, "Please don't tell me that my son was not a murder victim." The Unborn Victims of Violence Act, I hope, will pass this body overwhelmingly today if only each Member opens their eyes to the photo of the dead Tracy Marciniak's murdered child and opens their hearts to the mothers who have implored Congress to give their unborn babies the status they deserve under the criminal law. I urge my colleagues to do so by supporting this legislation before the House today.

Mr. Speaker, at this time I will include for the RECORD two letters that the gentleman from California (Mr. HUNTER), chairman of the Committee on Armed Services, and I exchanged regarding the two committees' jurisdictional claims on this legislation.

HUNTER, F. JAMES SENSENBRENNER, J. R.

Dear Chairmen:

I am writing to you concerning the jurisdictional interest of the Committee on Armed Services in matters being considered in H.R. 997, the Unborn Victims of Violence Act of 2003.

I recognize the importance of H.R. 997 and the need for this legislation to move expeditiously. Therefore, at this time I will waive further consideration of this bill by the Committee on Armed Services. However, I can assure you that I support your request to be conferenced on the provisions over which we have jurisdiction during any House-Senate conference. Additionally, I request that you include this letter as part of your committee's report on H.R. 997.

Thank you for your attention to this request.

With best wishes,

Sincerely,

Chairman.

Hon. DUNCAN HUNTER, Chairman, Committee on Armed Services, House of Representatives, Washington, DC, February 9, 2004.

DEAR CHAIRMAN SENSENBRENNER: I am writing to you concerning the jurisdictional interest of the Committee on Armed Services in the provisions being considered in H.R. 997, the Unborn Victims of Violence Act of 2003.

I recognize the importance of H.R. 997 and the need for this legislation to move expeditiously. Therefore, at this time I will waive further consideration of this bill by the Committee on Armed Services. However, I can assure you that I support your request to be conferenced on the provisions over which we have jurisdiction during any House-Senate conference. Additionally, I request that you include this letter as part of your committee's report on H.R. 997.

Thank you for your attention to this request.

With best wishes.

Sincerely,

Chairman.

Hon. DUNCAN HUNTER, Chairman, Committee on Armed Services, House of Representatives, Washington, DC, February 9, 2004.

DEAR CHAIRMAN HUNTER:

Thank you for your letter regarding H.R. 997, the "Unborn Victims of Violence Act of 2003." H.R. 997 was secondarily referred to the Committee on Armed Services because section 3 of the bill relating to the Uniform Code of Military Justice falls within its Rule X jurisdiction.

I appreciate your willingness to forgo consideration of this bill.

I acknowledge that by agreeing to waive its consideration, the Committee on Armed Services does not waive its jurisdiction over the bill relating to the Uniform Code of Military Justice.
Thank you for your assistance in this matter.

                Sincerely,
                F. JAMES SENSENBRNNER, Jr.,
                Chairman.

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

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

Mr. Speaker, I rise in opposition to the so-called Unborn Victims of Violence Act. Here we are again to consider a bill which has now, for three Congresses, unnecessarily mired what should be a laudable and uncontroversial effort to punish truly heinous crimes in the emotionally charged and legally suspect back allies of the abortion debate. This is regrettable. Mr. Speaker, because real people are suffering real harm, while this House has played abortion politics instead of acting to punish truly barbaric crimes.

The issue today is straightforward: Is it or is it not necessary to enact a bill making a statement endorsing the controversial and legally revolutionary notion that a fetus is a legal person from the moment of conception in order to punish these criminals with the severity that they justly deserve?

That is the heart of the issue. The proponents of this bill are taking what should be a straightforward issue and unnecessarily turning it into a controversial one.

What is the matter? Quite simply, because if the law recognizes that a fetus is a legal person from the moment of conception, as this bill would do, when it is a zygote, a blastocyst, an embryo, a simple collection of undifferentiated cells, then the law must recognize and protect the rights of that person on a legal basis with the rights of the adult pregnant woman. If our laws recognize that, then there can be no right to choose, because, logically, terminating a pregnancy even in its earliest stages would be killing a fully legal person.

So when the proponents tell you that this is not about the right to choose, this is not about the right to have an abortion, remember that very simple and clear fact. And, remember that we have an alternative that is just as tough on these criminals: the Lofgren substitute. We do not have to choose between an assault on Roe v. Wade and permitting these heinous criminals to walk free.

□ 1030

That is a false choice, but I do not ask my colleagues to believe me. Take my colleagues to believe me. Take this issue to heart. For those of us who are prochoice, the right to choose extends not just to a woman’s right to have an abortion if she wants, but also to her right to carry a pregnancy to term if she wants and to deliver a healthy baby in safety.

That is why we support the Unborn Victims of Violence Against Women Act. That is why we support programs to provide proper prenatal care and nutrition to all women. That is why we support proper health and nutrition services after a birth. That is why we support other initiatives like the Family and Medical Leave Act. We do not believe that life begins at conception and ends at birth. We have an obligation to these children and to their parents both prenatally and postnatally.

Let there be no mistake, using physical violence against a woman to prevent her from having a child that she wants is just as much an assault on the right to choose as it is the use of violence against women who wish to exercise their constitutional right to choose to end their pregnancy. A woman, and only a woman, has the right to decide when and whether to bring a child into the world; not an abusive partner, not a fanatic, not even Congress.

If we are serious about this problem, and the problem of domestic violence against pregnant women, we have fundamentally and adequately dealt with this bill. We have an appropriate vehicle, this bill, before us for that purpose.

Violence against a pregnant woman deserves strong preventive measures and stiff punishment. According to the Journal of the American Medical Association, homicides during pregnancy, and in the year following birth, are the leading pregnancy-related death among women in the United States. Among nonpregnant women, it is the fifth leading cause of death.

Mr. Speaker, it is a disgrace that while these preventable crimes continue to occur, Congress fiddles with laborious symbolic legislation designed to interfere with the right to choose rather than taking affirmative steps to deal with this real problem. Why does this Republican-controlled Congress and White House continually refuse to fund effectively and adequately the Violence Against Women Act? It appears that many of the Members who have signed on to this bill are the same ones who voted to divert funds from protecting women from violence to protecting stock dividends from taxation.

We owe it to these victims to enact strong penalties, ones which are not constitutionally suspect, to end these heinous crimes. I urge that we adopt the Lofgren substitute to make an assault that harms a fetus a second crime with just as severe or more severe penalties as with this bill, but a second crime against the women so as to not get into the question of rights of the person to full personhood, which is, of course, the purpose of this bill, but would undermine Roe v. Wade, despite the disingenuous disclaimer of some of the other people on the other side. Let us not crowd the issue of fighting domestic violence, of fighting violence against women and unborn infants, by plunging a legitimate law enforcement effort into the murky waters of the abortion debate.

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

Mr. SENSENBRNNER. Mr. Speaker, I yield myself 2 minutes to make 3 points.
Mr. Speaker, the gentleman from New York seems to imply that this bill has to do with tax cuts and appropriation levels. It does not. It has to do with the criminal law, and as an aside, the criminal law is an expression of the sense of values of the legislative body that puts the criminal law on the books.

Secondly, the gentleman from New York seems to think that we are plowing new ground in making a definition of what a child in utero is and giving the criminal law the protections that are contained in this bill. That is a settled issue, and on July 25, 2000, with the gentleman from New York’s support, we passed the Protection of Innocent Children Act which defined a child in utero as meaning a member of the species Homo sapiens at any stage in development who is carried in the womb, and that means a two-cell zygote.

Thirdly, the gentleman from New York seems to want to interject the abortion debate in this bill. That is not the case at all, and I would refer him to page 7 of the bill as reported that says nothing in this section shall be construed to permit the prosecution of any person relating to an abortion for which the consent of the pregnant woman or a person authorized by law to act on her behalf has been obtained or for which such consent is implied by law.

So what we are dealing with here is wanted children, children that the mother has every intention of bringing to term to have, to give birth and to give that child a nurturing and loving household and a nurturing and loving upbringing. These are the children that we wish to provide protection for under this bill.

Mr. Speaker, I yield 5 minutes to the gentleman from Ohio (Mr. Chabot), who is the chairman of the Subcommittee on Constitution.

Mr. Chabot. Mr. Speaker, I thank the gentleman for yielding me the time, and I thank the gentleman from Wisconsin (Mr. Sensenbrenner) for his leadership on this issue. I also want to commend and thank the gentlewoman from Pennsylvania (Ms. Hart), the principal sponsor of this bill, for her leadership.

Sadly, recent studies in Maryland, North Carolina and New York City and Illinois have indicated that homicides are leading cause of death of pregnant women in those parts of the country. Those homicides are often inspired by the desire to kill a woman’s unborn child. Yet due to gaps in the Federal criminal law, an unborn child can be killed or injured during the commission of a violent Federal crime without any legal consequences.

These gaps are appalling to the American people. Recent polls have shown that 80 percent of registered voters, including 69 percent of voters who consider themselves to be prochoice, believe that prosecutors should be able to separately charge the violent attacker of a pregnant woman that kills her unborn child. Yet today, for example, if a man stalks his pregnant wife across State lines and attacks her, injuring her but killing the unborn child, that man could not be prosecuted under Federal law for the loss of that child.

The Unborn Victims of Violence Act fills this glaring gap in Federal law with a simple expression of basic understanding, namely, that the loss of an unborn child of violence deserves separate recognition under Federal law. This bill provides that if an unborn child is injured or killed during the commission of crimes of violence already defined under Federal law, prosecutors can bring two charges, one on behalf of the mother, the other on behalf of the unborn victim.

H.R. 1997 recognizes that the loss of an unborn child at any stage of development is a unique and separate loss both to society and to the mother who brings this child to term. This bill, for the first time under Federal law, treats an unborn victim of violence as something more than a torn spleen or a bruised appendix or other physical injuries incurred during the course of a violent attack that may warrant enhanced penalties but not separate charges under Federal law now. H.R. 1997 treats such unborn victims with the respect and dignity under the law that their loving mothers and the American people rightfully demand for them.

We must all ask ourselves, is an injury to an unborn child the same thing as a broken bone? If the answer is no, as I think we all know that it is, then the only appropriate response is to treat harm to an unborn victim as a distinct and separate offense under Federal law.

This legislation has been called merely symbolic by its opponents, but I believe that Americans in America would view the loss of their unborn child through violent means as merely symbolic. Certainly not Tracy Marciniak, whose unborn child was murdered by her husband. She told the Subcommittee on the Constitution, referring to the substitute amendment which we will be dealing with later, “Please don’t tell me that my son was not a real murder victim,” and, “Please remember Zachariah’s name and face” when you vote on a substitute amendment that refuses to allow a separate charge for the killing of a wanted, unborn child.

Shiwna Pace, whose unborn child Heaven Sashay was brutally murdered by the three hired hitmen, has also testified that, “It seems to me that any Congressman who votes for the ‘one-victim’ amendment,” in other words, the substitute, “is really saying that nobody died that night. And that is a lie.”

Indeed, because unborn victims are distinct victims, the Unborn Victims of Violence Act is also referred to as Laci and Conner’s Law, for Laci and Conner Peterson, two recent victims of terrible violence.

Opponents of the legislation before us today claim it will open the door to all manner of terrible imagined future legislation, but the only door this legislation opens is the door to a distinct room in the edifice of the Federal Code in which unborn victims of violence can be granted the distinct respect they are owed. Just as expecting mothers reserve space in their home for wanted and loved unborn children, we in Congress should reserve for unborn victims of violence a distinct place under the protective shield of criminal law by providing for a separate offense when they are violently killed or injured. The American people consider the murder of an unborn child distinctly offensive, and they demand that the murder of an unborn child be a distinct offense under Federal law, and I urge its passage.

Mr. NADLER. Mr. Speaker, I yield myself against the grind of a machine that may consume.

Mr. Speaker, the distinguished chairman said a moment ago that in the Innocent Child Protection Act of 2000 we made settled law the personhood of the fetus. It is not correct. In the Innocent Child Protection Act of 2000 we simply said that a pregnant woman could not be executed, and we defined a pregnant woman as someone who had a child in utero, and then defined, as the chairman said, the words “child in utero.” It is not what we are talking about here. For the purpose of saying you cannot execute a pregnant woman, we have defined what a pregnant woman means. That is all that that bill did.

This bill seeks to establish a fetus as a separate legal person by giving it separate legal rights in order transparently to make it a separate legal person within the meaning of the 14th amendment that says no person shall be deprived of life, liberty or property without due process of law. That is exactly the opposite of what the Supreme Court said when it said we have never held a fetus to be a person in the full meaning of the term. This bill is an attempt to whittle away at that term.

The distinguished chairman of the subcommittee says we have to acknowledge the particularly heinous nature of the crime, and indeed, we do. The Lofgren substitute acknowledges the assault on the fetus as a separate crime to be separately punished, to be additionally punished, but a separate crime against the woman because her interest in carrying that pregnancy to term and bearing a healthy baby is assaulted.

It does not recognize it as a separate crime against a separate person, which is the object of this bill and what we are debating, and which is why this bill, despite the disclaimers of the proponents, is a direct assault on Roe v. Wade, a direct assault on abortion, and if all they are interested in is to make a separate crime when you assault a
fetus, when you harm a fetus, then the Lofgren substitute is perfectly adequate for that. But their aim is to damage the right to choose, and that is the real purpose of this bill.

Mr. Speaker, I yield 5 minutes to the gentlewoman from New York (Mrs. LOWEY).

Mrs. LOWEY. Mr. Speaker, I rise in opposition to this terribly misguided bill. The bill before us today would give a fetus the same recognition as you or I for the first time in Federal law. Let me make something perfectly clear. The loss of a pregnancy under any circumstances is absolutely devastating to a woman and her family. Those who injure or kill a pregnant woman should be severely punished, and families should have the legal tools to have their loss recognized.

Instead of addressing the real issue at hand, the horrible pain for a woman who loses a pregnancy to an act of violence, this bill sends a message that women and the unborn must serve to be safeguarded or valued in their own right; that it is only through their fetuses that they are entitled to any Federal protections against violence. This, in my judgment, is the wrong approach. Of course those matter. They matter when the baby is conceived, they matter when the baby is developing in utero, and they matter when the child arrives in the world; yet this bill does not make it a Federal crime to attack a pregnant woman. In fact, its sponsors have explicitly rejected amendments to protect a woman herself under Federal law.

The Lofgren substitute would do just that. It would severely punish crimes against pregnant women without undermining Roe v. Wade. It gets us to the same ends without the overtly political means.

If my colleagues want to crack down on criminals who attack pregnant women and their children, let us focus on giving babies the best start we can by promoting the health of women throughout the entire pregnancy.

The Unborn Victims of Violence Act is not about shielding pregnant women or fetuses from violent acts, it is and has always been about protecting women. If my colleagues want to protect women from violence, let us fully fund the Violence Against Women Act.

Finally, if my colleagues are serious about protecting the unborn, let us focus on giving babies the best start we can by promoting the health of women throughout the entire pregnancy.

The Unborn Victims of Violence Act is not about shielding pregnant women or fetuses from violent acts, it is and has always been about protecting women. If my colleagues want to protect women from violence, let us fully fund the Violence Against Women Act.

Mr. Sensenbrenner. Mr. Speaker, I yield 3 minutes to the gentlewoman from Pennsylvania (Ms. HART), the principal author of the bill. (Ms. HART asked and was given permission to revise and extend her remarks.)

Ms. HART. Mr. Speaker, I thank the gentleman from Wisconsin (Mr. Sensenbrenner) and my subcommittee chairman, the gentleman from Ohio (Mr. CHABOT), for their hard work on this issue throughout the time I have spent in Congress over the last 3 years and throughout the time I have been the principal sponsor of this legislation. They do have women and families in mind, as I do and as the supporters of this bill do.

It is interesting rhetoric when it is claimed that prosecution of a crime against a woman or an allegation against a perpetrator of a crime against a woman is not happening. It is already against the law to attack a woman and cause her injury or death. That should not be a surprise to any of us. It is not, however, on the Federal level a crime to attack a woman and cause injury or death to the unborn child as a separate crime.

There are two victims in these kinds of crimes. That is so clear from the Laci and Conner Peterson case. The family came to visit us and asked that we name this bill after Laci and Conner Peterson in remembrance of them. That family showed us what the real loss is. They have lost a daughter, Laci Peterson, and their grandson Conner. That cannot be restored by enhancing the penalty for the attack against Laci Peterson. It cannot be restored at all; but the least we can do as lawmakers is recognize the loss to the family. It is shocking to me that anyone would support a substitute to the legislation that recognizes what families who have gone through this tragedy have asked us to do.

Studies have shown, unfortunately, that domestic violence against pregnant women is prevalent, that fully one-quarter of women who are pregnant who die are victims of homicide. These families are crushed when this happens. They lose the woman, and they lose the hope of the child for the future.

This bill is all about recognition of a family’s loss. It is about prosecution of a terrible crime. This bill is about making sure that we recognize what is really happening in these kinds of crimes. Numerous reports show us that the motivation behind a crime against many of these pregnant women is the fact that she is pregnant, the fact that she has chosen to carry a child makes someone angry, and it makes someone angry enough to attack her and her unborn child.

Mr. Speaker, we recognize unborn children throughout the world. This Congress recognized unborn children enough to prevent the execution of a pregnant woman in prison. It is about time we recognize for that family who has suffered a grave loss a crime against that woman and her unborn child with a two-victim bill such as this. I encourage my colleagues to support H.R. 1997.

Mr. Nadler. Mr. Speaker, I yield 3 minutes to the gentlewoman from Illinois (Ms. SCHAKOWSKY).

Ms. SCHAKOWSKY. Mr. Speaker, I thank the gentleman for yielding me this time.

It is actually amusing and certainly annoying that there is some sort of accusation that those of us who think that the substitute is preferable do not care about women’s health. We care about the babies that they are carrying. As a mother, as a grandmother of four children, we have to recognize this bill for what it is. If we want to go after protecting pregnant women, we ought to go after protecting pregnant women, not about threatening to take away their right to choose, which is this thinly veiled effort to do because we are trying to create a special status of human being, of a fetus, of an unborn child. While I kind of admire the strategy, it does not get to the heart of this issue.

The proponents say we have to have this bill to protect pregnant women from violence, but the truth is this bill does not even address crimes committed against the woman at all; it only addresses the new crime created in this bill, which is a crime against a zygote, an embryo, a fetus. Furthermore, this bill would not even apply to the tragic Laci Peterson case, as we understand the facts of the case, and as is true in the vast majority of domestic violence cases. Those crimes are covered by State law and not Federal law.

H.R. 1997 only touches on few and rare instances when pregnant women could be harmed by someone committing a Federal crime. The undisputed aim of this bill is to move forward a calculated antichoice agenda in which embryos and fetuses are codified into law as humans with all of the human rights afforded people in our society. This would bring us one step closer to overturning Roe v. Wade and taking away a woman’s constitutional right to choose.

Instead, if we truly care about protecting pregnant women from violence and creating stiffer penalties for those who harm pregnant women, we should pass the substitute to this bill, known as the Motherhood Protection Act. The substitute recognizes that the pregnant woman is a victim when she is assaulted, instead of making the fetus the victim and separating the woman from which anybody who is pregnant or has been pregnant knows is really not when you are carrying that child. The substitute classifies assault against her and assault on her pregnancy as two crimes. It provides for federal protection for the woman. Unlike H.R. 1997, the substitute gets to the heart of the matter: protecting pregnant women from violence.
I urge my colleagues to vote no on H.R. 1997 and yes on the substitute amendment.

Mr. SENSENBERGREN. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. King).

Mr. KING. Mr. Speaker, I appreciate the gentleman from Wisconsin (Mr. SENSENBERGREN) yielding me this time, and I profoundly appreciate the work of the gentlewoman from Pennsylvania (Ms. HART) on this issue, as well as the work of the chairman and the subcommittee chairman, the gentleman from Ohio (Mr. CHABOT).

I urge Members to vote against the Lofgren substitute amendment. At issue today is whether there is one victim or two. When a pregnant woman is murdered, there are two victims. When a pregnant woman is injured and her baby dies, the law must recognize that and punish her violent attacker.

Pregnant women deserve the full protection of law. When Laci Peterson and Conner Peterson were killed, there were two victims. This substitute treats Laci's child as if he never existed. Conner did exist. Laci and her family were looking forward to his birth. If we allow Federal law to recognize the unborn child in Laci's womb, we are guilty of covering up for the criminal who robs an expectant mother and in other cases the father and the rest of the family of their baby. Grieving family members need to know that criminals will pay for their actions. Women deserve better than this. They should recognize her injury, and we should pursue justice.

Roe v. Wade may, and I pray temporarily, provide for a woman to decide temporarily the fate of her unborn child, but this does not affect the Roe v. Wade decision. What we are proposing is someone else stepping into the shoes of the mother. I urge Members to vote for Laci and Conner's law, the Unborn Victims of Violence Act, and I thank the sponsors of this bill, the chairman of the committee, and the folks who have worked so hard.

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

Mr. Speaker, the gentleman from Iowa just hit the nail on the head. He said that the purpose of this bill is to recognize that there are two victims, two people involved in this. That is exactly the point of this bill, and that is exactly why we should not pass this bill without the Lofgren substitute. I am glad the previous speaker and some of the other speakers on the other side stripped away the false rhetoric on this bill. This bill is not about punishing an assault on a fetus separately; the substitute as well as the bill does that. This is not about giving it an additional punishment; the substitute as well as the bill does that.

This is about saying that there are two victims, not one victim; that the fetus or the embryo or the zygote, depending on the status of the pregnancy, is a separate legal person. That is the point of the bill. That is why we must have the substitute, why we cannot agree to the bill, because the whole purpose of the legislation, of legally stripping away the separate fetal personhood, which would undermine the entire rationale of Roe v. Wade and undermine a woman's right to choose, because if a fetus is a separate legal person, how can she choose to terminate the pregnancy? This is not about giving it an additional crime for harming the unborn. This is going way back to Biblical law. If we look at the original Five Books of Moses, it says very plainly if you assault a woman and she dies, you should be put to death. And if you assault a woman and she miscarries, you shall pay her monetary compensation. In other words, by killing the fetus, you have damaged an interest of the woman for which she is due compensation, but you have not committed murder as you have if you kill the born person, the woman.

So we have never in our history recognized a fetus as a separate legal person. The Supreme Court in Roe v. Wade specifically says we have never recognized a fetus as a separate person.

If we were to do so, then we would get into the 14th amendment question of who is a person for the purposes of life, liberty or process, without due process of law; and that is the purpose of this bill. That is the purpose of similar bills in the State legislatures, I suspect, to give underpinning to a future Supreme Court majority to say that we recognize a fetus as a person within the meaning of the 14th amendment and, therefore, abortion is murder and, therefore, Roe v. Wade is overruled and, therefore, States have no right to legalize murder and you would need a constitutional amendment to permit abortions in this country.

That is the real point of this bill. And strip away all the disingenuous rhetoric about everything else, because everything else we agree on. We agree that there ought to be an additional penalty if you harm the fetus when you assault a woman. We agree that it should be a separate additional crime. The only question here between the bill and the substitute is should the separate additional crime for harming the fetus be a crime against the woman as we say, an additional separate crime against a woman deserving an additional separate penalty? Or should it be an additional crime against a second person, the fetus being recognized as a person?

That is the issue in this bill and this substitute. To say that it is not and to quary the abortion debate is quite simply disingenuous. That is why the bill was introduced. That is why they are pushing it. It is why we are opposing it.

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

Mr. SENSENBERGREN. Mr. Speaker, I yield myself 1 minute. Mr. Speaker, let us get back to the Innocent Child Protection Act, which passed the House unanimously on July 25, 2000. The purpose of that bill, which was to make clear in the law the killing of a child in utero because of the mother's crimes causing the death penalty to be imposed. There the legislation, again which was signed into law, defined the child in utero as a human being at any stage of development who is born alive in the natural process of childbirth. We decided and we made law 3½ years ago when the Innocent Child Protection Act was passed.

I would note that the three Members on the other side of the aisle who have spoken against the current bill all voted in favor of the Innocent Child Protection Act and the definition that I have just repeated for, I believe, the third time.

Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. GINGREY).

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

Mr. Speaker, I commend the gentlewoman from Pennsylvania, and I rise in strong support of H.R. 1997, the Unborn Victims of Violence Act, and in strong opposition to the single-victim substitute.

Let me take my time to try to put a little perspective in the minds of my colleagues. I have just repeated for, I believe, the third time that the purpose of H.R. 1997 is to prevent the killing of a child in utero because of a mother's crimes causing the death penalty to be imposed. There the legislation, again which was signed into law, defined the child in utero as a human being at any stage of development who is born alive in the natural process of childbirth.

Members of Congress, let us get back to our constituents. Let us get back to the poster to my left. This is a picture of my grandchildren. My granddaughters, Ali and Hannah, are now 6 years old. They were born at 26 weeks, each weighing 1 pound 12 ounces. Thank God their brother, little Hank, who is 3 years old, has two precious siblings. My daughter and son-in-law have three precious children. My wife, Billie, and I are very proud grandparents.

As a physician, I know that Laci Peterson at 8½ months pregnant, little Conner probably weighed three times as much as my granddaughters did at their birth, weighing 1 pound 12 ounces. A strategically directed blow to her abdomen, or any woman's abdomen, at 8 months pregnant could result in just a minor bruise, a contusion to the mother, yet the death of the child, a child that within weeks would have been born fully well.

Yet in this substitute amendment, what would happen? Instead of the perpetrator of this crime getting slapped on the wrist, they would get slapped on both wrists. Yet that child would be dead, and that family would be robbed of life. I think it is utterly and a human perspective, I want to call my colleagues' attention to the poster to my left. This is a picture of my grandchildren. My granddaughters, Ali and Hannah, are now 6 years old. They were born at 26 weeks, each weighing 1 pound 12 ounces. A strategically directed blow to her abdomen, or any woman's abdomen, at 8 months pregnant could result in just a minor bruise, a contusion to the mother, yet the death of the child, a child that within weeks would have been born fully well.

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It's always satisfying when we get to debate and vote on legislation that has such broad, bipartisan support across the country.

How broad is this support? Poll after poll show that the vast majority of Americans believe that if someone attacks or murders a pregnant woman and kills her unborn child, then the criminal should be charged with two separate crimes. Sixty-nine percent of registered voters who call themselves pro-choice also agree that violent thugs should be charged with two offenses if they kill a woman’s unborn child during the commission of a brutal crime.

The widespread support by the American people is reflected here in the House of Representatives where we have passed or have legislation for two separate crimes. Sixty-nine percent of registered voters who call themselves pro-choice also agree that violent thugs should be charged with two offenses if they kill a woman’s unborn child during the commission of a brutal crime.

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Landon, were murdered in Scott County, Kentucky. Carol Lyons, Ashley’s mother and Landon’s grandmother said, “Nobody can tell me that there were not two victims. I placed Landon in his mother’s arms, wrapped in a baby blanket that I had sewn for him. Just before I kissed my daughter goodbye for the last time and closed the casket.”

Mr. Speaker, 3 weeks ago, the Kentucky State House correctly approved legislation to redress single victim prosecute my colleagues in this House body in the name of unborn victims like Landon Lyons to protect unborn victims of violence by voting in favor of this bill.

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

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. GARRETT).

Mr. GARRETT of New Jersey. Mr. Speaker, I rise in full support of H.R. 1997, the Unborn Victims of Violence Act. I commend those who have come before me in previous years for their work, and I commend the gentlewoman from Pennsylvania for her work now in bringing this issue to the floor.

Violence against a woman who is pregnant with an unborn child is a hideous and tragic act that must be punished accordingly. To my left here is a photograph, this is the first time I have seen this photograph recently, of Tracey Marciniak and her little baby. I would challenge anyone who knows the story, that she was beaten, she survived the beating but her little baby did not. I would challenge anyone from the other side of the aisle who would look at this photograph and say that this is a fetus in her arms. No, I would say this is her baby in her arms. And when a baby, born or unborn, is taken away from her mother, the offender must be punished.

This is no nonsensical legislation. Once it is passed, it will work to deter violence against women and their unborn children as well. As has been stated by other people already, one of the leading causes of violence and death to women in many States is in fact homicide of pregnant women.

I would urge all Members of good faith on both sides of the aisle to do what is right for society, right for women, and right for the innocent victims in this Nation and vote in favor of this legislation.

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

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. PENCE), a member of the committee and the authorship of this bill.

Mr. PENCE asked and was given permission to revise and extend his remarks.

Mr. PENCE. Mr. Speaker, I thank the chairman for the opportunity to speak in strong support of the Unborn Victims of Violence Act. As a member of the Committee on the Judiciary, there are many times that we deal with issues that are along the fault lines of the cultural debate; and I am a pro-life Member of Congress, and I do not apologize for that. But I rise today in support of what has come to be known as Laci and Conner’s Law to say from my heart and my soul about abortion. This is not about the thorny issues that surround the debate over a woman’s right to choose or the right to life; but, rather, this is simply a law about justice.

The reality is that fetal homicide laws, which is a characterization of the Unborn Victims of Violence Act, are already the law in 29 States in the United States of America. And what Congress seeks to do today, with the strong leadership of the chairman of the committee and the authorship of the gentlewoman from Pennsylvania, is, in effect, to have Federal law catch up with those 29 State laws.

That this is not about abortion is specifically stated in the law itself that provides that it does not apply to any abortion to which a woman has consented to any act of a mother or father or any other, any form of medical treatment. It is not about abortion or a cultural debate. It is about justice.

And with regard to those who would argue for the view that when a woman is attacked and her unborn child is injured that there is only one victim, I close citing the words of the mother of Laci Peterson and the grandmother of Conner Peterson, who speaks more eloquently and more powerfully than any of us can here today:

“I hope that every legislator will clearly understand that adoption of such a single-victim amendment would be a painful blow to those, like me, who are left to grieve the loss of a two-victim crime. Because Congress should be saying that Conner and other innocent unborn victims like him are not really victims, indeed, that they never really existed at all. But our grandson did live. He had a name, he was loved, and his life was violently taken from him before he ever saw the sun.”

I thank the gentleman for yielding me this time, and I strongly support the Unborn Victims of Violence Act.

Mr. NADLER. Mr. Speaker, I yield such time as she may consume to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished gentleman from New York for yielding me this time and I respect greatly my colleagues on a very tough and emotional debate.

Yesterday, I rose on the floor of the House to indicate that I do not think one will find any division, any schism in this House about the value and the need for the protection of all Americans, all of us within the boundaries of this Nation against violent and horrific acts. And certainly the murder and the violent assault and action that would injure anyone in this country deserves the full force of the law, and I stand here today supporting that concept. So I would argue vigorously that if one does the crime, they need to pay the price.

It is interesting that we come to the floor today just a few days shy of the tragedy of the Peterson family and the beginning of that trial in California. So it would seem that we urgently need to move forward because of that tragedy.

It is interesting to note that as that trial is proceeding, those prosecutors feel fully confident of their case, as I am sure the defense of theirs, but they moving forward to protect the victims of that tragic crime. So it begs the question as today as to why this body would choose to ignore and reject standing law that has allowed a woman to choose now for more than 2 decades under Roe v. Wade. Why under H.R. 1997 it is now represented as a necessary legislative act to protect a pregnant woman. I cannot imagine why the substitute that we have now crafted, the gentlewoman from California (Ms. LOFGREN) so studiously designed, that in actuality creates a separate Federal criminal offense for assaulting a pregnant woman resulting in injury or termination of a pregnancy without entangling the issue in the question of choice.

We have come to this floor on many occasions in a side-winding way to undermine the law of this day. One may not agree with Roe v. Wade, but the determination is that it is law in this Nation has the right to choose on the basis of her engagement with her family, engagement with her spiritual leader, and her personal needs. We are responsible for abiding by the law, and my colleague who continue to chip away at the rights of physicians to make a determination on a woman’s health when it is necessary to abort a fetus so that that woman can be preserved to recreate again, here we go again with an attempt now to suggest that an unborn child or fetus is not protected when a tragedy occurs by the laws of this land.

We have an alternative. We have a substitute that creates a separate offense so that we do not criminalize the doctor or the mother when there is a need and a necessity to choose to terminate a pregnancy.

Why do we go over this over and over again? Where is the respect for women who have asked to make an independent choice? Those who choose not to abort, we respect that decision. Those who for personal reasons make the choice, the laws stands on their side. And I will sit on this floor to participate in frivolity, and it does not make sense that we would come to the floor of the House and suggest not only to our colleagues but to the American people that there is no relief when there is an attack on a woman that is pregnant.

For in this bill, H.R. 1997, it is clearly focused at criminalizing the acts of
women if they decide to choose to termi- 

nate a pregnancy. And why do I say that? Because what the bill does is it recog- 

nizes a member of the species homo sapiens at all stages of develop- 

ment as a victim of crime from concep- 

tion to birth, that attempts to afford a 

fetus, embryo, and even a fertilized egg 

rights and interests separate from and 

equal to those of the woman. There is 

no recognition of the crime against the 

woman.

So, Mr. Speaker, this is what our 

angst is with this misrepresentation. 

This is not to ensure that a pregnant 

woman who would be violently at- 

tacked and may lose her life and that 

of the child that she may be carrying 

be protected, but it is to suggest that 

one may do anything that may be a 

violent act against that particular em- 

bryo that is woman is carrying, and 

that means that it is subjecting a 

woman to possible criminal acts for a 

choice that she may make, one to save her 

life or to provide for her health. 

This substitute is what we are pro- 

moting tells the real truth, and the 

real truth is that we can provide a sepa- 

rate offense to protect against that 

terrible and heinous act for assaulting 

a pregnant woman resulting in an in- 

jury or termination and we can create 

an offense that protects pregnant 

woman and punishes violence resulting 

in injury or terminations of a preg- 
nancy without conflicting with the 
core principles of Roe v. Wade.

I only ask my colleagues that there 

are few occasions where we may seek 

reason and there are few occasions 

where we might understand that we are 

not here for ourselves, but for the peo- 

ple we represent. The law of the land is 

Roe v. Wade. I will join any Member to 

protect against violence of pregnant 

women; but I cannot stand here while 

avoiding any under-

—

the deter-

rmined approach that would protect all women 

and that is a Supreme Court that has 

recognized a fertilized egg, embryo, or a fetus 
as a person who can be an independent vic- 
tim of a crime. Our Supreme Court has held 
in Roe versus Wade that fetuses are not per- 
sons within the meaning of the fourteenth 
amendment. Nowhere in this legislation is the 
harm to the woman resulting from an involun- 
tary termination of her pregnancy mentioned. 
In fact, the pregnant woman is not mentioned 
at all. 

We have States laws that already address 
crimes committed against pregnant women. 
The majority of States have statutes on the 

books that address criminal conduct that 

results in harm to a pregnancy. Many States 
punish murder or manslaughter of an “unborn 

child,” as that term is defined by the State 
law. Some States punish assault, battery, or 

other harm resulting in injury or death to an 

“unborn child,” as that term is defined in State 
law. For other States, if a crime committed 

against a pregnant woman results in termi- 
ation of her pregnancy, the harm to 

the pregnancy is an adjacent to the crime or 

may be used as a sentence enhancement. 

I am also here today to support Congress- 

woman Zoe LOFGREN’s substitute, the “Moth-

erhood Protection Act” (MPA). This is a crime 

bill that designed to protect pregnant women 

from violence. MPA embodies many of the 

same principles that I offered as amendments 
in the House Judiciary Committee, where this 
bill was originally introduced. I have always 
supported the intent of this bill, to protect the 
life of the pregnancy has suffered as a victim of a crime of violence and the via-

bility of her pregnancy. However, I oppose the 

means by which the drafters of this bill have 

used to achieve its end. Like MPA, all my of-

fered amendments referred to changing lan-

guage in the bill, focusing on the pregnant 

mother instead of the fetus. 

The MPA creates a second, separate of- 
fense with separate, strict, and consistent pen-

alties for assault resulting in the termination of a 
pregnancy or assault resulting in prenatal in-

jury. 

MPA recognizes the pregnant woman as the 

primary victim of an assault that causes the 
termination of her pregnancy, and it creates a 
separate crime to punish this offense. In this 
way, the bill accomplishes the stated goals of 
the Unborn Victims of Violence Act—the deter-

rence and punishment of violent acts against 
pregnant women—while avoiding any under-

mining of the right to choose. 

This bill fails to address the very real need 

for strong Federal legislation to prevent and 
punish violent crime against women. Nearly 
one in every three adult women experiences 
at least one physical assault by a partner dur-

ing adulthood.

WHAT UVVA DOES

The Unborn Victims of Violence Act erodes 

the legal foundation of a woman’s right to 

choose by elevating the legal status of all 

fetal rights and interests separate from and 
equal to those of the woman. There is 

no recognition of the crime against the 

woman.

The Unborn Victims of Violence Act redefines 

woman to possible criminal acts for a 

future child is tragic and intolerable. Rather 

than supporting such common-sense meas-

ures, my colleagues are instead promoting the 

Unborn Victims of Violence Act (UVVA), de-

scribed as “a sneak attack on a woman’s right 
to choose.” The loss of a wanted pregnancy is a 

tragedy, but solutions should be real, not politi-

cal.

WHAT MPA DOES

The MPA creates a second, separate of-

fense that protects pregnant women 
from violence. MPA embodies many of the 
same principles that I offered as amendments 
in the House Judiciary Committee, where this 
bill was originally introduced. I have always 
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rence and punishment of violent acts against 
pregnant women—while avoiding any under-

mining of the right to choose.

This bill fails to address the very real need 

for strong Federal legislation to prevent and 
punish violent crime against women. Nearly 
one in every three adult women experiences 
at least one physical assault by a partner dur-

ing adulthood.

Congress can protect pregnant women from 

violence without resorting to controversial bills 

like Unborn Victims of Violence that under-

mine Roe v. Wade. We must take strong 

steps to prevent such attacks and must recog-

nize the unique tragedy suffered by a woman 

whose pregnancy is lost as a result of violence. I am calling on Congress to sup-

port tough criminal laws that focus on the 
harm suffered by women who are victimized 
while pregnant, as well as a range of pro-

grams that promote healthy childbearing and 

family planning.

While I am pleased to see the Bush admin-

istration taking an active interest in women 

and children, I hope they will see their goals 

can be met in other areas. I would like to see 

the Bush administration focus their efforts on 

caring for a pregnant woman by providing her 
decent medical care. I hope the Bush adminis-

tration ensures more happy pregnancies and 

births, both with proper family planning and 

prenatal care. I call on the Bush administration 
to have for the millions of children al-

ready being born and to ensure that more, 

but go to school in overcrowded classrooms 

and dilapidated buildings.

We have a wide range of programs in place 

to help women and children. I would like my 

colleagues to spend more time encouraging 

and funding these, rather than once again un-

dermining a woman’s attempt to choose.

I fully support a woman’s right to choose, 

including a woman’s right to choose to carry a 

pregnancy to term. Because Unborn Victims of 

Violence does nothing to protect women and 

because its clear intent is to create fetal 

personhood, I, along with Planning Parent-

thood Federation of America, oppose this legis-

lation. Congress should adopt a more rea-

soned approach that would protect all women 

from violence.

Mr. SENSENBRENNER. Mr. Spea-

ker, I yield myself 3 minutes.

Mr. Speaker, the women who are the 

victims of the violence that has caused 

death or harm to their babies have al-

ready made their choice, and their 

choice was to carry their babies to 
term and to give birth and to raise 
those children in hopefully a nurturing 

and loving household. To say that this 

legislation takes away rights of a 

woman is just flat-out wrong. Maybe 
some people disagree with the choice 

that that woman made, but that is a 

personal choice; and we ought to recog-

nize that this legislation respects that 

personal choice.

And then to hear that this legislation 
is an assault on the Constitution is 

completely missing the point. The Su-

preme Court has consistently upheld 
homicide laws, two-victim crime 

laws. The Webster case, I think, was 

the most emphatic upholding of that, 

and that is a Supreme Court that has 

also consistently refused to modify Roe 
v. Wade or to overrule it. So the Court 

is able to function on which apparently some of the Members 

on the other side of this argument have 

not been able to make, that fetal homi-

cide laws are constitutional, two-vic-

time crime laws are legal as well.

Now, I hope that more Members 

would have been able to hear the argu-

ments that were advanced by the gen-

tleman from Georgia (Mr. GINGREY),
who was an obstetrician by profession before he was elected to Congress. He has said that in some instances a minor bruise on the abdomen of a pregnant woman can result in the death of the child. If all that someone can be prosecuted for is minor bruising, then the full force of the law against someone who has caused the death of another would not be able to be imposed against that defendant without a two-victim bill. And that is why two victim bills are important. It is important, it is constitutional; but, most of all, it respects the right of the women who have decided that they do not want an abortion, that they want to give birth, and they want to raise the child with all the love that a newborn child deserves.

Mr. Speaker, I yield 2 minutes to the gentleman from Alabama (Mr. ADERHOLT).

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

Of course, as has been said on numerous occasions this morning, we are considering the Bill to Protect Unborn Victims of Violence Act. I joined 136 Members of this body to cosponsor this legislation, and I want to commend the gentlewoman from Pennsylvania (Ms. HART) for her sponsorship this legislation this morning. I do believe the time has come for the House to pass this legislation again and help ensure that it is signed into law. And again, as has been stated this morning, this legislation takes an important step that recognizing that violence against an unborn child, against the will of a mother, can be prosecuted in the Federal courts.

This law is very simple. It would establish that if an unborn child is injured or killed during the commission of an already defined Federal crime of violence, then the assailant may be charged with a second offense on behalf of the second victim, the unborn child. This bill recognizes an unborn child as a separate victim in the eyes of the Federal law.

I have supported this law previously; but as I stand here today, the bill takes on a little bit different meaning. My wife, Caroline, is due to give birth on Monday in Alabama to our second child; and looking at her and feeling the baby move and seeing the sonograms, I do not think there is a shadow of a doubt that the child is a child. This child certainly deserves the full protection of the law.

Caroline reminded me just a few weeks ago that she and Laci were at about the same stage of their pregnancies during the Christmas holidays, and of course that is when Laci was killed during that time. So it, like I said, takes on a special meaning not only for me but also for my wife, Caroline. But if something should happen to any mother or to any child who is in the womb for us to leave them without a crime, I think the American people would want to see justice on behalf of both individuals, the mother and the child.

So I respectfully ask my colleagues this morning to send a strong message to the Senate and to the President that our goal is to protect the most vulnerable and the most innocent among us.

Mr. NADLER. Mr. Speaker, I yield myself no more time, but I would like to ask the distinguished chairman, first of all, I congratulate him for endorsing the right to choose. But second of all, he talked about the woman who has chosen to bear her pregnancy to term, to have a child, and an assault which destroys or damages her fetus is an assault on her right to choose, and indeed it is. He is entirely right. That is why the substitute makes the assault on her fetus a separate crime with a separate penalty, and that is why in the substitute we make it an additional crime against her.

The bill, of course, makes it a separate crime against the fetus, and that is the question here.

Also, the distinguished gentleman from Florida (Mr. STEARNS) quoted Exodus 21:22. He said it was 22:22, but it is 21:22. He must have said 22. He misspoke. Before I read it, let me be very clear: I did not raise this reference to the Bible because I think we ought to enact Biblical or religious law in this Chamber, far from it, but simply to show it has always been regarded as an assault on her right to choose. It is indeed an assault on her right to carry that pregnancy to term, and she is the damaged party because she has lost her right to carry the pregnancy to term. She has lost her right to bear a child, and that is why we substitute make it an additional crime against her.

I support the right to choose. But second of all, I would like to ask the distinguished chairman, first of all, I congratulate him for endorsing the right to choose. But second of all, he talked about the woman who has chosen to bear her pregnancy to term, to have a child, and an assault which destroys or damages her fetus is an assault on her right to choose, and indeed it is. He is entirely right. That is why the substitute makes the assault on her fetus a separate crime with a separate penalty, and that is why in the substitute we make it an additional crime against her.

Exodus 21:22 reads as follows: "If men strive and hurt a woman with child so that her fruit depart from her, she may sue her for her damage; every man according to the season of her husband to her fruit. But if mischief follow, then they shall give life for life." If men strive and hurt a woman with child so that her fruit depart from her, she may sue her for her damage; every man according to the season of her husband to her fruit. But if mischief follow, then they shall give life for life. Now, I am not sure what the Bible means by "mischief." I have an interpretation here from a rabbinical source that says it means if she dies.

But, in any event, if she does not die, if mischief does not follow, if she has a miscarriage, monetary compensation. It is only when mischief follows, when she dies, that he is guilty of a capital crime. That is precisely because at least the Bible did not consider the fetus to be a person for whose killing it is a capital crime, as killing a born person is.

Again, I cite this not because we are bound in enacting civil law to enact Biblical law, we are not, obviously, but because this is how I make sense of this bill, by trying to establish the fetus as a separate person for legal purposes, is a radical departure not only from Anglo-American legal traditions, but from all of Western legal traditions going way back to the Bible.

Mr. Speaker, I am pleased to yield 5 minutes to the distinguished gentlewoman from New York (Mrs. MALONEY).

Ms. MALONEY. Mr. Speaker, I thank the gentleman for his leadership on this issue and so many others. I really rise in strong opposition to this bill and in support of the Lofgren amendment.

In a country in which up to two-thirds of battered women are turned away from shelters for lack of space, in no way does this bill combat domestic violence. But no one should be naive enough to think that this bill has anything to do with domestic violence. Instead, this is another step down the slippery slope toward granting personage to fetuses. This sets up an untenable situation in which a fetus' rights and interests are at odds with its mother.

To make the fetus a person would inject a layer of legal complexity that would make every pregnant woman's ordinary decisions perilous, opening her medical and other choices to second-guessing liability or even criminal charges. This bill criminalizes actions that can occur at the very earliest phases of pregnancy, making every miscarriage subject to an investigation.

It is roughly 20 to 25 percent of all pregnancies end in miscarriage. Usually there is a genetic reason, but sometimes there is another cause. Studies show that miscarriages can occur because of excessive coffee drinking, smoking, exposure to chemicals, illness, stress or trauma during an accident. Since culpability accrues whether the perpetrator knows the woman is pregnant or not, a wide variety of relatively innocent actions could lead to charges.

For example, when someone comes to work, for example, with German measles, knowing that they could infect a fellow worker, could they be guilty of manslaughter? Will Starbucks have to post signs advising pregnant women that they cannot buy more than two cups of coffee per day? Will car manufacturers face imprisonment for miscarriages caused by steering wheels, seat belts or air bags? Will airlines face criminal charges if they permit pregnant women to fly? Will bodega owners be charged if they permit pregnant women to buy more than two cups of coffee per day? Will bodega owners be charged if they permit pregnant women to buy more than two cups of coffee per day? Will airlines face criminal charges if they permit pregnant women to fly?
I have kept a scorecard of antiochoice actions since the Republican majority took over in 1995. If this bill passes today, it will mark the 202nd action against a woman's right to choose, which is exactly what this bill is intended to do. It stems from Senator HATCH's mouth last July when he commented on this bill: "They say it undermines abortion rights. It does. But that is irrelevant."

It is insulting that the authors of this legislation would use violence against women as a vehicle to attack a woman's right to choose.

Let me say it again, this bill does nothing to address the violence against women, but the Lofgren substitute does. The Lofgren substitute would severely punish crimes against pregnant women without limiting their very basic rights and without defining the Constitution to establish fetal personhood.

Please vote in favor of the Lofgren amendment, which will be up shortly, and no to this underlying bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota (Mr. KENNEDY). Mr. KENNEDY of Minnesota. Mr. Speaker, I rise today in strong support of the Unborn Victims of Violence Act.

Few people know that homicide is the leading cause of death of pregnant women in this country. Thousands more expectant mothers will experience physical violence during their pregnancy each year. When a pregnant woman is harmed, so is her child. Under these circumstances, it only makes sense that a person who is in utero could be prosecuted for harming two innocent lives rather than one. In fact, 29 States, including my State of Minnesota, have laws that protect unborn children during some stage of development. If the mother is not killed in an attack, but the unborn child is, clearly that attacker is responsible for the unborn child's death. However, in the eyes of the law, nobody died, and the most an attacker can be charged with is assault.

This must be changed. Even in the highly publicized tragedy involving Laci and Conner Peterson, the national media rightly recognized that there were clearly two victims. But if this were a Federal case, only one victim would be recognized.

The opponents of this bill have wrongly characterized this bill and tried to give credence to their one-victim alternative. But I would like to bring to you what the mother of Laci Peterson had to say:

"Please understand how adoption of such a single-victim proposal would be a painful blow to those like me who are left to grieve after a two-victim crime because Congress would be saying that Conner and other innocent victims like him are not really victims; indeed, that they never really existed at all. But our grandson did live. He had a name, he was loved, and his life was violently taken from him before he ever saw the sun."

That comes from Laci's mother, from Conner's grandmother. This is something that 84 percent of Americans support. This is something that House and Senate prosecutors in the abortion debate. It does. The Lofgren substitute would severely criminalize any violence against women, especially pregnant women, but the Lofgren substitute does nothing to address the violence against women as a vehicle to attack a woman's right to choose.

This legislation affirms a woman's right to choose by punishing the criminal that has robbed her not only of her choice, but also of including anything in the Roe v. Wade decision prevents Congress from recognizing the lives of the unborn children outside the parameters of the right to an abortion.

I strongly urge my colleagues to support the original provisions of the Unborn Victims of Violence Act because they recognize clearly what most Americans back in our districts feel, that violence against an unborn child is a crime just as heinous as the attack on its mother.

Mr. NADLER. Mr. Speaker, I yield 3½ minutes to the distinguished gentleman from Wisconsin (Ms. BALDWIN). Ms. BALDWIN. Mr. Speaker, I rise today in opposition to H.R. 1997, the Unborn Victims of Violence Act.

Let us be clear: This bill is nothing more than an attack on a woman's right to choose. By defining the phrase "unborn in utero" to include any member of the species Homo sapiens at any stage of development who is carried in the womb, this bill provides protections for an embryo or fetus, regardless of the stage of development, from conception till birth.

This bill forges new ground in attempting to recognize embryos and fetuses at all stages of development as persons with the same legal status as the mother. In fact, this bill makes no mention of the primary victim of violence, the pregnant woman, and instead creates a new cause of action on behalf of the unborn, and this marks a major departure from existing law and threatens the foundations of the right to choose.

We all agree that every time a criminal causes the injury or death of a pregnant woman through violence, it is a tragedy.
During the debate, I have heard some Members talk about stories they have heard from people they have met. I remember in Wisconsin hearing testimony of a personal story of a woman who was beaten by her spouse when pregnant with her child. She was also beaten right after she first got married and beaten before her pregnancy, and beaten in the early stages of her pregnancy. If we had taken a tough enough approach to violence against women, the violence would not have happened in the first place.

I have long been a supporter of the Violence Against Women Act, which expands protections for women against these callous acts of violence. I believe we would be much better served by laws to protect women, pregnant or not, from violence, instead of establishing an entirely new framework to protect fetal rights.

By switching the focus of these crimes, we are diverting attention from the victim. It is women, and this is not a step forward in the fight against domestic violence.

I urge my colleagues to vote against these bills and then work together to do proactive legislation to better attack this threat against women.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Maryland (Mr. BARTLETT).

Mr. BARTLETT of Maryland asked and was given permission to revise and extend his remarks.

Mr. BARTLETT of Maryland. Mr. Speaker, I rise to support the Unborn Victims of Violence Act and to oppose the Democratic amendment.

H.R. 1997 would state that when a violent criminal act is committed against a pregnant woman, and that act results in the death of the baby, the criminal will be guilty of a second offense.

What this debate comes down to is personhood, according to a well-known liberal activist group. People for the American Way, a group opposing this bill, stated, “Unlike the underlying bill, however, the pro-choice Lofgren substitute would not threaten Roe by recognizing the embryo or fetus as a separate, legal ‘person.’” That is correct. Today in the House, we declare that criminal acts committed against pregnant mothers are crimes against two persons. What else could it be?

Human life takes different forms throughout life, but they never lose their humanness, their humanity. A baby in the womb will be born a person. A newborn, although it cannot fend for itself, is a person. An 87-year-old that shuffles slowly along is still a person.

Mr. Speaker, when there are two victims, there should be two crimes. I urge the House to pass H.R. 1997.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the gentleman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Mr. Speaker, I rise to oppose this bill, and I question how this body could even consider a proposal as dishonest as this one. This bill is a wolf in sheep’s clothing, a proposal to undermine reproductive rights dressed up as a bill to punish violent crimes against women.

We have really important issues that we should be considering, Mr. Speaker, rather than legislation that will undermine a woman’s right to choose. We should be focusing this time today on policies that ensure every woman has a healthy pregnancy. We should promote solutions to the tragedy of domestic violence and the many other heinous offenses against women.

If anti-choice forces would like to debate whether or not a woman has the right to make her own medical decisions, I am ready for that debate. Our constituents deserve a frank discussion about a woman’s right to choose. It is unfair and it is misleading to characterize this bill as anything other than an assault on reproductive freedom in this country.

Mr. Speaker, I urge my colleagues to join me in the opposition of this mis-leading base legislation and in favor of the Lofgren substitute that protects the pregnant woman without reducing her own rights.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. FERGUSON).

Mr. FERGUSON. Mr. Speaker, passing this bill, the Unborn Victims of Violence Act, which is also known as Laci and Conner’s Law, should be common sense to all. I am mystified, frankly, by those who seem to be hysterical in their opposition to this commonsense legislation.

Let us see why this bill is so important. This is a picture of Ashley Lyons. Ashley learned last year that she was expecting; and the joy of the thought of her new child filled her heart. Tragically, earlier this year, Ashley was murdered and her unborn son, Landon, died as well. Was there one life lost, or were two? Of course, two people died in that crime.

Here is a picture of Tracy Marcinik and her son, Zachariah. While in the 9th month of pregnancy, Tracy was brutally beaten, a crime which resulted in the death of her unborn son, Zachariah. According to some, even some in this very Chamber, according to some in this very chamber today, there was no murder committed here. And according to some in this very Chamber, Tracy did not lose her child.

Did two people die when Ashley Lyons and her son, Landon, were murdered, or just one? Was a murder committed when Tracy Marcinik was beaten and her unborn son was killed? During the search for Laci Peterson and her unborn son, Conner, in San Francisco, did they find two bodies or did they find just one body?

Mr. Speaker, if my colleagues think there were no crimes committed here, then vote “no” on this bill. But if my colleagues can get past the politics and the ideology to see the truth, if they can see the common sense that there were two victims in this crime, that there was a murder committed here and that there were two victims in the Peterson murder case, then they must and they will vote “yes” on this bill.

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

Mr. Speaker, I will read into the RECORD some letters that we have here. This bill has been a death on family violence. We have here a letter in opposition to the bill and in support of the Lofgren substitute from the Family Violence Prevention Fund. It says: “If Congress is serious about domestic violence against pregnant women and children who are victims, Members will quickly pass the Domestic Violence Screening, Treatment and Prevention Act, H.R. 1267.”

The American Association of University Women is opposed to this bill. The National Organization for Women is opposed to this bill.

The National Council of Jewish Women is opposed to this bill in which they say that “this bill defines an unborn child as a member of the species homo sapiens at any stage of development. For the first time, it gives separate legal protection to a fertilized egg, embryo, or fetus and mandates penalties for harm to an unborn child equal to those mandated for harm to the woman herself. This legal definition will set a precedent that the anti-choice movement can exploit in its ongoing efforts to equate abortion with murder. And it would establish a foundation on which to build a case that the rights of fertilized eggs, embryos, and fetuses are apart from and superior to the rights of the women in whose bodies they develop.”

“The Unborn Victims of Violence Act is a sham designed to exploit the understandable public sympathy for a woman who loses her pregnancy or her life to violence in order to promote an agenda by which women will in fact lose control of their bodies to the State.” That is from the National Council of Jewish Women.

The National Abortion Federation, the Religious Coalition of Reproductive Choice, the American Civil Liberties Union, NARAL, People for the American Way, the National Organization for Women, all of these groups are concerned either with the rights of women, about reproductive rights, about women’s rights, about domestic violence; and they are all opposed to this bill.

Juley Fulcher of the National Coalition Against Domestic Violence, which is the group that for the last 25 years has led the fight for antidomestic violence legislation in the States and in the Congress, testified against this bill in our committee, and I commend her testimony to my colleagues.

Mr. Speaker, I will insert all of these letters into the RECORD at this time.
DEAR REPRESENTATIVE NADLER: On behalf of the Family Violence Prevention Fund, I am writing to express concern about the Unborn Victims of Violence Act, H.R. 1997, passed by the House Judiciary Committee on January 21. We are deeply disappointed that some are promoting this bill as a way to end domestic violence. Domestic violence is a public health and safety crisis, and intervention measures that offer great promise to stop violence before it starts.

The murder of Laci Peterson was an unspoken tragedy, but many laws designed as quick fixes have caused great harm. For example, mandatory domestic violence health reporting laws deter women from seeking the medical help they need. We need to step back and consider what actually works. Our goal must be to stop violence against all women, regardless of whether they are pregnant.

If Congress is serious about stopping domestic violence against pregnant women and helping women and children who are victims, Members will quickly pass the Domestic Violence Screening, Treatment and Prevention Act, H.R. 1267, this essential bill would train health providers to routinely screen female patients for a lifetime history of abuse and give women access to critical domestic violence services when abuse is identified. Introduced in the House in March of 2003 by Representative Lois Capps (D-CA) and Steven LaTourette (R-OH), this bill has the potential to prevent tragedies by helping victims before violence escalates.

We also urge Congress to fully fund all Violence Against Women Act programs and support legislation that would actually prevent domestic violence before it begins. Domestic violence prevention legislation should include services for children who are exposed to abuse, programs that support young families at risk of violence, and efforts to teach young men and boys how to develop healthy, non-violent relationships. Such legislation would do much more to stem the tide of domestic violence than the Unborn Victims of Violence Act.

Finally, we wish to thank you for your continued leadership and support on this issue. As a member of the National Council of Jewish Women, I urge you to oppose the "Unborn Victims of Violence Act," (S. 1019) which purports to protect pregnant women by enhancing penalties for criminal acts that harm an "unborn child." Recognizing harm to an "unborn child" that is injured in the commission of a crime does nothing to help pregnant women that are victims of violence. It merely aids the anti-choice movement in establishing separate legal status for the fetus.

The Unborn Victims of Violence Act defines an "unborn child" as "a member of the species homo sapiens, at any stage of development, in any species in the commission of any of several federal criminal acts. H.R. 1997 fails to recognize the violence to the woman and ignores the reality that any attack that harms a pregnancy inherently is an attack on the pregnant woman herself. At a past House Judiciary Subcommittee on the Constitution Hearing on this bill, domestic violence expert Julie Fulcher testified against the bill, stating, "The Unborn Victims of Violence Act is not designed to protect women." The result is that the crime committed against a pregnant woman is no longer about the woman victimized by violence. Instead, the focus is on the fate of the "unborn child," which it defines as "a member of the species homo sapiens, at any stage of development, who is carried in the womb," and punishes this violation of rights. The bill would allow for swift and efficient prosecution, but undermines the legal principles underlying a woman's right to choose. We urge you to oppose H.R. 1997—although it purports to aid women in reality this bill not only ignores women crime victims but undermines their constitutional rights.

Sincerely,

MARCIA D. GREENBERGER, Co-President, and JUDY WAXMAN, Vice President, Health and Reproductive Rights.

a direct threat to a woman’s right to choose a safe and legal abortion by granting personhood to a zygote, blastocyst, embryo, and fetus separate and apart from the woman.

NAF opposes this legislation because it does nothing to protect pregnant women. Not a single provision of the bill addresses the ultimate problem of violence against women. Instead, the bill emphasizes the fetus over the woman, diverts attention away from violence against women, and fails to recognize that the best way to protect the fetus is to better protect women from violence.

The supporters of the bill claim that they want to protect pregnant women. The true intent behind this bill—to dismantle Roe v. Wade and undermine a woman’s right to choose has been exposed. Additionally, this bill would set a dangerous legal precedent by establishing in law that an “unborn child” is an individual separate from a woman, and by elevating its status above that of a woman. The legislation makes no distinction between a fetus that is nine months old, an embryonic blastocyst that is six weeks old, a zygote that is four days old and has yet to implant in the uterus, and a zygote that is two hours old and has not yet divided into more than two cells. By granting full personhood to a fetus, embryonic blastocyst, and zygote, the bill threatens to set the stage for a complete prohibition of safe and legal abortion.

Acts of violence against women, including pregnant women, are intolerable, and the criminal justice system should respond to them. Yet, H.R. 97, however, is not the right response. Thank you again for your vote against this legislation, and for your continuing support of a woman’s right to choose.

Sincerely,

VICKI SAPORIA
President & CEO

RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE

Representative JERROLD NADLER
House of Representatives
Washington, DC.

DEAR CONGRESSMAN NADLER: I am writing to express my strong opposition to the so-called ‘Unborn Victims of Violence Act,’ H.R. 97, which was recently reported out by the House Judiciary Committee.

The bill recognizes a fertilized egg, zygote or fetus by explicitly stating that any human ‘in utero’ is a ‘child,’ regardless of gestational length. Thus the bill seeks to impose one religious belief about the beginning of life—that the fetus at all stages of development is a person—and make it the law for all, regardless of individual beliefs. As an interfaith coalition, we believe that religious imposition must not impose one religious view on any issue.

The claims by UVVA supporters that this bill is about preventing violence against pregnant women are preposterous. Their unwillingness to consider the amendments offered in committee by Reps. Lofgren, Baldwin and Scott shows that their aim is to establish legal rights distinct from those of the pregnant woman, and thus lay the foundation for overturning Roe v. Wade. I strongly urge its defeat.

Sincerely,

REV. CARLTON W. VEAZEY
President and CEO

AMERICAN CIVIL LIBERTIES UNION

OPPOSE “THE UNBORN VICTIMS OF VIOLENCE ACT” (H.R. 97) DURING TOMORROW’S JUDICIARY COMMITTEE MARKUP

DEAR REP. NADLER: The ACLU strongly urges you to oppose H.R. 97, deemed by its sponsors “The Unborn Victims of Violence Act,” when it is marked up in the House Judiciary Committee. This bill unnecessarily undermines reproductive freedom, when alternative approaches to punishing violent crimes against women exist.

H.R. 97 would create a federal criminal code to create a new, separate offense if, during the commission of certain Federal crimes, an individual causes the death of, or bodily injury to, an embryo (‘person’). The bill would also establish a ‘personhood’ at birth. Because H.R. 97 applies to all stages of prenatal development, it would be the first federal law to recognize a zygote (fertilized egg), a blastocyst (pre-implantation embryo), an embryo (through week eight of a pregnancy), or a fetus as an independent ‘victim’ of a crime with legal rights distinct from the woman who has been harmed by a violent criminal act.

The ACLU fully supports efforts to punish acts of violence against women that harm or terminate the fetus. This bill is an inappropriate method of imposing such punishment, however, because it dangerously seeks to separate the woman from her fetus in the law. It could dramatically alter the existing legal framework, elevate the fetus to an unprecedented status in Federal law, and undermine the foundations of the right to choose abortion.

In addition, H.R. 97 explicitly disavows a mens rea (or criminal intent) requirement with respect to the harm to the fetus and thus is in tension with the Due Process protections that guarantee the right to a fair trial. The bill permits a person to be convicted of the offense of harm to a fetus even if he or she did not know, and had no reason to know, that the woman was pregnant, and he or she did not intend to cause harm to the fetus. Such a result undermines the Constitution’s promise of due process.

Criminal interference with a woman’s right to bear a child should be prevented and punished. Legislation that imposes enhanced penalties for violent acts that intentionally compromise a pregnancy appropriately punishes an additional injury a woman suffers without recognizing the fetus as a legal entity separate and distinct from the woman who has been harmed.

For these reasons, we strongly urge you to vote against H.R. 97 when it is considered in the Judiciary Committee.

Sincerely,

LAURA W. MURPHY
Director
GREGORY T. NOJEIM
Associate Director and
Chief Legislative Counsel
NARAL PRO-CHOICE AMERICA

Hon. JERROLD NADLER,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE: I write to reiterate NARAL Pro-Choice America’s opposition to H.R. 97, the so-called Unborn Victims of Violence Act.

This legislation recognizes a second legal “person” when a woman is a victim of certain federal crimes. Sponsors claim the bill is aimed at violence against women, and at first blush, their proposal may seem reasonable. As a pro-choice advocacy organization, NARAL Pro-Choice America strongly believes that acts of violence against women, especially pregnant women, are tragic and should be punished to the full extent of the law. But sponsors of the Unborn Victims of Violence Act are not interested in addressing the real issue at hand.

Unfortunately, a close examination reveals that the bill is not designed to protect pregnant women. Instead, it is carefully crafted to undermine a woman’s right to choose. The bill creates a separate federal offense if, during commission of certain crimes, a person causes death or injury to what the sponsors call “a member of the species homo sapiens at all stages of development.” For the first time in federal law, this bill recognizes a zygote, embryonic blastocyst (pre-implantation embryo), embryo (through week eight of a pregnancy), and fetus as a “person” that can be an independent victim of a crime.

For the first time in federal law, this legislation would grant an embryo rights separate from, and equal to, those of a woman. Any doubts about the sponsor’s true motives have been erased. Indeed, one of the bill’s lead sponsors admitted: “They say it undermines Roe v. Wade. But it’s irrelevant.” Similarly, a prominent anti-choice advocate has observed: “In as many areas as we can, we want to put on the books that the government must not impose one religious belief about any issue on everyone. That government must not impose one religious belief about any issue on everyone.”

As an interfaith coalition, we believe that government must not impose one religious belief about any issue on everyone. Their unwillingness to consider the amendments offers in committee by Reps. Lofgren, Baldwin and Scott shows that their aim is to establish legal rights distinct from those of the pregnant woman, and thus lay the foundation for overturning Roe v. Wade.

Thank you for your consideration.

Warm regards,

KATE MICHELMAN
President

PEOPLE FOR THE AMERICAN WAY

House of Representatives
Washington, DC.

DEAR REPRESENTATIVE: On behalf of the more than 600,000 members and activists of the American Way, I write today to reiterate the American Way’s opposition to H.R. 97, the “Unborn Victims of Violence Act.” While purporting to protect pregnant women from violence, this bill instead creates a new offense that purports to subordinate to the will of Roe v. Wade decision by establishing legal “personhood” for embryos and fetuses.

Violence against pregnant women is tragic and deserves to be punished. However, laws that seek to impose one religious belief about any issue on everyone. That government must not impose one religious belief about any issue on everyone.”

We urge you to oppose H.R. 97, and to instead consider the bill that strengthens rights for women who are victims of domestic violence and other violent crimes.

NARAL Pro-Choice America shares their concern and urges Congress instead to pass common-sense measures that help women, and do not undermine their rights.

Thank you for your consideration.

Warm regards,

KATE MICHELMAN
President

PEOPLE FOR THE AMERICAN WAY
Washington, DC.
and to address the fact that homicide is the leading cause of death among pregnant women. However, the “Unborn Victims of Violence Act” is not the answer, for it holds the noble goal of protecting pregnant women from violence hostage to language threatening women’s right to choose.

By contrast, the substitute bill that Rep. Lofgren (D-CA) and the Judiciary Committee serves the goal of protecting pregnant women without at the same time threatening women’s reproductive freedom. Like the underlying bill, Rep. Lofgren’s “Motherhood Protection Act” would authorize additional penalties for violence against pregnant women—up to 20 years when an embryo or fetus is injured and up to life if a pregnancy is terminated. Unlike the underlying bill, however, the Lofgren substitute would not threaten Roe by recognizing the embryo or fetus as a separate legal “person.”

We strongly urge you to protect pregnant women and a woman’s right to choose. Oppose the Unborn Victims of Violence Act and instead support the Motherhood Protection Act. Pregnant women deserve additional protection against violence, but they should not have to pay for it with their reproductive freedom.

Sincerely,  
RALPH G. NEAS,  
President,  
NATIONAL ORGANIZATION FOR WOMEN,  

Honorable Member,
House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE: The National Organization for Women opposes H.R. 1997, formerly entitled Unborn Victims of Violence Act of 2003 (UVVA) and now called the Lofgren’s Conner’s Law. This bill would advance the legal status of an embryo or fetus, making it equal to that of a pregnant woman and, consequently, would seriously erode the rights guaranteed under Roe v. Wade.

Through this legislation, sponsors are attempting to establish in law the extreme view that the legal rights of an embryo are separate from, and different from, the pregnant woman’s—and then to press for additional statutory provisions that would overturn a basic tenet of the Roe decision.

The Supreme Court has held that fetuses are not legal “persons” within the meaning of the Fourteenth Amendment of the U.S. Constitution; this is an important holding that should be safeguarded. Changing the criminal system to include independent pros ecution for injuring a fetus is a dangerous legal precedent that would have broad implications in limiting women’s rights. A further defect is that there is no requirement that the perpetrator of the pregnancy intended to harm the fetus. Without a showing of intent—a key component of criminal law—prosecuting such cases would be extremely difficult.

In addition, H.R. 1997 does not provide additional protections for pregnant women, who are the target of violent assault. If Congress truly wants to protect pregnant women, then a revision is needed of the bill’s language to more appropriately focus on the woman. Over 20 states have enhanced penalties for a crime against a pregnant woman that results in a miscarriage or interruption of normal fetal development. Congress could follow the lead of these lying bill or by directing judges to escalate the penalty according to the gestational stage of the pregnancy when the harm was inflicted.

We believe that UVVA is adopted, opponents of women’s reproductive rights fully intend to broaden the law to allow women to be sued for harm to their fetuses—a frightening scenario that is being tested in several states.

Gloria Feldt,  
President,  
PLANNED PARENTHOOD,  

Mr. Speaker, let me simply reiterate again and summarize this debate. Do we oppose violence against women? Obviously. Do we think that when someone assaults a pregnant woman and harms the fetus, it is an additional crime, a separate crime deserving of additional and separate punishment? Yes. Does the substitute make it a separate crime? Yes. Does the substitute give it additional punishment equal to or even more severe than in some cases in this bill? Yes.

What is the difference here? The difference between the bill and the substitute is only that we believe it is a separate crime against the woman. The substitute and the amendments as a whole will make a separate crime against the mother. If a woman was a new victim, a separate victim, the fetus. It counts the fetus as a full person for the purpose of this crime, and every speaker who has risen on the opposite side has said that, and I agree that they tell the truth. We disagree with that, because it ignores all of our legal tradition, and it goes against the rationale of the Supreme Court in upholding abortion rights; and its purpose is to lay the foundation for laws that would criminalize abortion because, after all, if the fetus is a person, then abortion is murder. It lays the foundation for laws that would restrict the liberty of pregnant women because, after all, if the fetus has rights equal to a citizen, then we have to restrict her liberty and her actions to protect the fetus.

These things we are not prepared to do, and that is the debate on this bill; because that is why I urge defeat of this bill and support of the Lofgren substitute.

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

Mr. SENSENBRENNER. Mr. Speaker, I yield 10 minutes to the gentleman from Illinois (Mr. HYDE), who will close the general debate on this side.

Mr. HYDE. Mr. Speaker, first of all, let me say, I am very happy that the gentleman from New York (Mr. NADLER) was never aborted. I am glad he is here. He stimulates the discussion. He is even fun, on occasion; and I am very glad that the gentleman survived.

I also would like to say that yesterday, I heard two gentlewomen from the other side complain that they have kept a scorecard, and over 200 times in the immediate years we have had to vote on abortion. That was a consideration. I think annoyance up to an extent, and I regret that. But I do not think any single issue defines the difference between the two sides better than that remark about having to vote 200 times on abortion, because that indicates that abortion is not all that important to them. After all, it is a thing. It is a commodity. It is a throw-away, used Klee nek; but it is not a life, a human life.

Now, of course, we feel differently. We feel it is a human life. We feel it is entitled to respect and dignity, and it is entitled to due process of law. And, of course, they deny that.

So that concern that we have had to debate this issue too much, it seems to me, defines the positions of the two sides.

Now, some years ago, in fact it was 1841, John Quincy Adams represented 38 slaves from the ship Amistad in a court proceeding where he argued before the U.S. Supreme Court on their behalf, and he told the Court, he said, this is the most important case you will ever hear because it involves the very nature of man, and so we, he was talking about slaves, whom some people held to be commodities, chattels, things that could be bought and sold or thrown away if need be, but less than human, and so that case did involve the nature of man, and so we, he was sorry that we get another check in the scorecard because we are discussing this one more time, but I will suggest to my friends on the other side,
you will never get rid of this issue as long as there are people who are sensitive to the notion that all human life is precious and deserving of protection, especially the vulnerable, the weak, the small, the defenseless that cannot rise to the occasion and cannot escape, but is disposable by your ethic.

I would like to see a little honesty in this debate. By that I mean stop with the euphemisms. Right to choose, my goodness, everybody's for the right to choose. It is what you are choosing that is important. There is only one choice, a dead baby or a live baby. But the right to choose is a process, it is not substantive.

They refer to the unborn as a fetus or as the product of conception. All these euphemisms, these marketing tools, let us call it what it is. Why do you shy away from the word abortion? Abortion, the only time you use it is when you point the finger at us and say we are against abortion, and in that you are quite religious.

Well, Mr. Adams before the Supreme Court presented the question as to whether slaves were worthy of protection under the law, whether they had value, and that is the issue here. You deny that, which is a lie and to accept, to the unborn; when is a person a person when you do not really know. The Court took a pass on that, and of course you take it. It is a legal construct. A personhood belongs to the human being; not animal, not vegetable, not mineral, but a person, personhood.

I assign personhood to a tiny entity, a fertilized egg. I guess it is very small, even premicroscopic, but it is the beginning of the human life, and if you deny that, you are kidding yourself, and you are clinically primitive because that is not so. You want to deny any dignity, any value, any status, any standing to an unborn child. Never mind that because it is tough to argue for killing, what is abortion does. It kills a baby. You will say it is an exercise of reproductive rights. Well, I say it is a problem, and I say we support this bill, the underlying bill. I hope we defeat the substitute, we support this bill, the underlying bill. I hope we defeat the substitute, which demeans the humanity of the little defenseless child who was waiting to be standing with and holding up and defending.

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

Mr. Speaker, I state to the distinguished gentleman from Illinois for the passion he brings to this discussion, but more than that, for the clarity and honesty he brings to this discussion, for he has swept away much of the rhetoric and much of the underbrush which impedes a clear view of this and defined the real issue.

This is a bill about abortion, as he quite clearly recognizes. Both the bill and the substitute have some practical impact. They both define two crimes. They both define the same penalties. They both have the same deterrent effect. That is not the issue, as he recognizes.

The bill defines the fetus as a person from the moment of conception. The substitute does not recognize the fetus as a person, for legal purposes, from the moment of conception. That is the difference, and that is the core of the abortion debate, as the distinguished gentleman recognizes.

The people who believe abortion to be murder believe a fetus, a zygote, a blastocyst is a person, a full human person with full and equal and legal rights from the moment of conception. We do not. We do not use the euphemism "a right to choose" as a euphemism for abortion. We support a woman's right to choose to have an abortion if she wishes. We support a woman's right to bear a pregnancy to term if she wishes. That is why we say we support the right to choose.

Abortion is clearly troubling emotionally and intellectually to many people. I, for one, and I can only speak personally, would find an abortion of a 9-month pregnant fetus, that is to say, a 9-month-old fetus, a horror, and I believe it is, in fact, illegal, except to save the life of the mother. On the other hand, I do not believe that a two-cell zygote after conception is a human being. I do not believe that it has the potential. It obviously has the potential to become a human being, but it is simply two cells, and I have no compunction about an abortion of a group of cells. I do not believe it to be a human being.

The question is whether a small clump of cells or an embryo is a human being or not, is not a question that we are ever going to agree on. The chairman said the abortion debate is going to be with us forever, and I think he is right, certainly a long time. We are not going to disagree on that question.

The difference is I respect everyone's right to their opinion, whether informed by physiology, by religion, by morality, by their relative ability, to make that decision for themselves as to how they regard a blastocyst or a zygote. Some religions declare it a human; some religions say no. I do not think it is the job of Congress to dictate to people how to make that very personal, moral decision. I believe that decision is one which must be left to a woman.

If a woman says that, to me, as the wife of the embryo at early stage of development is a human being, and I will not have an abortion even if it risks my life, I will respect that decision. She is entitled to it. I would not support Congress coming in and saying we will save her life despite her will if she is competent because we do not agree with her moral decision. On the other hand, if she says, her moral decision is that I do not believe an early embryo or fetus is a human being and I wish to have an abortion, I will respect her decision. I will not want Congress or the State legislature or the President to say, you are wrong morally, my moral conviction is superior to yours, and therefore, I will use the power of the state, the power of compulsion to put my moral conviction over yours. That is the debate here.

This bill is mostly a sham. The distinguished gentleman from Illinois takes the sham away and says that is really the issue, and the real issue is we are going to say, which we have never said before, we had that Biblical passage
which I brought, as I said before, I do not think Congress ought to enact Bib-
lical or religious law into civil law, but I brought it to show that in the Bib-
lcal times they did not regard a fetus as a person, because if you killed the fetus you would not pay any compensation. If the woman died, there was a
capital punishment because the fetus is not regarded as a full person. That
brought back, we have not regarded an Anglo-Saxon law, a Roman law up
until now, a fetus as a full person.

Now, because of the abortion debate that erupted 30 years or so ago, the last
30 years, people have tried to change the law to say that we should give
legal recognition to the assertion that a fetus or an embryo from the moment
of conception is a person for legal pur-
poses. We do not agree with that. This bill would do that. Therefore, we are
opposed to this bill.

Some people have that opinion. Some people have that conviction. I respect the
cultural or religious people. I respect that. Others disagree. We should not use the power of law to im-
pose that opinion, that theological opinion, that physiological opinion, that moral opinion on people who do
not share it and wish to have abortions or other acts that may flow from that.

That is the distinction here, and this bill is an abortion bill despite not what
the gentleman from Illinois said, but some other people said, because, as I
said before, the consequences of the de-
fining a second crime, the substitute would do, giving a severe penalty, giv-
ing additional penalties, are the same in the bill and the substitute. The dif-
fERENCE is the legal underpinning, and the only reason we care about the legal
underpinning is because of what it says
about the key distinction underneath the legal right to an abortion and the
underpinning for Roe v. Wade.

Mr. HYDE. Mr. Speaker, will the gen-
tleman yield?

Mr. NADLER. I yield to the gen-
tleman from Illinois.

Mr. HYDE. Mr. Speaker, the gen-
tleman, I am sure, understands, be-
cause he is a good lawyer, that the un-
born has legal status in probate mat-
ters where a pregnant woman is an heir
or beneficiary and is pregnant and the
interests of the child may be different.
So a guardian ad litem is appointed.
You understand that a woman can be pregnant, and her pregnant child could
be injured in the womb and have a
cause of action.

Mr. NADLER. Mr. Speaker, Mr. Speaker, reclaim-
ing my time, and understand, and I am
not an expert in probate or estate law,
but I do understand that as the fetus
gets older, our law gives it more rec-
ognition. In fact, the Supreme Court in
Roe v. Wade said in the first trimester
the woman has a constitutional right to
have her child. If her choice completely prevails, you cannot regulate abortion. In the second tri-
mester there is more of an interest,
and, therefore, you can regulate; and in
the third trimester after viability, you
can prohibit abortion. That is in Roe v.
Wade because it recognizes that there
is more interest that attaches. I do not
deny that, and exactly how much attac-
ches and so forth we can debate in a
lot of contexts.

What I am saying is that the defini-
tion of the fetus or the embryo as a
human being, as a person, for purposes
of law in all respects, which is what
this bill would do, we have never done.
We do not do that. We have never done,
and in my opinion we should not be-
cause it is one conception. It is a defen-
sible proposition, but it is not a proposi-
tion that many people and religions agree with, and it is not a proposition
that we should impose by Congress pro-
or con. I urge adoption of the sub-
stitute, not the bill.

Mr. Speaker, I yield 3 minutes to the
telewoman from California (Ms.
WATSON).

Ms. WATSON. Mr. Speaker, I rise
today in strong opposition to H.R. 1997, the Unborn Victims of Violence Act.
The bill seeks to recognize a fetus at
any stage of development as a person.
I think we are all aware scientifically
that a fetus cannot survive on its own
without any medical intervention. It is
yet another covert attack on a woman’s
right to choose waged by extreme thinking.
It sacrifices real protections for women
at the expense of a politically driven
agenda to undercut Roe v. Wade, and I
strongly urge my colleagues to reject
this antichoice bill.

H.R. 1997 defines the phrase “child in
utero” or “unborn child” as a fetus at
any stage of development from concep-
tion to birth. In effect, the language
undercuts Roe v. Wade, which held that
a fetus even after viability is not a per-
sion for purposes of the 14th amend-
ment. By creating a new Federal crime
for bodily injury and/or death of an un-
born child, the bill opens a new door of
litigation over when life begins in the
context of criminal prosecutions.

H.R. 1997 also contributes little to
the actual protection of women. Rather
than enhancing penalties under exist-
ing law for criminal acts against preg-
nant women, the bill diverts the atten-
tion to the fetus. As Juley Fulcher of
the nonpartisan National Coalition
Against Domestic Violence stated in her
testimony to Congress, “The goal of
the act is to further a specific polit-
ical agenda. It posits that the crime
committed against a pregnant woman
is no longer about the woman
victimized by violence.”

Make no mistake about it, violence
against women remains a serious issue
in today’s society, and Congress should
address the issue. The statistics are
shocking but true: The leading cause of
death of pregnant women is murder. It
is one of the reasons why I support the
Lofgren substitute amendment that
targets those who kill pregnant women
without falling into an antichoice trap.
The substitute would create a separate
and distinct crime for any violence or assaulting

conduct against a pregnant woman that interrupts or terminates her preg-
nancy in addition to the assault on the
pregnant woman. This is the appro-
priate approach to the issue. I strongly
urge my colleagues to reject H.R. 1997
and support the Lofgren substitute.

Mr. COLLINS. Mr. Speaker, the Unborn Vic-
tims of Violence Act, H.R. 1997, is a needed
and important bill that must be passed.

I believe that we must protect unborn chil-
dren against acts of violence. It is for
this reason that I have cosponsored H.R. 1997. Under
current federal law, if a criminal assaults or
kills a pregnant woman and causes death or
injury to her unborn child, they face no con-
sequences for taking or injuring that unborn
life. The Unborn Victims of Violence Act would
make any act that causes death of, or bodily
injury to, a child who is in utero at the time the
conduct takes place, guilty of a separate
crime. If enacted, H.R. 1997 would afford pro-
tection to a completely defenseless life form,
an unborn child, by creating a separate of-
fense for acts of violence against the unborn
child.

We passed this bill by a solid majority in the
last Congress. I am hopeful that this year, our
Congress will pass the bill and that we will be able to
move this legislation and we can send a final
bill to the President for him to sign into law.

We have laws that protect men, women,
and children from murder. We should have a law
to protect the unborn, the most innocent
and helpless of God’s creations, from murder.
This is a common-sense bill and a necessary bill. I’m proud to be a co-sponsor and proud

Mr. ISAKSON. Mr. Speaker, I rise today in
full support of the Unborn Victims of Violence
Act.

Violence with the intent of injuring or killing
a woman or any person is wrong and de-
severely. The most severe penalty. Such an act
of violence against a pregnant woman is an
act against two lives and should be punishable
as separate offenses.

We need only look to the Lacy Peterson
case in California for clear and compelling
evidence for the justification of two separate of-
fenses. Any person intent in causing harm or
dead through violence and crime against any
life must be held accountable for every life.

Mr. STARK. Mr. Speaker, I rise today to
strongly oppose H.R. 1997, the so-called “Un-
born Victims of Violence Act.” I am deeply dis-
appointed that Republicans are using this con-
troversial bill as a vehicle for their blatant at-
tacks on a woman’s right to choose.
The Republican majority could enact a number of serious and meaningful laws that
prevent and punish violence against women.
However, instead of bringing common-sense
measures up for debate, anti-choice law-
makers bring the Unborn Victims of Violence
Act to the floor. It’s perfectly clear why they’re raising it. The Bush Administration—along with
Republicans in Congress—are trading the
wishes of their conservative base for votes in the
upcoming elections.

The Unborn Victims of Violence Act is a separate Federal offense if, during commission of certain crimes, a per-
son causes death or injury to what the spon-
sors of this bill call “a member of the species.
homo sapiens at all stages of development." If this bill passes, it will for the first time in Fed-
eral law, recognize a zygote, blastocyst, em-
bryo, and fetus as a "person" that can be an independent victim of a crime. This bill does this even though the Supreme Court ruled in Roe v. Wade that fetuses are not persons within the meaning of the Fourteenth Amend-
ment.

Let's be clear, this bill will not help address the serious issue of violence against women, which affects nearly one in every three women during their adulthood. If its intent were truly good, this would fully support it. In fact, domestic violence organizations, like the National Coal-
ition Against Domestic Violence—that do not take positions on abortion—oppose this legis-
lation.

The Unborn Victims of Violence Act isn't the right solution. That's why I oppose it and will instead vote for the substitute being offered by my colleague Representative ZOE LOFGREN. Her amendment, the Motherhood Protection Act, will help to prevent crimes against preg-
nant women, rather than embroil the issue surrounding the abortion debate. It would create a second Federal offense for harming a pregnant woman and would impose the same penalties for harm to, or termination of, a pregnancy as the Unborn Victims of Violence Act. But, importantly, the Motherhood Protection Act recognizes the pregnant woman as the primary victim of a crime rather than the fetus. This guarantees appropriate penalties in the law without getting us into a volatile, un-
necessary debate over abortion.

Further exploiting the issues of violence against women, anti-choice advocates have resorted to using the unfortunate case of Laci Peterson's murder to push the legislation—even though passage of the Unborn Victims of Violence Act has been one of their top legisla-
tive priorities since 1999, long before the Pe-
terson tragedy. Any doubts about the spon-
ser's true motives were erased when Senator ORRIN HATCH told a reporter: "They say it un-
dermines abortion rights. It does. But that's ir-
relevant."

The Unborn Victims of Violence Act clearly fails to address the very real need for strong Federal legislation to prevent and punish vio-

cent crimes against women. Congress should be protecting pregnant women from violent crime without having to resort to controversial bills like the one before us. I ask my col-
leagues to vote "no" on this deceptive bill, which does nothing to thwart acts of violence, and vote "yes" on the substitute being offered today, a real remedy for assaults made against pregnant women.

Mr. FARR. Mr. Speaker, as a strong sup-
porter of reproductive choice against women, I look forward to the day that this House de-

dates legislation that will actually make women safer. Unfortunately, the main goal of H.R. 1997 is undermining the freedom of choice, rather than protecting pregnant women.

I strongly oppose H.R. 1997, which provides that whoever causes the death of, or bodily in-
jury to, a fetus, embryo, zygote, or otherwise fertilized cell would be guilty of a separate criminal offense, and the punishment would be the same as if the violent act had been com-
mitted against an adult. By elevating a fetus to the same legal status as an adult, this legisla-
tion seeks to recognize the existence of a sep-

arate legal "person" where none currently ex-
ist. This creates the legal ability to threaten

the Supreme Court's decision in Roe v. Wade. Moreover, H.R. 1997 does not recognize two victims but focuses solely upon providing legal protections for the fetus. The crime perpetrated against the woman is absent from the bill alto-
gether.

The issue of violence against women is a ser-
ious and concerning problem that deserves our atten-
tion and resources. I support the Democratic substitute to H.R. 1997, the Moth-

erhood Protection amendment. Without unnec-
essarily engaging in the abortion debate, this substitute creates a new, separate federal of-
dense for any violence or assault against a preg-
nant woman that interrupts or terminates her pregnancy. Crimes committed against pregnant women are heinous and should be punished to the fullest extent of the law, and that's precisely what the Majority Leadership's substitute will do.

H.R. 1997 is undermining the freedom of choice movement has forced the Unborn Vic-
tims of Violence Act through the House twice since 1999. The bill's true purpose is not to address vio-
lence against pregnant women. It is, and always has been, a way of undermining free-
dom of choice. H.R. 1997 does not recognize two victims. The mother is notably absent from the bill alto-
gether. In fact, H.R. 1997 does not require a conviction for the underlying crime against the woman; the crime against the woman could go unpunished.

The Unborn Victims of Violence Act goes beyond its intent to protect pregnant women and negates all the good it could do by delib-

erately and unnecessarily conflicting the core principle of Roe v. Wade.

I challenge my colleagues, male and fe-

male, to look at our Constitution and review the freedoms and civil rights that Congress has worked strenuously over our nation's his-
tory to protect. Given the broad attention that many mem-
bers have focused on this particular issue of protec-
ting women from violence, I am looking forward to hearing support for the funding of the Unborn Victims of Violence Act, which is currently funded 200 million dollars below the authoriza-

tion level.

I encourage my colleagues in support both victims, and in their right to reproductive free-
dom: support the Motherhood Protection sub-

Ms. LEE. Mr. Speaker, I rise today to de-

fend a woman's right to choose and to oppose H.R. 1997.

Once again, the Republican leadership is chal-

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ting women from violence, I am looking forward to hearing support for the funding of the Unborn Victims of Violence Act, which is currently funded 200 million dollars below the authoriza-

ition level.
Additionally, Mr. Speaker, it should be noted that Americans have shown that they support unborn victims laws. Three nationwide polls, conducted in 2003 showed that respondents support unborn victims legislation by margins of 8 to 1 and in some cases as high as 12 to 1.

The American people accept that an attack on a pregnant woman is not just an attack on her, but an attack on her unborn child as well. It is time for Congress to come to the same resolution.

In conclusion, I want to extend my sincere thanks to my colleague from Pennsylvania, Congresswoman HART. I appreciate her leadership on this issue.

Mr. Speaker, the unborn cannot defend themselves when they are attacked, yet they are no less a victim. I urge my colleagues to stand up today to offer justice for all victims of violent crime.

Mr. BARRETT of South Carolina. Mr. Speaker, I rise this afternoon in support of victims like Carol Lyons Speaker, I rise this afternoon in support of victims like Carol Lyons’ grandson Landon. On January 7, 18-year-old Ashley Robbins and her unborn son, Landon, were murdered. When Ashley’s mother Carol testified before the Kentucky Legislature’s Senate Judiciary Committee on January 15 of this year she said,

Nobody can tell me that there were not two victims. I placed Landon in his mother’s arms, wrapped in a baby blanket that I had sewn for him, just before I kissed my daughter goodbye for the last time and closed the casket.

H.R. 1997, the Unborn Victims of Violence Act would provide that an individual who injures or kills an unborn child, like Landon, during the commission of one of nearly seventy specified federal crimes against the mother would be guilty of a separate offense against the unborn child. This is the right thing to do.

There are too many families suffering like the Lyons’ family, knowing that those responsible for the murder of their unborn child or grandchild will never be punished for the crime they committed. We must not allow Landon, and countless other unborn children’s deaths to have been in vain. Today, we have the opportunity to protect the rights of the most innocent life, that of an unborn child.

Mr. Speaker, I rise this morning in strong support of the Unborn Victims of Violence Act and I urge my colleagues to vote “yes” on H.R. 1997.

Ms. CUBIN. Mr. Speaker, I rise today in support of H.R. 1997 and for America’s voiceless unborn children. We are all familiar with the tragic stories like the plight of Laci and Conner Peterson, and Landon Lyons of Kentucky, as well as countless others. From these tragedies one thing should be clear: Unborn children can be brutally victimized through acts we already recognize as Federal crimes, and it is our duty to ensure justice is served on behalf of these innocent victims.

In the unthinkable instance where a pregnant woman is physically harmed, it is a simple fact that more than one life is potentially at stake. The injury or death of a child who is still in utero is a crime that must not continue to go unpunished.

We have a responsibility to do everything in our power to protect both women and the unborn children they might be carrying. When both a mother and her unborn child are the victims of crime, two people are harmed. The law needs to recognize this reality, and I hope my colleagues will do so by voting in favor of H.R. 1997.

Recently, our Nation celebrated the 184th birthday of one of our true American heroes, Susan B. Anthony. Committed to the idea that all people should be afforded the same respect, she worked for years to champion both the rights of women and unborn children. I can think of no better way to honor the great memory of Susan B. Anthony than by upholding the ideal of respect for the dignity of human life by supporting the Unborn Victims of Violence Act of 2003.

Mr. TIAHRT. Mr. Speaker, I rise today in strong support for H.R. 1997, the Unborn Victims of Violence Act.

This important legislation would finally make it a separate Federal offense to cause death or bodily injury to a child in utero in the course of committing an already defined Federal offense. It is imperative that we hold criminals responsible for conduct that harms or kills an unborn child. I cannot understand the opposition to this bill. Abortion laws, it merely affirms that a violent act against a pregnant woman affects not only her but her unborn child as well. There are most certainly two victims in such crimes, as 24 States have already recognized.

This issue we have debated for the past couple of years finally caught the Nation’s attention with the murders of Laci Peterson and her unborn son Conner. Americans strongly believe that there were two murders committed last December and that the law should be treated as such. The predictablearan, a two-week-old who died. He had your name, he was loved, and his life was violently taken from him before he ever saw the sun.

In conclusion, I want to extend my sincere appreciation to my colleagues for their support. This bill is not a real solution. This bill only addresses the crisis of violence against women, pregnant or not, seriously. This bill completely disregards women as the primary victim of violence. You cannot harm a fetus without causing physical harm to a pregnant woman first. If this body wanted to consider violence against women, pregnant or not, seriously, I have a few alternate suggestions. We could provide adequate funds for the Violence Against Women Act so that seeking help will ever be turned away from a shelter. We should insulate that victims of domestic violence have equal access to programs funded under the Victims of Crime Act. Additionally we should provide women with access to contraceptive services, to thereby preventing unintended pregnancies that make them more susceptible to these dangerous situations.

All the title X funded clinics in my district, including Pima County Health Department Clinics, provide appropriate counseling services, and refer women to local domestic violence agencies for additional services. They even provide small information cards in the private bathroom that are designed for women to place in their medicine cabinet if they are in an abusive partner. Title X clinics are one of our most valuable resources in reaching uninsured women who are victims of domestic violence. Unfortunately these programs are drastically under funded. If this Congress really would like to reach women in need, they would make funding for this program a priority.

This bill is not a real solution. This bill only applies to cases of assault that occur under
Federal jurisdiction. Between 1994 and 2000, only 130 Federal cases involved Federal domes-
 tic violence statutes. The public’s broad support for preventing and prosecuting assault on
 women is being exploited for political pur-
 poses. This is an antitwomb case. It disregards
 the woman’s role in the pregnancy, and reduces
 the law to the point of any harm inflicted upon her.
 I urge my colleagues to support the Lofgren sub-
 stitute which offers real solutions and real pen-
 alties for tragic violence against women, and
 oppose final passage of this misguided bill.

Mr. GOODLATTE. Mr. Speaker, I rise today in
 strong support of the Unborn Victims of Vio-
 lence Act, and I thank Representative HART
 for introducing this important legislation, as
 well as Chairman SENSENIBRENNER for bring-
 ing this important legislation to the floor. This bill
 will convey to violent criminals the important
 message that when they inflict harm on a
 pregnant woman and her unborn child, those
 criminals will be accountable for the harm
done—not only to the expecting mother, but
 also to the unborn child.

It is unthinkable how we are under current Federal
law, an individual who commits a Federal crime
of violence against a pregnant woman
receives no additional punishment for killing or
injuring the woman’s unborn child during the
commission of the crime. Where is the justice
when the violent attacker of a pregnant
woman, even with the express purpose of
harm her unborn child, and not be held ac-
countable for those actions?

The American public knows that this bill is
necessary—recent polls have shown that ap-
proximately 70% of registered voters believed
that prosecutors should be able to separately
charge the violent attacker of a pregnant
woman for the death of her unborn child. In
addition, most States have recognized this
problem by passing laws to protect unborn
children—29 States, including my home State
of Virginia, have seen the wisdom in holding
criminals accountable for their actions by mak-
ing violent criminals liable for conduct that
harms or kills an unborn baby.

Unfortunately, our Federal statutes do not
sufficiently provide for the protection of unborn
children and as a result the Federal punish-
ment for these heinous crimes amounts to lit-
tle more than a slap on the wrist. Criminals are
held more liable for damage done to prop-
erty than for intentional harm done to an
unborn child. This discrepancy in the law is ap-
palling. It’s time for Congress to Act.

Regardless of whether you are pro-choice
or pro-life, those of us who are parents can
identify with the hope that accompanies the
impending birth of a child. No law passed by
Congress could ever heal the devastation cre-
ated by the loss of a child, or ever replace a
child lost to violence. However, we can ensure
that justice is done by making sure that crimi-
nals who take the life of an unborn child pays
for their actions.

I urge each of my colleagues to join me in
voting for the Unborn Victims of Violence Act.

Mr. PAUL. Mr. Speaker, while it is the inde-
pendent duty of each branch of the Federal
Government to act constitutionally, Congress
will likely continue to ignore not only its con-
stitutional duty but earlier criticism from Chief
Justice William H. Rehnquist, as well.

The Unborn Victims of Violence Act of 2001,
H.R. 1997, would amend title 18, United
States Code, for the laudable goal of pro-
tecting unborn children from assault and mur-
der. However, by expanding the class of vic-
tims to which unconstitutional, but already-ex-
ist, Federal murder and assault statutes apply, the Federal Government moves yet an-
other step closer to a national police state.

Of course, the current wave of federalizing every human mis-
 deed in the name of saving the world from
some evil than to uphold a constitutional oath
which prescribes a procedural structure by
which the Nation is protected from what is per-
haps the worst evil, totalitarianism. Who, after
all, wants to amongst those Members of
Congress who are portrayed as soft on violent
crimes initiated against the unborn?

Nevertheless, our Federal Government is
constitutionally, a government of limited pow-
ers. Article one, section eight, enumerates
the legislative areas for which the U.S. Congress
is allowed to act or enact legislation. For every
other issue, the Federal Government lacks
any authority or consent of the governed and
only the State governments, their designees,
or the people themselves can authorize actions
that affect our rights to governance. The 10th
amendment is brutally clear in stating “The
powers not delegated to the United States by
the Constitution, nor prohibited by it to the
States, are reserved to the States respec-
tively, or to the people.” Our Nation’s history
notwithstanding, the U.S. Constitution is a
document intended to limit the power of cen-
gral government. No serious reading of histor-
ical events surrounding the creation of the
Constitution could reasonably portray it dif-
ferently.

However, Congress does more damage
than just expanding the class to whom Federal
murder and assault statutes apply—it further
entrenches and seemingly concurs with the
 Roe v. Wade decision—the Court’s intrusion
into rights of States and their previous at-
tempts to protect by criminal statute the
unborn’s right not to be aggressed against. By
specifically exempting from prosecution both
abortionists and the mothers of the unborn—
 as is the case with this legislation—Congress
appears to say that protection of the unborn
child exists only if it is not entirely the fault
conditioned upon motive. In fact, the Judiciary
Committee in marking up the bill, took an odd legal
turn by making the assault on the unborn a
strict liability offense insofar as the bill does not
even require knowledge on the part of the
aggressor that the unborn child exists. Murder
statutes and common law murder require in-
tent to kill—which implies knowledge—or the
part of the aggressor. Here, however, we have
the odd legal philosophy that an abortionist
with full knowledge of his terminal act is not
subject to prosecution, a aggressor act-
ing without knowledge of the child’s existence
is subject to nearly the full penalty of the law.
With respect to only the fetus, the bill exempts
the murderer from the death sentence—yet
another diminution of the unborn’s personhood
status and clearly a violation of the equal pro-
tection clause. It is becoming more and more
difficult for Congress and the courts to pass
the smell test as government simultaneously
seizes the unborn as a person in some in-
stances and as a nonperson in others.

In his recent report to Congress on behalf of the Federal Judicial, Chief Justice
William H. Rehnquist said “the trend to fed-
eralize crimes that have traditionally been han-
dled in state courts . . . threatens to change
entirely the nature of Federal system.”

Rehnquist further criticized Congress for yield-
ing to the political pressure to “appease respons-
eive to every highly publicized societal ill or
sensational crime.”

Perhaps, equally dangerous is the loss of another constitutional protection which comes
with the passage of more and more Federal
criminal legislation. Constitutorally, there are
only three Federal crimes. These are treason
against the United States, piracy on the high
seas, and counterfeiting—and, because the
 constitution was amended to allow it, for a
short period of history, the manufacture, sale,
or transport of alcohol was concurrently a Fed-
eral and State crime. “Concurrent” jurisdiction
criminals, such as alcohol prohibition in the past
and federalization of murder today, erode the
right of citizens to be free of double jeopardy.

The fifth amendment to the U.S. Constitu-
tion specifies that no “person be subject for
the same offense to be twice put in jeopardy of
life or limb . . . .” In other words, no person
shall be tried twice for the same offense. De-
spite the various pleas for federal correction of
societal wrongs, a national police force is nei-
ther prudent nor constitutional.

Occasionally the argument is put forth that
States may be less effective than a centralized
Federal Government in dealing with those who
leave one State jurisdiction for another. Fortu-
nately, the Constitution provides for the pro-
ducers means for preserving the integrity of
State sovereignty over those issues delegated
to it via the tenth amendment. The privilege
and immunities clause as well as full faith and
credit clause allow States to exact judgments
from other States. However, in United States v.
Lanza, the high court in 1922 sustained a ruling that being tried by
both the Federal Government and a State
Government for the same offense did not of-
defend the doctrine of double jeopardy. One
implication of unconstituting the Federal
criminal justice code is that it seriously
increases the danger that one will be subject
to being tried twice for the same offense.

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Despite the various pleas for federal correction of
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one empowered by force rather than voluntary exchange.

When small governments becomes too oppressive with their criminal laws, citizens can vote with their feet to a “competing” jurisdiction. If, for example, one does not want to be forced on a campaign trail from using medicinal marijuana to provide relief from pain and nausea, that person can move to Arizona. If one wants to bet on a football game without the threat of government intervention, that person can live in Nevada. As government more and more centralizes, it becomes much more difficult to vote with one’s feet to escape the relatively more oppressive governments. Governmental units must remain small with ample opportunity for citizen mobility both to efficient governments and away from those which tend to be oppressive. Centralization of criminal law makes such mobility less and less practical.

Protection of life—born or unborn—against initiations of violence is of vital importance. So vitally important, in fact, it must be left to the States’ criminal justice systems. We have seen that universal constitutional and philosophical mess results from attempts to federalize such an issue. Numerous States have adequately protected the unborn against assault and murder and done so prior to the Federal Government’s unconstitutional sanctions of Roe v. Wade decision. Unfortunately, H.R. 1997 ignores the danger of further federalizing that which is properly reserved to State governments and, in so doing, throws legal philosophy, the Constitution, the Bill of Rights, and the insights of Chief Justice Rehnquist out with the baby and the bathwater.

Mr. BLUMENAUER. Mr. Speaker, I oppose H.R. 1997. The so-called “Unborn Victims of Violence Act.” Since the landmark Roe v. Wade Supreme Court decision, Congress has slowly passed legislation to erode women’s reproductive choices. This is a personal and private decision that should be made by a woman, her family, her physician, and her own beliefs.

This is the third time that people who oppose reproductive freedom for women and their families have attempted this back door maneuver to restrict abortion. Instead of focusing on purely political measures aimed at the erosion of a woman’s reproductive freedom, we should be protecting women from violence and increasing assistance to women in life-threatening domestic situations.

Harsh penalties already exist in 38 states for crimes against pregnant women that result in the injury or death of her fetus. The overwhelming majority of crimes against pregnant women are committed by her fetuses’ parents in cases of domestic abuse or drunk driving accidents, instances that are prosecutable under currently existing State laws. Nearly one in every three adult women experiences at least one physical assault by their partner during adulthood. Drunk driving accidents continue to result in substantial loss of life in every city across the Nation. H.R. 1997 would do nothing to add to the existing protections against these serious and prevalent crimes.

I support the Lolgren amendment, “the Motherhood Protection Act,” a crime bill that would protect pregnant women from violence and impose stiffer penalties than the competing bill, “the Unborn Victims of Violence Act.” If protecting pregnant women from vio- lent crime were truly our priority, Congress would have passed the Lolgren amendment to H.R. 1997.

Mrs. JONES of Ohio. Mr. Speaker, I rise in opposition to H.R. 1997, the Unborn Victims of Violence Act.

A pregnant woman is one of the most vulnerable members of our society. Nearly one in three women report being physically assaulted during pregnancy and murder is the leading cause of death among pregnant women.

H.R. 1997 does nothing to protect pregnant women from violence; rather, it creates a new cause of action on behalf of the unborn. The result would be a step backward for victims of domestic violence by once again diverting the attention of the legal system away from efforts to punish violence against women.

The legislation would apply in a limited set of circumstances involving members of the Armed Forces and anyone who injures or kills a fetus during the commission of a crime under Federal jurisdiction. But it should be noted that similar bills have been introduced in various States that would cover anyone who harms the fetus regardless of the circumstances.

Injury inflicted upon a fetus is accomplished by an assault on a woman; therefore punishment for such crimes should be prosecuted as crimes against women. Changing the criminal law to focus on the fetus instead of on the victim is a dangerous legal precedent, which could have broad implications in limiting women’s rights.

H.R. 1997 creates controversy around the issue of violence against women where none presently exists. If the primary intention of the bill’s sponsors, Congress should take strong measures to protect all women from violence rather than using this backdoor approach to restrict a woman’s right to choose. If we really want to punish violence against pregnant women, it should be done in a way that does not entangle this issue with the abortion debate.

H.R. 1997 is the first step toward outlawing abortion. The real purpose of this legislation is not to deter and punish criminal conduct but to erode the rights of women. This new bill is a thinly veiled attempt to undermine Roe v. Wade by establishing a distinct legal status for a fetus in Federal law. H.R. 1997 marks a major departure from current Federal Law by elevating the legal status of a fetus at all stages of development. It is an obvious attempt to add to Federal law the anti-choice definition of an “unborn child” as “a member of the species homo sapiens, at any stage of development, who is carried in the womb.”

Repositioning the fetus as an entity with legal rights independent of the pregnant woman would create future legal rights that could only be used against a pregnant woman, possibly putting the woman and fetus in conflict and placing the health, worth and dignity of the woman on a lower level than a weeks-old embryo. For example, if the legislature could make it possible for a pregnant woman to be prosecuted for failing to protect her fetus from domestic violence committed against her.

We all agree that criminals who attack pregnant women—including especially heinous attacks aimed at ending the pregnancy—should be punished for their actions. But H.R. 1997 is not needed to allow the vigorous prosecution of anyone doing harm to a pregnant woman.

In fact, the measure does not even mention harm done to pregnant women. Any bill intended to battle such wanton criminal acts of cruelty should, as the legislation offered by Representatives ZOE LOFGREN and JOHN CONYERS, Jr., does, speak of crimes against mothers and potential “interception of the process of pregnancy” or “ending a pregnancy,” not by trying to define a fetus as an “unborn child.”

If the supporters of H.R. 1997 were sincere about protecting a woman’s pregnancy, they would not have stacked this bill full of language with no other purpose than to further their efforts to eliminate reproductive choice for U.S. women.

H.R. 1997 shifts the focus from violence against women and elevates the fetus—even a zygote, blastocyst or embryo, perhaps before its existence is known to the woman—to a status equal with that of the adult woman, a full member of society, who suffers both the physical assault and the possible loss of a wanted pregnancy.

Mr. Speaker, I rise to reiterate my opposition to H.R. 1997 and the blatant assault on a woman’s right to choose. Mr. CARDOZA. Mr. Speaker, I rise today to speak in support of H.R. 1997.

Under current Federal law, a person who commits a crime of violence against a pregnant woman receives no additional punishment for harming a fetus—specifically a woman’s unborn child. This is unacceptable.

In my district, the death of Laci Peterson and her unborn son, Conner, shook the community of Modesto and the Nation. As much as we all hoped to find Laci alive and well, we now must face the reality that in cases like hers, real justice cannot be achieved under existing Federal law.

Fortunately, California already has a similar unborn victims of violence law, as do 28 other States. But the Peterson case underscores the need for congressional action. After meeting with Laci’s mother, Sharon Rocha, I agree that we cannot allow the gap in Federal law to persist.

The simple fact is that pregnant women are vulnerable, and we must do everything we can to protect them—and everything we can to punish those who do the unthinkable. We must be tough on crime, and especially tough on heinous crimes. This is an issue of justice. To me, there is no other issue here.

I urge my colleagues to support the bill. Mr. DINGELL. Mr. Speaker, it is with a heavy heart that I rise today in opposition to H.R. 1997, the Unborn Victims of Violence Act. Mr. Speaker, the bill before us today needlessly politicizes a serious issue. Frankly, I am outraged that members of this body are being cajoled into voting yes just to say yes. Fortunately, that is not the case. The legislation is a step backward in efforts to enact serious and meaningful laws to prevent and punish violent acts against pregnant women.

Violent crimes against pregnant women are of a particularly heinous nature. This is something we can all agree on. However, to bog down a debate with abortion politics is disingenuous to say the least. The bill raises questions about the wisdom of my colleagues who support this bill. Is the goal to address the especially horrendous crime of harming a pregnant woman, or is the goal to generate an abortion-related campaign issue?

Supporters of this legislation will come to floor today and tell us that their intentions are pure, they are not attempting to undermine...
Roe v. Wade. In fact, one prominent Senator stated, "They say it undermines abortion rights. It does . . . but that's irrelevant." Mr. Speaker, that is not irrelevant. This is a back door attempt to chip away at a woman's right to choose and I wish the supporters of this legislation would just admit it.

Now, I would argue that this body is to pass meaningful legislation to prevent and punish those who assault pregnant women, I would urge my colleagues to vote "yes" on the Lofgren substitute. This substitute, based on H.R. 2247, addresses the real issue at hand. This substitute and oppose this cynical election later date.

Mr. KUCINICH. Mr. Speaker, the Unborn Victims of Violence Act (UVVA) is a Trojan Horse. While its sponsors claim that the bill will deter violence against pregnant women, the legislation actually does nothing to the rights that women have to make reproductive choices. In fact, this legislation is not about deterring violence against pregnant women.

Individuals who commit violent acts against pregnant women should be prosecuted to the fullest extent of the law and I strongly agree that Congress should increase penalties for these types of crimes. That is why I am a co-sponsor of the Motherhood Protection Act. This establishes higher penalties when violent crimes against pregnant women interrupt the normal course of pregnancy. These higher penalties apply based on UVVA. However, UVVA isn’t designed to protect pregnant women from violent acts. It is crafted in order to undermine the right to reproductive choice by Federally recognizing a fetus with separate legal rights. That would be a big change in federal law that gives separate legal rights to embryos or fetuses. There is no need to establish controversy, unprecedented Federal rights for embryos. Doing so, as UVVA does, radically changes the law without making any women safer.

UVVA would not help women when they and their pregnancies suffer as a result of domestic violence. This proposal would only confuse and complicate juries. UVVA would make it more difficult to prosecute violent crimes against women. Yet, at this time, there is nothing in Federal law that gives separate legal rights to embryos or fetuses. There is no need to establish controversy, unprecedented Federal rights for embryos. Doing so, as UVVA does, radically changes the law without making any women safer.

Mr. Speaker, as folks back in my home state of Georgia say, “that’s as wrong as the day is long” . . . It’s high time we did something about this and passed this legislation. Yet, despite the facts and the very strong support of the American people for this bill, we continue to hear from a band of critics on the other side of the aisle that this debate is really somehow about abortion . . . that even though this bill says absolutely nothing about any abortion law anywhere in our nation—that’s really what this bill is all about.

Well, the reaction of this country dentist from Georgia to that kind of nonsense is pretty simple: “Gawsh! This is about one thing and one thing only—letting America’s expectant mothers know that the child they have chosen to give birth to is protected by this Federal Government against the dastardly acts of violent criminals.”

Mr. Speaker, I’m not struggling anymore. The answer is clear: there is no good reason that our government should allow this tragic double-standard to continue. Again, I urge my colleagues in this body to do the right thing and vote in favor of the Unborn Victims of Violence Act.

Mr. TOM DAVIS of Virginia. Mr. Speaker, I rise today to join my colleagues in support of the Unborn Victims of Violence Act. It is imperative to ensure those infants "in utero" in the second victim, the unborn child. And in fact, protected from criminal assailants, and that we impose a penalty when acts of violence against these unborn victims fall under Federal criminal law. Some claim this measure will infringe on a woman’s right to choose. But currently, 29 States have statutes that criminalize the killing of a fetus or “unborn child”, and none of these laws have affected States’ practice of legal abortion. Criminal defendants have brought many legal challenges to the state unborn victims laws, based on Roe v. Wade and other constitutional arguments, but all such challenges have been rejected by State and Federal courts. We cannot turn our backs on mothers, fathers, and grandparents across our Nation who lose unborn babies due to heinous acts of violence every year. This will serve as an additional deterrent to violence. The Unborn Victims of Violence Act. H.R. 1977, sends a clear and strong statement that anyone who injures or kills unborn children is committing a crime. I wish my fellow colleagues would join me in making as equally strong a statement when it comes to injuring our children by injecting them or their mothers or their fathers with vaccines containing the mercury-based preservative Thimerosal.

Over the last several years, I have conducted 19 hearings on vaccines and the detrimental health effects of other mercury-containing medical products. On May 21, 2003, my subcommittee’s 80-page report entitled, “Mercury in Medicine—Taking Unnecessary Risks” was published in its entirety in the CONGRESSIONAL RECORD. This study was the result of a 3-year investigation during my tenure as the chairman of the House Committee on Government Reform, and it outlines the undeniable connection between mercury in all its forms and possible permanent health risks, including brain and kidney damage. According to the U.S. Centers for Disease Control, developing fetuses and young children are the most vulnerable and susceptible to the potential harms of mercury damage. Because of this, a joint statement was issued in July 1999 by the American Academy of Pediatrics and the U.S. Public Health Service, recommending removal of Thimerosal from vaccines as soon as possible (CDC, 1999).” It is now 2004, and there are still at least 3 vaccines on the pediatric schedule that still contain Thimerosal (flu, Hib/HepB, and DtaP).

In 2001, the Institute of Medicine conducted an immunization Safety Study meeting on safety concerns regarding Thimerosal. In their report, it was concluded in their “Recommendations Regarding the Public Health Response” section that “...a causal relationship between Thimerosal-containing vaccines and developmental disorders ... is biologically plausible.”

I believe that it is good public policy and simple common sense for this House to
strongly assert that all United States Health Agencies should take concrete steps to eliminate the usage of mercury in any capacity, particularly from all vaccines and dental amalgams. I believe that it is good public policy and simple common sense for this House to strongly assert that any vaccinations produced under the Vaccines for Children Program be completely devoid of Thimerosal or any other preservative in their vaccines if they switched to the single-shot vials. Moving to single-shot vials could have an enormously positive impact in helping to minimize, perhaps even eliminate, some cases of Alzheimer’s, autism, and other neurological disorders linked to mercury.

This is something that the pharmaceutical companies must address. Our Food and Drug Administration and health agencies are asleep at the switch. They are letting children and adults be damaged day after day by allowing mercury to continue to be put into vaccines for adults and children.

We have a growing number of people who are being diagnosed with Alzheimer’s, a dramatically growing number. We have 1 in 10,000 children 10 years ago that were autistic, now it is 1 in 150. And scientists before my Committee on Government Reform Subcommittee on Human Rights and Wellness say it is in large part because of the mercury in the vaccines. We have to get the FDA on the stick. They have to demand that pharmaceutical companies remove the mercury out of them very, very quickly. If not, we are going to continue to have an epidemic on our hands that America does not need and should not tolerate.

Mr. BRADY of Texas. Mr. Speaker, I rise in support of H.R. 197, the Unborn Victims of Violence Act and want to thank my colleague from Pennsylvania for introducing it.

Sadly, in America today an individual who commits a Federal crime of violence against a pregnant woman will receive no additional punishment for killing or injuring the woman’s unborn child while committing the crime. America’s mothers and their unborn children deserve better. When the crime involves two victims, the law must protect and provide justice for both.

The legislation we are considering today, H.R. 197 would make it a separate Federal crime to hurt or kill an unborn child during the commission of a Federal crime against a pregnant woman. Over half of the States in our country currently recognize both the mother and the unborn child as victims of violent crimes.

In fact, just last week the Commonwealth of Kentucky enacted a fetal homicide law in response to public attention to a recent tragedy in that State where 18-year-old Ashley Lyons and her unborn baby died. As both a strong supporter of victim’s rights and a pro-life advocate, I recognize that the voices of members of families who have lost loved ones—born and unborn—in crimes of violence, are an important part of the debate over this legislation.

Carol Lyons, Ashley’s mother, says, Nobody can tell me that there were not two victims—I placed Landon in his mother’s arms, wrapped in a baby blanket that I had sewn for him, just before I kissed my daughter goodbye for the last time and closed the casket.

The House of Representatives overwhelmingly passed this bill in 1999 and again in 2001. In both cases, it was never brought up for a vote in the Senate.

However, this year we finally have an opportunity to finally enact this legislation into law. Recent violent crimes involving the murder of unborn children and their unborn children have captured national attention and brought to light the judicial plight family members of victims face when they seek justice.

I strongly oppose the substitute amendment being offered by Congresswoman ZOE LOFGREN. Her amendment fails to recognize the unborn child as a victim of a crime, even in circumstances when the perpetrator acts with specific intent to kill the unborn child. A vote in favor of the Lofgren substitute is a vote to codify the doctrine that an attack on a pregnant woman has only a single victim, even when the mother survives and the baby dies.

Mr. CANTOR. Mr. Speaker, as legislators, it is our responsibility to stand up and protect innocent members of society. Presently, an individual who commits a Federal crime against a pregnant woman receives no additional punishment for killing or injuring the woman’s unborn child while committing the crime.

The Unborn Victims of Violence Act protects pregnant women and their unborn babies. The current Federal law is unjust, and Laci and Conner’s Law will protect women from further abuse. This new law will send the right message that both a mother and a child should be protected.

Right now, the law says that the pregnant woman is the only victim in a crime, and nothing could be further from the truth. There are two victims harmed in this crime, the mother and her unborn baby. As a cosponsor of this legislation, I will work to ensure it is enacted into law.

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

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

The SPEAKER pro tempore. The SPEAKER pro tempore (Mr. MOORE). All time for general debate on this bill having expired, it is now in order to consider the amendment printed in part B of House Report 108-427 by Ms. LOFGREN.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MS. LOFGREN

Ms. LOFGREN. Mr. Speaker, I offer an amendment in the nature of a substitute.

The SPEAKER pro tempore. Pursuant to House Resolution 529, the gentleman from California (Ms. LOFGREN) and the gentleman from Wisconsin (Mr. SENSBRENNER) each will control 30 minutes.

The Chair recognizes the gentleman from California (Ms. LOFGREN). Ms. LOFGREN. Mr. Speaker, I yield myself such time as I may consume.

Today I offer a substitute that my colleagues and I hope can unify Members on both sides of the debate over choice to achieve a very important goal, the deterrence and punishment of violent acts against pregnant women.

According to the purported goals of H.R. 197, that is our common ground, but it is clear that the purpose of H.R. 197 is not actually to achieve the purported common goal of protecting pregnant women from assault. If that were the case, we would all vote today.
for the Lofgren substitute and begin to ensure that women across the country are safe from violence.

The Lofgren substitute does not threaten Roe v. Wade, but instead creates a new separate offense for any violent criminal conduct against a pregnant woman that interrupts or terminates her pregnancy. The substitute provides that any termination in the pregnancy is punishable by a fine and imprisonment of up to 20 years, and if the pregnancy is terminated, even if unintentional, the assailant is automatically sentenced to life in prison. These penalties are even tougher than those provided for in the Unborn Victims of Violence Act.

Those of us who have experienced a miscarriage understand a very essential truth: The loss is something you never forget. Whether the woman is 6 weeks pregnant or 6 months pregnant, the loss is acutely felt by that woman, and it deserves the full penalty that the law commands. Penalties under H.R. 1997, however, vary depending upon the underlying crime resulting in inconsistent penalties for the same horrific crime. In fact, under H.R. 1997, if a postal worker was assaulted with a knife in the back, there is a resulting injury to her pregnancy, there is only a maximum penalty of 3 years; but if the same assault happened to another Federal employee, her assailant could get up to 8 years in prison under H.R. 1997. Why should the penalty for injury to one pregnant woman over another depend upon where she works? It defies logic and reason.

Unlike the Unborn Victims of Violence Act, the Lofgren substitute has tough, consistent penalties for the same horrific crime, regardless of irrelevant circumstances like the place of employment. A loss or injury to a pregnancy is the same loss to a woman no matter where she works.

Mr. Speaker, advocates for H.R. 1997 say their bill is about protecting women from violence. In fact, the bill ignores women. H.R. 1997 does not address the woman nor the assault committed against her. Under H.R. 1997, there is a possibility that the crime against the woman could go unpunished because there is no conviction requirement for the underlying crime. How can the other side say they are preventing crime against pregnant women, when you ignore her and the crime against her?

Mr. Speaker, the bottom line is the Lofgren substitute does not needlessly interject the abortion debate and exploit what is conceded a matter of a pregnant woman’s right to a safe, healthy and free from horrific acts of violence pregnancy.

Although many have said that the underlying bill has nothing to do with abortion, I think it is important to look at the proponents of the pro-choice movement who seek to limit about the bill, and I would like to quote Samuel Casey, the executive director of the Christian Legal Society, who said last year, “In as many areas as we can, we want to put on the books that the embryo is a person. That sets the stage for a jurist to acknowledge that human beings at any stage of development deserve protection, even protection that would trump a woman’s interest in terminating a pregnancy.”

J. Cook, vice president of the American Association of Pro Life Obstetricians & Gynecologists, said last year, “We have to approach this in a way that is defensible, a step at a time. This bill is aimed at establishing that a fetus in utero is a human being and has human rights.”

Finally, Senator Orrin Hatch said last year, “They say it undermines abortion rights; it does, but that is irrelevant.” Irrelevant perhaps in the other body, but not to me.

Mr. Speaker, I support legislation that has the goal of protecting a pregnant woman from violence. I cannot do so through legislation that would also undermine other extremely important rights of women, like the right to choose. That is antithetical to the protection and safety of women.

I hope we can come together on this substitute. Congress there were a number of antichoice Members of the House that voted for the substitute, understanding that the penalties are more severe and would provide more complete protection for women. I urge my colleagues to do so again to show this country that Congress is serious about protecting pregnant women from violence.

We have in this country and in this House strong disagreement about who gets to decide whether a pregnancy will be brought to term or not, the Congress or the woman. That debate is going to go on for a long time, but it does not have to be part of this discussion. We can come together to protect women and their families. I hope our country can move away from the argument about abortion involved in that effort. I hope that we can come together to embrace common ground on what I think could be a moment of triumph for this Congress and for the American people in standing against violence against women.

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

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

Mr. Speaker, the substitute amendment should be soundly defeated as it would throw salt into the wounds of those parents who have implored this Congress to recognize under Federal law the loss of their loved, unborn child.

These mothers are not seeking recognition of the violence they have suffered alone. They are seeking recognition of the violence their unborn children have suffered as well. They are seeking recognition of the loss of their unborn child.

H.R. 1997 recognizes that loss; the substitute does not. This House has defeated this substitute amendment each time it has been brought up, with increasing margins during the 106th and 107th Congresses. We should increase that margin today.

A recent Fox News poll asked, “If Scott Peterson is convicted of killing his pregnant wife, Laci, do you think he should be charged with one count of homicide for murdering his wife, or two counts of homicide for murdering both his wife and his unborn son?” An overwhelming 84 percent of the American public responded that two counts, not one, should be brought.

These results are confirmed by two other recent polls that show support for two separate charges for violent criminals who harm mothers and their unborn children. Support for a separate charge for an unborn victim is 84 percent, according to a Newsweek poll, and 79 percent, including 69 percent of those who describe themselves as pro-choice, according to another Fox News poll conducted in July. Each poll found that less than 1 in 10 of those who disapprove of the bill support the one-victim approach.

This substitute amendment embodies the extreme ideology of those who are unwilling to recognize an unborn child in the law in any context whatsoever.

The term “unborn child” as used in H.R. 1997 has been widely used and accepted by judges, including the Supreme Court, and Justice Blackmun, the author of Roe v. Wade, has recognized it. The term “unborn child” has been widely tested in court and has sustained all constitutional challenges in terms of a fetal homicide law. Removing that term and replacing it with the vague and untested language of the substitute would accommodate nothing, while risking grave confusion and jeopardizing the conviction of violent Federal criminals. The abstract language in the substitute, which points to injuries to a “pregnancy,” ignores the fact that violent criminals can and do inflict injuries on a real human being in his or her mother’s womb. If an assault is committed on a Member of Congress and her unborn child subsequently suffers from a disability because of the assault, that injury cannot accurately be described as an abstract injury to a pregnancy. It is an injury to an unborn child. The bill recognizes that. The substitute does not.

Also, unlike the language of H.R. 1997, the substitute contains no exception for abortion-related conduct, for conduct of the mother, or for medical treatment of the pregnant woman or her unborn child. This omission leaves
the substitute amendment bare to the charge that it would permit the prosecution of mothers who have abortions who inflict harm upon themselves and their unborn children or doctors who incidentally kill or injure unborn children as a result of their treatment. For that reason, the substitute amendment will certainly be subject to a successful constitutional challenge. The underlying bill has been tested and proven constitutional.

Today's debate is not about penalties for victims. It is about the bill. H.R. 1997 recognizes unborn victims of violence. The substitute does not. In the name of unborn victims, including Conner Peterson, Heaven Lashay Pace, Zachariah Marciniak, Landon Lyons and the others who are not named today but are known and loved and missed by their surviving family, the substitute should be soundly defeated and the bill passed.

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

Ms. LOFGREN. Mr. Speaker, I yield myself such time as I may consume. I would note that on line 6 on page 1 of the amendment, it notes that whoever engages in any violent or assaultive conduct against a pregnant woman resulting in the death of the person so engaging does not include an abortion that is legal because of Roe v. Wade.

Mr. Speaker, I yield 4 minutes to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Mr. Speaker, I stand here today strongly supporting the Lofgren substitute. The gentleman from Illinois (Mr. Hוה) is right, my colleagues and I have considered an unbelievable number of antichoice proposals over the last few years, including 200 since the Republicans took over the House of Representatives.

These proposals have troubled me; but this bill, the bill that we are considering today, is perhaps the most disconcerting of them all. Instead of open-mindedly admitting what they are attempting to do to a woman's reproductive freedom, proponents of this bill are exploiting a senseless and tragic crime to make their true intentions hidden. Let me be clear. We all oppose violence against women, and we all understand that a violent attack on a pregnant woman is an especially heinous act that deserves a uniquely harsh punishment. But that is not what the underlying legislation is about.

Our constituents deserve an honest debate about this proposal and some very honest information. I am sure that many people assume that this legislation if it were approved would have an impact on the tragic case in California after which this case is named. People also probably assume it would create an effective new tool to prosecute many domestic abusers who harm their pregnant or non-pregnant women or boyfriends. That is simply not true. Women are the victims of violence across the country every day, but rarely does this violence fall in the jurisdiction of federal courts. Unless a fetus is harmed in the commission of a violent federal crime, this bill will not apply.

Considering that this new law would rarely be applied, you may wonder, how about who they are talking about? We are here to undermine the fundamental protections of Roe v. Wade with platitudes about violence against women thrown on as window dressing. If this bill passes, a 2-hour-old fertilized egg will have the same rights as the woman bearing it. Antioch choice forces have been very open and honest about their strategy for turning back the clock on reproductive freedom in this country. In fact, we have heard many of the underlying bill's proponents tell you that the egg is a human. By declaring that even a fertilized egg is a person, proponents are laying the groundwork for undermining women's ability to make their own medical choices and decisions.

Thankfully, we have an opportunity to address horrific acts of violence against pregnant women without undermining the woman's ability to control her own body. This ability is through the Lofgren substitute, which establishes clear, constitutional, penal penalties for those who violently harm pregnant women without reducing her rights to that of a fertilized egg. We should not be debating this today. We should be debating and approving policies that help keep every woman safe in her own home and ensure that every pregnancy is a healthy one. I urge my colleagues to join me in supporting the Lofgren substitute and opposing the underlying bill. This bill is nothing but an exploitive attempt to end reproductive freedom.

Mr. SENSENBRENNER. Mr. Speaker, I yield 7 minutes to the gentleman from Ohio (Mr. CHABOT), the distinguished subcommittee chairman.

Mr. CHABOT. Mr. Speaker, I thank the gentleman for yielding me this time. This substitute amendment should be soundly defeated. The substitute amendment appears to operate as a mere sentence enhancement authorizing punishment in addition to any penalty imposed for the predicate offense. That is most unfortunate. No sentencing enhancement can adequately express society's disapproval for the distinct loss that occurs when a mother is harmed or killed by a violent criminal. A loss that is both unique and uniquely offensive to both a loving expectant mother and to the vast majority of Americans warrants a unique and separate offense under the criminal law. H.R. 1997 provides for a separate offense. The substitute does not.

Indeed, the witnesses we heard from in committee supporting H.R. 1997, this bill, have told us that they are not Republican. Democrats, they said. And in any case, the are people who have lost unborn children to violence, and they want those children treated appropriately under the law. That is precisely what H.R. 1997 does. The substitute does not.

Sharon Rocha, the mother of Laci Peterson and the grandmother of unborn victim, Conner Peterson, has written that "the Lofgren proposal should enshrine in law the offensive concept that such crimes have only a single victim, the pregnant woman."

Shiwona Pace, whose unborn child, Heavenly, was brutally murdered by three hired hitmen, has said, "It seems to me that any Congressman who votes for the one victim amendment is really saying that nobody died that night. And that is a lie."

Those who focus this debate on penalties and abstract terms such as harm to a pregnancy rather than to an unborn child misunderstand the purposes of the criminal law. The criminal law does not exist only to punish criminals; it exists to lend dignity to victims, including unborn victims. It is an expression not only of society's disapproval of certain conduct, but of its recognition of the victims of such conduct and the manner in which such victims should be recognized. A separate offense for harm to an unborn child forces all of us, including potential criminals, to consider the act of harming an unborn child as an independent evil.

A Newsweek poll found that only 9 percent of those surveyed, less than one in 10 Americans, oppose a separate offense for killing an unborn child. Those 9 percent of Americans who should be heard, of course, and they have been heard through this substitute amendment. But they must not win, as the law exists in large part to reflect America's overwhelmingly shared values, and those shared values support separate charges for the killing and injuring of wanted, unborn children.

I ask, looking at this picture, is this Tracy Marciniak that we have talked about. This is her unborn child here. Zachariah. Tracy was attacked by her husband, who is pregnant with this child. Tracy survived her physical injuries. The child died that night. I ask you, this is the funeral of this child. There is Tracy holding her child. How many victims do we see in this photograph? I think it is clear, there are two victims in that photograph. This legislation that we are addressing here today recognizes two victims. The substitute amendment does not.

The terminology in the substitute amendment is hopelessly confusing; and if adopted, it will almost certainly jeopardize any prosecution involving the injuring or killing of an unborn child during the commission of a violent crime. The substitute amendment provides an enhanced penalty for "interruption to the normal course of the pregnancy resulting in prenatal injury, including termination of the pregnancy." The amendment also eliminates greater punishment for an interruption that terminates the pregnancy than it does for a mere interruption of a pregnancy. What exactly is
the difference between an interruption of a pregnancy and an interruption that terminates the pregnancy? The substitute does not say. Does any interruption of a pregnancy not necessarily result in a termination of the pregnancy? Or have the supporters of this substitute somehow succeeded in mastering the science of suspended animation? By defining an interruption to the normal course of the pregnancy, the substitute is either science fiction or simply impossible for Federal prosecutors to apply.

The substitute amendment is a moral failure in that it refuses to recognize that unborn children can be victims of violence. It is a drafting failure in that its ambiguous terminology would leave prosecutors at a loss as to how to administer it. And it is a constitutional failure in that it contains no exceptions for abortion-related conduct. The substitute should be soundly defeated.

In my view, it all comes down and this entire debate is summed up in a single photograph. Whether or not there are two victims in this photograph or only one is the issue that is at hand. The majority in this House, as we have had it here twice before and it has passed with pretty overwhelming numbers, the majority of us see the clear indication in this picture that there are two victims. The substitute amendment, and it is craftily worded, but ambiguous enough that prosecutors have indicated that successfully prosecuting an offense under the substitute is virtually impossible; but the people that support that particular substitute amendement are indicating in essence that there is only one victim here. I think common sense should prevail. There are two victims.

I would strongly urge my colleagues to defeat the substitute amendment and pass the underlying bill.

Ms. LOFGREN. Mr. Speaker, I would just note that just for corrective purposes, to what extent does provide for a separate offense, not a sentence enhancement.

Mr. Speaker, I yield 4 minutes to the gentlewoman from Wisconsin (Ms. BALDWIN), a member of the Committee on the Judiciary.

Ms. BALDWIN. Mr. Speaker, I rise today in strong support of the Lofgren substitute to H.R. 1997. Violence against women remains epidemic in our society. According to a Commonwealth Fund survey, nearly one out of every three adult women experiences at least one physical assault by a partner during adulthood. Acts of violence committed against pregnant women are especially heartbreaking and abhorrent. Congress should and must focus sharply on efforts addressing this issue.

But we can address this issue without tangling it in the abortion debate. And the gentlewoman from California’s (Ms. LOFGREN) substitute does exactly that. It focuses on the crime of violence against the pregnant woman without undermining a woman’s right to choose. The substitute creates a separate and distinct crime for any violent assault against a pregnant woman that harms or ends her pregnancy, in addition to the assault of the pregnant woman herself.

Most importantly, this substitute avoids the issue of fetal rights and fetal personhood. It correctly recognizes that the pregnant woman is the primary victim of an attack that can result in injury or death of her pregnancy. In this way, the substitute we consider today accomplishes the stated goals of the underlying bill, the deterrence and punishment of violent acts against pregnant women, without bogging us down in the abortion debate.

I urge my colleagues to ask themselves why H.R. 1997 treats an embryo or a fetus at any stage of development as an individual, with extensive legal rights against the mother. How would establishing this legal framework reduce the occurrence of crimes against pregnant women? The answer is that the underlying bill is not directed to the pregnant woman. Instead, the substitute unnecessarily opens up an abortion debate.

I applaud the gentlewoman from California’s (Ms. LOFGREN) efforts of addressing the serious issue of violence against pregnant women in a way that accomplishes the goal of reducing this violence in a nonaggressive manner, and I urge my colleagues to support this substitute.

Mr. SENSENBRENNER. Mr. Speaker, I yield 4 minutes to the gentlewoman from Pennsylvania (Ms. HART).

Ms. HART. Mr. Speaker, I thank the gentleman for yielding me this time as well as the opportunity to debate the substitute.

This bill, the underlying bill, does address the rights of women. We have heard many who oppose it and support the substitute state that it does not. And it clearly allows a woman to seek punishment from the perpetrator of a crime against her that she may survive and that may cause the death of her unborn child. A woman who has made a decision to carry a child has that taken away from her during a violent act. Somehow I do not see how this reduces her rights.

The Lofgren substitute, however, fails entirely to recognize unborn children as victims of violent crime; in fact, transforming the child’s injuries to what amount to mere abstractions. The terminology in this substitute is virtually incomprehensible, and if adopted, it will almost certainly jeopardize any prosecution for injuring or killing an unborn child during the commission of a violent crime against the mother.

The substitute amendment provides an enhanced penalty for what is called interruption of the normal course of pregnancy, resulting in prenatal injury, including termination of pregnancy. The amendment then authorizes greater punishment for the interruption that terminates the pregnancy than it does for a mere interruption of the pregnancy. But what exactly is the difference between the termination and the interruption of a pregnancy? It implies that a pregnancy can stop and start again, but does not an interruption of a pregnancy necessarily result in the termination of the pregnancy? And what does the phrase “termination of the pregnancy” really mean here? Does it mean that the unborn child died, or could it also mean that the child was born prematurely even without suffering any injury? These ambiguities make the substitute impossible to comprehend and certainly difficult to enforce.

Second, the substitute amendment appears to operate as a mere sentence enhancement, authorizing punishment in addition to any penalty imposed for the crime against the mother. Yet the language of the substitute suggests it be a separate offense for killing or injuring the unborn child, but then it does not allow the prosecutor to proceed with a crime against the unborn child. Is a separate charge necessary for the enhancement to be imposed? The substitute amendment simply does not make this clear.

It also mischaracterizes the nature of the injury that is inflicted when an unborn child is killed or injured during the course of such a violent crime. Under the current language of the bill, a separate offense is committed whenever an individual causes the death or injury of a child who is in utero at the time the conduct takes place. The substitute would transform the death of the unborn child against an abstract, “terminating a pregnancy.” Bodily injury inflicted upon the child would become a mere prenatal injury. Both injuries are described as resulting from the interruption of the normal course of pregnancy. These abstractions ignore the fact that the death of the unborn child occurs when a pregnancy is violently terminated by a criminal.

The substitute also fails to recognize that a prenatal injury is an injury inflicted upon a human being in the womb of his or her mother. If an assault is committed on a pregnant woman, and her child subsequently suffers from a disability because of the assault, the injury cannot be accurately described as an abstract injury to a pregnancy. It is only an injury to a human being. Our bill recognizes that; the substitute does not.

The substitute is fatally flawed and should be rejected.

Sharon Rocha, the mother of Laci Peterson, the grandmother of unborn victim Conner Peterson, has written that the Lofgren proposal would enable “the law of the land that such crimes have only a single victim, the pregnant woman.” The substitute amendment embodies the extreme ideology of those who are unwilling to
recognize the unborn child under law in any way.

Our approach works. Twenty-nine States have laws that recognize two victims. They have been challenged in court and have survived. Reject this substitute. The bill that will provide for two victims, and one that we know that works, and one that is not offensive to the families of these victims.

Ms. LOFGREN. Mr. Speaker, I yield 2 minutes to the gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Speaker, I have left a hearing to come to the floor to congratulate the gentlewoman from California for coming forward with a bill that does what the great majority of the American people want to see us do today.

Is the point here to penalize crimes against pregnant women or to give personhood to the fetus? I think the majority would say it is the latter. I believe Congress got around to recognizing that when, in fact, a violent crime is committed against a pregnant woman, that is a crime against the family, and we should have done something about it long ago.

But what we are doing here with the bill that is on the floor is forcing some Members to vote against the bill, a bill that would otherwise have nearly universal approval in this House. It reminds me of an effort that took us to pass the Violence Against Women Act because we nitpicked at it, at this, that, and the other. And it must have been 6 or 7 years before the Violence Against Women Act passed in the face of rising violence against women.

We are doing the very same thing with crimes against pregnant women. It is a terrible act to commit a violent crime against a pregnant woman. We should not leave this issue unless we come to an agreement on, in fact, dealing with that crime and that crime alone.

What the majority is trying to do here is to say to them I do not think they can constitutionally do anyway. The majority cannot confer personhood on a fetus in the face of Roe v. Wade. They can keep coming to the floor all they want to, but I do not think that they can successfully do that by statute. But we can keep a substitute that is critically important from coming out of any Committee by insisting on conferring personhood against the will of the majority of people, of the majority of the United States, who support the common-sense approach to choice.

The number of pregnant women who have been murdered has been grossly underreported because they are reported as murders. It is time we did something about it. This is a separate offense. It is a separate criminal offense. The bill that we have is one that will congratulate the gentlewoman for getting us to where we need to be today, justice for women, finally, on violence against those who are pregnant.

Mr. SENSENBRENNER. Mr. Speaker, I have one more speaker to close on this side. Does the gentlewoman from California have any further speakers? Ms. LOFGREN. Mr. Speaker, may I ask how much time remains?

The SPEAKER pro tempore. The majority has the right to close.

Ms. LOFGREN. Mr. Speaker, I yield 4 minutes to the gentlewoman from California (Ms. LINDA T. SANCHEZ), a member of the Committee on the Judiciary.

Ms. LINDA T. SANCHEZ of California. Mr. Speaker, I rise in opposition to the Unborn Victims of Violence Act and in support of the substitute bill offered by the gentlewoman from California (Ms. LOFGREN), the Motherhood Protection Act.

I believe very strongly that violence against pregnant women is one of the most morally reprehensible crimes. Any act of violence against pregnant women should be condemned, and I support legislation that protects women and their unborn fetuses from violence.

However, I have to rise and oppose the Unborn Victims of Violence Act that we are considering on the floor today because it jeopardizes a woman’s right to choose, disguised, sadly, as an effort to protect women from violence. This bill is a blatant attempt to undermine a woman’s right to choose, disguised, sadly, as an effort to protect women from violence. Under the Unborn Victims of Violence Act, for the first time anywhere in Federal law, an unborn fetus at any stage of development will be treated as a person that can be an independent victim of a crime. It is not that hard to figure out that it is a direct attack on a woman’s right to choose as established in Roe v. Wade.

The Unborn Victims of Violence Act is also inadequate for protecting women from violence. If the proponents of this bill were, in fact, sincere in their desire to prevent harm to unborn fetuses, they would start by preventing harm to pregnant women. It is very telling that the Unborn Victims of Violence Act is silent on the issue of preventing and punishing violent crimes against women and that the proponents of this bill will not accept the substitute bill offered by Ms. LOFGREN, the Motherhood Protection Act.

The gentlewoman from California’s (Ms. LOFGREN) substitute provides women and fetuses with the protections they need. It creates a separate Federal crime. It is a separate Federal crime for harm to pregnant women and imposes a penalty of up to 20 years in prison for injury to embryos or fetuses. If a woman’s pregnancy is terminated in an attack, the penalty can be up to life in prison.

The Lofgren substitute is a far better bill than the Unborn Victims of Violence Act because it protects women, it protects fetuses, and it still preserves a woman’s right to choose. I urge my colleagues on both sides of the aisle to show women in this country that we will protect them from violence by voting no on the Unborn Victims of Violence Act and voting yes on the superior Lofgren substitute.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. Mr. Speaker, I thank my good friend for yielding me this time.

Mr. Speaker, this on my left is a picture of Tracy Marciniak holding her son at his funeral. She met with me. She met with other Members. The gentlewoman from Ohio (Mr. CHABOT) just spoke of this, to tell us what happened to her and to her son Zachariah. Minimum time was given to the attacker, that nobody died that night, the penalty whatsoever imposed for the killing of this little baby. Tracy has written to Congress, and I hope you all stand up and take notice, and said “Congress should approve the Unborn Victims of Violence Act. Opponents of this bill have put forth a counterproposal, known as the Lofgren amendment. I have read it,” she goes on to say, “and it is offensive to me because it says that there is only one victim in such a crime, the woman who is pregnant.”

“Please hear me,” she goes on to say. “On the night of February 8, 1992, there were two victims. I was nearly killed. Liza Zachariah died. Any lawmaker who is thinking of voting for the Lofgren ‘one-victim’ amendment should first look at this picture of me holding my dead son at his funeral. Then I would say to that Representative, ‘If you really think that that is right, I urge you to vote for the ‘one-victim’ amendment.’”

Mr. Speaker, the Lofgren amendment stripped of its surface appeal trappings and enhanced penalty does have one significant advantage. It targets an objective, and that is denial. Denial that an unborn child has inherent dignity, denial that an unborn child has worth, denial that an unborn child has innate value. The gentlewoman from California (Ms. WOOLSEY) said a few moments ago in this debate we all oppose violence against women. I thank her for that admission.

Back in the 100th Congress I was prime sponsor of legislation that included the Violence Against Women Act, the 5-year authorization. The gentlewoman from Illinois (Mr. HYDE), who was then chairman of the Committee on the Judiciary, worked to craft language that throws the book at those who commit violence against women, while providing shelters, and so many others worked on that. It was division B of that bill. I was the prime sponsor. So no one on that side of that divide takes a back seat to anyone that says that somehow we are not against violence against women.

The gentlewoman from Wisconsin (Ms. BALDWIN) said a moment ago that...
the woman is a victim and not the only victim. There is another victim, the baby. And I just want to say again, talking about the gentlewoman from California’s (Ms. WOOLSEY) comments, while we are all against violence against women, we are not all against violence against unborn children. And this bill offered by the gentlewoman from Pennsylvania (Ms. HART) and the gentleman from Wisconsin (Mr. SENSBRENNER) and the others who are leading the effort on this are saying a mugger does not have an unfettered right or access to an unborn child to kill him or her.

The amniotic sac is a protective covering over an unborn child, but it is not made of Kevlar. Those sacs can be pierced so easily by a knife or by a bullet, and we are saying when a knife or a bullet or a fist pierces and kills a little baby like Zachariah, there ought to be a separate offense. Yes, throw the book at the mugger for any offense that he commits against a woman, we are all for that, but do not deny a penalty for a child who has been killed by that same act.

Vote against the Lofgren amendment and for the Hart bill.

Ms. LOFGREN. Mr. Speaker, I yield myself such time as I may consume. Mr. Speaker, the substitute that I have offered creates a separate Federal criminal offense for assaulting a pregnant woman resulting in injury or termination of her pregnancy, without entangling the issue in our disagreement about abortion and the woman’s right to choose.

In addition to recognizing the horrendous underlying crime of assault on a pregnant woman, it recognizes the horrific crime of assault on a pregnant woman that results in the interruption or termination of a pregnancy. It creates an offense that protects pregnant women and punishes violence without conflicting with the core principles of Roe v. Wade.

The substitute provides consistent penalties for the same horrific crime. It provides for a consistent maximum 20-year sentence for injury and a consistent maximum life sentence for causing the termination of a woman’s pregnancy. It requires a conviction for the underlying criminal offense, ensuring the crime is proven. The woman is also punished, and it focuses on the assault of violence committed against the pregnant woman, providing a deterrent effect for violence against women.

I am sure that the Members of this body who oppose a woman’s right to choose also oppose violence against women. There is no disagreement on that score. All I am saying with my substitute is that we have the ability to come together in this substitute against violence against women without entangling our very serious disagreement about choice.

I think it has been made clear by the proponents of this bill that it is about choice. That is why this bill, the underlying bill, was referred and considered by the Subcommittee on the Constitution, not the Subcommittee on Crime, in the Committee on the Judiciary, because it is about the Constitution.

The policy of the underlying bill is to undercut Roe v. Wade. I think Roe v. Wade provides important protections for the women of this country. I am 56 years old, and I remember as an undergraduate in college young women who had to seek illegal providers or go to another country. I know women who almost lost their lives. Thankfully, because the Supreme Court has now recognized that women have the right to make choices about their own reproduction, women now do not have to seek illegal or dangerous health care solutions when they have made a decision that they cannot have a child.

I think that Roe v. Wade, by allowing women to make decisions about their own lives, is an important principle and an important defense for the freedom of American women, and I do not think American women should give up their freedoms without getting protection from violence. That is what I think the underlying intent of H.R. 1997 is. I think that is why the National Coalition Against Domestic Violence, which represents organizations and domestic violence shelters in all 50 States, opposes H.R. 1997.

So I hope the Lofgren substitute will be approved, and I hope that we can come together to stand against violence and for freedom for American women.

Mr. Speaker, I yield 3 minutes to the gentlewoman from Colorado (Ms. DEGETTE).

Ms. DEGETTE. Mr. Speaker, I rise in strong support of the Lofgren amendment and in opposition to the Unborn Victims of Violence Act.

Mr. Speaker, the majority of Americans are prochoice, and they depend on us to protect that right to choose, while at the same time working to make abortion rare by making sure that all women have a full range of reproductive choices. They depend on us to pass legislation that will protect their reproductive freedom, and they depend on us to know the difference between legislation that truly protects women and legislation that is discussed as something that it is not, like, for example, the bill that is before us now.

Today, Members of Congress who truly care about the issue of violence against women can put their words into action by voting for the Lofgren substitute. The substitute provides for the deterrence and punishment of violent acts against pregnant women, and it does so while completely avoiding the controversial issues of abortion. It creates a new separate crime with tough penalties, up to 20 years to life, for an assault that causes the termination of a pregnancy.

So my colleagues can choose to vote for the substitute and actually accomplish a goal they care about, or they can go with the underlying bill, which is nothing but a poorly disguised vehicle to undermine Roe v. Wade.

We are not fooled by this legislation. Our constituents will not be fooled by this legislation. We Members of the House really care about taking steps to protect pregnant women and punish the people who commit horrible acts of violence against them, we will all join together and vote for the Lofgren substitute.

There is only one real difference between the substitute and the underlying bill, and it is this one thing that reveals the true goal of H.R. 1997. The underlying bill creates a Federal criminal offense that provides a pregnancy from conception to birth with the legal status separate from that of the woman. Regardless of what we are hearing today from proponents of the legislation, there is only one reason to vote for this bill, and that is to support defining a fetus or a fertilized egg, for that matter, as a person.

If the supporters of the legislation want to debate the merits of abortion, let us do it out in the open. But they should be embarrassed about cloaking the true intent in an issue that we all agree upon, protecting pregnant women from violence.

We keep hearing those who support the bill talk about two victims, but what they are omitting is the fact that this bill does not mention the main victim, the woman, another indication this bill is not really about two victims at all. The Lofgren substitute is the bill that truly focuses on women, because it creates a Federal criminal offense for harm to a pregnant woman. I strongly urge my colleagues to vote yes on the Lofgren substitute and no on final passage.

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

Mr. SENSENBRENNER. Mr. Speaker, I yield the balance of my time to the gentleman from Texas (Mr. DELAY), the majority leader.

Mr. DELAY. Mr. Speaker, I thank the chairman for bringing this bill to the floor. It is a very important bill, and it is a very timely bill.

This bill has passed the House twice in two different Congresses. It is a bill that desperately needs to become law, because, Mr. Speaker, Laci Peterson was murdered, but he never spoke a word or took his first steps, but he was real. Whoever killed Laci Peterson also killed her son, and to deny that is to deny truth. Unborn victims of violence are separate victims of violence, and it is a matter of interpretation, it is a matter of plain fact. A child could tell you that a man who kills a pregnant woman and her unborn child takes two lives.

Unborn victims of violence feel their own pain, suffer their own wounds and die in their own excruciating deaths, and with this legislation before us, we have the opportunity to say so. We have the opportunity to say that in this Nation...
unborn children targeted by violent men are guaranteed justice under the law, just as their murderers are guaranteed justice under the law. The Unborn Victims of Violence Act is a matter of common sense and common human compassion and will stand up to this body by an overwhelming, bipartisan majority, and make right in the law what is now blatantly and indefensibly wrong.

Mr. Speaker, I do not question the motives of those who oppose this plan to vote no. But to those who oppose this bill and support the substitute, support increased penalties for attacks against pregnant women without acknowledging the second victim of such attacks, I ask this: Why? Why are the attacks against pregnant women like Laci Peterson so egregious? Why should they merit harsher penalties? Why do all people in all cultures, naturally, instinctively, recoil at such attacks? It is the vulnerability of the pregnant woman and the fetus, but it is also the innocence and the very being of the unborn child.

Civilized society has an obligation to punish injustice, no matter the size, strength or political inconvenience of its victim. The substantive law that has been robbed from this world before he ever touched it, but, Mr. Speaker, he was here. Today he may be looking down on us from the nurseries of Heaven, protected for eternity by the God who knitted him together in the womb, nestled in the loving embrace of the mother who gave him his name, but before Conner Peterson was taken, Mr. Speaker, he was here.

Conner Peterson was here. Vote yes, and have the courage to say so.

Ms. MCCARTHY of Missouri. Mr. Speaker, I rise today to support the Lofgren substitute to the Unborn Victims of Violence Act (H.R. 1997), legislation to create a second Federal offense for harm to a pregnant woman without acknowledging the second victim, the fetus. The Lofgren substitute accomplishes the stated goals of the Unborn Victims of Violence Act, the deterrence and punishment of violent acts against pregnant women. By allowing for a second Federal offense against a pregnant woman, perpetrators of violence will be punished to the full extent of the law and their crimes. H.R. 1997, without the Lofgren substitute, will do nothing to prevent violence against women and further undermines their reproductive freedom. Recognizing the fetus as a legal person would be the equivalent of rolling back a well recognized right that was established over 30 years ago. The Lofgren substitute would preserve that right.

Mr. Speaker, I urge my colleagues to support the Lofgren substitute.

Mr. LANTOS. Mr. Speaker, I rise in support of this amendment sponsored by my good friend and fellow CalifornianCongresswoman ZOE LOFGREN. This amendment clearly recognizes that crimes committee against pregnant women are especially egregious acts that should be subject to more stringent punishment. This amendment would make it a separate Federal crime to cause, whether intentionally or not, a prenata injury or the termination of the pregnancy of the victim during commission of a number of specified Federal offenses.

Mr. Speaker, I am certain all of my colleagues will agree that any violent crime against a person is deplorable in and of itself; however, crimes against expectant mothers and their unborn are grossly more reprehensible and should be dealt with more severely. I applaud Congresswoman LOFGREN for introducing this amendment.

While I strongly support the amendment we are debating and am a cosponsor of similar legislation that is being introduced by Congresswoman LOFGREN—the Motherhood Protection Act (H.R. 2247)—I feel an obligation to express my concerns and my strong opposition to the underlying legislation we are considering today, H.R. 1997, the Unborn Victims of Violence Act. Although these two bills appear similar at first blush, they are based on completely different premises.

The Lofgren amendment is based on the belief that when the normal course of pregnancy is disturbed by a violent crime, the mother is robbed of her chance to bring a child into this world. Such a child is not irreparably harmed and the offender should be subjected to additional punishment.

On the other hand, Mr. Speaker, the Unborn Victims of Violence Act extends victim status beyond the expectant mother and assigns legal status and protection to an unborn embryo or fetus. I believe this is nothing more than a thinly veiled attempt to undermine the rights of women established in Roe v. Wade. Assigning legal rights to an unborn embryo or fetus is the flat step in granting “personhood” to an entity which does not yet meet the current threshold for the legal definition of a person. Passing this legislation would be the beginning of the slippery slope that will ultimately be used to limit a woman’s right to choose.

Mr. Speaker, the legislation we are considering today is simply a politically motivated effort by some of our colleagues to chip away at the underpinning of Roe v. Wade. We, as legislators, have the responsibility to see through these extremist and extreme views, and to enact legislation that does not threaten our citizens with the loss of their Constitutional rights.

Mr. Speaker, a crime against a pregnant woman is an appalling and deplorable act that deserves the severe punishments specified in the Lofgren amendment. Without this amendment, the adoption of the Lofgren Victims of Violence Act is simply a deplorable effort to take away from the women of this country the rights for which many have fought. I urge all of my colleagues to support the Lofgren substitute amendment to protect expectant mothers.

Ms. JACKSON of Texas. Mr. Speaker, I am here today because we have a better alternative to the Unborn Victims of Violence Act. I support Congresswoman ZOE LOFGREN’s substitute, the “Motherhood Protection Act.” This is a crime bill that is designed to protect pregnant women from violence. The Motherhood Protection Act embodies many of the same principles that I offered as amendments in the House Judiciary Committee, where the Unborn Victims of Violence Act was originally introduced. I have always supported the intent to hold the perpetrator of the pregnant mother who has suffered as a victim of a crime of violence and the viability of her pregnancy. However, I oppose the means which the drafters of the Unborn Victims of Violence Act have used to achieve its end. Like The Motherhood Protection Act, all my offered amendments referred to changing language in the bill, focusing on the pregnant mother instead of the fetus.

As a legislator and as a mother, I want to protect the rights of women and children. As Chair of the Congressional Children’s Caucus, I know how valuable and precious the lives of children are, and I will do everything in my power to ensure that any injustices are met with severe punishment. Unborn Victims of Violence does not do this. Rather, the Motherhood Protection Act does.

The Motherhood Protection Act creates a second, separate offense with separate, strict, and consistent penalties for assault resulting in the termination of a pregnancy or assault resulting in prenatal injury.

The Motherhood Protection Act recognizes the pregnant woman as the primary victim of an assault that causes the termination of her pregnancy, and it creates a separate crime to punish this offense. In this way, the bill accomplishes the stated goal of the Unborn Victims of Violence Act—the deterrence and punishment of violent acts against pregnant women—while avoiding any undermining of the right of choice.

Unborn Victims of Violence fails to address that the real need for strong Federal legislation to prevent and punish violent crimes against women. Nearly one in every three adult women experiences at least one physical assault by a partner during adulthood.

Congress can protect pregnant women from violence without resorting to controversial bills like Unborn Victims of Violence that undermine Roe v. Wade. We must take strong steps to prevent such attacks and must recognize the unique tragedy suffered by a woman whose pregnancy is lost or harmed as a result of violence. I am calling on Congress to support tough criminal laws that focus on the harm suffered by women who are victimized while pregnant, as well as a range of programs that promote healthy childbearing and family planning.

I am pleased to see the Bush administration taking an active interest in women and children, I hope they will see that their goals can be met in other areas. I would like to see the Bush administration focus their efforts on caring for a pregnant woman by providing her decent medical care. I hope the Bush administration ensures more happy pregnancies and births, both with proper family planning and prenatal care. I call on the Bush administration to have care for the millions of children already living and breathing in our country, who go to school in overcrowded classrooms and dilapidated buildings.

We have a wide range of programs in place to help women and children. I would like my colleagues to spend more time encouraging and funding these, rather than once again undermining a woman’s right to choose.

Ms. HARMAN. Mr. Speaker, I rise today in opposition to the so-called Unborn Victims of Violence Act, H.R. 1997. Proponents of this bill claim it addresses violence against pregnant women.

Let’s be honest here. H.R. 1997 is not an antiabortion bill, it is an antiabortion bill. This bill does not address the women who are victims of violence. In fact, this bill makes no mention of the woman and the harm to her that results
from an involuntary termination of her pregnancy.

Legislation that truly addresses the devastation of a pregnancy lost due to a violent crime should focus on the attack on the woman and resulting harm to her fetus, as does the amendment offered by my friend and colleague, the gentlewoman from California (Ms. LOFGREN).

I rise in support of this amendment, as it ensures efficient prosecution of the criminal wrongdoer and would not undermine the legal principles underlying a woman’s right to choose.

Mr. Speaker, if we are trying to do is protect pregnant women, then let us protect them. Let us not insult the intelligence of women in this country by attacking their rights under the guise of protecting unborn fetuses. The Venice Family Clinic and Westside Family Health Center, both located in my district, have programs in place that identify pregnant women at risk of domestic violence and work closely with the family throughout the pregnancy and for at least 1 year after the baby is born. These programs have had positive results at reducing domestic violence before it occurs.

Mr. Speaker, I urge support for this amendment and rise in opposition to the underlying bill.

The SPEAKER pro tempore (Mr. LAH OOD). All time has expired.

Pursuant to House Resolution 529, the previous question is ordered on the bill, as amended, and on the further amendment offered by the gentlewoman from California (Ms. LOFGREN). The question is on the amendment in the nature of a substitute offered by the gentlewoman from California (Ms. LOFGREN).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Ms. LOFGREN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. The bill was ordered to be engrossed and third reading of the bill.

Mr. OLVER. Mr. Speaker, for rollcall vote No. 30, I stated for: 'Ay, yea.

A motion to reconsider was laid on the table. Stated for: Mr. KIRK. Mr. Speaker, on rollcall No. 30 I would have voted 'aye'.
The SPEAKER pro tempore (Mr. LAHOO) announced the result of the roll call vote is as follows: 

**NOT VOTING**—16

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Mr. DELEAY. If the gentleman will yield? Mr. HOYER. I yield to the gentleman from Texas.

Mr. DELEAY. Mr. Speaker, I thank the gentleman from Maryland for yielding to me.

Mr. Speaker, the House will reconvene on Tuesday at 12:30 p.m. for morning hour and 2 p.m. for legislative business. We will consider several measures under suspension of the rules. A final list of those bills will be sent to Members’ offices by the end of the week, and any votes called on those measures will be rolled until 6:30 p.m. 

On Wednesday, the House will convene at 10 a.m. We plan to consider H.R. 1561, the Patent & Trademark Fee Modernization Act. In addition, we plan to consider H.R. 3752, the Commercial Space Launch Amendments Act. In the Senate, finally, I would like to remind all Members that we do not plan to have any votes next Friday, March 5.

I thank the gentleman for yielding and will be happy to answer any questions he may have.

Mr. HOYER. Mr. Speaker, I thank the gentleman for that information, and reclaiming my time, I wish to ask the gentleman just a few questions about other legislation.

It is my understanding the highway reauthorization bill has not been completed by the other body. It has not come back here. As the gentleman knows, it expires Sunday, I think. Does the gentleman have any idea of what the Senate intends to do, and what action, if any, might be taken on this?

Mr. DELEAY. If the gentleman will continue to yield, I would just remind the gentleman the House passed a 4-month extension. It has been over in the Senate for some time. The Senate is having trouble with their rules to keep extra-revenue matters off of that bill, and they want to change the time of the extension.

So, unfortunately, we informed the Senate that the House has finished its business; and in order to accommodate the Senate with the 2-month extension, we would have to work with the minority to come up with a unanimous consent request to do that, because holding Members around for votes would be impossible. The Senate has a dilemma on their hands, and they are trying to work through it.

Mr. HOYER. Mr. Speaker, I thank the gentleman for that information. We did pass the extension in a timely fashion. And although I have not had the opportunity to discuss this with the Democratic leader, my presumption would be that we would try to work with the majority in providing unanimous consent so that if something can move in the next 48 hours, we accomplish that objective.

Mr. Leader, as you know, the 9-11 commission has requested an extension of time. My understanding is the President has indicated his support of that extension. I also think I have read that the majority leader in the Senate believes that they would support that.
Can the gentleman inform us as to whether or not we might see legislation on the floor to accomplish an extension of time that Governor Kean and Mr. Hamilton have requested?

Mr. DELAY. Again, if the gentleman will continue to dwell, we are working through that issue. There are people that have great concerns about extending the 9-11 commission on our side of the rotunda. That is one of the problems that we are having with the highway extension bill, is they want to stick with the commission extension extension extension extension to it. We feel strongly that we cannot do a unanimous consent request to deal with that issue under present circumstances.

So we are working through this. The Senate thinks that they can pass such an extension, and the House will have to deal with it if and when that occurs.

Mr. HOYER. Reclaiming my time, Mr. Speaker, I thank the gentleman. On this issue, I have discussed briefly with the leader on our side, and I believe if such an extension, even if it were on the highway bill, that would not preclude us from entering into a unanimous consent. I have not polled everybody, so I cannot say unanimity; but there is broad support.

The families I know, as well as the commission, believe that they need more time to do the work we have asked them to do. So I thank the gentleman for that answer and for focusing on that.

The fiscal 2005 budget resolution, Mr. Leader. When might we expect the budget to be marked up in the Committee on the Budget and to be here on the floor?

Mr. DELAY. Mr. Speaker, the Committee on the Budget has held their hearings and hopes to hold a markup in the next couple of weeks. We hope to keep the House on a schedule that allows us to complete a conference report by April 15. A lot of work is being done on both sides of the aisle. This process is, as far as we are concerned, on time for an early consideration of the budget.

Mr. HOYER. Mr. Speaker, so the gentleman would expect consideration on the budget in the March 15 time frame?

Mr. DELAY. If the gentleman would yield, that is what we expect, and that is what I hope to do.

Mr. HOYER. Lastly, Mr. Leader, the Foreign Sales Corporation Act, as the gentleman knows, we have not modified that, and the European Union has said on March 1, a few days from now, Monday, they have the ability to start imposing sanctions on U.S. goods. When do you think or is there any information as to when we may consider on the floor a bill dealing with foreign sales corporations to respond to the problem that exists that will motivate the EU to impose such sanctions?

Mr. DELAY. Mr. Speaker, as the gentleman knows, the Committee on Ways and Means has reported a bill to address the repeal of the foreign sales credit last year. We understand the problem. While there have been a couple of deadlines for European retaliation which have come and gone, we understand the threat that now exists beyond the March 1 deadline that we need to find a way to address this issue. We are coordinating with the Committee on Ways and Means, the Senate leadership and the White House to resolve the issue in a way that not only ensures our compliance with the World Trade Organization, but also increases the competitive position of all American companies in the global economy.

Mr. HOYER. Mr. Speaker, I thank the gentleman for that answer, and I would hope that we can respond to that issue as soon as possible. I know there is bipartisan support for what was referred to as the Crane-Rangel bill. I am not sure what it is referred to now, the Rangel-Manzullo bill. I think we could proceed in a bipartisan way if that bill could be moved forward. I understand that is not the bill that the committee has reported out, but it seems to me there is bipartisan consensus on that issue, and I thank the gentleman from Texas for that information.

ADJOURNMENT TO MONDAY, MARCH 1, 2004

Mr. DELAY. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at noon on Monday, March 1, 2004. The SPEAKER pro tempore (Mr. LAHOO). Is there objection to the request of the gentleman from Texas?

There was no objection.

HOUR OF MEETING ON TUESDAY, MARCH 2, 2004

Mr. DELAY. Mr. Speaker, I ask unanimous consent that when the House adjourns on Monday, March 1, 2004, it adjourn to meet at 12:30 p.m. on Tuesday, March 2, for morning hour debates.

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

There was no objection.

DISPENSLING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. DELAY. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

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

There was no objection.

ANNOUNCEMENT BY COMMITTEE ON RULES REGARDING AMENDMENTS TO H.R. 3752, COMMERCIAL SPACE LAUNCH AMENDMENTS ACT OF 2004

(Mr. DREIER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, the Committee on Rules may meet next week to grant a rule for consideration of H.R. 3752, Commercial Space Launch Amendments Act of 2004 which may require that amendments be printed in the CONGRESSIONAL RECORD prior to their consideration on the floor.

The Committee on Science ordered the bill reported on February 4, 2004, without amendment and is expected to file its report with the House on Monday, March 1, 2004. Members should draft their amendments to the text of the bill as introduced on February 3, 2004, by the Committee on Science.

Members should use the Office of Legislative Counsel to ensure that their amendments are drafted in the most appropriate format. Members are also advised to check with the Office of the Parliamentarian to be certain that their amendments comply with the rules of the House.

RESIGNATION AS CHAIRMAN AND ELECTION AS CHAIRMAN OF THE COMMITTEE ON ENERGY AND COMMERCE

The SPEAKER pro tempore laid before the House the following resignation as chairman of the Committee on Energy and Commerce:

Mr. Tauzin, after Mr. Barton of Texas, Chairman.

DEAR MR. SPEAKER: Please accept this letter as my resignation as Chairman of the Committee on Energy and Commerce, effective at midnight on February 16, 2004.

Thank you for your assistance in this matter.

Sincerely,

W.J. "Billy" Tauzin,
Chairman.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

Mr. DREIER. Mr. Speaker, I offer a resolution (H. Res. 539) and ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 539
Resolved, That the following named Member be, and he hereby is, elected to the following standing committee of the House of Representatives:

Committee on Energy and Commerce: Mr. Barton of Texas, Chairman. Resolved, That the following named Member be, and he hereby is, ranked as follows on the following standing committee of the House of Representatives:

Committee on Energy and Commerce: Mr. Barton of Texas, Chairman. The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The resolution was agreed to. A motion to reconsider was laid on the table.
RESIGNATION AS MEMBER OF COMMITTEE ON SCIENCE

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Science:

Hon. DENNIS HASTERT, Speaker, House of Representatives, Washington, DC.

Dear Mr. SPEAKER: I hereby resign as a Member of the Committee on International Relations and ordered to be printed:

To the Congress of the United States:

Pursuant to section 1 of title I of Public Law 65-24, ch. 30, 50 U.S.C. 191, and sections 201 and 301 of the National Emergencies Act, 50 U.S.C. 1601 et seq., I hereby report that I have exercised my statutory authority to continue the national emergency declared in Proclamation 6867 of March 1, 1996, in response to the Cuban government's destruction of two unarmed U.S.-registered civilian aircraft in an international airspace north of Cuba. Additionally, I have exercised my authority to expand the scope of the national emergency as, over the last year, the Cuban government, which is a designated state sponsor of terrorism, has taken a series of steps to destabilize relations with the United States, including threatening to abrogate the Migration Accord with the United States and to close the U.S. Interests Section. This conduct has caused a sudden and worsening disturbance of U.S. international relations.

In my proclamation (copy attached), I have directed the Secretary of Homeland Security to make and issue such rules and regulations that the Secretary may find appropriate to prevent unauthorized U.S. vessels from entering Cuban territorial waters. I have authorized these rules and regulations as a result of the Cuban government's demonstrated willingness to use reckless force, including deadly force, in the ostensible enforcement of its sovereignty. I have also authorized an effort to deny resources to the repressive Cuban government that may be used by that government to support terrorist activities and carry out excessive use of force against innocent victims, including U.S. citizens, and to destabilize relations with the United States, and threaten a disturbance of international relations. Accordingly, I have continued and expanded the national emergency in response to these threats.

George W. Bush.

The Speaker, February 26, 2004.

CONTINUATION OF NATIONAL EMERGENCY RELATING TO CUBA—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 108-169)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

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George W. Bush.

The Speaker, February 26, 2004.
Mr. WOLF. Mr. Speaker, I rise today with sadness in my heart as we mourn the loss of Macedonian President Boris Trajkovski. He was a moderate leader who helped unite his ethnically divided country. He was killed on Thursday when his plane crashed in bad weather conditions in mountainous southern Bosnia.

President Trajkovski was a great friend of the United States. He led the efforts to establish relations with the United States and attended the National Prayer Breakfast in Washington a number of times where he became friends with many Members of Congress and many individuals in the administration. He was a man of great faith. His great faith drove him to be a man who led reconciliation throughout his region of the world.

President Trajkovski was inaugurated as the second President of the Republic of Macedonia on December 15, 1999. Prior to that, Mr. Speaker, he served as the head of foreign affairs of the Republic of Macedonia and as chief of the cabinet of the mayor of the Kiselova Voda municipality in Skopje from 1997 to 1998.

Since taking office in 1999, President Trajkovski was active on the international level, giving numerous speeches at international forums, such as the World Economic Summit in Davos, the Council of Europe, the United Nations and the South East European Cooperation Process, and addressed the parliaments of several countries. He was dedicated to greater cooperation between states on behalf of the Republic of Macedonia.

President Trajkovski participated in numerous international conferences on conflict resolution, religious tolerance, religious freedom, and served as president of youth work in the United Methodist Church in the former Yugoslavia for over 12 years.

President Trajkovski was widely respected in Macedonia for his neutral stance in the former Yugoslav Republic, where tensions persist between Macedonians and the country's ethnic Albanian minorities after a 2001 war. He had called for greater inclusion of ethnic Albanians in state bodies and institutions.

He has many friends, Mr. Speaker, throughout Europe and the entire world. Macedonia is a good friend and partner to the United States and plays an important role in its support of U.S. and NATO operations in Kosovo.

This loss will certainly be felt throughout the international community. Our thoughts and prayers are with the Trajkovski family and the Macedonian people. The United States has lost a great friend.

GREENSPAN WEIGHS IN ON ECONOMIC POLICY

Mr. BROWN of Ohio. Mr. Speaker, it is always a pleasure to succeed the gentleman from Virginia who has a strong commitment to human rights. His talk today underscored that commitment to human rights in our country and around the world.

Mr. Speaker, I would just like to start with a couple of facts. Under the Bush tax plan, a millionaire in this country got a $93,000 tax cut, for some-...
And the other part of his plan is more trade agreements like the Central American Free Trade Agreement; we have got one with Australia coming down; the Singapore, Chile, the Central American Free Trade Agreement coming up; the Free Trade Area of the Americas, which will double the size of NAFTA, quadruple the number of low-income workers, those trade agreements that hemorrhage jobs and ship jobs overseas.

So when we see Alan Greenspan say we have got to keep giving tax cuts to millionaires but to pay for them we are going to have to cut Social Security and Medicare, that is the same thing that George Bush is saying when he continues this economic policy. Again, this economic policy is twofold. It is tax cuts for the most privileged people in our society, the people who need it the least; and trickle-down economics and trade agreements that hemorrhage jobs, that ship jobs overseas. It is not working. We have lost 3 million jobs. In fact, George Bush will likely, we do not know in the next 10 months for sure, but likely will be the first President since Herbert Hoover that actually have lost jobs during his time that has not happened. The jobs he is losing are some of America’s best jobs. They are manufacturing jobs. They are jobs that have sent kids to college, allowed people to buy a home, allowed people to have a middle-class lifestyle. If we continue this trickle-down economics and we continue these trade agreements that hemorrhage jobs, we will continue this loss of jobs, and we will never see our economy come back the way it should and bring us the kind of country that we are used to having.

That is why Alan Greenspan’s comments really do hit home, that he wants to continue this tax policy, continue trickle-down economics. It just means that he is choosing to make the choice that President Bush is making, the choice that Republican leaders in Congress are making is that in order to pay for these tax cuts, this Congress is going to have to cut Social Security and Medicare. It is the wrong choice. It is the wrong idea for America. It is a violation of American values, our family values that help our families send our kids to college and build the kind of life-styles and the kind of lives for our children that we so desire.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. CONYERS) is recognized for 5 minutes.

(Mr. CONYERS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

IN HONOR OF THE CAREER OF DR. JOSE HINOJOSA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. HINOJOSA) is recognized for 5 minutes.

Mr. HINOJOSA. Mr. Speaker, I rise today to honor a friend, a university professor, a renowned expert and the dean of the school of politics in south Texas, Dr. Jose Hinojosa. For a generation, Dr. Hinojosa has been the compass that has helped me navigate his political career in south Texas. Successful politicians, mayors, county judges, State senators and representatives and, yes, Members of this body, myself included, are all proud alumni of the Dr. Hinojosa school of public service.

Dr. Hinojosa, after 26 years of service, has decided to retire. As a political science professor at the University of Texas Pan American, he is nationally recognized for his knowledge and expertise in the regional politics of south Texas. For Dr. Hinojosa, political science is not merely an academic exercise. It is about empowering the community he so dearly loves, the Mexican American community. To that end, Dr. Hinojosa has taught the School of Public Administration at the University of Texas Pan American. He knew that electing Hispanic leaders was only step one of the empowerment process. He helped build the intellectual infrastructure to help those leaders make the transition to public service.

Dr. Hinojosa is a native of Jim Wells County and the son of the late Mr. and Mrs. Teodulo Hinojosa of Palito Blanco, a farming community in central Texas, which is adorned with bluebonnets and many other wildflowers during the spring time. He earned his bachelor’s and master’s degrees from Texas A&M University, Kingsville, which is now Texas A&M University at Kingsville. He received his doctorate in government and international studies from the University of Notre Dame in Indiana.

Over the course of his career, Dr. Hinojosa has taught at many prestigious institutions, including the University of Texas Pan American, the University of Texas at Austin, Ohio State University, and Notre Dame. He has been called to the service of Governors and Presidents. He served on the National Advisory Council for Ethnic Heritage Studies during President Carter’s administration and on the Job Injury and Interagency Council Advisory Committee under Texas Governor Mark White.

However, his greatest contributions have been felt in his home, south Texas. Dr. Hinojosa is an outstanding teacher, whether to students enrolled in a political science course or to candidates for public office. His enthusiasm for public service and for the democratic process is infectious and he has inspired thousands of people, young and not so young, to participate in our democracy. His voice, even after a bout with throat cancer costing him the use of his vocal cords, has always been a call to action. From the difficult days of segregation after World War II to today, Dr. Hinojosa has maintained an unshakeable faith in the people of south Texas. One only has to visit the Rio Grande Valley to see the progress that Dr. Hinojosa has fostered and cultivated since the first Hispanic county judge was elected in Hidalgo County in 1970. Today, the Lower Rio Grande Valley is one of the four fastest growing and most dynamic regions in the country.

Mr. Speaker, Dr. Hinojosa has decided to retire. He will be sorely missed in the halls of college campuses and in the halls of government; but I know that his wife, his children, and grandchildren have great plans for him.

Dr. Hinojosa has taught us well, and the number of Hispanics seeking to win Federal elected positions will continue to skyrocket thanks to him.

In conclusion, I ask all Members of Congress to join me in commending Dr. Jose Hinojosa for his exceptional career and contributions to the great State of Texas and our Nation.

MILITARY RETIREE ARE WAITING; LET US FINISH THE JOB

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. FILNER) is recognized for 5 minutes.

Mr. FILNER. Mr. Speaker, I rise today to let everyone know of a bill I have introduced that will eliminate what we call the Disabled Veterans Tax and to provide immediate concurrent receipt of military retired pay and VA disability compensation to all deserving disabled military retirees.

H.R. 3730 is called the Immediate and Full Repeal of the Disabled Veterans Tax Act of 2004 and does exactly what the title says. It eliminates the years of waiting before a military retiree receive all the retired pay and compensation they have earned and deserve.

Last year, our Nation’s veterans waged a long and determined campaign to eliminate this Disabled Veterans Tax. As my colleagues know, we did take a step that some say was a legitimate compromise but I call an insult to our veterans. That law makes veterans with a disability rating of 50 percent or more wait 10 years before their tax is completely eliminated. A great number of those veterans are elderly and unfortunately may not live to see the day that they get their full compensation.

Even worse, fully two thirds of America’s disabled veterans have been left behind and will continue to be taxed as before, nearly 400,000 of our veterans. Despite the actions of Congress, the Disabled Veterans Tax is alive and well.

Some of the veterans left behind include a veteran of the Kuwait theatre who had below-the-knee amputation after being hit by a drunk driver while jogging near the Pentagon to maintain...
IN SUPPORT OF ISRAEL'S CONSTRUCTION OF A SECURITY FENCE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. Garret) is recognized for 5 minutes.

Mr. GARRETT. Mr. Speaker, since 1948 the State of Israel has constantly been under attack from inside and outside her borders, from neighbors on all sides. Innocent Israeli citizens, including women and children, are killed or wounded in terrorist attacks. Israeli shops, streets, and schools have become the battleground. There are always threats in the country and always a cause for alarm.

Today, the threat to Israel's security has never been greater. On the eve of the U.N.'s hearing this week on the West Bank barrier, a Palestinian suicide bomber blew apart a Jerusalem bus, killing himself and eight passengers, and injuring 4 others, was in protest of the security barrier constructed by Israel to foil terrorist attacks such as this.

This terrible and painful bombing in Jerusalem highlights the urgency to the claim of Israeli leaders that a security fence is desperately needed in order to prevent terrorists from entering from the West Bank and proves that Israel is under a new wave of violence, one that the Palestinian leadership is unable and unwilling to stop.

For this reason, I support Israel's construction of a security fence and will support that additional miles be built. Israel is decision to continue this self-defense option. The security fence is a proven way to impede terror, which in turn will help advance the peace process. It is situated to protect the lives of Israelis. The separation barrier has proven itself by preventing 50 percent of the attempted terrorist attacks against Israel, and the fence around Gaza has prevented all Palestinian suicide bombers from entering the country.

There are Palestinians who are working now to disrupt this pursuit towards peace. Monday, the Palestinians presented their case to the United Nations International Court of Justice, the ICJ, standing against the Israeli separation barrier in the West Bank, while Israeli appealed to world opinion and moral common sense to ignore the proceedings that are unfair.

Israel only began the construction of this fence after a series of near daily terrorist attacks that killed 999 Israelis and left thousands more wounded for life. Now more than 40 nations, including the United States, the European Union, and Australia, have joined in protesting the court's consideration of this matter because it falls outside the court's traditional mandate to serve as a mediator between a willing state and, more importantly, because it undermines Israel's, and for that matter any nation's, right to self-defense.

The Palestinians and their supporters have now manipulated the U.N. General Assembly to request the ICJ to issue a legal advisory on the security of the fence. Though it is not legally binding, this advisory opinion could prompt anti-Israel resolutions at the U.N. later this year and will reinforce efforts to isolate Israel internationally.

Manipulation of the ICJ is only the latest attempt in many attempts by Israeli detractors to use every arm of the U.N. to delegitimize Israel. The U.N. has been a source of anti-Israel bias for generations. In 1962, for example, the U.N., in a resolution against Israel than any other subject matter, over 400 since 1964. In contrast, that body has never investigated the Palestinian terrorist campaign against Israel, nor has it investigated the abuse, torture, and other human rights violations by nondemocratic states in the Arab world. The U.N. is the same body that voted against removing Saddam Hussein and ending his evil regime over his own people.

The international community and Arab states in the region must come together now and strongly discourage further Palestinian terrorism. Nations around the world must support Israel in their right to defend their land and their people. Israel has every right and must have every right and ability to protect their people and their country. Those who say otherwise, that Israel's self-defense is an impediment to progress, they miss the point entirely. The destruction of Palestinian terrorism by means of a permanent settlement to progress; rather, it is the definition of progress.

Where the violence stops, the peace process can move forward. And until it does, Israel's efforts to build a security fence on their own borders are a necessary and justified response to the perils that this nation faces. As Israel is a free and democratic, peace-loving nation and our only real ally in a region filled with unrest and American hatred, our Nation must do everything we can to support Israel and not stand in the way of the Israeli leaders doing what they feel is necessary to protect their citizens and their homeland.

AMERICA AT RISK: CLOSING THE SECURITY GAP

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, the gentleman from Texas (Mr. Turner) is recognized for 60 minutes as the designee of the minority leader.

Mr. TURNER of Texas. Mr. Speaker, I yield to the distinguished gentleman from South Carolina (Mr. Clyburn), the vice chairman of the Democratic Caucus.

The MATTHEW PERRY COURTHOUSE

Mr. CLYBURN. Mr. Speaker, I thank the gentleman for yielding.
am pleased that the gentleman yielded to me today.

Mr. Speaker, when I first came to Congress 11 years ago, the very first piece of legislation I introduced was to name the Federal courthouse proposed for Columbia, South Carolina, after the war and attend a University of South Carolina. After finishing college, he was turned away from the station and forced to order food through a window as he watched for a train station to proudly return to serve in World War II. After finishing college, he was turned away from the station and forced to order food through a window as he watched for a train station to proudly return to serve today in senior status. He individually tried over 6,000 cases, and his work led to the release of some 7,000 people arrested for protesting various forms of segregation.

I was one of those protestors that Matthew Perry so eloquently defended, after I was arrested with nearly 300 other students on a college campus in 1961. Matthew Perry chose me as his chief witness at the trial of Fields against South Carolina. He lost that case, as he did all of his cases at the magistrate level, and, with one exception, all were overturned on appeal. His perseverance was unmatched and his dedication undaunted.

Judge Perry went on to become the first black lawyer from the Deep South to be appointed to a Federal bench when in 1976 he became a judge on the United States Military Court of Appeals here in Washington, D.C. Three years later, he returned home to become a United States District Judge for South Carolina, where he continues to serve today in senior status. Throughout the death threats and lean times that marked his early career, to today’s achievements and accolades, Matthew’s devoted wife Hallie has remained steadfastly by his side. The couple has one son Michael, a banker in South Carolina.

The dedication of a United States courthouse in his honor in the shadow of his birthplace that was once cloaked in the scourge of segregation signals a new era in South Carolina, brought about in large measure by the dogged determination of Matthew Perry and his unbending faith that justice will prevail. His vision and veracity led him to challenge the Jim Crow laws of his day and continued in providing faith and hope to the entire generation of South Carolinians.

Mr. Speaker, the motto of the State of South Carolina is, “While I Breathe, I Hope.” Our State’s motto and our Nation’s promise of life, liberty and the pursuit of happiness are reflected in the life experiences and work of Judge Matthew J. Perry, J r., and I am pleased to be here today to enter into the record just a little synopsis of the life of this great South Carolinian and outstanding American.

Mr. TURNER of Texas. Mr. Speaker, I rise today to speak on a very critical subject, the subject of homeland security. There is no responsibility of this Congress more important of all, to exercise of vigorous and thorough oversight in the area of homeland security. Just one year ago, the Congress created the Department of Homeland Security from 22 separate agencies of this Federal Government. Implementing the largest reorganization of the Federal Government in almost 50 years would be daunting enough, but given the urgency to prevent, to deter and to respond to terrorist attacks, and knowing that failure is never an option. It is clear to me that the administration, that the new Department and its congressional overseers, face a challenge unlike any in our history before.

A lack of leadership or focus, errors in judgment, or any delay in any of these can place thousands of American lives at risk. Poor management can result in a waste of taxpayer dollars as the new Department enters into multi-billion-dollar contracts under pressure to meet this critical challenge.

The Democrats on the Select Committee on Homeland Security, in exercising our responsibility for oversight, have produced a 135-page review of the Department of Homeland Security’s activities during its first year. This document is entitled “America at Risk: Closing the Security Gap.” We have relied upon in preparation of this document our own independent investigations, our own research, as well as expert testimony and briefings from throughout this country. This report highlights the very significant security gaps that still remain, and offers recommendations on how we can best go about closing these security gaps.

From the very founding of our Nation, the very first charge of government is to provide security for the American people. The opening words of our Constitution call on us to provide for the common defense. We gather here today in the shadow of a grave and gathering threat to the safety and the security of the American people. Those who delivered the deadly blows here today in the shadow of a grave and gathering threat to the safety and the security of the American people. Those who delivered the deadly blows against our Nation on September 11, 2001, are poised for further attacks against our homeland.

Just days ago, Ayman al-Zawahari, the mastermind behind al Qaeda’s operations and Osama bin Laden’s closest confidant, threatened America once again. In an audiotape released to the Al Jazeera network, Zawahari had this to say: “Bush, strengthen your defenses and your security measures, for the Muslim nation, which sent you the legions of New York and Washington, cornerstone of our liberties.”

Mr. Speaker, the cornerstone of our liberties is our Constitution, our Constitution, our Constitution, which is the foundation of our liberties. When our founders wrote the words, “We the people of the United States, in order to form a more perfect union…” That is our cornerstone, the cornerstone of our liberties, which is the foundation of our liberties.

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Director Tenet, confirmed the stark reality of the conflict with al Qaeda clear when he said, "We are still at war against a movement that is not going away any time soon."

Mr. Speaker, we are at war, at war against a cruel and calculating foe who will not stop in its effort to deliver death and destruction to our shores, and we must do everything necessary to close those security gaps that make us vulnerable to terrorist attack, and we must move with the urgency of a Nation at war.

That is why the Democratic Members of the House Select Committee on Homeland Security have chosen the first anniversary of the Department of Homeland Security to issue this report to the American people. We present a review of our defenses, and we propose recommendations to close the security gaps that make us vulnerable to attack.

Mr. Speaker, we all understand that there is no responsibility of Congress more important than working to preserve the safety and security of every American. That requires this Select Committee on Homeland Security in this House to vigorously exercise our oversight responsibility. We know that we cannot afford to sleep while Rome burns.

There are some who say on this first anniversary of the new Department that we are safer than we were before September 11, 2001. That is true. But that sets the bar way too low. The real question that we must ask today is, are we placing our priorities in the right place. Both are important, but they must have the excellence, but they must have the support and the direction that they deserve. That is the responsibility of the leadership of this Congress and of the new Department of Homeland Security and of our President.

On this, the first anniversary of the Department of Homeland Security, we should strive to regain that sense of urgency that we all had after September 11, 2001. We must have a renewed sense of purpose to close the security gaps that threaten the safety of the American people.

I am confident that, working together, we can accomplish these goals.
pay the premium and get the insurance to protect you, or you can decline to pay the premium and face the risk of the consequences. This Nation remains at risk. We are engaged in a struggle unlike any in the history of this country, and we are facing an enemy that is driven by religion, ideology, fanaticism, and that is intent upon doing harm to the people of our country. This threat is one that we must face head on. This threat is one that we must be sure that we prevail against. And this threat is one that we must be willing to pay the cost of.

Mr. Speaker, it is my hope that every Member of Congress and the American people will join with us in regaining the sense of urgency that we have in making sure that we have done everything necessary to ensure the protection of the American people. I would urge every Member of this Congress and every listener to take a look at this report and its contents on the Web site of the Select Committee on Homeland Security. The Web address is www.house.gov/hsc/democrats. Let me repeat that, Mr. Speaker: www.house.gov/hsc/democrats.

As my colleagues review this report, I think they will find that we as a Nation have a long way to go in being able to tell the American people that we are prepared enough to defend against, to prevent, to deter, and to respond to a catastrophic terrorist attack.

Mr. Speaker, I hope that every Member of this Congress will join together in that same spirit that this Congress exhibited on September 11 of 2001 when in that same spirit that this Congress, the House, the gentleman from Michigan (Mr. HOEKSTRA), the ranking member, this Congress will join together against, to prevent, to deter, and to respond to a catastrophic terrorist attack.

Mr. Speaker, I hope that every Member of this Congress will join together in that same spirit that this Congress exhibited on September 11 of 2001 when we gathered just outside of this Chamber on the steps of this Capitol and joined together in expressing our resolve to prevail against al Qaeda, expressing our commitment to do whatever is necessary to win, and joined together in singing “God bless America.” For the truth is, we are the greatest Nation that has ever existed on the face of the Earth. We have tremendous responsibilities in our leadership in this world, and we must do whatever is necessary to prevail in the war on terror.

HOMELAND SECURITY: FIRST PRIORITY FOR AMERICA

The SPEAKER pro tempore (Mr. BISHOP of Utah), under a previous order of the House, the gentleman from Rhode Island (Mr. LANGEVIN) is recognized for 5 minutes.

Mr. LANGEVIN. Mr. Speaker, I want to thank the gentleman from Texas (Mr. TURNER) for hosting his important Special Order today. As we mark the 1-year anniversary of the creation of the Department of Homeland Security, it is a time to both recognize successes and acknowledge failures. There is no more true facing Congress today and the administration than protecting the freedom and security of the American people. In fact, the preamble to our Constitution makes providing for the common defense the first responsibility of Congress.

Improving the safety of our citizens at home must be undertaken just as aggressively as pursuing terrorists abroad. I want to express my deepest appreciation to all those who have taken this task from nearly 200,000 employees of DHS working in every sector in every State, to the dedicated and courageous first responders in all of our communities. We owe you a great debt of thanks and gratitude. We face a threat today that is unprecedented and we are prepared enough to defend this Nation.

Mr. Speaker, I hope that every Member of this Congress and every listener to take a look at this report and its contents on the Web site of the Select Committee on Homeland Security. The Web address is www.house.gov/hsc/democrats. Let me repeat that, Mr. Speaker: www.house.gov/hsc/democrats.

Ms. HOUGHTON. Mr. Speaker, I hope that every Member of this Congress and every listener to take a look at this report and its contents on the Web site of the Select Committee on Homeland Security. The Web address is www.house.gov/hsc/democrats. Let me repeat that, Mr. Speaker: www.house.gov/hsc/democrats.

As my colleagues review this report, I think they will find that we as a Nation have a long way to go in being able to tell the American people that we are prepared enough to defend against, to prevent, to deter, and to respond to a catastrophic terrorist attack.

One critical component of this goal is providing the communications equipment and infrastructure necessary for first responders to take effective and coordinated action.

Interoperable telecommunications technology exists today at an affordable price, but we must provide the funding and leadership to ensure it is deployed without delay.

Information must also flow more smoothly between Federal agencies and the State and local personnel who are in the first line of defense in an emergency. Unfortunately, at present, resources are being allocated and priorities are being set in the absence of a reliable threat assessment that can be mapped against existing vulnerabilities. State and local responders are operating without the benefit of current, specific intelligence and most lack the clearance or physical means to receive classified information even when it is available. We need to clarify the information-sharing responsibility within our Intelligence Community and ensure that those who need this information receive it in a timely and beneficial manner.

Furthermore, we continue to face serious vulnerabilities at our ports, borders, and nuclear and chemical facilities and other critical infrastructure. While our airports are significantly safer due to increased passenger and baggage screening, passengers and crew are still at risk from the cargo traveling on these planes.

DHS should also deploy technology like remote sensors and unmanned aerial vehicles to secure every mile of our land border. We need to station Customs inspectors at risk ports abroad, increase accountability for companies shipping goods to this country, and deploy systems to track every ship and container entering a U.S. port.

DHS must ensure the highest levels of security at nuclear and chemical facilities, which means requiring the private sector to act as an equal partner in critical infrastructure security.

Finally, as we endeavor to identify threats before they become real dangers, we must be ever vigilant in defending the civil liberties of our citizens. Protecting the homeland does not need to run counter to protecting privacy and freedom. We should make sure that intelligence tools are used judiciously, and we must work always toward a balance that ensures both security and liberty.

The gentleman from Texas (Mr. TURNER), the ranking member, this week led Democrats on the Select Committee on Homeland Security in unveiling a report entitled America at Risk: Closing the Security Gap, and I was proud to join him in that effort. This important and comprehensive report details many of the remaining shortfalls in our homeland security defense efforts and, more importantly, offers substantive proposals for addressing them. I want to commend the gentleman from Texas (Mr. TURNER), the ranking member, for his leadership on this report. I hope this report will serve as a catalyst for bipartisian action, and I look forward to working with my colleagues to address this most important issue.

Mr. Speaker, our Nation has come a great distance since September 11, but we stop now at our own peril. We must act quickly to address the problems that remain and provide safe and secure communities for all of our citizens.

AMERICA: A NATION STILL AT RISK

The SPEAKER pro tempore (Mr. BISHOP of Utah). Under the Speaker's announced policy of January 7, 2003, the gentleman from Michigan (Mr. HOEKSTRA) is recognized for 60 minutes as the designee of the majority leader.

Mr. HOEKSTRA. Mr. Speaker, tonight I want to build off the comments of perhaps some of the previous speakers in talking about America is still a Nation at risk.
In his new book, Why America Slept, author Gerald Posner raises the possibility that better tactical performance by the United States could have averted the September 11 terrorist attacks. He suggests that the problem was that law enforcement and other agencies failed to effectively identify and pursue numerous clues in the months preceding those tragic events. This could be true, but it is more likely that the attacks could have been averted had the U.S. recognized a new enemy earlier and developed a strategy to effectively respond to it, a lapse that the United States Intelligence Community will have to make up as it reinvents itself to respond to a fluid world that I think was redefined by September 11.

Terrorist attacks throughout the previous decade were treated as isolated criminal acts rather than a developing new emergent threat bent on destroying the United States, and I think this is a question that we have to ask ourselves, and we have to determine what we believe the threat will be in the future. We know what happened during the 1990s. We know about the examples of the first attack on the World Trade Center in 1993. The threat was there, and the U.S. recognized a new enemy in the 1990s of various terrorist organizations and people who seek to do us and our allies harm. In that same speech, the President at that time, President Bill Clinton, said, And someday, some way, I guarantee you he will use their weapons, I guarantee you he who has really worked on this for any length of time believes that, too.

Continuing, in this century we learned through harsh experience that the only answer to aggression and ill-intent is forceful deterrence and, when necessary, action. In the next century the community of nations may see more and more the very kind of threat Iraq poses now, again, a rogue state with weapons of mass destruction, ready to use them or provide them to terrorists who travel the world. If we fail to respond today, Saddam will be emboldened. This is someone who knows that he can act with impunity.

Again, on February 17, 1998, President Bill Clinton highlighted the threat not only of Saddam Hussein, but of this emerging threat that we saw in the 1990s of various terrorist organizations and people who seek to do us and our allies harm. In that same speech, the President at that time, President Bill Clinton, said, And someday, some way, I guarantee you he will use their weapons, I guarantee you he who has really worked on this for any length of time believes that, too.

The strategic error that we made in the first couple of years of the new millennium is well established. We must learn from it, and we continue to learn from it as the Bush administration. The stakes here are very real, and they are enormous. This is someone who has used weapons of mass destruction twice against his own people and against Iran. He does not respect norms.

As we are going through the 1990s, and even as we were going through the first couple of years of the new millennium, we have seen that America was becoming more aware and our leaders were becoming more aware of these various threats.

Madeleine Albright identifying the threat primarily through a narrow Cold War lens, and now our concerns have broadened. We are deeply concerned by regional tensions in South Asia where both India and Pakistan have conducted nuclear tests.

Going on later on, she talks about chemical or biological warheads, and we know that they are devilishly difficult to shoot down.

Again, already in 1998 or maybe saying as late as 1998, Secretary of State Madeleine Albright identifying the threat to America, our people, our forces here and our allies. We need to continue this discussion and this debate to see whether this threat continues to be real.

National Security Adviser Samuel Berger in an op-ed, Washington Times, October 16, 1998. And indeed, we have information that Iraq has assisted in the chemical weapons activity in Sudan with information linking Bin Laden to the Sudanese regime and the al-Shifa plant.

The threats are real. They have been identified in administration after administration. This week and over the last couple of weeks, we have had the opportunity to get an update, and I would encourage my friends to take a look at some of these threats that have recently been made so that they can reach their own judgment as to the kind of threat that faces America today, because as we understand the threat and reach agreement as to what the threat may be, that will also then provide the foundation for our actions and our response to that threat.

Steve Cambone, an Under Secretary of Defense for Intelligence, delivered his views on this back on January 22, 2002, as what he had to say. We are a Nation at war. We do not know how long it will last, but it is unlikely to be short. We cannot know where or against whom all of its battles will be fought. There are multiple fronts in this war. There is no single theater of operations. We do know that we are all at risk, at home and abroad, civilians and military alike. We do know that battles and campaigns will be both conventional and unconventional in their conduct. Some of those battles and campaigns will be fought in the open, and others will be fought in secret where our victories will be known to only a few.
Going on, in describing the situation that we find ourselves in today, we are facing a turbulent and volatile world populated by a number of highly adaptive state and nonstate actors. Some of these are weighing whether to or to what extent their actions might oppose the interests of the United States and its friends. Others, such as terrorist organizations, who are responsible for attacks in the United States, Turkey, Indonesia, Morocco, Saudi Arabia, Israel, Kenya, the Philippines, Afghanistan, Pakistan, and other places, have committed themselves to war.

In such a world, where largely ungoverned areas can serve as sanctuary for terrorists, and where political and military affairs in Europe, Asia, Africa, and South America continue to evolve, it is impossible to predict with confidence what nation or entity will pose a threat in 5, 10, or 20 years to the United States or to our friends and allies. In such a world, where our vulnerabilities are all too well understood by our potential adversaries, we should expect to be surprised.

“Not everything that unfolds in the coming years should be a surprise. We can expect that an adversary will continually search for an effective means to attack our people, our economy, our military and political power, and the interests of the United States and also the United States. And what we have learned continues to validate my deepest concern. It is a concern that we continue to have,” the statement concluding, “that this enemy remains intent on obtaining and using catastrophic weapons.”

During the 1990s, we saw what al Qaeda and other organizations were willing to do and what they were capable of doing. Director Tenant goes on and explains a little about the war against al Qaeda and its leadership:

“Military and intelligence operations by the United States and its allies overseas have degraded the group. Local al Qaeda cells are forced to make their own decisions because of the disarray in the central leadership. We are creating large and growing gaps in the al Qaeda hierarchy. We are receiving a broad array of help from our coalition partners, who have been central to our effort against al Qaeda.”

This is something that we found out in some of the opportunities I have had to meet with individuals in the Middle East.

“We have a number of allies in the war against al Qaeda. Since the May 12 bombings, the Saudi government has shown an important commitment to fighting al Qaeda in the kingdom, and Saudi officers have paid with their lives. Elsewhere in the Arab world we have received valuable cooperation from Jordan, Morocco, Egypt, Algeria, and the UAE, Oman, and many others. President Musharraf of Pakistan remains a courageous and indispensable ally, who has become a target of assassins because of the help he has given us.”

“Partners in Southeast Asia have been instrumental in the roundup of key regional associates of al Qaeda. Our European partners work closely together to unravel and disrupt the continent-wide network of terrorists planning chemical, biological, and conventional attacks in Europe, not in America, not in the U.S., “in Europe.”

Again continuing to quote: “So we have made notable strides. But do not misunderstand me. I am not suggesting al Qaeda is defeated. It is not. We are still at war. This is a learning organization that remains committed to attacking the United States, its friends and its allies.”

Here is what Director Tenant has to say: “Terrorism: I will begin today on terrorism with a stark bottom line. The al Qaeda leadership structure was changed considerably in September 11. It is seriously damaged, but the group remains as committed as ever to attacking the U.S. homeland. But as we continue the battle against al Qaeda, we must overcome a movement, a global movement infected by al Qaeda’s radical agenda.

“In this battle we are moving forward in our knowledge of the enemy, his plans, capabilities, and intentions. And what we have learned continues to validate my deepest concern. It is a concern that we continue to have,” the statement concluding, “that this enemy remains intent on obtaining and using catastrophic weapons.”

Successive blows to al Qaeda’s central leadership have transformed the organization into a loose collection of regional networks that operate more autonomously. These regional components have demonstrated their operational prowess in the past year. The sites of their attacks span the entire reach of al Qaeda: Morocco, Kenya, Tunkur, Jordan, Saudi Arabia, Kuwait, Afghanistan, Pakistan, and Indonesia.

“Al Qaeda seeks to influence the regional networks with operational training and consultations and money. But it is typically in closed session, but also the House Permanent Select Committee on Intelligence. And I encourage my colleagues to go to the Web sites and read this testimony in complete detail to better understand the threats that we still face; and if they have questions, to peel back the layers so that they can make their own personal assessment of the threats that still face the United States.”

“Across the operational spectrum, air, maritime, special weapons, we have time and again uncovered plots that are chilling. On aircraft plots alone we have uncovered new plans to recruit pilots and to evade new security measures in Southeast Asia, the Middle East, and Europe. Even catastrophic attacks of the scale of 11 September remain within al Qaeda’s reach. Make no mistake, these plots are hatched abroad, but they target U.S. soil and the interests of our allies.”

“Again, this is Director Tenant speaking to the Senate Permanent Select Committee on Intelligence earlier this week. And I encourage my colleagues to go to the Web sites and read this testimony in complete detail to better understand the threats that we still face; and if they have questions, to peel back the layers so that they can make their own personal assessment of the threats that still face the United States.”

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administration, what Director Tenant laid out earlier this week is very little different; is very, very consistent with what the Clinton administration outlined during the 1990s. There is a real threat out there. That threat continues to evolve. It seeks change, and it continues to mature and respond to the steps that we take against it.

Again going back to Director Tenant's testimony: "A decade ago, bin Laden had a vision of rousing Islamic terrorists worldwide to attack the United States. Afterwards, he created al Qaeda to indoctrinate a worldwide movement and global jihad with America as the enemy, an enemy that would be attacked with every means at hand. In the minds of bin Laden and his cohorts, September 11 was the shining moment, their shot heard round the world, and they want to capitalize on it."

"And so even as al Qaeda reaps from our blows, other extremist groups within the movement it influences become more active, and the threat continues to evolve, it continues to change, and the threat out there. That threat continues to mature and respond to the steps that we take against it."

Our first stop was in Libya. It is kind of amazing as the individuals who were leading this trip were planning it in late November and December, I do not think that any of us would have expected when we traveled overseas in February that we would be stopping in Libya. That is one aspect that is going on in Iraq or what is going on in Afghanistan. And in that light, six of us had the opportunity a week and a half ago to go to Libya, to go to Iraq, and to go to Afghanistan.

Let me just give a few highlights of that trip. I will have a diary available within the next week or so, if Members want to see a more detailed explanation of exactly my views of what happened on this trip; but it is a bipartisan delegation of Republicans and two Democrats, who went on this trip.

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□ 1545

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"Let me just repeat: For the growing number of jihadists interested in attacking the United States, a spectacular attack on the U.S. homeland is the brass ring that many strive for." Let me just repeat that: "For the growing number of jihadists interested in attacking the United States, a spectacular attack on the U.S. homeland is the brass ring that many strive for." Let me just repeat that: "For the growing number of jihadists interested in attacking the United States, a spectacular attack on the U.S. homeland is the brass ring that many strive for."

He then goes on, "with or without encouragement by al Qaeda's central leadership."

Like I said, I would encourage my colleagues to go to various different sources and review this material from Director Tenant that was given in open session and is available to them. Go through it in detail. It is that important that they have that information as we move through this year.

I genuinely believe and agree with the assessments that came out of the Clinton administration, that are coming out of the administration that have come out of Director Tenant as he worked with the Clinton administration and as he works in this administration, that the threat is real. I believe that that is a bipartisan conclusion.

Working on the Permanent Select Committee on Intelligence, one of the things that you find is that on issues of national security there are not partisan labels at the door when we move in. We recognize that the issues that we work on are so critical that we cannot politicize them. We cannot make them partisan. We need to have and focus on what is best for the security interest of the United States.

"In light of that, on a number of occasions members of the Permanent Select Committee on Intelligence have had the opportunity to travel abroad together to meet with leaders from different nations and to assess what is going on in specific countries. That trip, I believe, was an opportunity to be in the same room with him or any of his parliamentary leaders. Some of their quotes included, "God created man on this Earth. Therefore, they, meaning men, have natural needs and natural rights. These are not bestowed by anyone else, and they cannot be taken away by men.""

Another quote that came out of our discussions, and remember, this is the Libyans talking to a bipartisan delegation of U.S. House of Representatives, "Every person has the right to develop to their full potential to live in peace, security, and prosperity."

Another quote, "How can you enslave people who are born free?"

Something that they are very proud of, and it is captured in this quote, "The leader of the revolution has even received recognition with an international human rights award."

After much effort and seeing much of the Libyan countryside, that is exactly what we had an opportunity to do, to express our appreciation to Colonel Qadhafi about the direction he was going and encourage him to continue in that direction.

We still have a number of issues with Colonel Qadhafi in terms of how he treats the people in Libya, but we will continue to work with him on those outstanding issues, but recognize as he dismantles the weapon of mass destruction program, and he was willing to allow U.S. inspectors into the country to look at his programs and then destroy those programs, and then move into the area of having closer economic and cultural ties with the U.S. and Europe. So our State Department requested that we stop in Libya and meet with Colonel Qadhafi and encourage him in the direction that he was moving. After much effort and seeing much of the Libyan countryside, that is exactly what we had an opportunity to do, to express our appreciation to Colonel Qadhafi about the direction he was going and encourage him to continue in that direction.

We still have a number of issues with Colonel Qadhafi in terms of how he treats the people in Libya, but we will continue to work with him on those outstanding issues, but recognize as he dismantles the weapon of mass destruction program in Libya, that provides us with a huge step forward. It is a significant step forward. Already we have learned much about how that whole network of chemical, biological, and nuclear weapons worked. It has helped

us expose things in Pakistan and give some kind of a better understanding what currently may be available in North Korea, what may be available in Iran, and what these countries may have had access to on the international black market.

There has been much benefit as to Colonel Qadhafi and the steps he has taken. We encouraged him to continue moving in that direction.

We also had some very interesting quotes as we sat down with an individual that we had read much about, but none of us ever had the opportunity or ever expected to have the opportunity to be in the same room with him or any of his parliamentary leaders. Some of their quotes included, "God created man on this Earth. Therefore, they, meaning men, have natural needs and natural rights. These are not bestowed by anyone else, and they cannot be taken away by men."

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as cultural and student exchanges between Libya and the United States. It was a fascinating opportunity to get an insight into this man and into this country and to be part of perhaps history, to be part of a history that will be part of the pattern of relationships between the United States and Libya.

We then went on to Iraq. I have been to Iraq a number of times before in measuring the progress of what has been going on. There are a number of reasons that we ought to be pleased about the success that we are having. As we go through this, I think it is important to recognize that there is still so much to do. There is no doubt that we are making progress on the economic side. There is no doubt that we are making progress on the political side. There is no doubt that we are making progress on the national security that we have a police force to monitor and enforce the laws and the rules that have been put in place; that they have a judiciary that can adjudicate disputes between the people in a peaceful way; and they also have the opportunity for transparent government bureaucracies.

What does that mean? It means that the people have a high degree of confidence that the actions that are going on in the institutions of government are free from corruption and are achieving the results to benefit the people of the nation and not a few of the rulers.

So we are working to establish a civil society in both Iraq and Afghanistan; and we are making progress, but do not underestimate the amount of work that needs to take place. Recognize how far these countries have to go, and recognize that we started from scratch.

When this Nation was founded, we started with the Articles of Confederation, found out that they did not work the way that we wanted them to, and then we developed the Constitution. When our Founding Fathers got together that second time to develop the Constitution as we now know it, it took them 4½ months to write it.

Afghanistan has just completed writing its Constitution and ratifying it. Hopefully they will be moving, and we are expecting that they will be moving towards elections this summer. It is a significant step forward and guarantees equal rights to men and women. Twenty-five percent of their new Parliament are guaranteed to be women by the nature of their Constitution.

In Iraq, we are asking this government to come up with a process for selecting the people who will write their Constitution. And then developing the Constitution, we are basically giving them right around 4 months to do that. It is important that we have an accelerated process, but we are asking these folks to do a lot in a very short period of time, and we are asking them to do it in a dangerous and difficult environment.

There are still folks out there who want to ensure that we do not have a civil society in Iraq and that we do not have a civil society in Afghanistan because they recognize that as the roots of a civil society take place, they will no longer be able to benefit at the expense of the larger population, and we have to help those who use the power to intimidate the people of Iraq and Afghanistan. These were brutal rulers in both of these regimes, killing thousands of their own people. In Iraq, it is estimated that Saddam Hussein and his henchmen killed over 1 million. We are asking to provide an opportunity to move these societies to the rule of law, transparent government, functioning judicialities, a functioning free press and an openness in their society.

There are a lot of statistics that are out, and I believe these are also available on various Web sites from the Pentagon, talking about the progress that we are making in Iraq, talking about the progress that we are making in the area of oil production, and talking about the progress that we are making in the area of education, opening schools, inspecting new schools, training teachers, having 1,500 secondary students participate in student exchange programs, talking about what is going on in health care, providing training to 2,500 medical staff by April 1. These are folks who for 20 years have been living in a world of terrorism and of other positive things that are going on that are helping to bring back a civil society in Iraq. We are making sure that we provide folks with basic human needs, including food and those types of things, because that is essential.

There is a lot of information about the progress that we are making, but I just want to share a few things that I think are maybe as indicative, if not more indicative, of the change that is occurring but taking place in Iraq. Let me state again, there is a tremendous amount of work that still needs to take place in Iraq. There is a tremendous amount of work that still needs to take place in a relatively short period of time in a difficult environment with people who are committed to seeing not that the coalition fails, but that the folks in Iraq, the Iraqis who want to build a new nation, that they will have a say. There are folks that are thrilled that they have been liberated and that America is there. They are thrilled that Saddam Hussein is gone.

The interesting story in Afghanistan is the most popular person, as President Karzai talked to us in Afghanistan, is a former anti-Soviet guerrilla. President because he represents the move toward civil society in Afghanistan, but the most popular person in Afghanistan today is the American Ambassador to Afghanistan. President Karzai said it is a good thing that the Americans are not on the ballot because he might win.

The Iraqis and the Afghans are optimistic about the opportunity they have to create a new Iraq and create a new Afghanistan. □

Like I said, one of the most moving parts of our trip was when we went to Casbah. When the police force was being formed, the police force was being formed for the last 30 years, a total disaster. The interesting story in Afghanistan is to make sure that not only do you have the rule of law which is going to be developed in their constitution but that the person on the street recognizes that there is a rule of law and there is a mechanism to enforce that. Part of that is the police force. We all know that that is essential by what the folks who are opposed to the coalition and to a new Iraq have been doing over the last couple of months. They are no longer targeting Americans and coalition forces. Sure, they will take a shot at us if they see a vulnerability or an opening, but what they are now doing is they are attacking those folks that are helping to put together the pieces of a new Iraq. A critical part of that is the police force.

The week before we went to Iraq, there were a couple of just dramatic bombings, deadly bombings. Over 100 policemen or recruits were killed in two bombings. Each time we go on this trip and when we come home, we are committed to honoring the lives and the sacrifices of American and coalition forces in Iraq. What we also wanted to do this time is we wanted to extend our appreciation to the young men and women, and the young women, in Iraq who are stepping up and taking their place eagerly in the new Iraqi police force, recognizing that when they leave that academy they become the targets, because they are the laws of the new Iraqis who are going to be putting together and enforcing and creating a civil society.

They are the targets for those that are opposed to our success. They recognize that the fast of those folks of them had been killed. Just this past Monday, I believe, or this past weekend, there was another bombing, another seven policemen were killed. We
met with these young recruits. They are going to through 4 to 6 weeks of training. Some of them may be selected to go on for more advanced training. They will be the ones that in many cases will be patrolling the streets with coalition and American forces, to get additional training. We went there. Eloquently, the leader of our delegation, the gentleman from New York (Mr. Boehlert), expressed our appreciation and empathy to these recruits in recognizing that 100 of their colleagues had died recently.

We then had the opportunity to go around and to talk to many of these recruits as they were lined up in formation, and we shook hands with probably over 200 to 250 of the 500 troops or the policemen that were assembled there. Universally, the message was consistent. You could see the energy, the enthusiasm and the excitement on their faces and in their eyes. They were excited about the training and the jobs that they have committed themselves to and recognizing the sacrifice that Iraqis are paying in building a new Iraq.

And then as we moved past, as we shook their hands, they took their hand, placed it on their heart and moved it away, meaning the true sincerity by which they were expressing their words and their actions and their emotions. As we left and as we finished meeting with and talking with these recruits, they broke out into a spontaneous applause and cheer, recognizing the partnership and the kinship, although they were from different places, but the partnership and the kinship that they felt with a congressional delegation from the United States and a police academy headed by a Brit that we all were on the same page, working and moving in the same direction of building a new and a free Iraq with a civil society and that we were united in the effort to fight terrorism in Iraq and Afghanistan.

We saw the same kinds of things as we went down the streets in Iraq, the actions of the kids as we walked by or as we drove by through the streets of thumbs up. They knew what it was like before. They knew what it is like now. They can only anticipate. But they anticipate with eagerness what they see happening in the future.

I just want to share a few more things. One of the great things now about Iraq, it was a closed society for 30 years. So they eagerly anticipate what they have never been in. In this new society, they are experimenting, and they are seeing things they never had before. Freedom of dissent, freedom to express opinions, access to technology they never had before, cell phones, satellites, and as soon as they have that, they have access to information they never had before, and in a very short period of time, they are now finding that many Iraqis are putting up their own Web pages, communicating in e-mails, talking about how they feel. I was like in a new Iraq, what they hope for in the future. Here is one story off one of the Web pages. Thursday, February 12, 2004: "Hi, friends. I received this e-mail from a Iraqi who now lives in exile. He wanted it me to read this on my part. This has moved me.

This is an e-mail that someone gave to me and thought I would be interested in reading it.

For the love of nation. I am a big fan of Iraq. I love it inch by inch from Karbala to Al-Fao. I love Iraq's mountains. I love Iraq's desert. I love Iraq's big cities and small villages. I love Iraq's old and new music. I love Iraq's poetry. I love Iraq's sarcastic sense of humor. I love Iraq's tea shops. In short, without Iraq, there is no me.

Born a Kurd in the breathtakingly beautiful North, I was taught as a child to speak, read and write both of Iraq's main languages, Kurdish and Arabic. The main difference between these languages is the different scripts. The Arabic language is the accepted language for school and government. Kurdistan is the region where the speakers at dawn when Iraqis are called to prayer, not because of my religious passion but because it is the practice of my people. I love the bells of the Iraqi churches on Sundays, not because of my Christian views or lack thereof but simply because of my Iraqiness.

You see, comrades, I would like to ask of you a small favor. I want you to please look at the word Iraq. Look at it. Now picture it on Ahmad Radhi's jersey. Picture it on the atlas. Picture it in the index of every book where civilization is mentioned. Picture it at the United Nations. Picture it on your passport. The secret is very simple. To love Iraq and Iraqis without exception and with no favor, whether as Saddam Hussein, as those in favor of the occupation and those opposed to it. It is not to think of it as to whom Kirkuk belongs. But what's really beautiful about Iraq is the fact that it predates all of these things, not as a piece of land through which two rivers flow but as a civilization where the setting of the stage for all that human beings have accomplished began. That is Iraq and we are blessed to be members of the land that has fascinated the world in its entirety.

Why am I writing this? I am writing this because I see among us a bigger sense of division than unity. I see among us more feelings of resentment than feelings of joy. I am more angry than soberness. I see among us people like fanatic Kurds and people who instead of trying to understand them or convince them otherwise, they attack their people as if they have a mandate from the Kurds of Iraq.

In Kirkuk, Kurdish flags virtually crisscross the city. In response to the Kurdish obsession with their flag, the Turkmans have done the same with their flag. The Arabs of Kirkuk are virtually trapped in the middle of too much ethnic tensions. They have every right to think that Kirkuk just as the people of Dohuk have every right to Najaf as long as their desire for residency is on the basis of their Iraqiness rather than their Kurdishness or Arabness or Shiaism or Turkmanism. Yes, I am inventing these terms because they should not exist.

Am I boring you? Well, read on. There are 1 million Kurds living in Baghdad. That number is larger than the Kurds of Kirkuk, Sulaimania, Arbil and Dohuk, not combined but individually. What does that mean? In a democratic Iraq that means 1 million votes. We are often deceived of hearing the Sunni center without considering the number of Kurds and Shia, not to mention Christian and Yezidi Iraqis that live in Baghdad. We hear the Kurdish North without looking at Mozul, the second largest Arab city in Iraq after Baghdad. We hear of the Shia South without considering the Sunni, Kurds and Arabs that live all around the south from Basra to Hilla to Najaf to Karbala.

The bottom line is, Iraq is the land of the Iraqis. The groups that constitute our beautiful mosaic should be Iraqis before they are Kurdish, Arab, Assyrian. Once an Iraqi government is established and the various Iraqi groups are given something to lose, they will naturally feel more Iraqi. Once we are sober and awakened, things will be different. Have faith in Iraq because there is no land on Earth that is more beautiful than Iraq. Behold, one little beautiful flower of new Mesopotamian nationalism blossoms. More will follow.

Salaam.

There are all kinds of these. Let me go to the last one. This is interesting because one of the key issues about what is going to be happening in Iraq and Afghanistan and parts of the Muslim world is what is going to happen to the women, will they have equal rights. Like I said, in Afghanistan
percent of the new parliament will consist of women. The women are guaranteed equal rights in the constitution, equal rights between men and women. It is a very, very positive statement. Here is another: “Iraqi Women Groups Take the Initiative.”

Iraqi women representing 55 women groups and organizations from all over Iraq gathered at Fardus Square this morning to sign a petition against resolution 137 to demand equal rights and fair, unbiased representation, at least 40 percent, in the future Iraqi constitutional council, governorate and municipal councils. Forty percent. They are not satisfied with what they got in Afghanistan with 25. They want at least 40 percent.

The sit-in was organized by the Supreme Council of Iraqi Women, the Advisory Committee for Women Affairs, and the Iraqi Women Network. Other noted women groups were present such as the Iraqi Contemporary Women Movement, Organization for Women Freedom in Iraq, Iraqi Hope Association, Independent Women Organization, Women’s Union of Kurdistan, Kurdistan Free Women Movement, Iraqi Women Revival Organization, and the Iraqi Students and Youth Union. Over 55 different groups. Think of it, in a very short period of time, the number of organizations that are forming and learning how to participate in representative government. They will make mistakes, but they are going through a very constructive process. They are learning how to express their voice in a meaningful way that they have not had the opportunity to do.

Several women activists gave speeches. Planning Minister Dr. Mahdi Al-Hafudh shyly gave a brief word of support and signed the petition. It got interesting when a woman in a burqa showed up at the gathering with her three kids. Remember, this is all on their Internet, the Web pages. Reporters are all over her, trying to pry her away. I can see her in the pictures. She said, we didn’t wait all these years without the most basic rights to be denied them now. An Arab reporter asked her if she was basic rights to be denied them now. An Arab reporter asked her if she was.

“I am neither,” she snapped at him. “I am an Iraqi citizen first and foremost, and I refuse to be asked to be a question.”

“AYS, and I, skulked around Fardus square and took pictures. Omar joined us later. We signed the petition against resolution 137 and the woman offered us a rose. If you want to sign it, there is an on-line petition which you can find at this site: Equality in Iraq. The petitions are to be submitted to Paul Bremer, and Kofi Annan later this week. Bremer has made it known that he will veto any law that will not recognize basic civil freedoms, but Resolution 137 is yet to be vetoed.

“You can find pictures of the gathering” as well.

Communication and representative government, participation is alive and well, as the other e-mail indicated and closed, “Behold, one little beautiful flower of new Mesopotamian nationalism blossoms. More will follow.”

Let us hope and pray that that is exactly what happens in Iraq. There is a tremendous amount of work that has been accomplished in Afghanistan. There is a tremendous amount of work that needs to still occur for those flowers, additional blossoms, to bloom. But that is what we are working for so that these folks can have a representative government, a new and free Iraq and a new and free Afghanistan.

THE DISPARITIES IN WEALTH AND INCOME

The SPEAKER pro tempore (Mr. BISHOP of Utah). Under the Speaker’s announced procedure, Mr. SANDERS is recognized for 60 minutes.

Mr. SANDERS. Mr. Speaker, as the only Independent in the House of Representatives, my views are a little bit different than the Democratic and Republican colleagues. So I want to share some thoughts today, thoughts that are not necessarily often expressed here on the floor of the House or often expressed, unfortunately, on the controlled media. Also I would like to mention to Members of the House that if they need any further information on any of the issues that we are going to be discussing they can get it from our Web site which is www.Bernie.house.gov.

Mr. Speaker, the corporate media does not talk about it terribly much, and we do not talk about it terribly often here on the floor of the House, but the United States of America is rapidly becoming three separate nations. We are becoming a Nation which has an increasingly wealthy elite composed of a small number of people with incredible wealth and power. That is one part of our Nation. The other part of our Nation is a middle class, the vast majority of our people, and that part of our society is shrinking. Middle class is shrinking. The average worker in America is working longer hours for lower wages. And the third part of our society, the low-income people, what we are seeing may have some to do with poverty, and we are seeing millions and millions of the poorest people in this country struggling hard just to keep their heads above water. One America incredibly rich, another America working long hours for low wages, another America struggling hard to make ends meet.

Mr. Speaker, there has always been a wealthy elite in this country. That is not new. And there has always been a gap between the rich and the poor. But the disparities in wealth and income that currently exist in this country today have not been seen since the 1920s. In other words, instead of becoming more equal, now with a growing middle class, we are becoming a Nation with by far the most unequal distribution of wealth and income in the entire industrialized world. It is not England with its royalty. It is the United States of America which has the most unequal distribution of wealth and income of major countries.

Today, the wealthiest 1 percent of Americans own more wealth than the bottom 95 percent. The wealthiest 1 percent, yes, that is right, the wealthiest 1 percent own more wealth than the bottom 95 percent. The CEOs of our largest corporations now earn 500 times what their workers are making, while their employees are being squeezed, being forced to pay more for their health insurance, while pensions are being cut back for workers, while retiree benefits are being cut.

The CEOs of large corporations are making out like bandits. And I am not just talking about the crooks who ran Enron and WorldCom or Arthur Andersen. I am talking about the highly respected CEOs like the retired former head of General Electric, Jack Welch, who, when he retired in 2000, he received $123 million in compensation that he is going to benefit for his lifetime, and meanwhile he cut back on the jobs that GE had in America and shipped substantial amounts of those jobs over to China and Mexico. But he did take good care of his own needs.

And I am talking about Lou Gerstner of IBM. He is the former head of IBM, who, from 1997 to 2002, received $366 million in compensation while slashing the pension benefits of his employees. I am talking about people like C.A. Heimbold, Jr. of Bristol-Myers Squibb, who received almost $75 million in 2001 while helping to make it almost impossible for many seniors in our country to afford the outrageously high cost of prescription drugs.

Mr. Speaker, we do not talk about this issue enough, but we should, and that is that today the Nation’s 13,000 wealthiest families, who constitute 1/100 of 1 percent of the population, a tiny percentage of Americans, receive almost as much income as the bottom 20 million families in the United States of America; 1/100 of 1 percent receive as much income as the bottom 20 million families. And I defy anyone to tell me that that is in any way a fair or that is in any way what the United States is supposed to be.

New data from the Congressional Budget Office, the CBO, shows that the gap between the rich and the poor in income has doubled from 1979 to the year 2000. In other words, we are moving in exactly the wrong direction. The gap is such that the wealthiest 1 percent had more
money to spend after taxes than the bottom 40 percent.

Mr. Speaker, according to data from the CBO, between 1973 and 2000, the average real inflation-adjusted income of the bottom 50 percent of Americans has actually declined by 17 percent, the average worker seeing a decline. Meanwhile, the income of the top 1 percent rose by 148 percent. The income of the top 1/20 of 1 percent rose by 343 percent, and the income of the top 1/400 of 1 percent rose by 956 percent. I know I am throwing out a lot of figures, and I suspect that I am boring some people, but the important point to be made here is the middle class is shrinking, and the people at the very top are doing extraordinarily well.

Mr. Speaker, when I was growing up, the expectation was that for someone in the middle class, that person in that family would be working 40 hours a week, understate the real middle class facing take care of the needs of a family. One person, 40 hours a week, earning enough money to take care of the whole family. I think, Mr. Speaker, we can all agree that that is no longer the reality for many families in our country. What has happened is, because of the shrinking of the middle class, the decline in real wages, it is very rare indeed in my State of Vermont or in any State in this country that we see a situation in which both parents in a marriage are not now forced to work, leaving kids at home or in child care.

In terms of what is happening to the middle class, we have lost over 3 million jobs in the last 3 years, and with over 8 million workers unemployed, the unemployment rate today is at 5.4 percent. But I think we all know that that unemployment, the official unemployment statistic, very much understates the reality facing workers in America. Today if one is living in a high unemployment area, and if they have given up looking for work, they are not a statistic. If they are working part time and want to work full time, if there are not full time jobs available, they are not a statistic. So the reality is that real unemployment is substantially higher than official statistics indicate.

In addition, of course, there are millions of Americans today with a college degree or higher education degrees who are working at jobs that require far less education than their abilities would provide.

Mr. Speaker, there is a point that I want to spend a little bit of time on: Importantly, over the last 3 years, of the 3.3 million private sector jobs that have been lost, over 2.8 million of those jobs were in the manufacturing sector. And one of the reasons for that is that we have a disastrous trade policy which almost tells corporate America, leave the United States of America, go to China, go to Mexico, go to some disparate Third World country where people are paid pennies an hour. That is what we want them to do.

The reality is that NAFTA has failed, our membership in the World Trade Organization has failed, and perhaps, above all, permanent normal trade relations with China has failed.

Mr. Speaker, the time is now, and it is long overdue for the United States Congress to stand up to corporate America, not just for corporate America, not just for CEOs who make huge compensation packages, but trade policies that are fair for the working people of this country.

Mr. Speaker, one of the issues that is not talked about enough, is very simple question, and the question is this: If in the last 20 or 30 years we have seen an explosion of technology, if we have seen the development of sophisticated computers, wireless, e-mail, we have seen faxes, we have seen cellular phones, we have seen satellite communications, we have seen robotics in factories, we are a Nation which has experienced a huge increase in productivity.

My question is, if the average worker today is far more productive than he or she was 20 years ago, why is that worker not working shorter hours and earning more money, rather than, in fact, working longer hours and earning less money? Why is it that in 1973 the average American worker in inflation-adjusted for wages made $14.09 an hour, and in 1999 the average worker was only $12.77 an hour? There is something wrong when productivity is exploding and workers are earning less in real wages.

In terms of manufacturing, we have, unbelievably but true, we have in the last 3 years lost 16 percent, 16 percent, of the jobs in our manufacturing sector. At 14.3 million jobs, we are at the lowest number of factory jobs since 1950, since 1950. In my own State of Vermont, one of the smallest States in this country, we have lost some 9,300 manufacturing jobs since 2001. And here is the tragedy: We are not, when we lose manufacturing jobs, just losing jobs; we are losing good-paying jobs. In Vermont, for example, 14.3 million jobs, we are at the lowest number of factory jobs since 1950, since 1950. In my own State of Vermont, one of the smallest States in this country, we have lost some 9,300 manufacturing jobs since 2001. And here is the tragedy: We are not, when we lose manufacturing jobs, just losing jobs; we are losing good-paying jobs. In Vermont, for example, on average, someone working in manufacturing makes over $42,000 a year. That is a decent income. And when that employee loses his or her job, what is going on for the future? What is going on for the future? Will the new jobs that are being created for our kids and our grandchildren be challenging jobs, be important jobs, be jobs that provide them with a middle-class standard of living? Those are the questions that parents are asking all over America; what kind of jobs will be available for our kids or our grandchildren?

In 2 years the Bureau of Labor Statistics does a study, and what their study is about is to project and to study what new jobs will be created in largest numbers over the next 10 years. They just completed a study covering the years 2002 to 2012. In other words, the question is, in what occupations are we going to see the most job growth, and what occupations will we see the least job growth?

Let me quote from Business Week as to what the results of that study showed: ‘According to a forecast released February 11 by the Federal Bureau of Labor Statistics, a large share of new jobs will be in occupations that do not require a lot of education and pay below average.’ Pay below average, professional income, is what is projected in terms of new jobs for our kids.

Think for a moment. All of this technology, all of this emphasis on education, and the new jobs that are going to be created pay below average. Of the 10 occupations that are expected to grow the most, only 2 would require a bachelor’s degree; 1 of those 10 jobs requires an associate degree, 7 require a high school degree.

So the conclusion there, the reality there, is that many of the new jobs being created for the future are waiters jobs and waitresses jobs, food preparation jobs, customer service representatives, jobs that require on-the-job training, jobs that do not require a college education and jobs that are low wage.

In other words, Mr. Speaker, it tells us that a profound lie is being perpetrated on the American people. It tells us that unless we change our public policies very quickly, the middle class will continue to shrink, and the jobs being created for the coming generations will, by and large, be low-wage, unskilled work. That is not the
America that I want to see for our kids or grandchildren, nor do I think that is the America that most Americans want to see.

Now, Mr. Speaker, when we talk about the decline of manufacturing, when we talk about the loss of decent paying jobs to China and other countries, let us understand that this year alone the United States has had a $500 billion record-breaking trade deficit, $500 billion more in goods and services than we are taking out.

In 2003, the trade deficit with China alone, one country, was $120 billion, and that number is projected to increase in future years. In fact, the National Association of Manufacturers estimates that if present trends continue, our trade deficit with China will grow to $330 billion in 5 years. I hope those Members of Congress who told us how great most favored nation status with China would be, how great permanent normal trade relations would be, hear these numbers. $120 billion trade deficit today. The expectation is that in 5 years that number will be $330 billion.

Mr. Speaker, our disastrous trade policy is not only costing us millions of decent paying jobs; it is squeezing wages. It is squeezing wages, because companies have now the opportunity to easily go to Mexico or to China. They are putting the squeeze on American workers, and they are saying if you do not take cuts in wages, if you do not put more into your own health care package out of your own pocket, we are going to go going.

This trend of wage squeezing is most apparent and most dramatic among people who only have a high school diploma who are now going out into the labor market. They are seeing a huge decline in wages today compared to what the case was 20 years ago, and the reason for that is obvious; 20 or 30 years ago there were factory jobs available that enabled high school graduates to earn a middle-class standard of living. Today those jobs are gone, and they are only available at McDonalds, at Wal-Mart, and people cannot make a decent living.

I think, Mr. Speaker, if I were to summarize what is happening in our economy today, I think the easiest way to do it would be to point out that not so many years ago General Motors was the largest employer in America. General Motors, with a strong union, paid its workers and pays its workers today a living wage, good wages, good benefits.

But today, Mr. Speaker, the largest employer in the United States of America is Wal-Mart, not General Motors. That is the transition, from a GM economy of good wages, to a Wal-Mart economy of poverty wages. Today Wal-Mart employees earn $8.23 an hour, or $13,801 annually, wages which are below the poverty level. That is what is going on in the American economy. Our largest employer now pays workers wages that are below the poverty level.

Ironically, and pathetically, many of these workers qualify for Federal food stamp programs, which means that Wal-Mart is being directly subsidized by U.S. taxpayers. Wal-Mart, our largest employer, has been sued by 27 States for not paying their workers overtime, their workers are entitled to, and some months ago Federal agents raidied their headquarters and 60 of their stores across this country, arresting 300 illegal workers in 21 States. That is our largest employer.

A recent study, and this is really incredible and an issue that I intend to move vigorously on, a recent study indicated that for every Wal-Mart Super Store that employed 200 workers, taxpayers were subsidizing these low-paid workers to the tune of $420,000 per year, which equates to about $2,100 per employee. Can you believe that? Wal-Mart salaries and benefits are so low that the taxpayers have to provide health care benefits and food stamp benefits and housing benefits to supplement the pathetically low wages that Wal-Mart, our largest employer, is providing.

Now, here is to injury, Mr. Speaker. It turns out that while the taxpayers of this country, the middle class of this country, is subsidizing Wal-Mart, 5 out of the 10 wealthiest people in America are in, yes, you got it, right now, the Waltons, the Walts, and the widow of Sam Walton as well. So these five people who own Wal-Mart are some of the wealthiest people in America. Each of them is worth about $20 billion, five people owning Wal-Mart, $20 billion apiece, $100 billion for one family, and, guess what? The middle class of America is subsidizing their employees because they are paying their workers poverty wages.

Now, if you come to somebody, please give my Web site an e-mail. You tell me, www.Bernie.house.gov. If that makes sense to you, you e-mail that to me. That is what is the transformation of the American economy; this is all about the loss of good-paying jobs, the creation of poverty-wage jobs.

Mr. Speaker, not only has permanent normal trade relations with China been a disaster, but so has NAFTA. We have an increased trade deficit with Mexico. We have lost many, many jobs to Mexico. The irony there is that people might think, well, you know, NAFTA was bad for workers in the United States, but maybe it helped the poor people in Mexico.

Well, think again. Think again. NAFTA has been a disaster for the poor and working people of Mexico. Since 1994, when NAFTA went into existence, the number of people who are poor or extremely poor has risen from 62 million to 69 million out of a population of 100 million. Since 1994, Mexico's agricultural sector, their rural area, has lost 1.3 million jobs, which is one of the reasons that we are seeing an increase in illegal immigration.

Frankly, Mr. Speaker, it did not take a genius to predict that unfettered free trade with China would be a disaster, which is why I and many other Members in the House have opposed it from the beginning. When you have disciplined, educated people in China available to work at 20 or 30 cents an hour, and with corporations having the capability of bringing their Chinese-made products back into this country tariff-free, why would American corporations not shut down their plants in this country and run to China?
Honeywell is moving rapidly to China. Should anyone be surprised that they have built 13 factories in China, or that Ethan Allen furniture has cut jobs at saw mills in America and 17 manufacturing plants, including the State of Vermont. A news article from The Washington Post in June of 2002 mentioned that millions of good white-collar information technology jobs, many of them going to India and other countries.

According to Forrester Research, a major consultant on this issue, they said, “Over the next 15 years, 3.3 million U.S. service industry jobs, $136 billion in wages, will move offshore.” The information technology industry will lead the initial overseas exodus. The remaining high-tech jobs abroad is Microsoft, which is spending $750 million over the next 3 years on research and development on outsourcing in China.

A ferocious new wave of outsourcing of white collar jobs is sweeping the United States,” according to a study by the University of California at Berkeley Business School: “A ferocious new wave of outsourcing of white collar jobs is sweeping the United States.”

The study says the trend could leave as many as 14 million service jobs in the United States vulnerable. The study also indicates that jobs remaining in the U.S. could be subject to pressure for lower wages.

And why would that be? Well, here are some comparisons between wages in the U.S. and India where a lot of these high-tech jobs are being performed. In the U.S., a telephone operator earns $12.50 an hour; in India, less than a dollar an hour. A payroll clerk in the U.S. averages $15 an hour, while in India that person makes less than $2 an hour. So what we are seeing is those jobs, often good-paying jobs, are also heading out of this country.

Now, Mr. Speaker, let me be very clear on several issues. I am not anti-Indian. I am not a xenophobe. I am an internationalist. I am more than aware that 1 billion people on this planet live on less than a dollar a day, and I think that the United States and the other countries in the industrialized world have a moral obligation to do everything that we can so that children get the education they need in developing countries, people get the health care and the prescription drugs that they need, that the water that people drink around the world is drinkable, that is our moral obligation. But in order to help poor people around the world, we do not have to destroy the middle class of this country. There are other ways to do that. And ironically, many of these neo-liberal-type approaches are being rejected in Latin America and many other countries around the world because they are not working. The IMF approach, the World Bank approach are being rejected in country after country where governments are being forced to cut back on education, and food subsidies. People do not want to see foreign companies coming in, driving out locally owned manufacturing and their locally owned businesses.

So the issue is not, do we help poor people around the world. We do. But do we do it in ways that do not destroy the middle class in this country, and I think we can.

The bottom line, Mr. Speaker, is we have got to find the race to the bottom. The goal of our economic policy should be to lift up poor people in the world, not lower the standard of living of American workers. And, Mr. Speaker, that is why, among other things, I have introduced legislation which would terminate, end completely, permanent normal trade relations with China. Trade in itself is a good thing, but it is only a good thing when it works for both sides. The New York Yankees do not trade their number one shortstop for a third-string, minor leaguer and say, well, that is just trade. You trade for equal value. And I believe that the United States has got to negotiate trade agreements with China, India, any country on Earth that work for them and work for us, but that are not one-sided, that work only for the CEOs of large corporations and work against the best interests of the middle class in this country.

Mr. Speaker, when we talk about what is happening in the middle class, when we talk about the loss of decent-paying jobs, when we talk about the growing gap between the rich and the poor, we should also mention something that rarely, rarely gets discussed on the floor of this House.

That is, that the American worker today is now working longer hours than the worker in any other industrialized country. Over the last 30 years, workers in middle-income, married-couple families with children have added an average of 20 weeks at work,
the equivalent of 5 more months. Most of the increase comes from working wives, many more of whom entered the labor market over this period, adding more work, more weeks per year and more hours per year; in fact, middle-income families close to 500 hours of work per year between 1979 and 2000.

Mr. Speaker, in my State and I believe all over this country, the American people are physically exhausted. They are stressed out because they are working in multiple jobs; two but two jobs, occasionally three jobs. According to statistics from the International Labor Organization, the average American last year worked 1,978 hours, up from 1,942 hours in 1990. That is an increase of almost 1 week of work per year. People are working today in order just to earn enough money to pay the bills, and they are becoming exhausted.

Mr. Speaker, I have talked a little bit about what is going on with the middle class. One of the reasons the middle class is on the edge of poverty in this country is that they are working in multiple jobs. Wal-Mart is now our major employer, but let me now talk about those who are not even in the middle class, people who are low income. We have got to ask a question about what is happening to the 11 million Americans who are trying to survive on the pathetic minimum wage of $5.15 an hour which exists here in the Congress.

Now, can one imagine at that time, when the President of the United States and the Republican leadership have provided hundreds of billions of dollars in tax breaks to the wealthiest 1 percent, there has not been one word of discussion about raising the minimum wage to a living wage? Tax breaks for billionaires, but allow millions of low-income workers to try to make ends meet on $5.15 an hour? What an outrage.

Mr. Speaker, when we look at our national priorities, we have got to recognize the national shame that in America today poverty is increasing, and we have by far the highest rate of childhood poverty of any major country on Earth. We are a Nation that gives tax breaks to billionaires, but we have 3.5 million people who will experience homelessness in this year, 13 million of our children. What kind of priorities is that? What kind of priorities do we establish when millions of senior citizens in America today are unable to afford the outrageously high cost of prescription drugs?

What about veterans, men and women who have put their lives on the line defending this country? Those veterans today, if they walk into a VA hospital or clinic, will more likely be stressed out because they are working in multiple jobs; two but two jobs, occasionally three jobs. According to statistics from the International Labor Organization, the average American last year worked 1,978 hours, up from 1,942 hours in 1990. That is an increase of almost 1 week of work per year. People are working today in order just to earn enough money to pay the bills, and they are becoming exhausted.

Mr. Speaker, when we talk about the health care crisis in America, obviously it goes well beyond the problems facing our veterans. We have got to be honest and we have got to acknowledge that our health care system today is in a state of crisis, and we have a lot of information on that issue and on prescription drugs on our Web site, which is www.Bernie.house.gov. The reality in terms of health care is that today 43 million Americans have no health insurance at all, and more and more people are underinsured, higher and higher premiums, higher and higher copayments and higher and higher deductibles.

Mr. Speaker, to my mind, the only solution to the growing crisis in health care, the escalating costs, the fact that the President is attempting to raise premiums and copayments, that person can go bankrupt paying off the medical bills, see their credit destroyed and, in some cases, never recover financially from those health care bills.

Either health care is a right of all people, or it is not. Either we provide the best health care in the world to every man, woman and child. It is morally unacceptable that when a worker loses his or her job, that worker can find himself without any health care, and if injury occurs or an accident occurs, that person can go bankrupt paying off the medical bills, see their credit destroyed and, in some cases, never recover financially from those health care bills.

Interestingly enough, we are seeing the equivalent of 5 more months. Most of the increase comes from working wives, many more of whom entered the labor market over this period, adding more work, more weeks per year and more hours per year; in fact, middle-income families close to 500 hours of work per year between 1979 and 2000.

Mr. Speaker, in my State and I believe all over this country, the American people are physically exhausted. They are stressed out because they are working in multiple jobs; two but two jobs, occasionally three jobs. According to statistics from the International Labor Organization, the average American last year worked 1,978 hours, up from 1,942 hours in 1990. That is an increase of almost 1 week of work per year. People are working today in order just to earn enough money to pay the bills, and they are becoming exhausted.

Mr. Speaker, I have talked a little bit about what is going on with the middle class. One of the reasons the middle class is on the edge of poverty in this country is that they are working in multiple jobs. Wal-Mart is now our major employer, but let me now talk about those who are not even in the middle class, people who are low income. We have got to ask a question about what is happening to the 11 million Americans who are trying to survive on the pathetic minimum wage of $5.15 an hour which exists here in the Congress.

Now, can one imagine at that time, when the President of the United States and the Republican leadership have provided hundreds of billions of dollars in tax breaks to the wealthiest 1 percent, there has not been one word of discussion about raising the minimum wage to a living wage? Tax breaks for billionaires, but allow millions of low-income workers to try to make ends meet on $5.15 an hour? What an outrage.

Mr. Speaker, when we look at our national priorities, we have got to recognize the national shame that in America today poverty is increasing, and we have by far the highest rate of childhood poverty of any major country on Earth. We are a Nation that gives tax breaks to billionaires, but we have 3.5 million people who will experience homelessness in this year, 13 million of our children. What kind of priorities is that? What kind of priorities do we establish when millions of senior citizens in America today are unable to afford the outrageously high cost of prescription drugs?

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Interesting enough, we are seeing some bipartisan concern about the rapidly escalating deficit, which this year
will be over $500 billion, and our national debt, which is now at $7 trillion. Some of you may have heard the other day that Alan Greenspan, the Chairman of the Fed, has a response to this growing deficit. Greenspan, who supported huge tax breaks for billionaires, run up a deficit, and then you deal with the deficit crisis by cutting back on the cost-of-living increases for our seniors in Social Security and in Medicare and making the retirement age when people receive Social Security later and later. I think that is an outrage.

That is why I have asked the President, who appointed Mr. Greenspan to his position, that is why I have asked the President to fire Mr. Greenspan. You do not support policies which give huge tax breaks to the rich, run up the deficit and then tell the elderly and the sick that they are the ones who will have to balance the budget. We should be very, very clear that these tax breaks, not only are they, in my view, immoral in terms of providing scant resources to people who do not need them, while we have children sleeping out on the street, but, in fact, what they are doing is leaving a terrible legacy for our children and our grandchildren. Think for a moment about the morality of tax breaks for people who do not need it today and telling our kids and grandchildren that they are going to have to pay off that debt either in higher taxes or in cuts in services to 18,500 people in 93 patient sites that she founded.

The Venice Family Clinic is the largest free clinic in the Nation, providing services to 50,000 people in 93 patient visits. Ms. Forer joined the clinic in 1994, and under her leadership, board, staff, and volunteers have doubled the clinic’s capacity and capabilities. The budget has grown from $5 million to $34 million and additional sites have been added. Sites most recently in place include a teen clinic on the campus of Culver City High School, a primary care facility located at Mar Vista Gardens, a clinic for 500 people in 93 patient visits.

Ms. Forer holds a Master’s degree in Social Work and Public Health from Columbia University. Prior to coming to the Venice Family Clinic, she served for 5 years as executive director of Settlement Health and Medical Services, a nonprofit community health center in east Harlem, New York. She also directed a department at the Metropolitan Hospital in New York City, where her mission was to make the hospital more accessible to local residents.

As Venice Family Clinic’s CEO and executive director, she reports to the board of directors, which guides the development of services and fund-raising. She also is responsible for the administration of the clinic’s 220-member staff and 1,900 volunteers.

Ms. Forer is currently a board member of the Community Clinic Association of Los Angeles County and the secretary and founding board member of the National Association of Free Clinics. Through these organizations and her direct advocacy work, Ms. Forer is involved at the local, State, and national levels in developing health care legislation and policy initiatives that will help people with low incomes and no health insurance.

Mr. Speaker, I commend Elizabeth Benson Forer for her commendable works and her commitment to families in our greater Los Angeles area.
transportation program that will carry us through April 30.

I would ask the chairman, is that right?

Mr. YOUNG of Alaska. Mr. Speaker, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. Mr. Speaker, that is correct.

Mr. OBERSTAR. Further reserving the right to object, the importance of our action here is that, without this extension, the current law expires on February 29 at midnight, and that would mean that without this extension of the 5-month extension, Federal Highway Administration employees would be furloughed, Federal Motor Carrier Safety Administration employees would be furloughed, some of the Federal Transit Administration employees would be furloughed, and actions by the States submitted to the Federal Government for funding of projects already under way or completed could not be approved, so State programs would come to a halt and the Federal Government would not be able to reimburse States after February 29. Is that correct?

Mr. YOUNG of Alaska. That is correct.

Mr. OBERSTAR. Mr. Speaker, I yield to the chairman for any further explanation he may have.

Mr. YOUNG of Alaska. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, this House passed H.R. 3783, the Surface Transportation Extension Act of 2004, which provide for a 4-month extension of the highway construction, highway safety, transit, motor carrier and surface transportation research programs.

This bill provides for a 2-month extension, and includes the best provisions of the House bill and also some provisions sought by the other body. This is a common effort.

I hope this breaks the logjam that is currently in place. I can say to the gentleman from Minnesota, he and I know we should have had the 4 months, but the other body is insisting on 2 months. We made it, as clean as possible, and they insisted on 2 months. So now we can possibly get this logjam finished so we can finish this legislation that is crucially important.

I do thank the gentleman for his cooperation on this issue. I am sorry we kept everybody here late tonight; but I cannot run the other body, as much as I would like to. Now we have to get this done so we do not stop our highway programs.

Mr. Speaker, I urge my colleagues to help me out and pass this legislation that is badly needed.

Mr. OBERSTAR. Mr. Speaker, further reserving the right to object, I very much appreciate the words of the chairman. This is the first time the House has spoken on this subject, but so has the Senate; and we are now doing the practical thing, what we can do, and that is to extend the program for another 2 months, which we know is likely to be revisited before the end of April.

However, this will give us time to proceed with the legislation pending in our committee and that we have been working on in a bipartisan fashion to do the right thing. To carry the surface transportation program forward and carry T-LU into the future.

So, again, I say to my colleagues on this side of the aisle, this is a bipartisan position. We are fully satisfied that the law is fully complied with, that there are no surprises in this legislation, that it is a straightforward extension of the extension, and we have no objection.

Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

The Clerk read the bill, as follows:

H.R. 3850

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 “Surface Transportation Extension Act of 2004”.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 2(a) of the Surface Transportation Extension Act of 2003 (23 U.S.C. 104 note; 117 Stat. 1110) is amended by inserting “and the Surface Transportation Extension Act of 2004” after “as amended by this Act”.

(b) PROGRAMMATIC DISTRIBUTIONS.—

(1) ADMINISTRATION OF FUNDS.—Section 2(b)(3) of such Act (117 Stat. 1110) is amended by striking “the amendment made under subsection (d)” and inserting “subsection (c)(1) of the Transportation Equity Act for the 21st Century”.

(2) SPECIAL RULES FOR MINIMUM GUARANTEE.—Section 2(b)(4) of such Act is amended by striking “$1,166,666,667 and inserting “$1,633,333,333”.

(c) EXTENSION OF OFF-SYSTEM BRIDGE SET-ASIDE.—Section 144(g)(3) of title 23, United States Code, is amended by striking “February 29” inserting “April 30”.

(d) AUTHORIZATION OF CONTRACT AUTHORITY.—Section 1101(c)(1) of the Transportation Equity Act for the 21st Century (117 Stat. 1111) is amended by striking “$13,483,458,333” for the period of October 1, 2003, through February 29, 2004, and inserting “$18,076,841,666 for the period of October 1, 2003, through April 30, 2004”.

(e) LIMITATION ON OBLIGATIONS.—Section 2(e) of the Surface Transportation Extension Act of 2003 (117 Stat. 1111) is amended to read as follows:

“(e) LIMITATION ON OBLIGATIONS.—

(1) DISTRIBUTION OF APPROPRIATIONS.—

Subject to paragraph (2), for the period of October 1, 2003, through April 30, 2004, the Secretary shall distribute the obligation limitation made available for Federal-aid highways and highway safety construction programs under the heading ‘FEDERAL-AID HIGHWAYS’ in the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004, to the extent that such limitation is applicable.

(2) LIMITATION ON TOTAL AMOUNT OF AUTHORITY DISTRIBUTED.—The total amount of obligation limitation distributed under paragraph (1) for the period of October 1, 2003, through April 30, 2004, shall not exceed $39,741,750,000; except that this limitation shall not apply to $372,750,000 in obligations for minimum guarantees of the period.

(3) TIME PERIOD FOR OBLIGATIONS OF FUNDS.—After April 30, 2004, no funds shall be obligated for any Federal-aid highway program project until the date of enactment of a law authorizing and obligating Federal-aid highway programs.

(4) TREATMENT OF OBLIGATIONS.—Any obligation of obligation authority distributed under this subsection shall be considered to be an obligation for Federal-aid highways and highway safety construction programs for the fiscal year 2004 for the purpose of the matter under the heading ‘FEDERAL-AID HIGHWAYS’ in the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004.”

SEC. 3. TRANSFERS OF UNOBLIGATED APPORTIONMENTS.

Section 3 of the Surface Transportation Extension Act of 2003 (117 Stat. 1112-1113) is amended by adding at the end the following:

“(e) PROHIBITION OF TRANSFERS.—Notwithstanding any other provision of this section, no funds may be transferred after February 29, 2004, by a State under subsection (a)—

(1) from amounts apportioned to the State for the congestion mitigation and air quality improvement program; and

(2) from amounts apportioned to the State for the surface transportation program and that are subject to any of paragraphs (1), (2), and (3)(A)(i) of section 133(d) of title 23, United States Code.”

SEC. 4. ADDITIONAL APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS UNDER TITLE 1 OF THE EQUITY ACT.

(1) FEDERAL LANDS HIGHWAYS.—

(A) INDIAN RESERVATION ROADS.—Section 110(a)(8)(A) of the Transportation Equity Act for the 21st Century (112 Stat. 112-117 Stat. 1113) is amended by striking “$187,500,000” and inserting “$252,500,000”.

(b) OTHER FEDERAL-AID HIGHWAY PROGRAMS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—


(B) PUBLIC LANDS HIGHWAYS.—

(A) INDIAN RESERVATION ROADS.—Section 110(a)(8)(A) of the Transportation Equity Act for the 21st Century (112 Stat. 112-117 Stat. 1113) is amended by striking “$98,750,000 for the period of October 1, 2003, through February 29, 2004, by a State under subsection (a)” and inserting “$133,500,000 for the period of October 1, 2003, through April 30, 2004”.

(C) PARK ROADS AND PARKWAYS.—

(A) INDIAN RESERVATION ROADS.—Section 110(a)(8)(C) of the Transportation Equity Act for the 21st Century (112 Stat. 112-117 Stat. 1113) is amended by striking “$98,750,000 for the period of October 1, 2003, through February 29, 2004, by a State under subsection (a)” and inserting “$133,500,000 for the period of October 1, 2003, through April 30, 2004”.
amended by striking `$51,666,667 for the period of October 1, 2003, through February 29, 2004' and inserting `$3,062,500';
(b) by striking `$1,166,667' and inserting `$4,166,667'; and
(c) in the item relating to fiscal year in table 3 of section 1101(l)(4) of such Act (117 Stat. 1117) by striking `$1,516,666,667' and inserting `$1,166,666,667'.

(2) by striking "February 29' and inserting "April 30'.

(i) RECREATIONAL TRAILS ADMINISTRATIVE COSTS.—Section 1101(i)(1) of such Act (117 Stat. 1117) is amended by striking `$50,000,000 for the period of October 1, 2003, through February 29, 2004' and inserting "$437,500 for the period of October 1, 2003, through April 30, 2004'.

(j) RAILWAY-HIGHWAY CROSSING HAZARD ELIMINATION IN HIGH SPEED RAIL CORRIDORS.—Section 1101(i)(1) of such Act (117 Stat. 1117) is amended by striking `$50,000,000 for the period of October 1, 2003, through February 29, 2004' and inserting "$437,500 for the period of October 1, 2003, through April 30, 2004'.

(k) NONDISCRIMINATION.—Section 1101(k) of such Act (117 Stat. 1118) is amended—
(1) in paragraph (1) by striking "$4,166,667 for the period of October 1, 2003, through February 29, 2004' and inserting "$3,062,500 for the period of October 1, 2003, through April 30, 2004'; and
(2) in paragraph (2) by striking "$1,166,667 for the period of October 1, 2003, through February 29, 2004' and inserting "$4,166,667 for the period of October 1, 2003, through April 30, 2004'.

(l) ADMINISTRATION OF FUNDS.—Section 5(i) of the Surface Transportation Extension Act of 2003 (117 Stat. 1118) is amended—
(1) by inserting "and section 5 of the Surface Transportation Extension Act of 2004" after "this section" the first place it appears; and
(2) by inserting "or the amendment made by section 4(a)(1) of such Act" before the period at the end.

(m) REDUCTION OF ALLOCATED PROGRAMS.—Section 5(m) of such Act (117 Stat. 1119) is amended—
(1) by inserting "and section 5 of the Surface Transportation Extension Act of 2004" after "for this section";
(2) by striking "both";
(3) by striking "and by this section" and inserting ", by this section, and by section 5 of such Act"; and
(4) by inserting "and by section 5 of such Act" before the period at the end.

(n) PROGRAM CATEGORY RECONCILIATION.—Section 5(n) of such Act (117 Stat. 1119) is amended by inserting "and section 5 of the Surface Transportation Extension Act of 2004" after "this section".

SEC. 6. EXTENSION OF HIGHWAY SAFETY PROGRAMS.

(a) SEAT BELT SAFETY INCENTIVE GRANTS.—Section 157(g)(1) of title 23, United States Code, is amended by striking "$46,666,667 for the period of October 1, 2003, through February 29, 2004' and inserting "$55,333,333 for the period of October 1, 2003, through April 30, 2004'.

(b) PREVENTION OF INTOXICATED DRIVER INCENTIVE GRANTS.—Section 163(e)(1) of such title is amended by striking "$50,000,000 for the period of October 1, 2003, through February 29, 2004' and inserting "$65,333,333 for the period of October 1, 2003, through April 30, 2004'.

SEC. 7. SPORT FISHING AND BOATING SAFETY.

(a) FUNDING FOR NATIONAL OUTREACH AND COORDINATION PROGRAM.—Section 4(c)(4)(D) of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(c)(6)) is amended to read as follows:
"$65,333,333 for the period of October 1, 2003, through April 30, 2004'.

(b) CLEAN VESSEL ACT FUNDING.—Section 4(b)(4) of such Act (16 U.S.C. 777c(b)(4)) is amended to read as follows:
"(4) FIRST 7 MONTHS OF FISCAL YEAR 2004. — For the period of October 1, 2003, through
April 30, 2004, of the balance of each annual appropriation remaining after making the distribution under subsection (a), an amount equal to $47,833,333, reduced by 2 percent of the amount appropriated under this title for that fiscal year from the Boat Safety Account of the Aquatic Resources Trust Fund established by section 9504 of the Internal Revenue Code of 1986 to carry out section 1302(d)(1) of title 46, United States Code, shall be used as follows:

(A) $5,833,333 shall be available to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

(B) $2,083,333 shall be available to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 163 of that title, shall be expended for State recreational boating safety programs under section 5312 of title 46, United States Code.

(C) The balance remaining after the application of subparagraphs (A) and (B) shall be transferred to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 5312 of title 46, United States Code.

(a) Allocating Amounts.—

(1) IN GENERAL.—Title I of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (division F of Public Law 108-199) is amended by inserting before the period at the end of the heading under the heading "United States Highway Traffic Safety Administration, Highway Traffic Safety Grants" the following: "Provided further, That not to exceed $2,600,000 of the funds subject to apportionment under section 163 of this title, shall be available for the National Highway Traffic Safety Administration for administering highway safety grants under those sections".

(b) Effective Date.—The amendment made by paragraph (1) shall take effect on January 24, 2004.

(c) Highway Safety Grants.—

(1) IN GENERAL.—Title I of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (division F of Public Law 108-199) is amended by adding at the end the following:

"Obligation authority shall be available for carrying out transit cooperative research programs under section 5333(a) of title 49, United States Code, not to exceed $6,262,630 and $4,095,000 available under section 5333(e)(2)(A) of title 49, United States Code, for the period of October 1, 2003, through April 30, 2004.

(2) Amounts Available for Fiscal 2004.—(A) $1,998,271,661 shall be available for grants described in clause (i).

(B) $729,941,563 shall be transferred to and administered under section 5300 for buses and bus facilities; and

(C) $1,305,320,100 shall be available for carrying out national planning and research under section 5315 of title 49, United States Code.

(3) not less than $4,784,106 shall be available for carrying out transit cooperative research programs under section 5333(a) of title 49, United States Code, for the period of October 1, 2003, through April 30, 2004.

(4) any amounts not made available under paragraph (1) through (3) shall be available for carrying out transit cooperative research programs under section 5311(b)(2) of title 49, United States Code.

(5) not less than $4,784,106 shall be available for carrying out transit cooperative research programs under section 5311(b)(2) of title 49, United States Code, for the period of October 1, 2003, through April 30, 2004.

(6) not less than $3,044,431 shall be available for providing rural transportation assistance under section 5311(b)(2) of title 49, United States Code,

(7) not less than $4,784,106 shall be available for carrying out transit cooperative research programs under section 5333(a) of title 49, United States Code, for the period of October 1, 2003, through April 30, 2004.

(8) any amounts not made available under paragraphs (1) through (7) shall be available for carrying out transit cooperative research programs under section 5311(b)(2) of title 49, United States Code.

(9) not less than $4,784,106 shall be available for carrying out transit cooperative research programs under section 5333(a) of title 49, United States Code.

(a) Highway Safety Grants.—

(1) IN GENERAL.—Title I of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (division F of Public Law 108-199) is amended by inserting before the period at the end of the heading under the heading "United States Highway Traffic Safety Administration, Highway Traffic Safety Grants" the following: "Provided further, That not to exceed $2,600,000 of the funds subject to apportionment under section 163 of this title, shall be available for the National Highway Traffic Safety Administration for administering highway safety grants under those sections".

(b) Effective Date.—The amendment made by paragraph (1) shall take effect on January 24, 2004.

(c) Highway Safety Grants.—

(1) IN GENERAL.—Title I of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (division F of Public Law 108-199) is amended by adding at the end the following:

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(2) Amounts Available for Fiscal 2004.—(A) $1,998,271,661 shall be available for grants described in clause (i).

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(3) not less than $4,784,106 shall be available for carrying out transit cooperative research programs under section 5333(a) of title 49, United States Code, for the period of October 1, 2003, through April 30, 2004.

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(9) not less than $4,784,106 shall be available for carrying out transit cooperative research programs under section 5333(a) of title 49, United States Code.

(a) Highway Safety Grants.—

(1) IN GENERAL.—Title I of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (division F of Public Law 108-199) is amended by inserting before the period at the end of the heading under the heading "United States Highway Traffic Safety Administration, Highway Traffic Safety Grants" the following: "Provided further, That not to exceed $2,600,000 of the funds subject to apportionment under section 163 of this title, shall be available for the National Highway Traffic Safety Administration for administering highway safety grants under those sections".

(b) Effective Date.—The amendment made by paragraph (1) shall take effect on January 24, 2004.

(c) Highway Safety Grants.—

(1) IN GENERAL.—Title I of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (division F of Public Law 108-199) is amended by adding at the end the following:

"Obligation authority shall be available for carrying out transit cooperative research programs under section 5333(a) of title 49, United States Code, not to exceed $6,262,630 and $4,095,000 available under section 5333(e)(2)(A) of title 49, United States Code, for the period of October 1, 2003, through April 30, 2004.

(2) Amounts Available for Fiscal 2004.—(A) $1,998,271,661 shall be available for grants described in clause (i).

(B) $729,941,563 shall be transferred to and administered under section 5300 for buses and bus facilities; and

(C) $1,305,320,100 shall be available for carrying out national planning and research under section 5315 of title 49, United States Code.

(3) not less than $4,784,106 shall be available for carrying out transit cooperative research programs under section 5333(a) of title 49, United States Code, for the period of October 1, 2003, through April 30, 2004.

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49, United States Code, for the period Octo- ber 1, 2003, through April 30, 2004—

"(A) $994,100 shall be available for the cen- ter identified in section 5055(j)(4)(A) of such title; and

"(B) $994,100 shall be available for the center identified in section 5055(j)(4)(F) of such title.

(2) TRAINING AND CURRICULUM DEVELOP- ment.—Notwithstanding section 5383(e)(2) of title 49, United States Code, any amounts made available under such section for the pe- riod of October 1, 2003, through April 30, 2004, that remain after distribution under para- graph (1), shall be available for the purposes specified in section 3015(d) of the Transpor- tation Equity Act for the 21st Century (112 Stat. 857).

(2) CONFORMING AMENDMENT.—Section 3035(d)(2) of the Transportation Equity Act for the 21st Century (112 Stat. 857) is amend- ed by striking “February 29, 2004” and in- serting “April 30, 2004”.

(k) ADMINISTRATION AUTHORIZATIONS.—Sec- tion 5383(f)(2) of title 49, United States Code, is amended—

(1) in the heading by striking “February 29, 2004” and inserting “April 30, 2004”; and

(2) by striking “February 29, 2004” and in- serting “April 30, 2004”.

(3) by adding at the end the following:

"(1) IN GENERAL.—Amounts—

(A) by striking “February 29, 2004” and inserting “April 30, 2004”;

(B) in paragraph (3), by striking “February 29, 2004” and in- serting “April 30, 2004”;

(C) in paragraph (4), by striking October 1, 2003, through April 30, 2004, and inserting “October 1, 2003, through April 30, 2004”;

(D) by inserting “$4,166,667” and inserting “$2,812,475”; and

(E) in the matter after subparagraph (G), by inserting “February 29, 2004” and in- serting “April 30, 2004”;

(f) PROJECT FOR NEW FIXED GUIDEWAY SYSTEMS AND EXTENSIONS TO EXISTING SYS- TEMS.—Section 3030 of the Transportation Equity Act for the 21st Century (112 Stat. 373) is amended by striking “February 29, 2004”, each place it appears and inserting “April 30, 2004”.

(g) NEW JERSEY URBAN CORE PROJECT.— Sec- tion 3033(a)(3) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2122; 112 Stat. 379) is amended by striking “February 29, 2004” each place it appears and inserting “April 30, 2004”.

(h) TREATMENT OF FUNDS.—Section 8(t) of the Surface Transportation Extension Act of 2003 (23 U.S.C. 101 note) is amend- ed by striking “Amounts” and inserting the following:

"(1) IN GENERAL.—Amounts—

(A) by striking “February 29, 2004” and inserting “April 30, 2004”;

(B) in paragraph (2), by striking “February 29, 2004” and inserting “April 30, 2004”; and

(C) in paragraph (2) by striking “February 29, 2004” and inserting “April 30, 2004”;

(d) by inserting after paragraph (1) the following:

"(2) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 24, 2004.

SEC. 11. FEDERAL MOTOR CARRIER SAFETY AD- MINISTRATION PROGRAM.

(a) CHANGES IN SAFE- TY PROGRAMS.—Section 2009(a)(1) of the Transportation Equity Act for the 21st Century (112 Stat. 5303) is amended—

(1) in the heading by striking “February 29, 2004” and inserting “April 30, 2004”; and

(2) (A) by striking “$2,467,500” and inserting “$2,920,000”; and

(B) by striking “February 29, 2004” and in- serting “April 30, 2004”;

(b) MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.—Section 31104(a)(7) of title 49, United States Code, is amended to read as follows—

“(7) Not more than $98,352,000 for the pe- riod of October 1, 2003, through April 30, 2004;"
2003” and inserting “Surface Transportation Extension Act of 2004”.

(2) MASS TRANSIT ACCOUNT.—Paragraph (3) of section 9503(e) of such Code is amended—(A) in the matter before subparagraph (A), by striking “March 1, 2004” and inserting “May 1, 2004”, (B) in subparagraph (C), by striking “or” at the end of such subparagraph, (C) in subparagraph (D), by inserting “or” at the end of such subparagraph, (D) by inserting after subparagraph (D) the following new subparagraph: “(E) the Surface Transportation Extension Act of 2004”;

(3) EXCEPTION TO LIMITATION ON TRANSFERS.—Subparagraph (B) of section 903(b)(5) of such Code is amended by striking “March 1, 2004” and inserting “May 1, 2004”;

(4) AQUATIC RESOURCES TRUST FUND.—(A) by striking “9504” of such Code is amended—(B) by striking “Surface Transportation Extension Act of 2003” each place it appears and inserting “Surface Transportation Extension Act of 2004”;

(5) BOAT SAFETY ACCOUNT.—Subsection (c) of section 904 of such Code is amended—(A) by striking “March 1, 2004” and inserting “May 1, 2004”, and (B) by striking “Surface Transportation Extension Act of 2003” and inserting “Surface Transportation Extension Act of 2004”;

(6) UNION BUSTING ACCOUNT.—Paragraph (2) of section 904(d) of such Code is amended by striking “March 1, 2004” and inserting “May 1, 2004”, and deleting subparagraph (B) in the matter before subparagraph (E), by striking “Surface Transportation Extension Act of 2003” each place it appears and inserting “Surface Transportation Extension Act of 2004”;

(7) SURFACE TRANSPORTATION ACCOUNT.—Paragraph (1)(B) of section 220 of the Internal Revenue Code of 1986 is amended by inserting “Surface Transportation Extension Act of 2004” each place it appears and inserting “Surface Transportation Extension Act of 2003”

(b) SURFACE TRANSPORTATION ACCOUNT.—The amendments made by section 220 of the Internal Revenue Code of 1986 are amended by striking “March 1, 2004” and inserting “May 1, 2004”, and deleting subsection (B) in the matter before subparagraph (E), by striking “Surface Transportation Extension Act of 2003” each place it appears and inserting “Surface Transportation Extension Act of 2004”;

(c) SURFACE TRANSPORTATION ACCOUNT.—Paragraph (1) of section 9503(d)(1) of such Code is amended—(A) by striking “March 1, 2004” and inserting “May 1, 2004”, and (B) by inserting after subparagraph (B) the following new subparagraph: “(E) an amount determined by the Secretary of Transportation to be the estimate under section 9503(d) of the Internal Revenue Code of 1986 receipts of the Highway Trust Fund, the Secretary of the Treasury shall treat—

(1) each expiring provision of paragraphs (1) through (4) of section 9503(b) of such Code which is related to appropriations or transfers to such Fund to have been extended through the end of the 24-month period referred to in section 9503(d)(1)(B) of such Code, and

(2) with respect to each tax imposed under the sections referred to in section 9503(b)(1) of such Code, the rate of such tax during the 24-month period referred to in section 9503(b)(1) of such Code to be the same as the rate of such tax as in effect on the date of the enactment of the Surface Transportation Extension Act of 2003.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. YOUNG of Alaska. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H. Res. 105, the SPEAKER pro tempore.

There was no objection.

APPOINTMENT OF HONORABLE FRANK R. WOLF TO ACT AS SPEAKER PRO TEMPORE TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS THROUGH MARCH 1, 2004

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

J. DENNIS HASTERT, Speaker of the House of Representatives.

The SPEAKER pro tempore. Without objection, the appointment is approved.

There was no objection.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. KLEczka (at the request of Ms. PELOSI) for today on account of personal business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders hereafter entered, was granted to: (The following Members (at the request of Mr. DeFazio) to revise and extend their remarks and include extraneous material.)

Mr. DeFazio, for 5 minutes, today.
Mr. Brown of Ohio, for 5 minutes, today.
Mr. Conyers, for 5 minutes, today.
Mr. Hinojosa, for 5 minutes, today.
Mr. Filner, for 5 minutes, today.
Mr. Davis of Illinois, for 5 minutes, today.
Ms. Norton, for 5 minutes, today.
Mr. George Miller of California, for 5 minutes, today.
Ms. Grijalva, for 5 minutes, today.

The following Members (at the request of Mr. Wolf) to revise and extend their remarks and include extraneous material:

Mr. Souder, for 5 minutes, today.
Mr. Wolf, for 5 minutes, today.

The following Members (at their own request) to extend their remarks and include extraneous material:

Mr. Garrett of New Jersey, for 5 minutes, today.
Mr. Langevin, for 5 minutes, today.
Ms. Watson, for 5 minutes, today.

SENATE BILL REFERRED

A concurrent resolution of the Senate of the following title was taken from the Speaker’s table and, under the rule, referred as follows:

S. Con. Res. 92. Concurrent resolution congratulating and saluting Focus: HOPE on the occasion of its 39th anniversary and for its remarkable commitment and contributions to Detroit, the State of Michigan, and the United States; to the Committee on Government Reform.

ADJOURNMENT

Mr. YOUNG of Alaska. Mr. Speaker, I move that the House do now adjourn.

The motion was made at (8 o’clock and 10 minutes p.m.), under its previous order, the House adjourned until Monday, March 1, 2004, at noon.

OATH FOR ACCESS TO CLASSIFIED INFORMATION

Under clause 13 of rule XXIII, the following Members executed the oath for access to classified information:

NOTICE OF PROPOSED RULEMAKING


Hon. J. Dennis Hastert, Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to Section 303(b) of the Congressional Accountability Act of 1995 (2 U.S.C. 1384(b)) (“Act”), I am transmitting on behalf of the Board of Directors of the Office of Compliance the enclosed Second Notice of Proposed Procedural Rule Making for publication in the Congressional Record.

We request that this notice be republished in the Congressional Record. It was first published in the Congressional Record of the House on February 24, 2004. However, the Act specifies that the enclosed Notice be published on the first day on which both Houses are in session following this transmittal. Because the Senate was unable to publish its Notice of these procedural rules on February 24th, we are retransmitting this Notice to both the House and Senate so that this Notice may be published in the Record of the House and Senate on the same day.

Any inquiries regarding this Notice should be directed to the Office of Compliance, 110 Second Street, S.E., Suite H9475 and S12599. On November 21, 2003, a Notice of Proposed Amendment to the Office of Compliance Rules of Procedure was published in the Congressional Record at S12599. On November 26, 2003, the Executive Director, Office of Compliance, approved another opportunity to comment on the Notice of Proposed Amendment to the Office of Compliance Rules of Procedure.

Copies of submitted comments will be available for review on the Office’s web site at www.compliance.gov, and at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540-1999. It is recommended that a hard copy of the submitted comments be requested, but not required, that an electronic version of any comments be provided on an accompanying computer disk. Comments may be submitted via the Internet to the Executive Director at 202-724-1913 (voice) or 202-426-1920 (TDD). A submission of comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA-200, Washington, D.C. 20540-1999.

Sincerely,

Susan S. Robfogel, Chair.

ATTACHMENT

FOURTH NOTICE IN AN ALTERNATIVE FORM

The Congressional Accountability Act of 1995: Second Notice of Proposed Amendments to the Procedural Rules. The hearing was held in the Congressional Record at S12599. On December 2, 2003 hearing was published in the Congressional Record at S15394 and H12304.

The Board of Directors of the Office of Compliance has determined to issue this Second Notice of Proposed Amendment to the Procedural Rules, which includes changes to the Rules of Procedure, together with a brief discussion of each proposed amendment. As set forth in greater detail herein below, interested parties are being afforded another opportunity to comment on these proposed amendments.

The complete existing Procedural Rules of the Office of Compliance may be found on the Office’s web site www.compliance.gov.

How to submit comments:

Comments regarding the proposed amendments to the Rules of Procedure of the Office of Compliance set forth in this NOTICE are invited for a period of thirty (30) days following the date of the appearance of this NOTICE in the Congressional Record. In addition, the Office of Compliance will make available on its Internet web site a copy of the proposed rules in an alternative format. Any inquiries regarding this notice should be directed via the Internet to the Executive Director at 202-724-1913 (voice) or 202-426-1920 (TDD). A submission of comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA-200, Washington, D.C. 20540-1999. It is recommended, but not required, that an electronic version of any comments be provided on an accompanying computer disk. Comments may be submitted via the Internet to the Executive Director at 202-724-1913 (voice) or 202-426-1920 (TDD).

Sincerely,

Susan S. Robfogel, Chair.
the Act, and for appeals of a decision by a hearing officer to the Board of Directors of the Office of Compliance, and for the filing of an appeal of a decision by the Board of Directors to the United States Court of Appeals for the Federal Circuit. The rules also contain other matters of general applicability to the dispute resolution process and to the operation of the Office of Compliance.

These proposed amendments to the Rules of Procedure are the result of the experience of the Office in processing disputes under the CAA since the original adoption of these rules in 1996.

How to read the proposed amendments: The text of the proposed amendments shows textual deletions (within brackets), and added text in italic. Textual additions which have been made for the first time in this second notice of proposed amendments are shown as Italicized bold. Textual deletions which have been made for the first time in this second notice of proposed amendments are shown in brackets. Textual additions which have been made for the first time in this second notice of proposed amendments are shown in brackets with double brackets. Only subsections of the rules which include proposed amendments are reproduced in this notice. The insertion of a series of stars (***) indicates that the unamended text within a section has not been reproduced in this document. The insertion of a series of stars (****) indicates that the unamended text of entire sections of the Rules have not been reproduced in this document. For the text of other portions of the Rules which are not proposed to be amended, please access the Office of Compliance website at www.compliance.gov.

PROPOSED PROCEDURAL RULE AMENDMENTS

PART I—OFFICE OF COMPLIANCE

Office of Compliance Rules of Procedure

As Amended—February 12, 1998 (Subpart A, section 1.02, “Definitions”), and as proposed to be amended in 2004.

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$10.01 Filing and Computation of Time.

(a) Method of Filing. Documents may be filed in person or by mail, including express, overnight and other expedited delivery. When specifically authorized by the Executive Director, or by the Board of Directors in the case of an appeal to the Board, any document may be filed by facsimile (FAX) transmission. . . .

Discussion: The electronic filing option is in addition to existing filing procedures, and represents the decision of this agency to begin the process of migration toward electronic filing. In response to comments, the Board has extended authorization authority to ensure that the Executive Director cannot unilaterally assume Board authority regarding a matter pending before the Board. In addition, in available technology, it will remain necessary to designate a particular format for electronic transmittal. Requiring a des

5.02 Appointment of the Hearing Officer

Discussion: Section 1.03(a)(2)(i) permits service or filing of documents by certified mail, return receipt requested. When these rules permit or require service or filing of documents by certified mail, return receipt requested, such documents may also be served or filed by express mail or other forms of expedited delivery in which proof of (delivery to) **date of receipt** by the addressee is provided.

Discussion: Section 1.03(a)(2)(ii) permits “other expedited delivery” of documents being filed for which proof of delivery is not required. However, there is no similar provision with regard to certified mail. Not including such information also better safeguards the security of document filing. **Date of receipt** by the addressee is provided.

Discussion: Section 1.03(a)(2)(iii) permits “other expedited delivery” of documents being filed for which proof of delivery is not required. However, there is no similar provision with regard to certified mail. Requiring a such a service method is specifically required in Sections 2.03(i), 2.04(i), and 5.01(e). Particularly in view of the lengthened time required for certified mail through the U.S. Postal Service since 9-11, the Board has determined that additional flexibility in the use of other mail delivery services is also necessary as an alternative to certified mail, return receipt requested.

1.05 Designation of Representative.

**AMENDMENT DELETED** (a) An employee, other charging individual or party, a witness, a labor organization, or an employing office, an entity alleged to be responsible for correcting a violation wishing to be represented by another individual must file with the Office a written notice of designation of representative. The representative may be, but is not required to be, an attorney. **(During the period of counseling and mediation) upon the request of a party, the Executive Director concludes that a representative of an employee, of a charging party, of a labor organization, of an employing office, or of an entity alleged to be responsible for correcting a violation has a conflict of interest, the Executive Director may, after giving the representative an opportunity to respond, disqualify the representative. In that event, the period for counseling or mediation may be extended by the Executive Director for a reasonable time to afford the party an opportunity to obtain another representative.)**

Discussion: Upon further consideration, the Board has deleted this proposed amendment. The Board does not agree with the assertion by a commenter that the current version of this rule is in excess of the authority of this Board under the Act.

**Date of receipt** by the addressee is provided.

Discussion: Section 1.03(a)(2)(ii) permits “other expedited delivery” of documents being filed for which proof of delivery is not required. However, there is no similar provision with regard to certified mail. Three such a service method is specifically required in Sections 2.03(i), 2.04(i), and 5.01(e). Particularly in view of the lengthened time required for certified mail through the U.S. Postal Service since 9-11, the Board has determined that additional flexibility in the use of other mail delivery services is also necessary as an alternative to certified mail, return receipt requested.

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Discussion: Upon further consideration, the Board has deleted this proposed amendment. The Board does not agree with the assertion by a commenter that the current version of this rule is in excess of the authority of this Board under the Act.

**Date of receipt** by the addressee is provided.
2.03 Counseling. 

(a) Initiating a Proceeding: Formal Request for Counseling. In order to initiate a proceeding under these rules, an employee shall [formally] file a written request for counseling with the Office regarding an alleged violation of the Act, as referred to in section 2.01(a) above. All [formal] requests for counseling shall be confidential, unless the employee agrees to waive his or her right to confidentiality under section 2.03(e)(2), below.

Discussion: The purpose of this amendment is to delete the undefined term “formal,” and require simply that the request be made in written form. Several commenters suggested deletion of the requirement that the counseling request be in writing would constitute a “waiver” of the statutory requirement of absolute confidentiality in counseling matters. See section 2.03(e)(2), below.

(b) Notice. The Executive Director shall notify the employee of the right and obligation, upon request, or by personal delivery within the stipulated referral period. In such circumstances, the requirement for a return by the employee to the Office’s procedures within 10 days can actually have the effect of disrupting the completion of the grievance process. Therefore, the Board proposes an extension of that time frame to 60 days. The time during which the employee is unable to make a referral to an agency grievance proceeding assumes that there will have been joinder of issues between the employee and the employing office. Therefore, the Board proposes an increase in the time for the employee to request a referral to the Office that the party has filed a civil action, specifying the district court in which the civil action was filed and the complaint number.

Discussion: The Office has the responsibility to be aware of judicial applications and interpretations of the Act. In this regard, see also proposed rule 9.06. In response to comments, the Board has replaced the proposed requirement that a copy of the complaint be provided, with a notice of filing. The Office also intends to include notice of this requirement in its Notice of End of Mediation.

AMENDMENT DELETED: [(II)] No party to any civil action required to provide information under paragraph (1) shall request information from the Office regarding the proceedings which took place pursuant to sections 402 or 403 related to said civil action, unless said party notifies the other party(ies) to the civil action of the request to the Office. The Office will determine whether the release of such information is appropriate under the terms of the Rules of Practice.

Discussion: Upon further consideration, the Board has deleted this proposed amendment.

* * * *

4.16 Comments on Occupational Safety and Health Reports. [The General Counsel will provide to responsible employing office(s) a copy of

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February 26, 2004

CONGRESSIONAL RECORD — HOUSE

H695

§4.16 Comments on Occupational Safety and Health Reports. [The General Counsel will provide to responsible employing office(s) a copy of
any report issued for general distribution not less than seven days prior to the date scheduled for its issuance. If a responsible employing office wishes to have its written comments appended to the report, it shall submit such comments to the Board of Directors which, in its sole discretion, shall review the matter and issue a final and non-appealable decision solely regarding inclusion or exclusion of comments. Submissions to the Board of Directors in this regard shall be made expeditiously and without regard to the requirements of subpart H of these rules.

§5.03 Dismissal, Summary Judgment, and Withdrawal of Complaints.

(d) Summary judgment. A Hearing Officer may, after notice and an opportunity for the parties to address the question of summary judgment, issue a summary judgment order without limitation of time to which any party may file a written response or objections. The Hearing Officer shall rule on the objections and issue a summary judgment order within 15 days after the written response is received. A party aggrieved by the decision of a Hearing Officer or Board may appeal to the Secretary of Labor for Labor Management Relations pursuant to Part 2428 of the same Rules, review of arbitrator awards under Part 2425 of the same Rules, determination of bargaining consultant requests under Part 2427 of the same Rules, requests for general statements of policy or guidance under Part 2427 of the same Rules, enforcement of standards of conduct decisions and orders by the Assistant Secretary of Labor for Labor Management Relations pursuant to Part 2428 of the same Rules, and determinations regarding collective bargaining impasses pursuant to Part 2470 of the same Rules. The term ‘‘matter’’ was intended by the Board to further consideration, because some of the procedures referenced in the labor-management relations Rules are addressed to the Board in the first instance. Submission by electronic version is in addition to the existing methods for filing submissions. This amendment to this decision of this agency to begin exploring the process of migration toward electronic filing. Because of limits in available technology, it remains necessary to create a particular format for electronic disk transmission. In response to comments, the Board has amended the proposal to allow for a ‘‘re quest’’ rather than a requirement. The availability of submissions on disk, particularly of lengthy documents, can save the Office time and expense in handling such documents.

§9.03 Attorney’s fees and costs.

(a) Request. No later than 20 days after the entry of a Hearing Officer’s decision under section 7.16 or after service of a Board decision by the Office, the complainant, if he or she is a prevailing party, may submit to the Hearing Officer who heard the case initially a motion for the award of reasonable attorney’s fees and costs, following the form specified in paragraph (b) below. All motions for attorney’s fees and costs shall be submitted to the Hearing Officer. [The Board or the Hearing Officer, if he or she is a prevailing party, may submit to the Executive Director a request for payment of attorney’s fees and costs.

§10.01 Filing, Service and Size Limitations of Motions, Briefs, Responses and Other Documents.

(a) Filing with the Office. Number. One original and three copies of all motions, briefs, responses, and other documents must be filed, whenever required, with the Office or Hearing Officer. When a party aggrieved by the decision of a Hearing Officer or other matter or determination reviewable by the Board files an appeal with the Board, one original and seven copies of any appeal brief and any responses must be filed with the Office. The Office, Hearing Officer, or Board may also request a party to submit an electronic version of any submission on a disk in a designated format.
§9.05 Informal Resolutions and Settlement Agreements.

(b) Formal Settlement Agreement. The parties may agree formally to settle all or part of a disputed matter in accordance with section 414 of the Act. In that event, the agreement shall be in writing and submitted to the Executive Director for review and approval. If the Executive Director does not approve the settlement, such disapproval shall be in writing to the third-party groundkeeper, and shall render the settlement ineffective.

(c) Requirements for a Formal Settlement Agreement. A formal settlement agreement requires the signature of all parties on the agreement document before the agreement can be submitted to the Executive Director. A formal settlement agreement cannot be rescinded after the signatures of all parties have been affixed to the agreement, unless by written revocation of the agreement voluntarily signed by all parties, or as otherwise [[required][permitted] by law.

(d) Violation of Formal Settlement Agreement. If a party should allege that a formal settlement agreement has been violated, the issue shall be determined by reference to the formal dispute resolution procedures of the agreement. If the particular formal settlement agreement does not have a stipulated method for dispute resolution of an alleged violation of the agreement, the procedures for formal resolution process shall be deemed to be a part of each formal settlement agreement approved by the Executive Director pursuant to section 414 of the Act.

Any complaint regarding a violation of a formal settlement agreement may be filed with the Executive Director after 60 days after the party to the agreement becomes aware of the alleged violation. Such complaints may be referred to the Executive Director to a Hearing Officer for a final and binding decision. The procedures for hearing and determining such complaints shall be governed by subparts F, G, and H of these rules.

Discussion: The Board disagrees with comments that the Office has no statutory authority to settle disputes regarding the alleged violation of settlement agreements. Under section 414 of the Act, the Executive Director may enter into any settlement agreement under the Act entered into at any stage of the administrative or judicial process. No settlement agreement as a “compromise effective” unless and until such approval has been given. The Office is concerned that many settlement agreements do not include provisions for dispute resolution in controversies regarding alleged violations of the agreement. Rather than considering initiating a practice of withholding approval of settlement agreements which do not contain provisions setting out dispute resolution procedures, the Office is providing all parties, by notice and rule, the option to include their own dispute resolution procedures as an integral part to the dispute resolution procedure stipulated in this proposed rule when they enter into a settlement agreement. The word “permitted” was inserted regarding a violation of a settlement agreement, since in this context a rescission of an approved agreement would rarely, if ever, be required by operation of law.

[[§9.06 Revocation, Amendment or Waiver of Rules.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker’s table and referred as follows:

§8.01 A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency’s final rule — Alobarbital (OPP-2003-1359; FRL-7391-3) received February 20, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

§8.02 A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency’s final rule — Approval of the State Implementation Plan for the Reading Area (Berks County) [PA 210-4302; FRL-7616-5] received February 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

§8.03 A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency’s final rule — Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revisions to Update the 1-Hour Ozone Maintenance Plan for the Reading Area (Berks County) [PA 210-4302; FRL-7616-5] received February 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

§8.04 A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency’s final rule — Approval of the State Implementation Plan for the Reading Area (Berks County) [PA 210-4302; FRL-7616-5] received February 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

§8.05 A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency’s final rule — Approval and Promulgation of Air Quality Implementation Plans; West Virginia; MOBILE6-Based Motor Vehicle Emission Budgets for Greenbrier County and the Charleston, Huntington, and Parkersburg 1-Hour Ozone Maintenance Areas [WV063-632a; FRL-7616-6] received February 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

§8.06 A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency’s final rule — Approval and Promulgation of Air Quality Implementation Plans; Montana; Approval of Section 112(I) Authority for Hazardous Air Pollutants; Equivalency by Permitting Programs; National Emission Standards for Hazardous Air Pollutants from the Pulping Process [MT 510-1020; FRL-7616-7] received February 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

§8.07 A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency’s final rule — Approval and Promulgation of Air Quality Implementation Plans; Michigan; Approval and Promulgation of State Implementation Plans; Minnesota; Revisions to Update the 1-Hour Ozone Maintenance Plan Update [TC-057-20020aaa; FRL-7616-8] received February 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.


§8.10 A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency’s final rule — Approval and Promulgation of State Implementation Plans; Missouri; Approval of the State Implementation Plan for the Kansas City Metropolitan Nonattainment Area [MO 210-7216k; A-1-FRL-7617-10] received February 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.
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6837. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Interim Final Determination to Stay and/or Defer Sanctions, San Joaquin Valley Unified Air Pollution Control District [CA-205-043(a); FRL-7621-2] received February 11, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6838. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — National Primary and Secondary Drinking Water Regulations; Approval of Additional National Primary and Secondary Drinking Water Regulations; Approval of Additional National Primary and Secondary Drinking Water Regulations; Approval of Additional National Primary and Secondary Drinking Water Regulations [FL-91-200323(b); FRL-7622-2] received February 11, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.


6840. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval of Coppermine Mine Plan, Administrative Fines; Central Apennines Area, Italy; and Sever 1-Hour Ozone Nonattainment Area; Revisions to the Texas Underground Injection Control Program for the State of Texas; Revisions to the Texas Underground Injection Control Program for the State of Texas [FRL-7626-9] received February 11, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.


6842. A letter from the Chair, Office of Compliance, transmitting Second Notice of Proposed Procedural Rule Making under Section 303(b) of the Congressional Accountability Act of 1995 for publication in the Congressional Record, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on House Administration and Education and the Workforce.

6843. A letter from the Chair, Office of Compliance, transmitting Second Notice of Proposed Procedural Rule Making under Section 303(b) of the Congressional Accountability Act of 1995 for publication in the Congressional Record, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on House Administration and Education and the Workforce.

TIME LIMITATION OF REFERRED BILL

Pursuant to clause 2 of rule XII the following action was taken by the Speaker:

H. 2120. Reference to the Committee on the Judiciary extended for a period ending not later than June 1, 2004.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. CALVERT (for himself, Mr. LAMPSHIRE, Mr. ISA, and Mr. MCINTYRE):

H. 3845. A bill to amend the Act of August 13, 1946, to raise the maximum amount that may be currently determined by the Secretary of the Army for the construction of small shore and beach restoration and protection projects, and for other purposes; to the Committee on Energy and Commerce.

By Mr. POMBO (for himself, Mr. RENZI, Mr. BACA, Mr. PEARCE, Mr. UDALL of Colorado, Mr. NUNES, Mr. UDALL of New Mexico, and Mr. DOOLEY of California):

H. 3846. A bill to authorize the Secretary of Agriculture and the Secretary of the Interior to enter into a memorandum of understanding or contract with Indian tribes meeting certain criteria to carry out projects to protect Indian forest land; to the Committee on Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. RODRIGUEZ (for himself, Mr. EVANS, and Mr. GUTIERREZ):

H. 3850. A bill to amend title 38, United States Code, to provide permanent authority for the Secretary of Veterans Affairs to continue to operate a program to provide counseling and treatment for veterans who were in military service experienced sexual trauma or sexual harassment; to the Committee on Veterans' Affairs.

By Mr. YOUNG of Alaska (for himself and Mr. OBERSTAR):

H. 3893. A bill to provide an extension of highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century; to the Committee on Transportation and Infrastructure, and in addition to the Committees on Resources, Ways and Means, and Science, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ABERCROMBIE (for himself and Mr. CASE):
H.R. 3651. A bill to authorize an additional permanent judgeship for the district of Hawaii; to the Committee on the Judiciary.

By Mr. ACEVEDO-VILA (for himself and Mr. DELOESEY).

H.R. 3522. A bill to extend the benefits of the weatherization assistance program under part A of title XIX of the Social Security Act to Puerto Rico and the United States Virgin Islands; to the Committee on Energy and Commerce.

By Mr. VELAZQUEZ of South Carolina (for himself and Mr. HERSHSMITH).

H.R. 3553. A bill to amend the Balanced Budget and Emergency Deficit Control Act of 1985 to extend the discretionary spending limits through fiscal year 2009, to extend paygo for direct spending, and for other purposes; to the Committee on the Budget, and in addition, the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FLAKE (for himself, Mr. PENCE, Mr. SMITH of Michigan, Mr. KING of Iowa, Mr. AKIN, Mr. TANCREDO, Mr. MCGOVERN, Mrs. DAVIS, Mrs. MILLER of Oregon, Mr. BRADY of Texas, Mr. HUBBARD, Mrs. MUSGRAVE, Mr. BARRETT of South Carolina, Mr. DEMINT, Mr. GUTENKNECHT, and Mr. FEENEY).

H.R. 3554. A bill to contain the costs of the Medicare prescription drug program under part D of title XVIII of the Social Security Act, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. GRAVES (for himself, Mr. HULSHOF, Mr. BLUNT, Mr. AKIN, Mrs. EMERSON, Ms. MCCARTHY of Missouri, Mr. SKELTON, Mr. CLAY, and Mr. GEPHARDT).

H.R. 3555. A bill to designate the facility of the United States Postal Service located at 607 Pershing Drive in Laclede, Missouri, as the "General John J. Pershing Post Office"; to the Committee on Government Reform.

By Mr. GREEN of Texas (for himself, Mr. LAMPSON, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. REYES, Mr. STENHOLM, Ms. JACKSON-LEE of Texas, Mr. FROST, Mr. ORTIZ, Mr. SANDLIN, Mr. RODRIGUEZ, Mr. GONZALEZ, Mr. TURNER of Texas, Mr. EDWARDS, Mr. BELL, Mr. DOGGETT, and Mr. HINOJOSA).

H.R. 3656. A bill to limit the congressional redistricting that States may do after an apportionment; to the Committee on the Judiciary.

By Mr. SAM JOHNSON of Texas (for himself, Mr. HERGER, Mr. NEAL of Massachusetts, Mr. RAMSTAD, Mr. BRADY of Massachusetts, Mr. HAYWORTH, Mr. SANDLIN, Mr. BURGESS, Mrs. MYRICK, Mr. SMITH of Texas, Mr. PAUL, Mr. SESSIONS, Mr. CULBERTSON, Mr. BONILLA, and Mr. HALL).

H.R. 3657. A bill to amend the Internal Revenue Code of 1986 to allow issuance of tax-exempt private activity bonds to finance certain surface transportation facilities; to the Committee on Ways and Means.

By Mr. NETHERCUTT (for himself, Ms. DEGETTE, Mr. BASS, Mr. SCHIFF, Mr. FROST, Ms. BORDALLO, Mr. VAN HALEN, Mr. GREEN of Texas, Mr. ANDREWS, Mr. WICKER, Mr. LANTOS, Mr. BECERRA, Mr. MOORE, Ms. DELAURO, Mr. MCMUGG, Mr. WELDON of Pennsylvania, and Mr. ROSSELLA).

H.R. 3658. A bill to amend the Public Health Service Act to increase the supply of pancreatic islet cells for research, and to provide for better coordination of Federal efforts to develop information on islet cell transplantation; to the Committee on Energy and Commerce.

By Ms. PELOSI (for herself, Mr. GEPHARDT, Mr. RODRIGUEZ, Mr. ROSEN, Mr. HOYER, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ALLEN, Ms. BALDWIN, Ms. BERKLEY, Mr. BẾ, Mrs. BONO, Mr. BRADY of Pennsylvania, Mrs. CHRISTENSEN, Mr. CUMMINGS, Mr. DAVIS of Illinois, Mrs. DAVIS of California, Ms. DELAURA, Mr. DEUTSCH, Mr. DOGGETT, Mr. EMANUEL, Mr. FERGUSON, Mr. Filner, Mr. FOEKEY, Mr. FRANK of Massachusetts, Mr. FREILINGHUSEN, Mr. FROST, Mr. GARRETT of New Jersey, Mr. GRIJALVA, Mr. HASTINGS of Florida, Mr. HINCHIY, Mr. HOEFFEL, Mr. HOUGHTON, Ms. JACOBSEN of Texas, Mr. JENSON, Mrs. KELLY, Mr. KIRK, Mr. KLECCZKA, Mr. LANTOS, Mr. LARSEN of Washington, Ms. LEE, Mr. LOFGREN, Mr. LUKAC, Mr. MCDERMOTT, Mr. MCNULTY, Mr. MICHAUS, Mr. MILLIEND- MCDONALD, Mr. GEORGE MILLER of California, Mr. NESTER, Mr. PRICE of North Carolina, Mr. QUINN, Mr. RODRIGUEZ, Mr. ROTHMAN, Ms. SHAKOWSKY, Mr. SCHIFF, Mr. SERRANO, Mr. SHAYS, Mr. SHIMKUS, Mr. SIMMONS, Ms. SLAUGHTER, Mr. SMITH of New Jersey, Mr. SOLIS, Mr. STARK, Mr. SWEENEY, Mr. UDALL of Colorado, Mr. WALSH, Ms. WATERS, Mr. WAXMAN, and Mr. WEXLER).

H.R. 3659. A bill to amend title XIX of the Social Security Act to permit States the option to provide Medicaid coverage for low-income individuals infected with HIV; to the Committee on Energy and Commerce.

By Mr. PETERSON of Pennsylvania (for himself, Mr. KIND, Mr. Ehlers, Mr. KILDEE, Mr. OBEY, Mr. HOUGHTON, Mr. GREEN of Wisconsin, Mr. LEVIN, Mr. REGULA, Mr. HART, Mr. KLECCZKA, Mr. BEREUTER, Mr. UDALL of Colorado, Ms. BALDWIN, and Mr. GREEN of Wisconsin).

H.R. 3660. A bill to amend the National Trails System Act to clarify Federal authority relating to land acquisition from willing sellers for the majority of the trails in the System, and for other purposes; to the Committee on Resources.

By Mr. RODRIGUEZ (for himself, Mr. SANDLIN, Mr. HINOJOSA, Mr. ORTIZ, Mr. FROST, Mr. TURNER of Texas, Mr. GREEN of Texas, Mr. BELL, Mr. DOGGETT, Mr. EDWARDS, Mr. REYES, Ms. JACKSON-LEE of Texas, and Mr. GONZALEZ).

H.R. 3661. A bill to amend part C of title XVIII of the Social Security Act to prohibit the operation of the Medicare competitive cost adjustment (CCA) program in Texas; to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SCOTT of Virginia (for himself, Mr. NORTON, Mr. BISHOP of Utah, Mr. KENNEDY of New York, Mr. WEDEN, Mr. CROWLEY, Mr. ACEVEDO-VILA, Mr. SCOTT of Georgia, Ms. DELAURO, Mr. RYAN of Ohio, Mr. TOWNS, Mr. JEFFERSON, Mr. STRICKLAND, Mrs. MALONEY, Mr. FROST, Mr. RANDEL, Mr. MCGOVERN, Mr. STARK, Mr. WALSH, and Ms. MANCUSO).

H.R. 3662. A bill to provide an automatic pay increase to any member of the Armed Forces whose male or female mem- ber's permanent station or, in the case of a member of a reserve component of the Armed Forces, the member's home of record, is in a state that is a member of the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SHADEGG: H.R. 3663. A bill to improve the access of investors to regulatory records with respect to securities brokers, dealers, and investment advisers; to the Committee on Financial Services.

By Ms. SLAUGHTER (for herself, Mr. QUINN, Mr. STRICKLAND, and Mr. TAYLOR).

H.R. 3664. A bill to provide coverage under the Energy Employees Occupational Illness Compensation Program for individuals employed at atomic weapons employer facilities during periods of residual contamination; to the Committee on the Judiciary, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. STARK: H.R. 3665. A bill to amend the Internal Revenue Code of 1986 to deny any deduction for certain gifts and benefits provided to physicians by prescription drug manufacturers; to the Committee on Ways and Means.

By Mr. PENCE (for himself, Mr. BERKLEY, Mr. BLUNT, Mr. LANTOS, Ms. CANTOR, Mrs. J. ANN DAVIS of Virginia, Mr. DE LA URBE, Mr. RODRIGUEZ, Mr. HASTINGS of Florida, Mr. HASTINGS of Georgia, Mr. MUSGRAVE, Mr. FLAKE, Mr. BEAUPREZ, Mr. SHIMKUS, Mr. SANDLIN, Mr. FROST, Mr. REHBORG, Mr. HAYWORTH of South Carolina, Mr. SOUDER, Mrs. MYCKI, Mr. MILLER, Mr. EMANUEL, Mr. DOOLITTLE, Mr. DE MINT, Mr. HERSHSMITH, Mr. SMITH of Michigan, and Mr. SAM JOHNSON of Texas, Mr. CHAROT, Mr. TANCREDO, Mr. JONES of North Carolina, Mr. BARTLETT of Maryland, Mr. RYAN of Kansas, Mr. MILLER of Florida, Mr. GOODE, Mr. KENNEDY of Minnesota, Mr. FRANKS of Arizona, Mr. CHANDLER, Mr. HAYWORTH, Mr. BROOKS of Georgia, Mr. SCHROCK, Mr. CRENshaw, Mr. OTTER, Mrs. BLACKBURN, Mr. SENSENBRENNER, Mr. LINDE, Mr. STEARNS, Mr. MARIO DIAZ-BALDASSARRE, Mr. SCHIFF, Mr. NADLER, Mr. FERGUSON, Mr. BROWN of South Carolina, Mr. McNULTY, Mr. WYN, Mr. NUNES, Mr. SHEARMAN, and Mr. HASTINGS of Florida).

H. Con. Res. 371. Concurrent resolution supporting the construction by Israel of a separation fence; to the Committee on International Relations.

By Mr. HASTINGS of Florida: H. Con. Res. 372. Concurrent resolution expressing the sense of Congress with respect
to the urgency of cessation of hostilities in the Republic of Haiti; to the Committee on International Relations.

By Mr. GEORGE MILLER of California (for himself, Mr. BALLANCE, Mr. OWENS, Ms. CORRINE BROWN of Florida, Mr. WATT, Mr. PAYNE, Ms. KILPATRICK, Ms. LEE, Ms. SCHAKOWSKY, Ms. EDDIE BERNICE JACKSON of Texas, Mr. CUMMINGS, Mr. RUSH, Mr. MEEKS of New York, Mrs. CHRISTENSEN, Mr. CONYERS, Ms. NORRIS, Ms. MAJETTE, Mr. WYN, Mr. HASTINGS of Florida, Mr. TOWNS, Mr. FATTAH, Mr. CLYBURN, Mrs. JONES of Ohio, Mr. CLAY, Ms. CARSON of Indiana, Mr. JEFFERSON, Mr. SCOTT of Virginia, Ms. MILLER-MCDONALD, Mr. FORO, Mr. DAVIS of Alabama, Ms. WATERS, Mr. JACKSON of Illinois, Mr. DEUTCH of Florida, Ms. WATSON, Mr. THOMPSON of Mississippi, Mr. DAVIS of Illinois, Mr. RANGEL, Mr. BISHOP of Georgia, and Mr. SCOTT of Georgia):

H. Res. 542. A resolution expressing the sense of the House of Representatives that the Secretary of Homeland Security should designate Haiti as a country under section 244 of the Immigration and Nationality Act in order to make nationals of Haiti eligible for temporary protected status under such section; to the Committee on the Judiciary.

By Mr. PRICE of North Carolina (for himself, Mr. BEREUTER, Mr. DREIER, and Mr. FROST):

H. Res. 543. A resolution providing for the establishment of a commission in the House of Representatives to assist in establishing a legal framework for immigration;

H. Res. 544. A resolution commemorating the 75th Anniversary of the Creation of the League of United American Citizens; to the Committee on International Relations.

By Mr. RODRIGUEZ (for himself, Ms. ROYBAL-ALLARD, Ms. LORETTA SANCHEZ of California, Mr. BACA, Mr. HINOJOSA, Mr. SERRANO, Mr. SERRANO, Mr. BEREUTER, Mr. DREW, Mr. MURPHY, Mr. MURDOCH, Mr. BROWN of Ohio, Mr. SHIMKUS, Mr. HOSTETTLER and Mr. TIBERI, Mr. TIERNEY and Mr. WELLER, Mr. LATOURETTE, Mr. PAYNE, Mr. AKIN, and Mr. MENENDEZ):

H. Res. 545. A resolution expressing the sense of the House of Representatives that a specific statement should be included in the Iraqi Transitional Administrative Law guaranteeing the people of Iraq the right to freedom of thought, conscience, and religion, and for other purposes; to the Committee on International Relations.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H. R. 1127: Mr. LIPINSKI.
H. R. 1206: Mr. TERRY.
H. R. 1212: Mr. BROWN.
H. R. 1245: Mr. CUNNINGHAM and Mr. HOEFFEL.
H. R. 1400: Mr. CARSON of Indiana, Mr. SANDERS, Ms. MAJETTE, Mr. PAYNE, Mr. PASCARELL, and Mrs. JONES of Ohio.
H. R. 1500: Mr. SCHIFF and Mr. GEORGE MILLER of California.
H. R. 1532: Mr. PLATTS, Ms. LORETTA SANCHEZ of California, Mr. FREILINGHUSEN, and Mr. LEVIN.
H. R. 1560: Mr. ENGLISH.
H. R. 1567: Mr. HERGER.
H. R. 1589: Mr. BROWN of Ohio.
H. R. 1658: Mr. MILLER of North Carolina and Mr. LARSEN of Washington.
H. R. 1767: Mr. PETERSON of Pennsylvania.
H. R. 1822: Mr. COX, Mr. CUNNINGHAM, Mr. DREIER, Mr. HERGER, Ms. ISSA, Ms. PELOSI, Mr. THOMAS, and Mr. NUNES.
H. R. 1944: Mr. J. JACKSON-LEE of Texas.
H. R. 2071: Ms. MCCOLLUM, Ms. NORTON, and Mr. DAVIS of Illinois.
H. R. 2247: Mr. BERMAN and Mr. LANTOS.
H. R. 2265: Mrs. KELLY.
H. R. 2318: Mr. ORTIZ.
H. R. 2366: Mr. FROST, Mr. HINCHHEY, Mr. PAYNE, Mr. DAVIS of Illinois.
H. R. 2372: Mr. MCDERMOTT.
H. R. 2435: Mr. FROST, Mr. HASTINGS of Florida, and Mr. OWENS.
H. R. 2505: Mr. MUSGRAVE.
H. R. 2511: Mr. GORDON.
H. R. 2579: Mr. PENCE, Mr. NETCHERT, Mr. WALSH, and Mr. BERRY.
H. R. 2652: Mr. CANTOR.
H. R. 2699: Mrs. JONES of Ohio, Mr. SHIMKUS, Mr. DAVIS of Alabama, Mr. CUNNINGHAM, Mr. WALDEN of Oregon, and Mr. ADERHOLT.
H. R. 2699: Mr. BEREUTER.
H. R. 2699: Mr. DAVIS.
H. R. 2637: Mr. BROWN of Ohio.
H. R. 3015: Mr. PICKERING and Mr. Hall.
H. R. 3066: Mr. TIBERI.
H. R. 3092: Mr. JEFFERSON.
H. R. 3113: Mr. AKIN, Mrs. MUSGRAVE, and Mr. JONES of Illinois.
H. R. 3142: Mr. ETHERIDGE and Mr. McNULTY.
H. R. 3173: Ms. WOOLSEY.
H. R. 3178: Mr. FILNER, Mr. DEUTCH, Mr. POLKOWE, Mrs. TAUSCHER, Mr. EMANUEL, and Mr. PETERSON of Minnesota.
H. R. 3192: Ms. LEE.
H. R. 3192: Mr. SMITH of Michigan, Mr. COOPER, and Mr. LUCAS of Ohio.
H. R. 3194: Mr. NETHERCUTT.
H. R. 3204: Mr. WELLER.
H. R. 3215: Ms. HARRIS, Mr. MURPHY, Mr. GOODLATTE, Mr. BILIRAKIS, and Mr. TERRY.
H. R. 3299: Mr. LARSEN of Washington.
H. R. 3313: Mr. BISHOP of Utah.
H. R. 3344: Mr. LIPINSKI and Mr. KILDEE.
H. R. 3382: Mr. WEXLER.
H. R. 3403: Mr. BURNS and Mr. ROSS.
H. R. 3412: Mr. JONES of North Carolina, Mr. ANDERSON, Mr. LANTOS, Ms. ROS-LEHTINEN, Ms. LATORETTE, Mr. PAYNE, Mr. AKIN, and Mr. BURTON of Indiana.
H. R. 3424: Ms. McCARTHY of Missouri and Mr. MOORE.
H. R. 3425: Mr. MOORE.
H. R. 3446: Mr. MENENDEZ, Mrs. MALONEY, Ms. ESCH, Mr. LANGEVIN, Ms. LE, Mrs. EDDRICK, Mr. CLAY, and Mr. OLIVER.
H. R. 3460: Mr. CRANE, Mr. OTTER, and Mr. SESSIONS.
H. R. 3473: Mr. RUPPERSBERGER, Mr. HERTZLER, Mr. BURTON of Indiana, and Mr. LIPINSKI.
H. R. 3474: Mr. ORTIZ, Mr. COSTELLO, and Mr. WAXMAN.
H. R. 3522: Mr. NEY and Mr. ENGLISH.
H. R. 3528: Mr. MICHAUD and Mr. THOMPSON of Mississippi.
The Senate met at 9:30 a.m. and was called to order by the Honorable John E. Sununu, a Senator from the State of New Hampshire.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty God, You know all about us. You know when we sit down and when we rise up. Forgive our past blindness to the grandeur and glory of Your unfolding providence. Thank You for the gift of a freedom to choose and give us the courage to change our minds when it is needed.

Bring our hearts under Your control as You infuse within us a deeper love for You. We pray for our world—the lands we know but also those other lands that stand within our minds as nothing more than names. May we never forget that You have children in every land. Use our Senators today to bring life and not death—peace and not war. Amen.

PLEDGE OF ALLEGIANCE

The Honorable John E. Sununu led the Pledge of Allegiance, as follows:

I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The Presiding Officer. The clerk will please read a communication to the Senate from the President pro tempore (Mr. Stevens).

The assistant Journal clerk read the following letter:


To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable John E. Sununu, a Senator from the State of New Hampshire, to perform the duties of the Chair.

Ted Stevens,
President pro tempore.

Mr. Sununu thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The Acting President pro tempore. The majority leader is recognized.

SCHEDULE

Mr. Frist. Mr. President, this morning the Senate will resume consideration of S. 1805, the gun liability bill. A unanimous consent agreement worked out by the managers last night means we will definitely make significant progress on a number of issues throughout the day, and we will complete action on the bill on Tuesday.

Senators should be aware the agreement covers amendments to be offered today and on Tuesday, but we do expect additional amendments to be offered and voted on tomorrow and during Monday’s session of the Senate. Those Senators who are not covered by the agreement should work with Senators Craig and Reed of Rhode Island to work through their amendments before Tuesday morning.

The first vote of the day should occur between 10:30 a.m. and 11:30 a.m. Members will be notified of rollcall votes throughout the day and possibly into the evening.

I wish to use a few moments of leadership time to comment on the bill. We will proceed right on the bill. It is going to be a fast-paced day. An agreement was worked out last night. I think we have a good game plan. We will finish the bill on Tuesday and we will start right in.

The bill, S. 1805, has broad bipartisan support. We will be considering a lot of amendments. We will debate those amendments, and we have the time agreements to see that they are considered fairly. This bill is bipartisan, with 10 Senators from the Democratic side of the aisle supporting it. The bill also has 45 Republican cosponsors. I know we can move quickly and process these amendments and move toward final passage of this important legislation.

There is a common misconception that the gun industry is a large and powerful industry, and it is simply not. In fact, the firearms trade is a relatively small industry. In 1999, the industry collectively made less than $200 million in total profits—just $200 million. To put that in perspective, Home Depot, a company with which we are all familiar, netted $4.3 billion in 2003. That one company made more than 20 times the profit of the entire firearms business.

In 2003, Wal-Mart, a highly competitive retail chain, profited a hefty $9 billion. And if we look at a chain such as Starbucks, even Starbucks sees bigger profits than the American firearms manufacturers.

I mention that because the issue is not of size or relative size. The real issue is that the gun manufacturing industry employs people with productive jobs, well-intentioned, well-meaning good jobs. These are valuable jobs, and most of these jobs actually are in rural communities. Those are the communities that, in many ways, need jobs the most that day and time.

Often, these gun manufacturers are the largest employer in these small communities and, as a consequence, these ruinous lawsuits do not just threaten the manufacturers; they end up threatening the whole town, the whole community itself.

Still, we have the antigun crusaders who insist that the firearms business, one of the most regulated industries in America today, must be brought to heel. Why? They believe the gun manufacturers themselves should be responsible for the criminal actions of other
people. They believe it is OK to allow lawsuits to achieve some sort of political end.

Clearly, I do not agree and a majority of people in this body do not agree. Indeed, most Americans certainly do not agree. Most Americans think this is just blatantly unfair.

Our Constitution protects the right to keep and bear arms. Indeed, 33 States have passed laws to preempt frivolous gun lawsuits—33 States. Today, we have the antigun crusaders who are, in effect, aided and abetted by the special interest trial lawyers charging ahead.

Since 1997, more than 30 cities and counties have sued firearm companies in an attempt to force them to change the way they make guns and the way they sell guns. In California, then-Gov. Gray Davis signed legislation explicitly authorizing lawsuits against gun manufacturers.

Because the firearms business is relatively small, one big verdict, one substantial verdict could bankrupt the entire industry. In California, that is a real possibility.

I never had the mind that every trial court that has heard these municipality lawsuits has thrown them out in whole or in part. Appellate courts in three States have overturned lower court verdicts and allowed the suits to go forward. Thus, it is critical we act now.

If the gun industry is forced into bankruptcy, the right to keep and bear arms will be a right in name only. Lawsuits have already pushed two companies into bankruptcy. Even if some gun manufacturers are able to hold on, the prices for firearms will be so high that owning a gun, such as a hunting rifle, will be a privilege only the wealthy can afford.

There is one other important and little known aspect of the issue. America relies on private gun manufacturers to equip our soldiers and law enforcement officers. The guns our police officers use, the guns that our soldiers carry, are made in the United States by American workers.

We are all agreed, no one wants guns in the hands of criminals. There are thousands of laws and regulations to stop illegal gun sales, but we do not want these frivolous, unnecessary lawsuits to strip police officers and soldiers of their sidearms. Do we really want unfair litigation to cripple our national security? The answer clearly is no, and thus we will act and we will act over the course of today, tomorrow, Monday, and complete this action on Tuesday.

The bill before us is narrowly tailored. It is focused. It is fair. It is equitable. It ensures that private parties are held responsible for their actions and that why this bill comes to this floor with broad bipartisan support. That is why passing this bill is the right thing to do.

I yield the floor.
The Senator from California [Mrs. BOXER] proposes an amendment numbered 2620.

Mrs. BOXER. I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To amend chapter 44 of title 18, United States Code, to require the provi-
sion of a device in connection with the transfer of a handgun and to pro-
vide safety standards for child safety de-

SEC. 5. REQUIREMENT OF CHILD HANDGUN SAFETY DEVICES. 

(a) Short Title.—This section may be cited as the “Child Safety Device Act of 2004.”

(b) Definitions.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

‘‘(36) The term ‘locking device’ means a de-
vice or locking mechanism that is approved by a licensed firearms manufacturer for use on the handgun with which the device or locking mechanism is sold, delivered, or transferred and that—

‘‘(A) if installed on a firearm and secured by means of a key or a mechanically, elec-

trically, or electromechanically operated combination lock, is designed to prevent the firearm from being discharged without first deactivating or removing the device by means of a key or mechanically, electroni-
cally, or electromechanically operated com-

bination lock;

‘‘(B) if incorporated into the design of a firearm, is designed to prevent discharge of the firearm by any person who does not have access to the key or other device designed to unlock the mechanism and thereby allow discharge of the firearm; or

‘‘(C) is a safe, gun safe, gun case, lock box, or other device that is designed to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.’’.

(c) Unlawfulacts.—

(1) General.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

‘‘(a)(1) does not preclude any administrative

or civil penalty under paragraph (1) shall not apply to any administrative

rulemaking proceeding under subparagraph (A) of a firearm for

under section 922(c)(1) by a li-

licensee, the Attorney General shall, after

request and opportunity for hearing—

(i) suspend or revoke any license issued to the licensee under this chapter;

(ii) subject the licensee to a civil penalty of not more than $15,000; or

(iii) impose the penalties described in clauses (i) and (ii).

(b) Review.—An action by the Attorney General under this paragraph may be re-

viewed only as provided under section 922(c).

(2) Administrative Remedies.—The sus-
pension or revocation of a license or the im-

position of a civil penalty under paragraph (1) does not preclude any administrative

remedy that is otherwise available to the At-

orney General.

(e) Amendment to Consumer Product Safety Act.—The Consumer Product Safety Act (15 U.S.C. 2051 et seq.) is amended by adding at the end the following:


(a) Establishment of Standard.—

‘‘(1) Rulemaking.—Notwithstanding

section 3(a)(1)(E), the Commission

shall initiate a rulemaking proceeding under section 553 of title 5, United States Code, not later than 90 days after the date of enact-

ment of the Child Safety Device Act of 2004 to establish a consumer product safety standard for locking devices. The Commiss-

ion may extend this 90-day period for good

cause.

‘‘(b) Final rule.—Notwithstanding any other provision of law, the Commission shall promulgate a final consumer product safety standard under this paragraph not later than 12 months after the date on which the Com-

mission initiated the rulemaking proceeding under subparagraph (A). The Commission may extend this 12-month period for good

cause.

‘‘(c) Effective date.—The consumer prod-

uct safety standard promulgated under this paragraph shall take effect on the date which

is 6 months after the date on which the Com-

mission promulgated such standard.

‘‘(d) Standard requirements.—The stand-

ard promulgated under this paragraph shall require locking devices that—

(i) are sufficiently difficult for children to de-activate or remove; and

(ii) prevent the discharge of the handgun unless the locking device has been de-activated or removed.

‘‘(e) Inapplicable provisions.—

‘‘(A) Provisions of this Act.—Sections 7, 9, and 30(d) shall not apply to any rule-
elating to locking devices promulgated under

paragraph (1) of this section.

‘‘(B) Chapter 5 of title 5.—Chapter 5 of title 5, United States Code, except for section

553 of that title, shall not apply to this section.

‘‘(C) Chapter 6 of title 5.—Chapter 6 of title 5, United States Code, shall not apply to

this section.

‘‘(b) Enforcement.—Notwithstanding sub-

section (a)(3)(A), the consumer product safety

standard promulgated by the Commission pursuant to subsection (a) shall be enforced under section 553(b) of title 15, United States Code.

(2) Availability of funds.—Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

Mrs. BOXER. Mr. President, I thank my colleagues on both sides of the aisle who worked late into the night to put forward a list of amendments this body would consider. I am very proud my amendment made the list. It is an amendment that we all support. It is an amendment that will protect our children, and what could be more important to us as we gather here every day than to pro-
tect our children?

My measure would do two things. First, it would require that every hand-
gun sold in this country come with a child safety device. The amendment is very broad on what that could be, so there really isn't a micromanaging type of amendment. This device could be a lock using a key or a combination, a device that locks electronically, it could be a lockbox, or technology that is built into the gun itself. Many of the folks working on this type of tech-nology are very enthusiastic about it.

There is no question in my mind, there is no question in the minds of the police in my State who just had a press conference on this issue, if we were to provide for this kind of a safety lock to the law of the land, the number of children involved in accidental shootings would go way down. So that is the first thing we do. We require some type of a lock when you buy a handgun.

Second, my amendment would make sure child safety devices are effective and that they are not shoddy or of poor quality. One of the worst things we could do is pass a bill that requires the gun industry to put a device that doesn't work. That would be a terrible thing for our families. So the bill re-

quires the Consumer Product Safety Commission to establish standards for the design of these locks and these devices and to test for perfor-

ance. We want to make sure, when par-

ents use a child safety device, that they are confident it will work as in-

ented.

In 1999 the Senate passed an amend-

ment by a vote of 78 to 20 to require that all handguns in this country be sold with a child safety device. The ma-

jority of our colleagues very strongly
supported this in quite a bipartisan way. I believe we should again agree that we need to protect our children from accidental gun shootings.

My home State of California recently enacted an excellent child safety device. It requires that all dealers and manufacturers equip the guns they sell with State-certified child safety devices. This is a very important bill for my State and I am proud of my State for doing it. But it is clear that the States along California's border do not have this requirement. Not one of those States has child safety device laws. That means even if California—and we do—has a good law, anyone can purchase a gun without a safety lock from a border State and return to California with it. Therefore, the progress we hope to make in California will be set back because we don't have a uniform and standard law.

The other important feature of our bill that impacts Californians is that while there is a State-certified standard for gunlocks in my State, those standards have not been set by the Consumer Product Safety Commission, and everyone agrees that the Consumer Product Safety Commission is the premier organization in the country that sets the gold standard. Again, I think it is very important that we have this type of standard because, as many colleagues point out, the manufacturers of these devices deserve some guidance. California may have other sets of standards, we could have another set of standards in New York, or in the Midwest, and we are going to have a potpourri of standards floating around rather than what I call the gold standard of the Consumer Product Safety Commission.

The other important point for my people of California—again, they have the safety lock law—is that the amendment allows for a Federal cause of action. If the lock is not included, if it fails, if it is defective in some way, or if the manufacturer's company, there will be a Federal cause of action. It is kind of a double protection for the children. I would like to talk about the need for this amendment for a moment. I have a chart that shows the statistics.

In the United States of America, in our great, great, great country, the greatest country in the world, a child or a youth is killed by an accidental shooting every 48 hours—every 48 hours. Where do these statistics come from? The FBI. For every child killed by a gun, four are wounded. Where does that come from? The Archives of Pediatric and Adolescent Medicine, December—I am assuming that is 2000—volume 55, No. 12.

What does this mean, when you multiply it out? Thousands of children are injured or killed by guns every year. In this country, according to the CDC, the rate of firearm deaths of children under the age of 14 is nearly 12 times higher in the United States than in 25 other industrialized countries combined.

Let me repeat that. The rate of firearm deaths of children under the age of 14 is 12 times higher in the United States than in 25 other industrialized nations.

Colleagues stand up and say: Guns don't kill people; people kill people. If you want to say: Guns don't kill children; children kill children. Yes, children kill children because they pick up a gun from a friend. They fire it at a brother. They don't understand the consequences of this. More than 22 million children live in homes with guns. I want you to envision this—22 million children live in homes with guns. More than 3.3 million of these children live in homes where the guns are always or sometimes kept loaded and unlocked.

Too many children are playing with real guns found in their parents' bedroom or a friend's home, and too many are playing with guns that are kept in this country because they are doing what children do: They are exploring; they are being curious. I don't know how many times I have heard stories with tearful parents saying: I kept that gun away from my child. It was in the highest, darkest corner of the deepest, tallest closet in my house. I never thought my baby could climb up and find that gun.

Well, they do. They do. Children are smart. They are tenacious. They are energetic. One study found that when a gun was in the home, 75 to 80 percent of first and second graders knew where their parents kept that gun. Seventy-five to eighty percent of first and second graders knew where their parents kept that gun.

In this country, we do so much to protect our children. We worry about them, as we should; it is our responsibility. We make sure that in a car they are strapped in the right direction so they don't have a tendency to get hurt in an accident. We have airbags to protect them. We protect them from shoddy toys, such as Play-Doh that they could eat and could hurt them. We set standards. We set standards for Teddy bears, for toys. We care about our children.

I wrote the afterschool law we have here with Senator Ensign. We love our children, every one of us—our own children, our grandchildren, the children of our friends. We are here to protect the children. That is part of our job.

So let me reiterate, one study found that when a gun was in the home, 75 percent to 80 percent of first and second graders knew where the parents kept the gun. So even if that gun is in a closet, at the top of a closet, under towels or blankets, kids are tenacious and they find the guns. But if they found a lockbox and they couldn't open it, they would not be protected. If they grabbed a gun and there was a child safety device on it and they tried to shoot, it wouldn't go off. If the gun had technology built in it so that only when the parents held it it would fire, they would be protected.

It seems to me in this day and age when we are losing a child or a youth to an accidental shooting every 48 hours, we ought to be absolutely united in passing this amendment.

I want to show you the face of a beautiful young man, Kenzo, a Californian, 15 years old, with his mom. His friend, Michael, while playing with a gun, shot Kenzo Bix, and he is gone forever. If that gun had had a child safety device on it, it wouldn't have happened.

I will give you some other stories. Just this January in Indio, CA, a 17-year-old boy named Jason Weed died after his 14-year-old brother accidentally shot him in the head. The other boy was showing him the gun in the home when it accidentally went off, lodging a bullet in the small boy's head. If that gun had had a safety device, and if the amendment we already passed here—the Kobil-Hatch-Boxer amendment that passed here the last time—had been adopted in the other body, if it had been signed into law, Kenzo would be alive; and this child I just talked about, Jason Weed, would be alive.

Then there is a story from Florida. There are so many stories, and we just picked a few.

A 3-year-old, Colton Hinke, and his 2-year-old sister Kaile were playing in their parents' bedroom when Colton found an unlocked, loaded handgun in the drawer. A neighbor heard the shot and rushed to the scene and found Kalie on her back, her face pale, her lips blue, and a small hole in her chest. She was in shock, and she was rushed to the hospital, but it was too late.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mrs. BOXER. May I ask for one additional minute from each side so I can conclude?

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mrs. BOXER. Thank you so very much.

There is another incident where a 1-year-old girl was critically injured by her 3-year-old brother. This little girl survived. I could go on, but I don't have the time at this point.

Let's pass this measure. I know Senators DeWine and Kohl have an amendment to change my bill in a very small way. I don't have a problem with that. I will be supporting that. I just know the overriding concern of mine, and I really do think most people in this body share this the last time, is let us protect our kids. Let us do it in a smart way. It is the right thing to do for the families of America.
I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, we have someone who will speak in opposition to the Boxer amendment. There is a second amendment on its way. It is not yet ready. It is coming; sometimes I don’t know from where. I ask unanimous consent that the amendment be temporarily set aside. In keeping with the unanimous consent agreement that was entered last night, at some subsequent time there will be the opportunity to offer the amendment that the Senator from Idaho and DeWine are going to offer as a second-degree amendment to Boxer.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The Senator from Idaho.

Mr. CRAIG. Mr. President, we expect a second-degree amendment to be here to modify and perfect the Boxer amendment.

I want to speak about the Boxer amendment because I in no way discredit—I guess the best way to say it—fail to recognize the same kind of concern Senator BOXER has expressed. She is correct. The Senate has expressed its will on this issue in the past. But let me bring you up to date about what the gun industry is doing now. Clearly, the gun industry is responding very quickly to new technologies and what is available to make sure firearms are safe, if you will, from the curiosity of a child and a child who might misuse it. Tragically enough, when children find a firearm, there is great curiosity.

There are organizations out there that have worked awfully hard to educate firearm owners and parents about the reality of a gun place in a home in an unsafe environment, or not locked behind a door, or in a situation where a child might get access to it. That is simply critical in the responsible ownership and handling of a gun.

Ninety percent of new guns in the United States are already sold with a safe storage device. The Senator from California is right, the devices vary, but so do guns and so do the conformation and structure of guns. It will be very difficult to suggest that one size fits all.

The industry, with its engineers and its technology and its computers, is devising trigger locks and safety devices that fit the particular firearm. This is done through a voluntary program with the firearms industry. Tenuous numbers of gunshops today—responsible, federally registered gunshops—are providing free of charge a trigger lock or a safety device as the weapon is sold. Many States and locales, such as Texas, have distributed safety devices free of charge, either in cooperation with the firearms industry or on their own initiative.

Trigger locks are mechanical devices. Like all mechanical devices they can fail if they are not well designed, and if their owners are not instructed on how to use them properly. The Consumer Product Safety Commission recently tested 32 types of gunlocks and found 30 could be opened without a key. That is why, clearly, uniformity is necessary. The Senator from Idaho and DeWine have offered a firearm. But quality gun manufacturers in this country are already providing safety devices which are critical and necessary.

What I am trying to suggest is these devices require a level of education that reduces all accidents. Clearly, if we can get most handguns in America in safe and responsible hands and in homes with safety devices or locked in a safe or locked in a device where a child cannot gain access, that is going to reduce the kinds of tragic accidents that occur when a small child in a curious way finds the gun that may not have been placed in a safe place by a parent.

Gunlocks are designed to address what I believe is a narrow range of threats. At some time, when a child’s life is lost, how tragic it is, and all of us understand that. Of course, then it makes tremendous news and the world wonders why this is happening. The reason it happens is because in the make up there was a parent who was less than responsible, who really didn’t lock that gun up.

At the same time, let’s also recognize the phenomenal complication involved. Sometimes guns are placed in locations in homes for security or safety, and easy access is critically important if that gun is to be used for the purpose of personal and property safety depending on the area in which a family lives or an individual lives.

At the same time, that does not deny the responsibility that is important. Gunlocks address that narrow range of threats. Clearly, they will deter the casual curiosity of a small child far more readily than it will deter what I call the per se unthinking and in some cases the per son bent on murder and mayhem. Some suggest a gunlock means a thief in the house will not steal the gun. Wrong. That simply is not the case. It simply means the thief will take the gun, take it out, knock the gunlock off, have it cut off, take it away so they can have access to a stolen firearm. That is the reality of thieves stealing guns.

This narrow range we are talking about and that we want to make sure stays in the realm of the curious of the small child. The firearms industry is already trying to develop standards to improve these devices. The industry has sought the creation of an industry standard for gun safety locks through the American National Standards Institute. The ANSI review process is well underway. In other words, because the gun industry is a responsible industry, they are well out in front of us already on legislation. So, there aren’t absolute mandatory requirements, but recognizing the reality and the tragedy that occurs on occasion, we want to make sure, and the industry certainly wants to make sure, that they are well out in front of it.

In a few moments we will have a second-degree perfecting amendment to deal with this issue. I will reserve the remainder of my time until that amendment is here.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. Murkowski). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from California.

Mrs. BOXER. I take this time to respond to the point made that the gun manufacturers are taking care of the child safety locks and that we do not need to have this law.

The experts in this whole field have turned out to be the National SAFE KIDS Campaign. This is a bipartisan organization that has one mission only and that is to protect our children. When they saw these statistics that are still occurring today, they said enough is enough. A child or youth is killed by a firearm every 3 hours. This has not changed.

In 1997, the gun manufacturers said they would work on this themselves, that they did not need a law. Research assessing the compliance with this agreement found most manufacturers were not providing locks and those that did offered low-quality devices where the locks just fell off and did not work.

The SAFE KIDS Campaign is urging us to include a provision to issue safe standards for gunlocks. This is very important.

My colleague says this is taken care of. It is not taken care of. We still have children dying. We still have our constituents calling with the tragic cases. I was one of the ones that I was told that not all of them, case after case, kids finding out where there is a gun, grabbing it and trying to act out a fantasy, not understanding this is a lethal weapon that can kill or maim a brother, a neighbor, a friend.

We did not tell the makers of aspirin, we know you are good manufacturers. They are good manufacturers. We do not tell them, please make a childproof cap. There are good manufacturers out there, I applaud them. But if you look at our bill and the way it works, we are not mandating a particular one-size-fits-all solution. We are very careful to
say we know there are many different handguns—this only applies to handguns; in my State we have one that applies to rifles and long guns, but this is just a handgun—we say you can have in your array of products a box that looks like a cupboard. You can have the technology built in the gun. You can have a combination lock.

I appreciate my friend does not like to put regulations on gun manufacturers and dealers, I understand that. And I understand he believes they are the best, the worst of the best. But the problem is, our kids are dying in the home. They are smart. They find out where the guns are. I cannot understand why this is not something we would all support. The last time it came to the Senate, we had a huge vote. I am hoping we will have a similar vote.

Look to the people. We are in charge of a lot of issues. The National SAFE KIDS Campaign is about one issue, the safety of our children. They are bipartisan. They are begging us to make this the law of the land. The Senate did it once before. The Senate should do it again.

Children living in the South have an unintentional shooting death rate that is twice that of children living in the Northeast. That is a fact the National SAFE KIDS Campaign has shown. All we need to do is see the rate our kids are dying and compare it to 25 other countries to see our kids are at a great disadvantage. We can do something today. I hope we will.

I yield my time.

Mr. DASCHLE. Madam President, I ask unanimous consent the Boxer amendment to be set aside temporarily.

The PRESIDING OFFICER. The clerks will report.

The assistant legislative clerk read as follows:

Mr. DASCHLE. I have had especially with Senator Craig, who is the lead Senator from South Dakota, and Senator Baucus, and others in the Senate, who contributed to this amendment. And my appreciation for his efforts at accommodating many of the concerns we have had as we address this bill.

I intend to support this bill, in part because of the acknowledgement of the need to address some of these concerns, as we do with this amendment.

The amendment we are offering right now strikes a balance between the need for the safety of children and the rights of gun owners and manufacturers. That balance is critical. We recognize the vast majority of gun owners and manufacturers and sellers are honest and decent people who obey the law and ought to be recognized for their honesty and the contributions they make to our economy.

The firearm industry is an important source of jobs, not only in those States where those jobs actually are located to the manufacture of firearms but to all other States. Not only the manufacture but the sale and distribution of those products are so much a part of our economic base.

But we should not invalidate the legitimate claims from being heard in court when those claims have a basis in fact—cases involving kids, cases involving defective products, cases involving gun dealers or manufacturers who broke the law.

So our concerns, as originally drafted, the legislation adversely impacted many of these cases. That is why I went to Senator Craig and Senator Baucus and others and expressed the hope that we could address some of these issues and concerns in a way that would accommodate a solution. And that is what I believe this amendment does.

We have worked in a bipartisan manner. I would hope this legislation could certainly be supported in a bipartisan manner. It goes a long way to balancing what are the rights of victims as well as the needs of the gun industry.

Our amendment makes several key changes in the legislation that was originally offered. It ensures the cases in which Federal or State laws have been broken can move forward. There was some lack of clarity with regard to that particular need. It restores the basic product liability standards so, in particular, if a child is injured by a defective gun, the victim’s loved ones can still hold accountable those responsible. It includes a provision to remove immunity from dealers who sell to straw purchasers; that is, purchasers who have no interest in buying the gun for themselves but passing on the gun, selling the gun to somebody who should not have it. Finally, it ensures that only trade associations connected to the business of manufacturing and selling firearms would be covered.

I think all of these changes—and many more; there are eight specific changes—do a great deal to enhance the bill, to make it a better, stronger bill and, at the same time, address the concerns that many have.

Our amendment strives to preserve the long-term vitality of an important American industry, one that is very important to people in the West and Midwest, in particular, but all over the country. It protects the rights and safety of the American public.

So I am very appreciative of the effort that has gone into this amendment. This took a lot of time, a lot of negotiation. Obviously, the subtleties in some of the language has more than a subtle impact ultimately on how legislation is interpreted and how laws are ultimately enforced. We think this amendment takes us a long way in addressing the needs of both our manufacturers as well as those who are concerned for safety on the streets and in our neighborhoods today.

Madam President, I might just take a moment, if I could, prior to relinquishing the floor, to talk about another matter. I appreciate the accommodation of my colleagues in so doing.
Madam President, all week long, tribal leaders from Indian nations throughout America have been in Washington for the winter conference of the National Congress of American Indians.

They include leaders from the Great Sioux Nation of South Dakota, and many others. Democratic Senators just met with many of these leaders; and some are in the gallery now, listening to these words. I am honored by their presence.

South Dakotans are very proud of our State’s tribal heritage. Some of the greatest leaders South Dakota has ever produced were Native Americans. They include Crazy Horse, the legendary warrior-leader; a man of extraordinary nobility, the great Lakota spiritual leader, Sitting Bull.

Sitting Bull helped lead his people in defense of their lands. When it became clear that defeat was inevitable, he helped lead his people’s efforts to secure a fair and just peace.

In negotiating the treaty under which the Lakota ceded their lands, Sitting Bull asked representatives of the Government to “let us put our minds together and see what life we can make for our children.”

More than a century later, the tribal leaders who have come to Washington this week are asking us to do the same thing: “Let us put our minds together and see what life we can make for our children.”

Last July, the U.S. Commission on Civil Rights released a report that has already become a landmark. It is entitled “A Quiet Crisis.” It documents the harsh realities of life in Indian country today. I ask unanimous consent that the executive summary of the report be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DASCHLE. We cannot undo the damage caused by more than a century of neglect and broken promises in 1 year or even one decade. But we must make honoring our trust obligations under those treaties we signed a real priority now. And we must take steps this year to address two of the most urgent obligations of Native Americans.

The first of these obligations is the need to find a just and fair settlement of the Indian trust dispute. Partly because so many American Indians live on remote reservations, not many Americans understand what the Indian trust fund dispute is about. It stretches back to the 1880s, when the U.S. Government broke up large tracts of Indian land into small parcels, which it then allotted to individual Indians and tribes.

The Government, acting as a “trustee,” took control of the Indian lands and established individual accounts for the land owners. The Government was supposed to manage the lands for account holders. It would negotiate sales or leases of land, and any revenues generated from oil drilling, mining, grazing, timber harvesting—or any other use of the land—was to be distributed to the account holders and their heirs. But that is precisely what did not happen.

The Indian trust fund has been so badly mismanaged for so long by administrations of both political parties that today no one knows how much money the trust fund should contain. Estimates of how much is owed vary from a low of $10 billion to more than $100 billion.

The people who are being hurt by this mismanagement are some of the poorest people in America. Many live in houses that are little more than shacks, with no heat, no electricity, and no phones. Many of them are elderly. They have been waiting their whole lives for money that belongs to them—money that our Government is holding and refuses to pay.

Ten years ago, Congress passed legislation requiring the Department of the Interior to make a full and accurate historical accounting of all trust assets and obligations. Seven years ago, a rank-and-file member of the Blackfeet Indian Nation, sued the Department to force it to comply with our order.

Last fall, a Federal judge finally agreed. It seemed that was going to be the beginning of the end of the trust fund dispute, and it was now finally within reach.

Then, shockingly, the administration and leadership in Congress on the other side, behind closed doors, added language to the 2004 Interior appropriations conference report ordering the Interior Department actually to ignore and defy the judge’s ruling. Clearly unconstitutional, it violates the separation of powers and due process protections.

It has become increasingly clear that this administration’s interest is in limiting the Government’s financial exposure rather than seeking a just settlement of the trust dispute. Despite its obligations to consult with the tribes, the Interior Department is now trying to push through its own plan to reorganize the Indian trust.

Tribal leaders have not been consulted. Deep skepticism and opposition in Indian country continues to exist.

Earlier this month, the administration sent Congress its budget for next year. It now makes deep cuts in every program affecting Indians, except one. There is a 50-percent increase for the Department’s trust reorganization plan.

The BIA, the Bureau of Indian Affairs, divides America into 13 regions. Yesterday, congressional and tribal leaders held a “summit” on trust reform. At that summit, the tribal representatives to that BIA region pleaded with Congress to slow the Department’s unilateral reorganization of the trust.

No trust reorganization plan can succeed without the involvement, support, and leadership of the tribes. It is time for Congress to take a more active role in trust reform. Three things are essential.

First, we need a new round of comprehensive public hearings. This week, Senator BEN NIGHTSHORSE CAMPBELL announced that the Indian Affairs Committee would hold hearings. I thank him.

Second, congressional meddling in the Cobell litigation must end. The “midnight rider” putting court orders on hold must not be extended; courts must be allowed to do their job. Last year, Senators MCCAIN, JOHNSON, ISON, and I introduced a bill, the American Indian Trust Fund Management Reform Act Amendments, requiring the Interior Department to conduct an historical accounting for all trust assets.

Third and finally, the Federal Government should start budgeting for an eventual solution. Money in those accounts belongs to Indians, and the Government cannot continue to hold it. Last year, in Interior’s budget, the Government spent twice as much on health care for Federal prisoners as it does for Indian children and families.

It is unacceptable that the Federal Government spends twice as much on health care for Federal prisoners as it does for Indian children and families. It is immoral that sick people are turned away every day from IHS hospitals and clinics in this country unless
they are in immediate danger of losing life or limb. “Life or limb” is not a figure of speech. It is an actual standard for care, and it is a national disgrace.

Last March, I offered an amendment to the budget resolution to provide $2.9 billion in order to fully fund one part of the IHS budget. Unfortunately, every Republican Senator voted against it. They offered an amendment with $292 million, one-tenth of the amount we proposed. It was inadequate, but we accepted it, only to find when we went to conference, the Republicans killed their own amendment in conference. We tried repeatedly last year to increase funding by $2.9 billion, and we will do so this year.

More than a century ago, our Government signed treaties with the Indian nations promising to provide them and their descendants three things forever: health care, education, and housing. The Government has failed to keep its promise and provide these benefits which the Indian people have already paid for in full with their lands. Tribal leaders are in Washington this week asking once again that we live up to our promises.

Let us put our minds together and see what life we can make for our children. I yield the floor.

EXHIBIT 1

EXECUTIVE SUMMARY

The federal government has a long-established special relationship with Native Americans characterized by their status as governmentalty independent entities, dependent on the United States for support and protection. In exchange for land and in compensation for forced removal from their original homelands, the government promised through laws, treaties, and pledges to support and protect Native Americans. However, funding for programs associated with those promises has fallen short, and Native people have been in the throes of a discriminatory history. Federal efforts to raise Native American living conditions to the standards of others have long been in motion, but Native Americans still suffer higher rates of poverty, poor educational achievement, substandard housing, and higher rates of disease and ill health. Native Americans continue to rank at or near the bottom of nearly every social, health, and economic indicator. Small in numbers and relatively poor, Native Americans often have had a difficult time ensuring fair and equal treatment on their own. Unfortunately, relying on the goodwill of the Federal Government to honor its treaty obligations to Native Americans clearly has not resulted in desired outcomes. Its small size and geographic apartness from the rest of American society induces some to designate the Native American population the “invisible minority.” To many, the government’s promises to Native Americans go largely unfulfilled. Thus, the U.S. Commission on Civil Rights, through this report, gives voice to a quiet crisis.

Over the last 10 years, federal funding for Native American programs has increased significantly. However, this has not been nearly enough to compensate for a decline in spending power, which had been evident for decades. The government has compounded this sad history of neglect and discrimination. Thus, there persists a large deficit in funding Native American programs that needs to be paid to eliminate the backlog of unmet Native American needs, an essential predicate to raising their standards of living to that of other Americans. Native Americans living on tribal lands do not have access to the same services and programs available to other Americans, even though the government has a binding trust obligation to them. In preparing this report, the Commission reviewed the budgets of the six federal agencies with the largest expenditures on Native American programs and conducted an extensive literature review.

DEPARTMENT OF THE INTERIOR

The Bureau of Indian Affairs (BIA), within DOI, bears the primary responsibility for providing the 562 recognized Native American tribes with federal services. The Congressional Research Service found that between 1975 and 2000, funding for BIA and the Office of the Special Trustee declined by $6 million yearly when adjusted for inflation. BIA’s mismanagement of Individual Indian Money trust accounts has denied Native Americans the right to their own money. A study estimated that $507 million and increasing at an annual rate of $66.5 million due to inflation will be needed to bring the nation’s 1,000 schools into adequate condition. BIA and its programs play a pivotal role in the lives of Native Americans, but mismanagement and lack of funding have undercut the agency’s ability to improve living conditions in Native communities.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Native Americans have a lower life expectancy than any other racial/ethnic group and higher rates of many diseases, including diabetes, tuberculosis, and alcoholism. Yet, health facilities are frequently inaccessible and many health care and specialty services are not readily available. Most Native Americans do not have private health insurance and they rely exclusively on the Indian Health Service (IHS) for health care. The federal government spends less per capita on Native American health care than on any other group for which it has this responsibility, including Medicaid recipients, prisoners, veterans, and military personnel. Annually, IHS spends 60 percent less on its beneficiaries than the average per person health expenditures nationwide. The IHS, although the largest source of federal spending for Native Americans, constitutes only 0.5 percent of the entire HHS budget. Even a smaller proportion of HHS’ discretionary budget today than five years ago. By most accounts, IHS has done well to work within its resource limitations. However, the agency currently operates with an estimated 59 percent of the amount necessary to stem the crisis. If funded sufficiently, IHS could provide more money to invest in health care, urban health programs, health facility construction and renovation, and sanitation services.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The availability of safe, sanitary housing in Indian Country is significantly less than the need. Over-crowding and its effects are a persistent problem. Furthermore, existing housing structures are substandard: approximately 40 percent of on-reservation housing is considered inadequate, and one in five reservations homes lacks running water. Native Americans also have less access to home-ownership resources, due to limited access to credit, land ownership restrictions, and restrictive building codes that make construction difficult and expensive.

While HUD has made efforts to improve housing, lack of funding has hindered progress. Funding for Native American programs at HUD increased slightly over the years (8.8 percent), significantly less than the rest of the agency (41.6 percent). After controlling for inflation, HUD’s Native American programs actually lost spending power. The tribal housing loan guarantee program lost nearly 70 percent of its purchasing power over the last four years, and the Native American Housing Block Grant lost funding for three years in a row. Given the unique housing challenges Native Americans face, greater and immediate federal financial support is needed.

Housing needs on reservations and tribal lands cannot be met with the same interventions that HUD uses to rent housing or homeownership goals in the suburbs or in urban areas. Improving access to comprehensive approach are needed, and the government’s trust responsibility to provide housing to Native Americans must be fully factored into these efforts.

DEPARTMENT OF JUSTICE

All three components of law enforcement—policing, justice, and corrections—are substandard in Indian Country compared with the rest of the nation. Native Americans are twice as likely as any other racial/ethnic group to be the victims of crime. Yet, per capita spending on law enforcement in Native American communities is only 60 percent of the national average. Correctional facilities in Indian Country are also more overcrowded than even the most crowded state and federal prisons. In addition, Native Americans have long held that tribal court systems have not been funded sufficiently or consistently, and hence, are not equal to other court systems.

Law enforcement professionals concede that the dire situation in Indian Country is unsurpassed. With funding commended for its stated intention to meet its obligations to Native Americans, promising projects have suffered from inconsistent or discontinued funding. Native American law enforcement funding has declined at least 80 percent over the years (8.8 percent), significantly less than the rest of the agency (41.6 percent). Between 1998 and 2003, but the amount allocated was so small to begin with that its proportion to the department’s total budget hardly changed. Native American programs make up roughly 1 percent of the agency’s total budget. A downward trend in funding has begun that, if continued, will severely compromise public safety in Native communities.

Additionally, many Native Americans have lost faith in the justice system due to perceived bias. Many attribute disproportionately high incarceration rates to unfair treatment by the criminal justice system, including racial profiling, discriminatory pros- ecution, and lack of access to legal representation. Solving these problems is vital to restoring public safety and justice in Indian Country.

DEPARTMENT OF EDUCATION

As a group, Native American students are not afforded educational opportunities equal to other American students. They routinely experience unqualified, underpaid teachers, weak curricula, discriminatory treatment, outdated learning tools, and
While some agencies are more proficient at managing funds and addressing the needs of Native Americans than others, the government’s failure is systemic. The Commission identified a number of jurisdictional overlap, inadequate collaboration, and a lack of articulation among agencies. The result is inefficiency, service delay, and wasted resources. Federal funds are spread thin, and coordination not only complicates the application and distribution processes, but also dilutes the benefit potential of the funds.

In the past, the Commission has provided new information and analyses in the hope of stimulating resolve and action to address unmet needs in Indian Country. Converting multiple federal programs to systemic action plans requires commitment and determination to honor the promises of laws and treaties. Toward that end, the Commission offers 11 recommendations, which if fully implemented will yield (1) a thorough and precise calculation of unmet needs in Indian Country; (2) increased efficiency and effectiveness in the delivery of services, achieved through goal setting, strategic planning, implementation, coordination, and measurement of outcomes; (3) perennial adequate funding; and (4) increased proportions toward the goal of independence and self-governance.

To act will signify that this country’s agreements with Native people, and other legal rights to which they are entitled, are little more than empty promises. Focused federal attention and resolve remain the only hope that will restore the dignity and momentum the American government has promised to its Native people. The Commission’s report and recommendations should be charged with analyzing the current status of programs. Congress should require that funding must be provided for programs to serve these individuals.

The Commission makes the following recommendations:

1. The Native American crisis should be addressed with the urgency it demands. The administration should establish a bipartisan, action-oriented initiative at the highest level of accountability in the government, with representatives including elected officials, tribal officials, and representatives from each Federal agency that funds programs in Indian Country, tribes, and Native American advocacy organizations. The action group should address the current critical challenges, the increasing need for accountability, and the need for specific benchmarks and timelines.

2. All agencies should contribute funds for Native American programs should be required to regularly assess unmet needs, including gaps in service delivery, for both urban and rural Native American individuals. Agencies should establish benchmarks for the elevation of Native American living conditions to those of other Americans. Agencies should document Native American participation in programs and catalog initiatives.

3. Agencies should replicate IHS’ Federal Disparity Index assessment for tracking disparities in services and needs. Tribal organizations and Native American advocacy groups should be consulted when agencies develop measures. The results of such examinations should be used to prepare budget estimates, prioritize spending, and assess the status of programs. Congress should require and review unmet needs analyses annually as a component of each agency’s budget justification.

4. All Federal agencies that administer Native American programs should be required to send a single comprehensive spending report to the federal government, including all funding for Native American programs from both Federal and State governments. The goal is to eliminate overlapping, underfunding, and mismanagement, ensuring monitoring of federal spending difficulties.

[Disturbance in the galleries.]

The PRESIDING OFFICER. Expressions of approval or disapproval are not in order.

Mr. CRAIG. Madam President, we are on the Duschle amendment which I support. The minority leader has expressed the value of that amendment. I am wondering if there will be a recorded vote. I will be very brief about it. We can have a vote on it and immediately move back to the Boxer amendment.

Mr. REID. Will the Senator yield for a question?

Mr. CRAIG. I am happy to.

Mr. REID. I am wondering if there is a need for a recorded vote.

Mr. CRAIG. I do not see that need.
Mr. REID. I think we can do this by voice because it is my understanding that the Kohl second degree is also going to be done by voice vote, so that would eliminate the need for two votes. We could go directly to the Boxer amendment, as amended.

Mr. CRAIG. Madam President, when Senator DASCHLE and I began to visit the issue of liability to gun manufacturers and responsible licensed gun dealers, we wanted to make sure it was as strong as I expressed yesterday that it would be. Senator DASCHLE came up with some ideas that would strike the "knowing and willing" in the preceding sentences, potentially increasing the likelihood that this exception in the general immunity afforded under the law would be applicable in any given case.

That is what we did. They are two very distinct provisions. I discussed them last night. I will not go into them today for the record. But, we handed that to the Congressional Research Service. What they have said is this: Applying these changes to the scenarios at issue—and those relate both to manufacturers and gun sales—it appears the amendment could have the effect of making it more likely that this exception to immunity would be applicable in certain facts, as established.

In other words, we truly have clarified the immunity provision. It is every bit as strong, if not stronger, than the current Federal laws pertaining to the mismanagement, mishandling, the criminal actions that are in violation of a Federal firearm license or that are in violation of a manufacturers responsibility to their communities.

I believe the amendment is a good one. It perfects and improves S. 1805. I encourage its passage.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to amendment No. 2621.

The amendment (No. 2621) was agreed to.

Mr. REID. I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table. The motion to lay on the table was agreed to.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. REID. I move that the legislative clerk proceed to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Madam President, under the terms of the order that is now before the Senate, Senator DEWINE and Senator KOHL were to offer an amendment. Senator DEWINE is not offering the amendment. I ask unanimous consent that Senator KOHL be allowed to offer a second-degree amendment to the Boxer amendment.

Mr. CRAIG. I do not object to that request, Madam President.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Wisconsin.

AMENDMENT NO. 2622 TO AMENDMENT NO. 2621

Mr. KOHL. Madam President, I rise as an original sponsor of the child safety lock amendment. I thank the Senator from California for offering this important measure today. The Child Safety Lock Act significantly reduces the incidence of gun-related tragedies in our country among the most vulnerable elements of our population; namely, our children.

I have a second-degree amendment I wish to offer now. I send the amendment to the desk.

The PRESIDING OFFICER. The assistant legislative clerk read the amendment as follows:

The Senator from Wisconsin [Mr. KOHL] proposes an amendment numbered 2622 to amendment No. 2621.

Mr. KOHL. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To amend chapter 44 of title 18, United States Code, to require the provision of a child safety lock in connection with the transfer of a handgun)

In lieu of the matter proposed to be inserted, insert the following:

TITLE II—CHILD SAFETY LOCKS

SEC. 201. SHORT TITLE.

This title may be cited as the "Child Safe-

TLock Act of 2004".

SEC. 202. PURPOSES.

The purposes of this title are—

(1) to promote the safe storage and use of handguns by consumers;

(2) to prevent unauthorized persons from gaining access to handguns, including children who may not be in possession of a handgun; and

(3) to avoid hindering industry from supplying firearms to law-abiding citizens for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

SEC. 203. FIREARMS SAFETY.

(a) UNLAWFUL ACTS.—

(1) MANDATORY TRANSFER OF SECURE GUN STORAGE OR SAFETY DEVICE.—Section 922 of title 18, United States Code, is amended by inserting at the end the following:

"(1) SECURE GUN STORAGE OR SAFETY DE-

VICE.—(1) IN GENERAL.—Except as provided under subparagraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

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

(A)(i) the manufacture for, transfer to, or possession by the Secretary, the Attorney General of the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

(B)(i) the transferee is provided with a secure gun storage or safety device for which a secure gun storage or safety device for which a handgun for law enforcement purposes (whether on or off duty); or

"(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified for commissioned service under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty); or

"(c)(1) the transferee is provided with a secure gun storage or safety device for which a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

"(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in subparagraph (a)(1)(A), if the transferee, the licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

(3) LIABILITY FOR USE.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

"(B) PROSPECTIVE ACTIONS.—A qualified civil liability action may not be brought in an Federal or State court.

"(C) DEFINED TERM.—As used in this para-

graph, the term 'qualified civil liability ac-

tion' means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party.

"(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

"(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

"(II) the handgun was transferred to another person for the purposes of law enforcement.

"(2) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

"(1) IN GENERAL.—Stated in the exception described in the paragraph that was used to conduct the firearms transfer; or

"(a) EACH VIOLATION OF SECTION 922(2) BY A LI-

censed manufacturer, licensed importer, or licensed dealer, the Secretary, or the Attorney General, after

"(i) suspend for not more than 6 months, or

"(ii) subject the licensee to a civil penalty in an amount equal to not more than $2,500.

"(B) REVOCATION.—An action of the Secretary under this paragraph may be reviewed only as provided under section 929(f).

"(2) ADMINISTRATIVE REMEDIES.—The sus-

pension or revocation of a license or the im-

position of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.

"(c) LIABILITY; EVIDENCE.—

"(1) LIABILITY.—Nothing in this title shall be construed to

"(a)(1) the manufacture for, transfer to, or possession by a law enforcement officer employed by an entity referred to in clause (1) of a handgun for law enforcement purposes (whether on or off duty); or

"(b) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified for commissioned service under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty); or

"(a) each violation of section 922(2)(B) by a li-

cessor, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

"(ii) the licensee to a civil penalty in an amount equal to not more than $2,500.

"(B) REVOCATION.—An action of the Secretary under this paragraph may be reviewed only as provided under section 929(f).

"(2) ADMINISTRATIVE REMEDIES.—The sus-

pension or revocation of a license or the im-

position of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.
(B) establish any standard of care. 

(2) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this title shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action relating to section 922(z) of title 18, United States Code, as added by this section. 

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to bar a government agency from imposing a penalty under section 924(p) of title 18, United States Code, for a failure to comply with section 922(z) of that title.

SEC. 2. EFFECTIVE DATE. 

This title and the amendments made by this title shall take effect 180 days after the date of enactment of this Act.

Mr. KOHL. Madam President, as I understand it, there is no need for debate on this amendment. The Senator from California has told me she has no objection to our modifications. So if it is not objectionable to the managers of the bill that we have already taken up, I will yield back our time. I will not call for a rollcall vote, and I hope the Senate will accept these modifications by voice vote.

The amendment will make the Boxer amendment virtually identical to the bipartisan child safety lock amendment that passed with 78 votes in 1999. Protecting our children from accidental shootings is a concern that crosses party lines, and I am assured that today we get a chance to express that concern again in an overwhelming and bipartisan way.

Every year, children and teenagers are involved in more than 10,000 accidental shootings. Close to 800 of those shootings result in a senseless death. And those 800 deadly accidents do not account for the thousands of additional gun-related deaths of America’s youth each year that result from suicide or intentional shootings. Every 6 hours, a young person between the ages of 10 and 19 commits suicide with an available firearm. In all, nearly 3,000 children and young people die every year from firearm-related injuries.

To many of us, this recitation of numbers and statistics is terribly grim. But for the families, the pain associated with those avoidable deaths is unbearable. What is equally tragic is that so many of these deaths could have been prevented. The use of a child safety lock would have, at the very least, stopped hundreds of accidents each and every year.

This legislation is simple, straightforward, and effective. It mandates that a child safety lock device or a trigger lock be sold with every handgun. Most locks resemble a padlock that locks around the gun trigger and immediately prevents it from being fired. These and other locks can be purchased in virtually every gun store for less than $10. They are already used by tens of thousands of responsible gun owners to protect their firearms from unauthorized use, and they surely have saved many lives.

Support for this commonsense approach to gun safety is widespread. In 1999, the same child safety lock provision passed the Senate by an overwhelming vote of 78 to 20. It was an amendment during the juvenile justice debate. This proposal is as popular with the rest of the country and the law enforcement community as it was with the Senate. Polls have shown that 73 percent of the American public, including 6 of 10 gun owners, favors the mandatory sale of safety locks with guns. In a survey of nearly 500 of Wisconsin’s police chiefs and sheriffs, 90 percent agree that child safety locks should be sold with every gun.

This legislation has the support of the current administration as well. During his campaign in 2000, President Bush indicated that if Congress passes a bill making the sale of child safety locks mandatory with every gun sale, he would sign it into law. Attorney General Ashcroft affirmed the administration support of the mandatory sale of child safety locks during his confirmation hearings before the Senate Judiciary Committee.

The bill is not a panacea. It will not prevent every single avoidable firearm-related accident, but the fact is all parents want the best for their children. This legislation will ensure that people purchase child safety locks when they buy guns. Those who buy locks are more likely to use them. That much we know is certain. Those who use the locks will be protected from liability if those guns are misused.

The Child Safety Lock Act is a modest proposal. Though imposing a minimal cost on consumers, it will prevent the deaths of many innocent children every year. The Senate spoke overwhelmingly in favor of this proposal in 1999.

Madam President, I urge my colleagues to support and vote for the amendment before us today.

Mr. REID. Madam President, I move to lay that motion on the table. The motion to lay on the table was agreed to.

Mr. REED. I move to lay that motion on the table.
(10,4),(995,990)
come from the National Safety Council, the National Center for Health Statistics.

Again, I do not dispute the emotion or the concern or the care that the Senator from California has on this issue. I do dispute the notion of the Federal Government to enter the home and tell the average citizen they have to comply with mandatory storage laws that exist with penalties. I believe that is unnecessary in a free society.

I believe the right responsible to always be necessary, and the industry is rapidly moving in that direction. Ninety percent are in compliance with the fundamental principles of the law itself.

This is the thing that concerns me most: Most States already provide penalties for reckless endangerment under which an adult found grossly negligent in the storage of a firearm under certain circumstances can be prosecuted for a felony offense. Universal mandatory storage requirements are counterproductive. That is going at the individual, instead of allowing the long arm of the law to come into the home. Clearly, that is the way it ought to be.

We know that no one-size-fits-all requirement can possibly meet the needs of all gun owners, and that is what is being suggested. We have already seen the industry involve science and technology to try to deal with this issue, and they are trying to develop those kinds of standards that work. I have already mentioned that the National Safety Council tested 32 types of gunlocks and found that 30 of them could be opened without a key. While the industry is rushing to get there, what we are needing and the industry is now doing it, is standardization.

In any emergency, and now we are talking about oftentimes why a gun is in a home, a trigger lock can handicap a person who needs a gun for protection. So the industry is trying to make them applicable so they can be accessed within seconds or minutes in case the burglar is breaking into the home, the reality is that if the gun is locked away in a safe it is ineffective as a use for personal protection in an unsafe environment. Those are the kinds of concerns I think all of us have as we talk about these kinds of issues and as we tick away at the right of the private gun owner to manage what I believe is a constitutional right in this country.

I will give a little bit of history and then I will close. In 1936, British police began adding the following requirements for firearms certificates: Firearms and ammunition to which this certificate relates must at all times, when not in actual use, be stored in safe and secure places. That was 1936. What has transpired in British law until today is that if one wants to own a gun and they get a certificate to own a gun, the police come to their home and ask where they are going to store it. They look at where it is going to be stored and if the gun owner does not have a lockbox or if they do not have a safe, they do not own a gun.

Will that ever happen in this country? I would hope not. I hope Americans would rebel about the reality of the governmententering their home and telling them what to do as it relates to storing an object in the home, especially an object that we believe is a constitutional right. That is the issue at hand.

Again, I am not going to argue with the Senator from California. States are moving now, and I think in some ways responsibly, to encourage, educate, and train. The industry is moving in that direction. To establish a Federal requirement that says this is the way one is going to do it in their home— I believe in a fundamental right of privacy—this is a breach of that right and an entry into the home with the long arm of Federal law. I do not think we ought to go there.

Mr. CRAIG. I accept that if I have an additional 1 minute to close after the Senator from California.

Mr. REID. I ask unanimous consent that the request be so modified.

Mr. REID. I ask unanimous consent that the request be so modified.

The PRESIDING OFFICER. The Senator from California.

Mr. REID. Madam President, on this amendment all time has been used. I ask the good offices of my friend from Idaho to allow the Senator from California 1 minute to respond to the statements of the Senator from Idaho.

Mr. CRAIG. I accept that if I have an additional 1 minute to close after the Senator from California.

Mr. REID. I ask unanimous consent that the request be so modified.

The PRESIDING OFFICER. The Senator from California.

Mr. REID. Madam President, that is quite right, because in the tragedy of suicide, although my friend from California is quite right, we do try on some of our bridges to build barriers, but if there is an intent, although we do our best, we often fail. But a 3-year-old or 5-year-old child picking up a gun really doesn't know someone is going to die. So it is up to us to make sure we do our best. That is all; we do our best. My last point. There are standards for aspirin caps, cribs, Play-Doh, Teddy bears, pajamas. There ought to be a standard for a safety lock on a gun. I don’t think we do violence to freedom in any way.

I wish my friend were with me on this, but if not, I hope we can repeat the vote we had last time; 78 to 20 sounds really good. I hope we can do that again.

I yield the floor.

Mr. CRAIG. Mr. President, I will be brief. I don’t question the sincerity of the Senator from California. I recognize what she is attempting to do. The industry is rushing. It is at near 90 percent compliance today. We want firearms to be as safe as possible in this country.

Let me close with this. Firearms are involved in 1.5 percent of the accidents within a home that involve a child; motor vehicles and children; 47 percent of the deaths of young children are caused by motor vehicles; falling, 15 percent; poisoning, 10 percent; drowning, 4 percent; fire, 3 percent; objects ingested and lodged in the throat in which they suffocate, 3 percent.
I move to lay that motion on the table. The motion to lay on the table was agreed to.

Mr. CRAIG. Mr. President, we have the Campbell concealed-carry bill. We are minutes away from being ready to offer that, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior journal clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. LEAHY) is necessarily absent.

The result was announced—yeas 70, nays 27, as follows:

[Rollcall Vote No. 17 Leg.]

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Mr. DODD. Are you going to take 30 minutes? I would like to be able to be heard.

Mr. HATCH. No. The PRESIDING OFFICER. The Senator from Utah.

The PRESIDING OFFICER. The amendment to the desk on behalf of Senators Campbell, Leahy, Hatch, DeWine, Sessions, and Craig, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant Journal clerk read as follows:

The Senate from Utah (Mr. HATCH), for himself, Mr. CAMPBELL, Mr. LEAHY, Mr. DeWINE, Mr. SESSIONS, and Mr. CRAIG, proposes an amendment numbered 2623.

The amendment is as follows:

(Purpose: To amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns)

On page 11, after line 19, add the following:

SEC. 5. LAW ENFORCEMENT OFFICERS SAFETY ACT.

(a) SHORT TITLE.—This section may be cited as the “Steve Young Law Enforcement Officers Safety Act of 2004”.

(b) EXEMPTION OF QUALIFIED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.—

(1) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926A the following:

“§ 926B. Carrying of concealed firearms by qualified law enforcement officers

“(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

“(b) This section shall not be construed to supersede or limit the laws of any State that—

“(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

“(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

“(c) As used in this section, the term ‘qualified law enforcement officer’ means an employee of a governmental agency who—

“(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;

“(2) is authorized by the agency to carry a firearm;

“(3) is not the subject of any disciplinary action by the agency;

“(4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm; and

“(5) is not prohibited by Federal law from receiving a firearm.

“(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is, or was, employed as a law enforcement officer.

“(e) DEFINED TERM.—As used in this section, the term ‘firearm’ does not include—
"(1) any machinegun (as defined in section 5845 of title 18);
"(2) any firearm silencer (as defined in section 921); and
"(3) any destructive device (as defined in section 921)."

(2) Clerical Amendment.—The table of sections for chapter 44 of title 18, United States Code, is amended by inserting after section 926B, as added by subsection (b), the following:

"§ 926C. Carrying of concealed firearms by qualified retired law enforcement officers

(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State that—
"(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or
"(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term 'qualified retired law enforcement officer' means an individual who—
"(1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

"(2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the apprehension of any person for, any violation of law, and had statutory powers of arrest;

"(3)(A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or

"(B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

"(4) has a nonforfeitable right to benefits under the retirement plan of the agency;

"(5) during the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification as a law enforcement officer to carry firearms; and

"(6) is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is photographic identification issued by the agency for which the individual was employed as a law enforcement officer.

(e) Defined Term.—As used in this section, the term 'firearm' does not include—
"(1) any machinegun (as defined in section 5845 of title 18);

"(2) any firearm silencer (as defined in section 921); and

"(3) any destructive device (as defined in section 921)."

(3) Exemption of Qualified Retired Law Enforcement Officers from State Laws Prohibiting the Carrying of Concealed Firearms.—

(1) In General.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926B, as added by subsection (b), the following:

"§ 926B. Carrying of concealed firearms by qualified law enforcement officers.

Mr. Hatch. Mr. President, let's see if my colleague from Connecticut can agree to this. I intend to take a few minutes to define the bill. I have promised Senator DeWine, I think he only has about 3 or 4 minutes.

Mr. Dodd. I think I still have the floor.

The PRESIDING OFFICER. The Senator from Connecticut has the floor.

Mr. Hatch. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. Hatch. Today I rise and join Senators Campbell, Leahy, Reid, and others I have named on this bill to offer it as an amendment to S. 1805, the Law Enforcement Officers Safety Act of 2003, which was favorably reported out of the Judiciary Committee with strong bipartisan support.

This amendment allows qualified current and retired law enforcement officers to carry a concealed firearm in any jurisdiction, will help protect the American public, our Nation's officers, and their families. I would note this bill has the overwhelming support of the Fraternal Order of Police and other law enforcement associations which have vigorously worked in support of this measure.

This amendment allows qualified law enforcement officers and retired officers to carry, with appropriate identification, a concealed firearm that has been shipped or transported in interstate or foreign commerce regardless of State or local law.

Importantly, this legislation does not supersede any State law that permits private persons to prohibit or restrict possession of firearms on any State or local government properties, installations, buildings, bases, or parks. Additionally, it clearly defines what is meant by 'qualified law enforcement officer' and 'qualified retired or former law enforcement officer' to ensure those individuals permitted to carry concealed firearms are highly trained professionals.

This amendment will not only provide law enforcement officers with the legal means to protect themselves and their families within the State or inter-State, it will also enhance the security of the American public, which is long overdue.

By enabling qualified active duty and retired law enforcement officers to carry firearms, even if off duty, more trained law enforcement officers will be on the street to enforce the law and to respond to any crises that may arise.

I urge my colleagues to vote in favor of this amendment because passage of this important legislation will provide that extra layer of protection to current and retired law enforcement officers, their families, and the public that we so desperately need.

Mr. President, I appreciate the co-sponsors on this bill, which includes Senator Reid. I ask unanimous consent that Senator Reid be added as a co-sponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. Hatch. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. Hatch. Thank you. Mr. President, I thank my colleagues, Senator Harding and Senator Kennedy, for being very gracious in providing me a few minutes to address the underlying bill. I know we are going to debate the amendment on concealed weapons, but I wish to share with my colleagues my views on this legislation.

I cannot see any amendment that can be offered to this legislation that is going to convince this Senator that the underlying bill deserves support. I am stunned, in many ways, that we are even suggesting this legislation. I can only imagine what would be if I were to come to the Chamber and offer a similar amendment that would exclude any other industry in the country from the exposure of potential liability for wrongdoing.

In my State, I represent more gun manufacturers than any other Member of this body. I also represent probably more insurance companies and more pharmaceutical companies in the State of Connecticut than almost any other Senator in the country. As strongly as I support the people who work in these businesses and respect what they do, the idea that we would take an entire industry and remove it from the potential of liability is rather breathtaking to me in this day and age.

I am a great advocate of tort reform, as many of my colleagues know. I authored the securities litigation reform bill and wrote the uniform standards litigation bill. I am now working on class action reform. But the idea that we are going to, as Senator Kennedy and I, give it immunity from wrongdoing, I think, is rather stunning to this Member.
I wish to share with my colleagues some general thoughts. I know there are amendments going to be offered on assault weapons and a variety of other proposals, but I want to put my colleagues on notice. I do not think we can ignore any amendment to this bill that will prevent the harm done by the underlying proposal and the precedent we are setting in this body. We are taking an industry and saying: No matter what you do, no matter how much harm you may cause, you never have to being held accountable and accountable for your actions. In this day and age, that this body would so overwhelmingly endorse an idea such as this is breathtaking.

I wish to take a few minutes to say why it is so outrageous. I want to add, with all the matters we should be addressing with the limited time in this session, with the thousands of people losing their jobs today, we have nothing to say about outsourcing. When we have a 44 million Americans without health insurance, we have nothing to say about those issues. We are drowning in budget deficits and trade deficits. We have the worst job deficit since the Great Depression. Poverty is increasing, and this Chamber has nothing to say on those issues except we are now going to take one group of manufacturers and say: Don’t worry about anything, you don’t have to ever be held accountable for your wrongdoing.

That is my view of this industry special legal protection for a number of reasons. First, it will have absolutely no impact whatsoever on reducing the rate of gun violence in our Nation. In fact, this bill ignores the devastating toll firearm violence continues to have on the country. According to the Centers for Disease Control and Prevention, there were nearly 29,000 deaths in the United States from firearms in the year 2001 alone—29,000 deaths. That is, of course, 10 times the number of lives tragically lost on September 11 at the World Trade Center, here in Washington, and in Pennsylvania. In fact, one year of gun violence in America nearly equals the number of Americans who died in the Korean war and almost half the Americans lost in the entire Vietnam conflict.

The numbers are staggering. These numbers exceed by a huge margin the number of firearm-related deaths on a per-capita basis in countries such as Canada, United Kingdom, Germany, Japan, and France.

Among those individuals most affected by gun violence are children. It is not just an incident such as the Columbine High School massacre in 1999 or inner-city neighborhood shootings that should make us realize that children are among the most vulnerable to gun violence. Children are also killed or injured by firearms because their parents did not store their guns properly, and the kids used them for horseplay.

It is no coincidence then that firearms are the second leading death among young Americans ages 19 and under. Approximately 2,700 children under the age of 19 are killed each year as a result of gun violence or improper use of guns.

The rate of firearm deaths of children under the age of 14 is 14 times higher in the United States than in 25 other industrialized nations combined. Let me repeat that. The firearm death rates of children under the age of 14 is 14 times higher in the United States than in 25 other industrialized nations combined.

We are about to exclude an entire industry from even being brought to the bar to question whether or not they might be liable. One story noted the firearm injury epidemic among children is nearly 10 times larger than the polio epidemic in the first half of the 20th century.

The human cost of gun-related deaths and injuries is tragic in itself, but the economic loss is also significant. According to the Centers for Disease Control and Prevention, in 2000, the average costs of treating gunshot wounds were $22,000 for each unintentional shooting and $18,400 for each gun assault injuries. These costs would undoubtedly be much higher today. Total societal costs attributable to gun violence is estimated to be between $100 billion and $126 billion per year. Who pays these expenses? By and large the American taxpayers do.

My colleagues speak against unfunded mandates, and yet this bill, if enacted, burdens the Nation’s cities and counties with billions and billions of dollars in medical care, emergency services, police protections, courts, prisons, and school security. It is shameful that while tens of thousands of people are dying each year due to firearms, and while the American taxpayers pay tens of billions of dollars to cope with the effect of gun violence, the United States Senate is doing absolutely nothing to make our streets and homes safer. In fact, we are doing quite the opposite by our actions today.

Second, the legislation will give this industry special legal protections that no other industry in the United States has. Neither cigarette companies nor asbestos companies nor polluters have such sweeping immunity as we are about to give this industry. In fact, gun manufacturers and sellers are already exempt from Federal Consumer Product Safety Commission regulations, despite the fact firearms are among the most dangerous and deadly products in society. We have more regulations on toy guns than we do on the ones that fire real bullets.

Imagine that, a toy gun that you buy from Mattel, the Consumer Product Safety Commission issues literally pages of regulations on what must be included in the production of that toy gun. There is not a single word in the Consumer Product Safety Commission regulations about the production of a gun that may kill 29,000 people each year in this country. The National Rifle Association made sure of this exemption 30 years ago, just as highly addictive tobacco products are not subject to regulation by the Food and Drug Administration.

I have supported tort reform in specific areas where I believe it is appropriate. My colleagues have been around long enough to know what is going to happen now. I promise a magazine disconnect safety could be installed by the manufacturers to prevent guns from firing if the magazine is removed. Even child proofing the gun with safety locks can be done relatively easily. However this bill is enacted into law, gun manufacturers will lose a huge incentive to include such reasonable safety devices in their products.

I know I am going to hear shortly, we will have just adopted a gun safety lock amendment. We did that a few years ago as well. What happened to it? It got dumped. That is what happened. Do not have any illusion about these amendments being adopted. My colleagues have been around long enough to know what is going to happen. When this bill leaves the Senate and goes down the hall to the other Chamber all of these nice provisions that are included will be dropped, just as they have been in the past.

Third, this legislation would close the courthouse door on our Nation’s mayors, gun victims, and law enforcement officers who are seeking to hold the gun industry accountable for their negligent conduct. Just last week, Los Angeles Police Chief William Bratton and over 80 other prominent law enforcement leaders from 26 States sent a letter to the Senate opposing the legislation.

The chiefs warned that passage of the immunity legislation would result in more illegal gun running and deter efforts to develop child-resistant guns. In the words of Chief Bratton:
The passage of this bill would deliver a devastating blow to justice. The NRA and Congress need to understand that special interest groups cannot come before public safety. Gun stores and manufacturers must be held to the same standards of safety as any other industry. And if they fail to act responsibly, they must pay the price.

Evidence uncovered which reveals that the gun industry has been engaged in irresponsible behavior for many years. Senator Reed and others have already mentioned one such industry actor: Bull’s Eye Shooter Supply of DC. This gun store claims that it “lost” the gun used by the Washington, DC snipers John Muhammed and Lee Boyd Malvo as well as more than 200 other guns. Many of these firearms were later traced to other crimes.

In fact, Bull’s Eye Shooter Supply had no record of the gun ever being sold and did not report it until after the Bureau of Alcohol, Tobacco, and Firearms traced the weapon and traced it back to the store.

Even after the rifle was linked to the sniper shootings and the newspapers reported on the disappearance of the guns sold, the rifle’s manufacturer, Bushmaster Firearms, declared that it still considered Bull’s Eye a “good customer” and was happy to keep selling to the shop. The judge in this case has since ruled twice that the sales from the families of the DC-area sniper victims against both Bushmaster Firearms and Bull’s Eye Shooter Supply should proceed to trial, and a preliminary appeal of these rulings has been rejected.

Nevertheless, this case as well as other important pending and future lawsuits against negligent gun dealers and manufacturers would be banned under the Senate bill, according to the opinion of two of the nation’s most prominent attorneys, David Boies and Lloyd Cutler.

There are many other instances of the gun industry not taking steps to prevent guns from reaching the illegal market. An article in the Federal Register last year states that unlicensed dealers sold and did not report it until after the Brady Act. Studies have shown that unlicensed dealers often sell large quantities of guns at these shows without having to run criminal background checks or keeping records.

Many of my colleagues might recall that a gun show was the source of the firearm purchased Eric Harris and Dylan Klebold before they went on their murderous rampage at Columbine High School. But again, the Senate bill will not hold such negligent gun sellers responsible for the injuries and deaths their firearms cause.

Supporters of this legislation contend that there is a gun litigation crisis in America, and that many of the cases being brought against the gun industry are frivolous. Nothing could be further from the truth. In fact, there are massive backlogs of claims against gun dealers and manufacturers burdening the court system, as with the asbestos litigation. Only 33 municipalities and one State, New York, have filed suits against gun makers. Not one of these cases has been dismissed as being frivolous.

In fact, 18 cities and counties have won favorable rulings on the legal merits of their cases. These courts have recognized that such cases are based on well-founded principles such as negligence, product liability, and public nuisance. Important information on the gun industry’s wrongful actions, which has long been cloaked in secrecy for many years, is being revealed in these lawsuits. These cases, however, will be precluded, and the information gleaned from them will be lost, if the gun industry is granted the immunity it seeks.

This legislation is the wrong way for the Senate to proceed on gun violence. Rather than giving special immunity to those manufacturers and dealers who wrongfully make and sell guns to criminals, the Senate should be working to protect our police officers and the people they protect.

Rather than placing more guns on the streets, the Senate should be considering more responsible guns legislation, such as making the ban on assault weapons permanent and closing the gun show loophole. I am hopeful that the Senate will have a full and comprehensive debate on these important issues in the coming days.

Rather than encouraging reasonable and safe gun use, the Senate is destroying any incentive for gun manufacturers to improve the safety of their deadly wares.

The Senate wisely defeated a cloture motion on the motion to proceed to the medical malpractice bill. It should now tell the gun industry that they need to be held accountable for their deeds as is the case for every other industry in America so I urge my colleagues to oppose this legislation.

I have great respect for my colleagues, but there is no amendment that is going to be adopted in this chamber that is going to make this ugly legislation any better. I do not care how much lipstick is put on this one, this is an unattractive bill by any standard and I am going to vote against it no matter what. What we are doing is outrageous. As the senator who represents more of these manufacturers than any other Member in this body, I can say this is flat out wrong and we ought to be ashamed of ourselves for taking an entire industry and not holding it potentially liable for the harm that it causes to people across this country. Thirty thousand people die every year, about 3,000 kids, and we are about to say to the manufacturer of the products that kill them to take a walk and that you never have to show up again in court. That is incredible to me that we are about to do that.

I yield the floor.

The PRESIDING OFFICER. The Senator’s time has expired.

The Senator from Idaho.

Mr. CRAIG. Mr. President, before I turn the time over to the Senator from Ohio, let me only say to the Senator from Connecticut, go back and read section 4 of the bill.

He is a very eloquent Senator, but at the same time this is a very narrow provision. It says if that manufacturer is in a State or if a licensed gun dealer violates the law, they are in trouble. You set it make it to the courthouse. We make it to the courthouse and the judge hears the arguments.

Let me refer to one of the Senator’s concerned constituents, the president of Local 376 of the UAW, who has lost over 600 jobs in the Savage Arms Factory they have had to spend millions of dollars defending themselves on frivolous lawsuits. So that is a problem.

Mr. DODD. If my colleague will yield. Mr. CRAIG. I will not yield. To a question, I will respond.

Mr. DODD. The Senator raised my name. I did not talk about the Senator from Idaho. The Senator used my name. May I respond?

Mr. CRAIG. No.

The PRESIDING OFFICER. The Senator from Idaho has the floor.

Mr. CRAIG. I have the floor. I would be happy to provide the letter to the Senator. I referred to the Senator as an eloquent spokesman and I ask the Senator to read section 4 of the bill.

I now yield 10 minutes to the Senator from Ohio who is a cosponsor of this legislation.

Mr. KENNEDY. I would be happy to yield another minute to the Senator from Connecticut so he may respond.

Mr. CRAIG. I have the floor and I have already yielded.

The PRESIDING OFFICER. The manager of the bill cannot yield the floor to another Senator. The Senator has the right—

Mr. CRAIG. I allocated him time—

The PRESIDING OFFICER. The Senator can allocate time. Other Senators have the right to compete for recognition, but the Senator cannot automatically give him the right for recognition.

Several Senators addressed the Chair.

Mr. CRAIG. Mr. President, I yield 1 minute to the Senator from Connecticut from my time. I do not want
him to feel I have impugned his good name in any sense. The PRESIDING OFFICER. The Senator can yield and he can compete for recognition.

The Senator from Connecticut.

Mr. LEAHY. Mr. President, I yield the floor.

The Senator from Ohio.

Mr. CRANDALL. Mr. President, I yield 5 minutes.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. I yield 10 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I yield 5 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. LEAHY. Mr. President, I yield 5 minutes to the Senator from Vermont.

Mr. LEAHY. Mr. President, I thank the managing Senator.

I listened to what the distinguished Senator from Ohio said about Steve Young. I thought it was eloquent, well thought through, very wise and eloquent. I was glad to hear those comments. I consider myself very fortunate to have known Steve. I thought how important it was that we change the name of this legislation from the Firearm Owners' Safety Act to the Steve Young Law Enforcement Officers Safety Act.

Steve Young was a dear friend of mine for many, many years. He was a policeman, and exactly the kind of policeman I would have wanted helping me if I were a victim of crime, the kind of policeman I would have wanted protecting my children or grandchildren or any member of my family. That was Steve Young—a model for all law enforcement.

He was a humble, dedicated man who devoted his career to working for the good of his fellow officers, for the good of his community, for the good of his fellow citizens, for the good of his fellow community members. Steve was elected by his peers to serve as the national president of the Fraternal Order of Police and held this post until his death from cancer on January 9, 2003. Steve was just 49 years of age at his death.

While Steve Young had an incredibly long career in law enforcement, he is most remembered for his commitment to protecting his community safe and free from crime. Steve's commitment to our communities was evident in everything he did. He was a leader. He was a protector. He was a hero.

To Steve's family and friends, I extend my deepest sympathy. To his former colleagues in law enforcement, I extend my congratulations. Steve Young is recognized for 5 minutes.
short title of this amendment to "The Steve Young Law Enforcement Officers Safety Act." I remember even talking with Steve a number of times after he was ill and could no longer travel. Through all of that time, he, in typical fashion, spoke about others and not about himself. I began my public career in law enforcement. To this day, the only thing in my personal Senate office that has my name on it is the plaque the police gave me when I announced that career in law enforcement to become a Senator. It is a plaque on the door to my office with my name and above it is the badge I carried as a law enforcement official.

One thing I knew during my time in law enforcement, the law enforcement officers are never off duty. They are dedicated public servants, trained to uphold the law and keep the peace. To enable law enforcement officers nationwide to be prepared to answer a call to duty no matter where, when, or in what form it presents itself, I am proud to offer the Law Enforcement Officers Safety Act, S. 253, as it was reported out of the Senate Judiciary Committee, as an amendment to the Protection of Lawful Commerce in Arms Act. People understand our amendment would permit off-duty and retired law enforcement officers to carry a firearm provided they have demonstrated their ability, provided they follow some very strict requirements, and be prepared to assist in dangerous situations.

This passed the Judiciary Committee by a vote of 18 to 1. It had 68 cosponsors, both Republicans and Democrats, and was strongly supported by the Fraternal Order of Police, the National Association of Police Organizations, the Federal Law Enforcement Officers Association, the International Brotherhood of Police Officers, and the Law Enforcement Alliance of America.

I worked with LT Steve Young on this. It was one of the things he and I talked about before he died. He was dedicated to it. He knew the importance of having law enforcement officers across the Nation armed and prepared, whenever and wherever a risk to our public safety arose. The current national president, MAJ Chuck Canterbury, worked with me and others to make this legislation law.

We owe law enforcement policing and the outstanding work of so many law enforcement officers have helped a great deal in our crime control efforts. But during the last few years, the downward trend in violent crime ended and violent crime rates have turned upward. We also know that more than 740,000 sworn law enforcement officers are currently serving in the United States. Since the first recorded police death in 1792, there have been more than 17,000 law enforcement officers killed in the line of duty—17,000. In the last decade, over 1,700 officers died in the line of duty—170 every year.

I think of a very sad funeral I went to in Vermont last summer. The trooper's family was left behind—young children, his widow. Roughly 5 percent of officers who die are killed when taking law enforcement action in an off-duty capacity, and more than 62,000 law enforcement officers are assaulted annually.

Convicted criminals often have long and exacting memories. I still have people come up to me and tell me they remember that I put them in prison. This happens to a lot of law enforcement officials. That law enforcement officer, the one who arrested the person who went to prison, is a target in uniform and out, active, retired, off-duty or on-duty.

So what we tried to do by bringing together Republicans and Democrats, Liberals, moderates, conservatives, is to put together an amendment designed to establish national measures of uniformity and consistency to permit trained and certified—and I underline that certified—on- and off-duty law enforcement officers to carry concealed firearms in situations so they may respond to crimes immediately across State and other jurisdictional lines as well as to protect themselves and their families from vindictive criminals.

Mr. President, I thank my friend from Idaho for yielding time. I think this is an important matter. I yield the floor.

Mr. CRAIG. Mr. President, may I ask how much time our side has remaining?

THE PRESIDING OFFICER. Eleven minutes. Senator KENNEDY has 18 minutes 59 seconds.

Mr. CRAIG. Does the Senator from Massachusetts wish to speak at this time?

Mr. KENNEDY. I thank the Senator. I saw the Senator from Alabama. I had plowed through so many sets of slides on the bill. I was so pleased to be here as well, but I would be glad to follow the Senator from Alabama.

Mr. CRAIG. I thank the Senator for that consideration. If he doesn't mind, I would defer our allocation of 10 minutes of time to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Senator Craig and Senator Kennedy for the opportunity to speak. I am pleased to hear the ranking member of the Judiciary Committee, Senator Leahy, speak in favor of this amendment. It does indeed have 67 cosponsors. It is designed to allow qualified law enforcement officers to carry a concealed weapon while they are off-duty.

Back at my home in Alabama, when I drive into the neighborhood, I know that a police officer lives at the corner. We have many close friends who are police officers and prosecutors. I know everyone has in the back of their minds the possibility that some dangerous criminal they apprehended, arrested, or prosecuted could utilize force against them.

This, first and foremost, provides the officers with a sense of comfort and help, he would respond. I also hope when he is traveling around off duty that he would be allowed to carry his weapon. We pay him to do it when he is on active duty. We pay him to carry that weapon and to be ready to respond.

Law enforcement officers are one of the greatest bargains Americans have for safety and security—that law officers would voluntarily, on their own time, be willing to carry a gun and oftentimes step forward at their own risk to help those in danger.

I think it is a very good piece of legislation. If officers who have been trained for 30 years in carrying weapons retire, we ought to be glad they are willing to carry them as they travel. We should be glad that active-duty police officers who have weapons are able to carry them as long as they have proper identification and the proper training. It would certainly be a tremendous cost-saving effort project to improve safety throughout America.

Qualified law enforcement officers are the only ones who can carry a firearm. They are defined as an employee of a government agency who is authorized by law to enforce the prevention, detection, and investigation or prosecution of, or the incarceration of any person for any violation of law. They have statutory powers. The officer must be authorized to carry a firearm and meet the standards established by the agency which requires the employee to regularly qualify in the use of a firearm. A qualified law officer is defined as an individual who has retired in good standing. A qualified retired law enforcement officer is one who has retired in good standing from service in a government agency for an aggregate of 5 years or more. The officer must have fit the above definition while active, must have been a forfeiture right to carry a firearm under a retirement plan during the most recent 12-month period, and have met with his or her own expense the State standard for training and qualification to carry a firearm. Both active and retired law enforcement officers will be required to carry photographic identification by the agency for which they were or are employed as a law officer before they can qualify under this effort.

Why do police officers need it? First of all, they are often at risk themselves.

People forget that there is a war on crime and that many of the criminals are seriously deadly individuals who hold grudges against those who have arrested them. As a former prosecutor for well over 15 years, I have many
personal security. But more than that, it is a free, available asset to America to protect citizens.

We have terrorists out there. If we had a terrorist attack in a shopping mall, or on the streets, or in some building, and going on in this community, wouldn’t we be pleased that a law officer with a gun was there who would plug this guy if need be to save innocent lives? Wouldn’t that be good to think so?

It is a frustrating thing, however, for law officers as they move from jurisdiction to jurisdiction. This country has a host of different gun laws. Gun dealers, gun possessors, and gun manufacturers are subject to the most intense Federal, State, and local regulations. An officer who goes about his duties and goes from one town to the next could find himself going through Boston, MA, and end up in a slammer for doing nothing but being prepared to defend a Boston citizen from a mugging or assault or a terrorist attack; or coming to Washington, DC; they could end up in jail. They have some of the toughest laws—maybe even tougher than Boston. They could end up in jail for doing nothing but being prepared to defend people in this community who may be under attack.

I think this makes good sense; I think it makes good sense for Federal legal action because you can’t do piecemeal. Every community has a different rule and a different law. Under the interstate commerce clause, I think we have a constitutional right and powers to submit this legislation.

The question is: Is it good policy? Is it something we should do? I think it is good policy, especially in light of all the proliferating rules around this country, all the requirements in every community, every city regulation in Philadelphia where they sue gun dealers—the mayor sues gun dealers, and they get the attorneys general in these States to gang up on them and sue them. They are doing nothing but manufacturing a firearm consistent with what the Federal and State laws are in America. But because somebody used it illegally, they want to sue them and put them out of business because they do not like guns. They are not able to do it completely; they are not able to pass legislation in their States or in the Federal Government to deal with this problem. So they want to use the power of law to do it.

That is why I support the underlying bill. I think it is good public policy because all it does is make clear what existing law is, has been, and should continue to be—that a manufacturer of a legally manufactured product according to the laws and the distributors of that product who distribute it according to the complex laws all over this country should not be responsible if there is an intervening criminal act by a person who gets his hand on that weapon.

What are lawsuits for? Lawsuits historically have been when something fails to perform—if a weapon blows up, knocks out your eye, shoots off at an angle and hits something it is not supposed to, you should be able to sue the manufacturer. But if the gun is legal, if it is prepared according to the law and sold, and if some criminal gets it and commits a crime, should the manufacturer be responsible for that? It goes against all of our understanding of what appropriate rule of liability in America is.

We are losing those distinctions. We want to police the law. We have Members who, because they cannot win a political vote, want to have some lawsuits—some favorable jurisdiction, whether it is in Philadelphia, or Boston, and they find a judge who is hostile to gun ownership end up getting the case. They say there are only 30 lawsuits of this kind, but if you keep filing these lawsuits, pretty soon you may find 12 people who agree with you, or a judge who agrees with you. The next thing you know, you have a big verdict.

The question is: Is it justified? Should a company have to defend itself from this kind of a political attack? If they are irresponsible, yes. If they violated the laws, yes. They should be sued. If the gun is defective, yes. They should be sued.

But again, I think there is no more strongly felt issue among law enforcement officers in America than their willingness to have a gun and the risk they undertake in using it because they may even forget they are crossing the State line into another city and end up being prosecuted for being prepared to defend the citizens of that community. They do not like that. It is troubling to them. Many talk to me about it personally.

I am glad we have overwhelming support in this body to pass this amendment. I thank the Senator from Idaho for it, I support it and I believe we will pass it.

I yield the floor and the remainder of the time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 18 minutes 50 seconds.

Mr. KENNEDY. I ask the Chair to notify me when 15 minutes are up. I hope to be able to spend a little more time in the Senate more about States rights and the importance of local communities making local judgments; they are in touch with the local people; they know best what is in the interests of the protection of a local community; or that a State knows more than a Federal Government about how to protect its citizens.

Those arguments are out the window with the proposed amendment to the underlying legislation. The amendment turns off duty police officers the right to carry any firearm on duty or off duty, notwithstanding any State or local gun safety laws, even if the officers’ own department rules prohibit the carrying of such concealed firearms.

I know this is hoping too much, that our friends on the other side of the aisle will restrain themselves from making this argument. I have heard arguments from the Senate from the other side, pointing over here that the Federal Government always knows best.

There is a lot of knowledge at the local and State level. Let’s respect that. That is what is thrown out the window with this amendment. This amendment is overriding gun safety laws that are decided by the people in local communities, overriding State laws, overriding them point blank, no matter what the States have said. We are talking about concealable weapons that will be able to be carried by police officers or retired officers, as well.

It is opposed by the International Association of Chiefs of Police, the Police Executive Research Forum, and the U.S. Conference of Mayors.

Let me explain why. This amendment is a serious step in the wrong direction. It will undermine the safety of our communities and the safety of police officers by broadly overriding the State and local gun safety laws. It will also nullify the ability of police departments to enforce rules and policies on when and how their own officers can carry firearms. Because of the substantial danger the amendment poses to police officers and communities, it is vigorously opposed by the International Association of Chiefs of Police.

There is no precedent for what the supporters of this amendment intend to accomplish. Congress has never passed a law giving current and former State and local employees the right to carry weapons in violation of controlling State and local laws. Congress has never passed a law interfering with the ability of State and local police chiefs to regulate their own carrying of firearms. Do we understand what this does? Congress has never passed a law interfering with the ability of the States or local police chiefs to regulate their own police officers carrying firearms. This amendment does. This overrules it.

Today, each State has the authority to decide what kind of concealed-carry law, if any, best fits the needs of the community. Each State makes its own judgments about what private citizens should be allowed to carry concealed weapons or whether on-duty or off-duty or retired police officers should be included or exempted in any prohibition. There is no evidence that States or local governments have failed to consider the interests and needs of law enforcement officers. No case has been made.

Consider, for example, the New Jersey law. In 1995, retired police chief John Deventer was shot and killed in his car. He was shot and killed by a bank robber. This incident prompted New Jersey to enact a law allowing retired officers to carry handguns under a number
of different conditions. In drafting this law, the New Jersey Legislature made a deliberate effort to balance the safety of police officers with the safety of the public at large by including a number of important safeguards that are not contained in this amendment.

For example, New Jersey law is limited to handguns. This amendment is not. As long as the police officer is qualified to carry one type of gun, he can carry any type of gun, any type of concealable weapon. New Jersey law is limited to handguns. This amendment is not. New Jersey law has a maximum age of 70. This amendment does not. Under New Jersey law, retired police officers must file renewal applications yearly. There is no application process here. Under New Jersey, retirees must list all their guns. No such record is required under this amendment. New Jersey gives police departments discretion to deny permits to retirees. No such discretion is provided under this amendment.

By enacting this amendment, Congress will be gutting all of the safe harbors contained in the New Jersey statute as well as the judgment of other States that have considered this issue.

The sponsors of this amendment have presented no evidence that States and local governments are unable or unwilling to decide these important issues for themselves. They have offered no explanation why Congress is better suited than States, cities, and towns to decide how best to protect police officers, schoolchildren, churchgoers, and other members of their communities.

Congress should bolster, not undermine, the efforts of States and local communities to protect their citizens from gun violence. In many States, cities, and towns, special places—churches, schools, bars, government offices, hospitals—have been singled out as deserving special protection from the threat of gun violence.

Michigan is a State that prohibits concealed firearms in schools, sports arenas, bars, churches, and hospitals. Georgia law allows active and retired police officers to carry firearms in publicly owned buildings but not in churches, sports arenas, or places where alcohol is sold. Kentucky prohibits carrying concealed weapons in bars and schools. South Carolina prohibits concealed firearms in churches and hospitals.

This amendment will override most such safe harbor laws at the State level. It will override laws that categorically prohibit guns in churches and hospitals of all kinds. It is not limited to the carrying of off-duty and retired officers is pure fiction.

It is important to note that in giving off-duty and retired police officers broader authority to nullify State and local gun safety laws, the amendment is not limited to the carrying of officers’ authorized weapons. In most police departments, officers may seek authorization to carry a range of weapons. If an officer wants to carry a weapon other than his service weapon—typically, a 9 millimeter semiautomatic pistol—he must prove he is qualified before the department will authorize him to carry it. To become qualified, the officer must demonstrate he can handle that weapon safely.

Rather than limiting its provisions to authorized weapons, this amendment provides as long as an officer at some point received authorization to carry a particular kind of firearm, such as his service weapon, he can carry, concealed, any other kind of firearm while off duty or retired, even if he never received authorization from his own police department to carry that other weapon.

In the 107th Congress, I introduced an amendment in committee providing an off-duty or retired officer could carry a concealed firearm only if he had been authorized to carry that firearm by the agency he works for, or if he had been authorized at the time of his retirement. That amendment was rejected by an evenly divided vote, 9 to 9. Thus, the legislation now before us will give off-
duty and retired officers carte blanche to carry concealed shotguns, snipers rifles, or other weapons their own police departments have not authorized them to carry. Its failure to limit this privilege to authorized police weapons—or even to hand guns, as New Jersey law provides—would undermine the safety of American communities.

Serious safety problems are also raised by the amendment’s override of gun-safety laws for retired officers, a category that is defined to include anyone who served in a law enforcement capacity for 15 years “in the aggregate” before retiring or resigning and taking a different job. There is no requirement that a retiree demonstrate a special need for a firearm. While the amendment provides that an officer must have technically left law enforcement in “good standing,” it is well known that sub-par government employees are routinely released from their positions without a formal finding of misconduct. The amendment does not draw a distinction between officers who served ably and those who did not. Officers who retire in “good standing” while under investigation for domestic violence, racial profiling, excessive force, or substance abuse could still qualify for broad concealed-carry authority for the remainder of their lives. As the International Association of Chiefs of Police has observed:

“This legislation fails to take into account those officers who have retired under threat of disciplinary action or dismissal for emotional problems that did not rise to the level of “mental instability.” Officers who retire or quit just prior to a disciplinary or competency hearing may still be eligible for benefits and appear to have left the agency in good standing. Even a police officer who retires with exceptional skills today may be stonewalled with an illness or other problem that makes him or her unfit to carry a concealed weapon, but they will not be overseen by a proper internal structure that identifies such problems in current officers.

Perhaps the most troubling aspect of the amendment is its potential to undermine the effective and safe functioning of police departments throughout the country. It removes the ability of police departments to enforce rules and policies on when and how their own officers can carry firearms. Police chiefs will lose the authority to prohibit their own officers from carrying certain weapons on duty or off duty.

Second, the amendment provides that regardless of “any other provision of the law of any State or any political subdivision thereof,” any individual who qualifies as a law enforcement officer and who carries a photo ID will be authorized to carry any firearm. In a variety of contexts, including the Federal preemption of State law, courts have interpreted the term “law” to include agency rules and regulations. The Supreme Court has ruled this term specifically includes contractual obligations between employees, such as work rules, policies, and practices promulgated by State and local police departments.

The PRESIDING OFFICER. The Senator has consumed 15 minutes.

Mr. KENNEDY. As I discussed, there is no requirement in the amendment that active-duty officers be authorized to carry each firearm that they wish to carry concealed. In other words, once an officer qualifies to carry a service weapon, he will have the right under this amendment to carry any gun, on duty or off duty—even if doing so violates his own police department’s rules.

Thus, if Congress enacts this legislation, police chiefs and local governments will lose the authority to tell their own officers, for example, that they cannot bring guns into bars while off duty; that they cannot carry their service weapons on vacation; or that they cannot carry concealed shotguns, rifles, or handguns on the job.

As the International Association of Chiefs of Police stated in a letter to the Judiciary Committee, “under the provisions of [this legislation], police chiefs would lose the authority and flexibility to craft policy the ability of officers to carry only department-authorized firearms while on duty. The prospect of officers carrying unauthorized firearms while on duty is very troubling to the IACP for several reasons.

First, an unauthorized weapon is unlikely to meet departmental standards. This in turn means that the officer will not have received approved departmental training in its use, and will not have qualified with the weapon under departmental regulations. Carrying an unauthorized weapon thus presents a risk of injury to the officer, fellow officers, and citizens, for the weapon itself may be unsafe or otherwise unsuitable for police use, and the officer may not be sufficiently proficient with its use to avoid adverse consequences.

In addition to the risk of injury involved, the carrying of unauthorized weapons is a major source of police civil liability in the U.S. today. An officer who fires an unauthorized weapon in the risk of civil liability for the officer and for the department, even though the shooting may have been otherwise legally justified. A number of civil suit plaintiffs have contended that the mere fact that the weapon that caused the plaintiff’s injury was unauthorized is, in itself, sufficient legal grounds for a finding of liability.

For these and other reasons, the IACP concluded that this amendment “has the potential to significantly and negatively impact the safety of our communities and our officers.”

Law enforcement executives face extremely difficult challenges today. As crime rates have started to rise again and new concerns about domestic security have emerged, police chiefs are forced to do more with less. The weak economy has forced cities and states to cut back on funding for law enforcement. The administration has tried its best to eliminate federal funding for such critical programs as the COPS Universal-Hiring Program, the Byrne Grant program, and the Local Law Enforcement Block Grant program.

The last thing Congress should do now is enact legislation that expands the civil liability of police departments and nullifies the ability of police chiefs to regulate their own officers’ use of firearms and to maintain discipline. By denying police chiefs the right to run their own departments, the amendment would deal a severe blow to common sense and public safety.

Each State and local government should be allowed to make its own judgment as to whether citizens and out-of-State visitors may carry concealed weapons, and whether active or retired law enforcement officers should be included in or exempted from any prohibition.

This amendment will unnecessarily damage the efforts of States and local governments to protect their citizens from gun violence. It will also expose States and local governments to unnecessary civil liability for the misconduct of police chiefs to maintain discipline and control within their own departments.

The Nation will be better served if the Senate puts this misguided legislation to rest and holds attention to measures we know will reduce crime and enhance the safety of police officers and all Americans.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. A minute and a half.

Mr. KENNEDY. Mr. President, the bottom line on this—we are going to have a chance to vote on this next Tuesday—is this an action by Congress to override State-considered legislation and local legislation on how to protect their local communities. Some States have made the judgment that they do not believe they ought to permit concealed weapons in bars and churches and other places such as in schools, because they do not want to have the proliferation of guns in schools, they do not want to have the proliferation of guns in bars, they do not believe concealed weapons ought to be in churches. The States and local communities have made that judgment in order to protect their local communities. But somehow we are deciding here in the Senate, on the basis of about an hour and 20 minutes of debate on this amendment, that we are going to override the common good sense of States and local governments and say: We know best. If you are a police officer or retired officer, you can carry that concealed weapon, even though you are not trained to be able to use it or authorized to use it, into the bars, schools, and churches of this country. That makes no sense and is a contradiction of what the States and local communities do.

How much further do we have to go toward a National Rifle Association? The President’s time has expired.
The Senator from Idaho.

Mr. CRAIG. Mr. President, I understand I have 1 minute.

The legislation exempts qualified active and retired law enforcement officers from State and local prohibitions on the carrying of concealed firearms. What this means is that active and retired police officers will be able to carry their firearms virtually anywhere in the U.S. without having to worry about violating any local or State gun laws.

The bill is noncontroversial and enjoys wide, bipartisan support in both the Senate and the House of Representatives. The Senate bill, S. 253, passed the Judiciary Committee in March 2003 on an 18 to 1 vote. The bill has 67 co-sponsors, including Majority Leader BILL Frist, Minority Leader Tom DASCHLE, and every other member of the Senate leadership from both sides of the aisle. Senator BEN NIGHTHORSE CAMPBELL, a former law enforcement officer, the amendment along with Judiciary Committee Chairman ORRIN G. HATCH, Ranking Member PATRICK J. LEAHY, and Minority Whip HARRY REID.

The House bill, H.R. 218, has 266 co-sponsors. In addition to a House majority, the bill has a majority of both the full Judiciary Committee and the sub-committee of jurisdiction. In 1999, the House passed a nearly identical measure as an amendment to another bill by an overwhelming 372 to 53 majority.

This isn’t a “firearms issue”—it is an officer safety issue. And, on 11 September 2001, it became a critical public safety and homeland security issue.

Law enforcement officers need this bill—it is the number one issue among rank-and-file officers today. Police officers are frequently finding that they, and their families, are the targets of vindictive criminals. A police officer may not remember all the faces of all the criminals or who she has put behind bars, but every one of those criminals will. This legislation gives all police officers the means to legally protect themselves and their loved ones—even if off-duty or retired.

Public safety and homeland security would benefit immensely from this bill becoming law. Law enforcement officers are a dedicated and trained body of men and women sworn to uphold the law and keep the peace. Unlike other professional licensees, the police officer is rarely “off-duty.” When there is a threat to the peace or public safety, the police officer is sworn to answer the call of duty. Officers who are traveling from one jurisdiction to another do not leave their instincts or training behind, but without their weapon, that knowledge and training is rendered virtually useless. These bills will provide the means for law enforcement officers to enforce the law and keep the peace—enabling them to put to use that training and answer the call to duty when the need arises. Without a weapon, the law enforcement officer is like a rescue diver without diving gear; all the right training and talent to lend to an emergency situation, but without the equipment needed to make that training of any use. Given the ongoing threat of terrorist activity against U.S. citizens, it just makes sense to give our first line of defense the tools they need in a first line of defense. Perhaps the strongest endorsement we can make is that thousands of violent criminals and terrorists will hate to see it pass.

This is not a States’ rights issue and the bill is limited to that. Officers who are traveling from the peace or public safety, the police professions, a police officer is rarely in a situation where any present or retired officer will have met the criteria to carry firearms set by one State, and make those credentials applicable and recognized in all States and territories in these United States. States and localities issue licenses for law enforcement officers and set their own requirements for their officers in training and qualifying in the use of these weapons. This legislation maintains the States’ power to set these requirements and determine whether active or retired officer is qualified in the use of the firearm, and would allow only this narrow universe of persons to carry their firearms when traveling outside their jurisdiction. We believe this is similar to the States’ issuance of drivers’ licenses which differ slightly from State to State, but all States recognize that the drivers have been certified to operate a motor vehicle on public roadways.

All 50 States require their officers to receive many hours—the average is 48—of firearms training before they leave the academy. Before receiving their appointment, law enforcement officers must meet certain score requirements in order to qualify with their weapons—90 percent. No officer with a score below the 70th percentile is considered qualified with his weapon.

Most States require their officers to requalify with their weapons on a regular basis. Individual agencies may require their officers to qualify more frequently, but they must meet the State’s minimum, which ranges from annually to every 5 years.

How Do Police Qualify? In order to carry under this legislation, a retired law enforcement officer would have to qualify with his firearm at his own expense every 12 months and meet the qualifications as an active duty officer in his State of residence. For example, a New Jersey police officer that retires to North Carolina must qualify annually at his own expense and meet the same standards that an active duty officer in North Carolina must meet.

Many Federal law enforcement officers already have the authority to carry their firearms. Training and qualification for Federal law enforcement officers is not so dissimilar to that of State and local law enforcement officers. There have been no issues of concern with Federal officers carrying in all jurisdiction, why would there be for State and local law enforcement officers?

There is Congressional precedent on this issue. Congress has previously acted to force States to recognize permits to carry issued by other States on the basis of employment in other instances. In June 1993, the Senate and House approved and enacted a law, PL 103–55, mandating reciprocity for weapons licenses issued to armored car company crew members among States. Congress amended the act in 1998, PL 105–78, providing that the licenses must be renewed every 2 years. This precedent allows armored car guards—who do not have nearly the same level of training and qualifications as law enforcement officers—to receive a license to carry a firearm in one State and forces other States to recognize its validity.

Airline pilots can obtain the authority law enforcement officers are seeking. In addition to armored guards, Congress passed a law exempts airline pilots who participate in the “Federal flight deck officer” from Federal and State law with respect to the carrying of concealed firearms. Note that this authority is not limited to the cockpit—but also while the pilots are on the ground and off-duty.

Congress has the authority to preempt State and local prohibitions on the carrying of concealed firearms, and has in the past granted a certain class of persons—based on the nature of their employment and their value in an emergency situation—the authority to carry firearms in all jurisdictions. To do the same for law enforcement just makes good sense.

On the last weekend in June, FOP members from Maryland Lodge No. 70 were packing up their campsite following a 3-day camping trip with their families in Harpers Ferry. That Sunday afternoon, after many of the officers and their families had left, a gunman opened fire on another camper, wounding him in the lower leg. Detective Timothy Utzig and Officer Andrew Albach reacted quickly, instructing their families to leave the scene, while they retrieved their firearms and confronted the man. The gunman, yelling incoherently, eventually obeyed the officers’ orders to lie down on the ground. After several hours, the law enforcement officers discovered that the man had several more live rounds for his shotgun in his possession. Detective Utzig and Officer Albach held the man until West Virginia authorities could arrive. It was determined later that the gunman had an extensive criminal history—including a murder conviction.

Sergeant Sam Harmon of the Jefferson County Sheriff’s Department said, “There’s no telling how many lives this could have saved. Sunday afternoon. These guys are our heroes for life.” They were certainly heroes, but they were also in violation of West Virginia
State law because they possessed firearms. These brave officers—who stopped a gunman’s rampage on their day off, outside of their own jurisdiction—were not charged, but their action placed themselves in legal jeopardy, physically. Had they complied with State law that Sunday, they or their families could have been victims. This is just one example of how public safety could be served if this bill were made law.

In 1982, off-duty Minneapolis Police Officer Jerry Johnson was vacationing in Phoenix, Arizona. He witnessed a man knock an elderly female to the ground, take her purse, and run. He immediately gave chase, without stopping to think that he was unarmed because he could not legally carry a firearm in Arizona. He caught the thief after a mile-long foot chase, and fought to subdue him. Had the criminal been armed, Officer Johnson would surely have been killed. Now retired, Officer Johnson through a great deal of trouble in his own State of Minnesota to get a concealed carry weapon permit as it is up to each individual chief whether or not to issue. When he moved into a different jurisdiction, he had to reinterrogate the chief of police in his new locality initially refused to issue him a permit.

Off-duty and retired officers are often targeted for attack by vengeful criminals. Off-duty police officer Tim Brauer was having dinner with his family in an Oklahoma City restaurant, outside his jurisdiction. While in the restroom, he was attacked by a man he had previously arrested. At the time, Oklahoma State law permitted off duty law enforcement officers to carry their firearms only within their home jurisdiction. In obeying the law and leaving his firearm at home while out with his family, he was left vulnerable to his attacker. Officer Brauer suffered severe injuries, but he lived and his family was not harmed. Oklahoma law now permits officers to carry throughout the State.

Officer Shynelle Marie Mason, a 2-year veteran with the Detroit, Michigan Police Department, was shot and killed on July 14, 2000, by a man she had previously arrested for carrying a concealed weapon. She encountered the man while off-duty; he confronted her and shot her several times in the chest. Though she was shot in the chest, her death was considered a “line of duty” death and her name appears on the Wall of Remembrance at Judiciary Square in Washington, DC.

In 2000, off-duty Las Vegas Police Officer Dennis Devitte, a 20-year veteran was relaxing at a local sports bar when the establishment was attacked by three men. Open fire on the crowd, hitting a man in a wheelchair. Officer Devitte did not hesitate—he pulled his tiny .25-caliber gun and, knowing he would have to get very close to make sure he hit his target, charged a man firing a .45-caliber semiautomatic. Officer Devitte got within one foot of the man, fired and killed the gunman—but not before he was shot eight times. The remaining two gunmen fled. All six civilians wounded in the attack were recovered. One of the most important reasons for this amendment a “the most courageous thing I’ve ever seen.” Officer Devitte lost six units of blood, his gun hand was badly damaged and his knee had to be entirely reconstructed with bones taken from a cadaver. And yet, he was back on the job 6 months later. For his incredibly heroic actions, Officer Devitte was selected as the ”Police Officer of the Year” by the International Association of Chiefs of Police, IACP, and Parade magazine.

On the 4th of July, 1999, off-duty Police Officer Alfredo Rodriguez of the Nassau County, NY Police Department was driving to Norwich, CT, with his wife and four children when he observed a Norwich Police Officer attempt to arrest a highly intoxicated man running in and out of traffic. A second man attacked the Norwich officer from behind, and shot and killed him. Rodriguez, although unarmed, pulled over, left his family and rushed to the aid of the officer. He was able to free the Norwich officer from an attack, and was shot and killed. At his time of the chief’s murder, retired police officers were not authorized to carry firearms in New Jersey. This incident prompted a change in New Jersey law, which now permits retired officers to carry throughout the State.

In closing, let me say about the amendment that is before us, concealed-carry, 67 Members of this Senate, Democrats and Republicans, believe this is a necessary and appropriate amendment. We believe it is. We think it is important that it be adopted, and that we extend these law-abiding, well-trained and schooled law enforcement officers and retirees this opportunity and privilege. With that, Mr. President, my time has expired. I understand we will now lay this amendment aside, to be voted on Tuesday next, and by the order of the unanimous consent agreement we arrived at last night, Senator Kennedy is now to have the floor to offer one of his amendments to be debated.

The PRESIDING OFFICER. The Senator is correct.

Mr. CRAIG. I yield the floor.

Mr. REID. Mr. President, I rise to join Senators CAMPBELL, HATCH and LEAHY to offer the Law Enforcement Officers Safety Act amendment.

The purpose of the amendment is simply to extend to current and retired law enforcement officers from State and local laws that prohibit carrying concealed firearms, as long as
the officers were bearing valid ID issued from their employing agency.

The Fraternal Order of Police, representing more than 1,000 Nevada law enforcement officers and more than 300,000 members nationwide, supports this amendment.

They support this bill because it would improve public safety. It would allow law enforcement officers to protect the public, as well as themselves. This amendment mirrors a bill sponsored by more than two-thirds of America’s Senators.

Again, our overwhelming support underscores the fact that this measure will protect our communities, as well as the brave police officers who serve us so well.

As I learned many years ago when I was on the Capitol police force, law enforcement officers are never truly "off-duty." They are dedicated public servants trained to uphold the law and keep the peace.

When there is a threat to the peace or to our public safety, law enforcement officers are sworn to answer that call—and answer it they do, whether they are on duty or not.

Law enforcement officers are always protecting the innocent just as they are always under threat from the guilty.

Although a police officer might not remember the name and face of every criminal he or she has put behind bars, criminals have long memories. A law enforcement officer is a target, whether in or out of uniform, whether active or retired, and whether on duty or off.

In fact, roughly 5 percent of officers who are killed in action are actually "off duty" at the time of their death.

This amendment is designed to protect officers and their families from vindictive criminals, and to allow thousands of equipped, trained and certified law enforcement officers to carry concealed firearms that will help them protect innocent citizens.

I urge all my colleagues to support this measure, which will make our communities safer and protect our brave police officers.

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NO. 2619

Mr. KENNEDY. Mr. President, I understand we have a half an hour; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I yield myself 15 minutes.

The PRESIDING OFFICER. Does the Senator wish to send the amendment to the desk?

Mr. KENNEDY. I believe the amendment is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

"The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 2619.

Mr. KENNEDY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To expand the definition of armor piercing ammunition and to require the Attorney General to promulgate standards for the uniform testing of projectiles against body armor)

On page 11, after line 19, add the following:

SEC. 5. ARMOR PIERCING AMMUNITION.

(a) EXPANSION OF DEFINITION OF ARMOR PIERCING AMMUNITION.—Section 921(a)(17)(B) of title 18, United States Code, is amended—

(1) in clause (i), by striking "or" at the end;

(2) in clause (ii), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(i) a projectile that may be used in a handgun and that the Attorney General determines, pursuant to section 926(d), to be capable of penetrating body armor; or

(iv) a projectile for a centerfire rifle, designed or marketed as having armor piercing capability, that the Attorney General determines, pursuant to section 926(d), to be capable of penetrating body armor; or"

(b) DETERMINATION OF THE CAPABILITY OF PROJECTILES TO PENETRATE BODY ARMOR.—Section 926 of title 18, United States Code, is amended by adding at the end the following:

"(d)(1) Not later than 1 year after the date of enactment of this subsection, the Attorney General shall promulgate standards for the uniform testing of projectiles against Body Armor Exemplar.

"(2) The standards promulgated pursuant to paragraph (1) shall take into account, among other things, in whom or in what kind of powder used to propel the projectile, the length of the barrel of the handgun or centerfire rifle from which the projectile is fired and the amount and kind of powder used to propel the projectile.

"(3) As used in paragraph (1), the term "Body Armor Exemplar" means body armor that the Attorney General determines meets minimum standards for the protection of law enforcement officers."

Mr. KENNEDY. Mr. President, I mentioned that there had been a homicide in Massachusetts, in Fitchburg, in August, over seven months. It was juvenile homicide. I ask that the Record be so corrected.

As we all know too well, the debate about gun violence has often been aggressive and polarizing with anti-gun violence advocates on one side of the debate, pro-gun advocates on the other. There are deep divisions in the country on the issue of gun safety, and the current debate on the gun immunity bill has thus far only served to highlight those divisions.

I believe, however, that there are still some principles on which we can all agree. One principle is that we should do everything we can to protect the lives and safety of police officers who are working to protect our streets, schools, and communities.

The amendment I am offering today is intended to close the existing loopholes in the Federal law that bans cop-killer bullets. Police officers depend on body armor for their lives. Body armor has saved thousands of police officers from devastating injury by firearm assault. Most police officers who serve large jurisdictions wear armor at all times when on duty. Nevertheless, even with body armor, too many police officers remain vulnerable to gun violence.

According to the Federal Bureau of Investigation, every year between 50 and 80 police officers are feloniously killed in the line of duty. In 2002, firearms were used in 51 of the 56 murders of police officers. In those shootings, 34 of the officers were wearing body armor at the time of their deaths. From 1992 to 2002, at least 20 police officers were killed after bullets penetrated their armor vests and entered their upper torso.

Some gun organizations have argued that cop-killer bullets are a myth. The families of these slain police officers know better. In fact, we know that armor-piercing ammunition is not a myth because it is openly and notoriously marketed and sold by gun dealers.

I direct my colleagues’ attention to the Web site of Hi-Vel, Incorporated, a well-known distributor and manufacturer in Delta, UT. You can access its online catalog on the Internet right now. Hi-Vel’s catalog lists an entry for armor-piercing ammunition. On that page you will find a listing for armor-piercing bullets that penetrate body armor. The bullets are available in packages of 10 for $9.95 each. Hi-Vel carries armor-piercing bullets for both the .223 caliber rifles such as the Bushmaster sniper rifle used in the Washington area attacks in October 2002, and the .762 caliber assault weapons. Over the past 10 years, these two caliber weapons were responsible for the deaths of 14 of the 20 law enforcement officers killed by ammunition that penetrated body armor.

In a recent report, the ATF identified three .223 and the .762 caliber rifles, as the ones most frequently encountered by police officers. These high-capacity rifles, the ATF wrote, pose an enhanced threat to law enforcement, in part because of their ability to expel particles at velocities that are capable of penetrating the type of soft body armor typically worn by law enforcement officers.

Another rifle caliber, the 30.30 caliber, was responsible for penetrating three officers’ armor and killing them in 1993, 1996, and 2002. This ammunition is also capable of puncturing light-armed vehicles, ballistic or armored armored limousines, armored 600-pound safe with 600 pounds of safe armor plating.

It is outrageous and unconscionable that such ammunition continues to be sold in the United States of America. Armor-piercing ammunition for rifles and assault weapons is virtually unregulated in the United States. A Federal license is not required to sell such ammunition unless firearms are sold as well. Anyone over the age of 18 may purchase this ammunition without a background check. And under the 26 Federal minimum age of possession. Purchases may be made over the counter, by mail order, by fax, by Internet, and there is
Terrorists are bent on exploiting weaknesses in our gun laws. Just think of what a terrorist could do with a sniper rifle and only a moderate supply of armor-piercing ammunition.

My amendment amends the Federal ban on certain armor-piercing ammunition to include a performance standard and extends the ban on centerfire rifles, which include the sniper rifles and assault weapons responsible for the deaths of 17 police officers whose body armor was penetrated by this ammunition.

My amendment will not apply to ammunition that is now routinely used in hunting rifles or other centerfire rifles. To the contrary, it only covers ammunition that is designed or marketed as having armor-piercing capability. That is—it designed or marketed as having armor-piercing capability, such as armor-piercing ammunition that is now advertised on the Hi-Vel Web site, or marketed to be armor piercing have no place in our society. Ducks, deer, and other wildlife do not wear body armor. Police officers do. We should not let another day pass without plugging the loophole in federal law that bans cop-killer bullets.

This is an issue on which mainstream gun owners and gun safety advocates can agree. I urge my colleagues to vote in support of this amendment. I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. CRAPO). Who yields time? The Senator from Idaho.

Mr. CRASKE. Mr. President, we have heard over the last few minutes what might appear, at first listening, to be alarming facts, figures, and statistics, but we all know that in any good debate the devil is in the details, and in the details of the Kennedy amendment there are some hidden secrets that must be brought out so we can understand them.

Let me, first and foremost, read into the RECORD a letter from the president of the Fraternal Order of Police. The Senator has held cop-killer bullets and protecting cops on the beat, those who wear soft body armor. This is what Chuck Canterbury, the national president of the Fraternal Order of Police, says in a letter to me that he has copied to Senator Frisch, Senator DACSHLE, and to Senator KENNEDY:

I am writing to advise you of our strong opposition to an amendment Senator Kennedy intends to offer later today.

In relation to the underlying amendment, Senator Kennedy will certainly present his amendment as an officer safety issue—and that is exactly what we have heard over the last good number of minutes. To get dangerous cop-killer bullets—and he talks about how dangerous they are off the shelf.

Regardless of its presentation, the amendment’s actual aim and effect would be to expand the definition of armor-piercing to include ammunition on any threat to law enforcement officers, but on a manufacturer’s marketing strategy.

I do believe we saw that language on the Web site that he quoted—a strategy, a rhetorical expression as it relates to an encouragement to buy a given type of ammunition.

He goes on to say:

The truth of the matter is that only one law enforcement officer has been killed by a round fired from a handgun which penetrated his soft-body armor—and in that single instance, it was the body armor that failed to provide the expected ballistic protection, not because the round was “armor piercing.”

It is our view that no expansion or revision of the current law is needed to protect law enforcement officers. To put it simply, this is not a genuine officer safety issue. If it were, Senator Kennedy would not be offering his amendment to a bill he strongly opposes and is working to defeat.

It sounds as if not only is the president of the Fraternal Order of Police talking about the facts, he is talking about some reasonable logic.

He goes on to say:

The real officer safety issue is the adoption of the Law Enforcement Officers’ Safety Act.

That amendment deals with carrying a concealed weapon, to which I believe the Senator spoke in opposition, which would exempt active and retired law enforcement officers from local prohibitions for the right to carry concealed firearms.

Mr. Canterbury goes on:

The amendment we just set aside—the Law Enforcement Officers’ Safety Act.

That amendment would not apply to ammunition that may be manufactured from other materials but can still penetrate body armor. Even more important, there are no restrictions on armor-piercing ammunition used in rifles and assault weapons. Armor-piercing ammunition has no purpose other than penetrating bulletproof vests. It is not designed for self-defense. Such armor-piercing ammunition has no place in our society.

Armor-piercing bullets that sidestep the Federal ban, such as that advertised on Hi-Vel’s Web site, put the lives of American citizens and those who defend American soldiers in jeopardy every single day. We know the terrorists are now exploiting the weaknesses and loopholes in our gun laws. The terrorists training manual斗 died by American soldiers in Afghanistan in 2001 advised al-Qaeda operatives to buy assault weapons in the United States and use them against us.

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Stan in 2001 advised al-Qaida operatives to use American soldiers in Afghanistan to attack the United States. In addition, the gun manufacturer, Smith & Wesson, recently introduced a powerful new rifle at the National Rifle Association’s annual convention. It weighs only 25 pounds, is designed to be carried in a helmet, and is what Chuck Canterbury, the national president of the Fraternal Order of Police, has copied to Senator Frisch, Senator DACSHLE, and to Senator KENNEDY:

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Regardless of its presentation, the amendment’s actual aim and effect would be to expand the definition of armor-piercing to include ammunition on any threat to law enforcement officers, but on a manufacturer’s marketing strategy.
that can pierce body armor. That is a fact. But the ammunition we are talking about is that traditionally known as the cop-killing bullet that is now outlawed in this country has nothing to do with the rifle. It had everything to do with the pistol, that weapon of choice by criminals in our country, and we know why.

Criminals do not walk down the street with a 30.06 over their shoulder. Somehow there is the visible factor that denies them the use of that rifle. They use handguns. They conceal them. They hide them on their person. They carry them in a package or in a carrying type of valve. They do not carry rifles. Yet the Senator's amendment goes directly at the hunting sports; it goes directly at hunting ammunition. This is why at the appropriate time when we have concluded the debate on the Senator's amendment, I will offer an alternative amendment under the unanimous consent agreement that we think reflects what ought to be done in relation to what the Senator is offering.

Let me also add that the most extensive study on this issue pursuant to a congressional mandate to the Antiterrorism and Effective Death Penalty Act of 1996 was a BATF draft report provided in 1997 to those individuals and organizations that had assisted in a BATF study of the issue of armor-piercing ammunition.

That study mandated, in response to President Clinton's repeated call, for a ban on bullets capable of penetrating soft body armor. Those Presidential statements rightfully concerned many in Congress who were aware that a performance-based ban, and that is what the Senator is offering, would outlaw the majority of rifle ammunition used for hunting and target shooting worldwide. That is just what I have spoken to. If that is the Senator's intent, then I wish to address that. Clearly that is what we believe one begins to enter into when they deal with a performance-based standard. The 1997 study took an intelligent and honest approach to examining how best to protect the lives of law enforcement officers, recognizing the reality that between 1985 and 1994 no officer in the United States who was wearing a bullet-resistant vest died as a result of any round of ammunition having been fired from a handgun penetrating that officer's armor causing the primary lethal injuries.

The study instead focused on how to improve police training, both in teaching officers how to defeat snatches by criminals and to encourage officers to wear vests routinely. Legislatively, the 1997 study rightfully concluded that to prohibit any of these commonly used pistol, rifle, shotgun cartridges because they might defeat a level 1 bullet-resistant vest would create an unreasonable burden on the legitimate consumer of such cartridges.

Combined with the availability of sensible, defensive strategies, the existence of laws restricting the common availability of armor-piercing ammunition was clearly working to protect law enforcement officers, and no attempt to discard the existing law is my opinion and many others, should be undertaken.

At the same time, because the existing laws are working, no additional legislation is necessary or required, certainly that that deals with performance-based standards, because one goes directly at ammunition used in target practice and in hunting. We do not believe, and I would hope the Senator from Massachusetts would agree, that is what we would intend to do.

In conclusion, what I am saying is the current law is adequate. This is not perfecting language. This is language to try to defeat the underlying bill, S. 1805. Obviously, the Senator has spoken openly against that. This is in no way a bill that improves the underlying bill itself and we think very unquestionably does it improve any existing Federal law. What it begins to do is what the sporting community and the legitimate owner of firearms have always been fearful of, that if the handgun or the rifle could not be controlled, the ammunition would be targeted and certain classes of ammunition would begin to be controlled and outlawed, and that is exactly what Senator KENNEDY is attempting to do with this amendment.

I think it is obvious by my statement I will strongly oppose this, but I will offer—or I should say the majority leader will offer—an amendment finalizing the debate on Senator KENNEDY's amendment that we think if there is a fix to fine-tune the existing law, then we will offer that fine-tuning to make it extremely punitive for anyone who might use armor-piercing bullets that would strike a law enforcement officer in our country, or anyone else for that matter, that would result in injury or death.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. How much time do I have remaining?

The PRESIDING OFFICER. Just under 18 minutes.

Mr. KENNEDY. I yield myself 7 minutes.

Mr. President, I read through the copy of the Fraternal Order of Police. As the Senator pointed out, the truth of the matter is only one law enforcement officer has been killed by a round fired from a handgun. We are not talking about ammunition in a handgun. We are talking about assault weapons and rifles, and I am talking about the FBI. Let's look at what the FBI says.

From 1992 to 2002, 20 law enforcement officers have been killed. Seventeen out of the 20 were killed with a rifle. That is what this amendment is about.

The Senator referred to the earlier bill we had on the law. I am the author of that. It took 5 years to get that passed. Five years it was opposed by the NRA. I do not doubt it probably is going to take 5 years to do something about armor-piercing bullets that can shoot through body armor, through a limousine, or bring down a helicopter. That is what we are talking about, 17 of the fatal shootings.

I ask unanimous consent that tables 10 and 36 of a document entitled "Law Enforcement Officers Feloniously Killed by Firearms" be printed in the RECORD.

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

TABLE 10.—LAW ENFORCEMENT OFFICERS FELONIOUSLY KILLED BY FIREARMS

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<td>Total</td>
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<td>14</td>
<td>11</td>
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<td>1</td>
<td>0</td>
<td>1</td>
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<td>1</td>
</tr>
<tr>
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<td>2</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>6</td>
<td>5</td>
<td>8</td>
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<tr>
<td>Entered above vest (front or back of neck, collarbone area)</td>
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<td>2</td>
<td>4</td>
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<td>4</td>
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<td>6</td>
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<td>Entered below vest (abdominal or lower back area)</td>
<td>8</td>
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<td>Penetrated vest</td>
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TABLE 36.—LAW ENFORCEMENT OFFICERS FELONIOUSLY KILLED BY FIREARMS

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<tr>
<td>Total</td>
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<tr>
<td>Entered through ammohole or area of vest</td>
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<tr>
<td>Entered above vest (front or back of neck, collarbone area)</td>
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<td>Entered below vest (abdominal or lower back area)</td>
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Mr. KENNEDY. Seventeen of the fatal shootings were done by .223, 762, or 30.30 caliber rifles. Armor-piercing ammunition for these caliber rifles is widely advertised and available, and there are no restrictions at all on the dead and dying.

My amendment will not apply to the ammunition routinely used in the hunting rifles or other centerfire rifles. To the contrary, it covers only the ammunition that is designed to market bullets having armor-piercing capability. This investigation is not satisfactory to the Senator from Idaho, work with me over the weekend to get the right language that stops this, and he and I will offer a unanimous consent to be able to vote on that on the Senate floor. The Senator knows what we are driving at, the kind of armor-piercing bullets that can penetrate the vests our law enforcement officers are going to wear.

I know the Fraternal Order feels we are trying to slow this bill down. With all respect to them, I have been the author of the armor-piercing bullets for 20 years. I have put it on this. I will put it on something else. They will support us. The Senator from Idaho will support us, put it on the next bill that comes down here. They know that is not the issue.

As I have pointed out, we are talking about the kind that is being advertised on the Web site. Here it is for everyone to see. I have put it on the record. We are talking about the ammunition that comes down here. They know that is not the issue.

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I strongly oppose and will encourage my colleagues to oppose this amendment. 

Mr. President, we have possibly one other Senator wishing to come to the microphone to speak. Let me check on that. If that is not true, I see no reason we couldn’t reserve the remainder of our time or move on to another amendment.
I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I just want to remind the Senate what we have just heard. It is a wonderful technique. I don't disparage my friend from Idaho and his friend from Hawaii. I just don't want the record to misrepresent what the amendment does and then to differ with it.

I have been here several years and I know that technique. It is one that I have used once in a while.

People ought to understand, when we are talking about life and death, we ought to be willing to at least deal with the facts.

The facts are as described in the amendment about what the definition would be in terms of the armor-piercing bullets. That talks about a projectile for centerfire rifles designed or marketed as having an armor-piercing capability that the Attorney General determines pursuant to the section 926(d) to be more likely to penetrate body armor than standard ammunition of the same caliber, period.

Armor-piercing bullets—as my good friend says, wants to eliminate all ammunition for these weapons and, therefore, the shelf will just be relics on the shelves of time.

This is what it is; it is written into the amendment: a projectile for centerfire rifles designed or marketed as having armor-piercing capability that the Attorney General determines—not the Senator from Massachusetts, not the Senator from Idaho—but the one that has the capability to more likely penetrate body armor.

That is what we are talking about—penetrating body armor that law enforcement officers wear and which stands between their life and their death.

That is what this amendment does. We have already seen and sadly reviewed the statistics that are out there now about the brave officers who have already been killed. We will have an opportunity to do something about that on Tuesday next. Let us not fail to do so.

Over the weekend, if there is language that is necessary to ensure that particular purpose can be achieved with more effective language, let me give the assurance to the Senator from Idaho and others interested who take that position that we are more than glad to go back and do that.

We will not compromise on dealing with the fundamental issue; and that is armor-piercing bullets penetrating those vests or put at risk the lives of brave officers today and in the future.

I withheld the remainder of my time. I saw the Senator from the State of Washington who I believe is ready to move ahead. I will either yield back my time or retain my time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I ask at this moment that the Senator not yield time. I have a few moments remaining on my time. I am going to ask for a very short period of time to go into a quorum call at which time we will come out of it and offer the Frist-Craig amendment. I don't need to debate that for any length of time. That is in the order of the unanimous consent. As the Senator from Massachusetts knows, those two then will be set aside to be voted on Tuesday next.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAIG. How much time remains on the current amendment, the Kennedy amendment?

The PRESIDING OFFICER. The sponsor has 61⁄2 minutes and the opponents have 11⁄2 minutes.

Mr. CRAIG. I am prepared to yield back if the Senator is, and I will offer the first Craig amendment and speak for a few short minutes on that and then yield back.

Mr. REID. We yield back the time of Senator KENNEDY.

The PRESIDING OFFICER. Without objection, the time of the proponent of the amendment is yielded back.

Mr. CRAIG. I yield back my time.

The PRESIDING OFFICER. All time is yielded back.

Mr. CRAIG. It is my understanding that the Kennedy amendment will now be set aside to be voted on Tuesday next.

The PRESIDING OFFICER. That is correct.

AMENDMENT NO. 2625

Mr. CRAIG. I send to the desk the Frist-Craig amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAIG], for Mr. FRIST, for himself and Mr. CRAIG, proposes an amendment numbered 2625.

Mr. CRAIG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, the amendment is so ordered.

The amendment is as follows:

(Purpose: To regulate the sale and possession of armor piercing ammunition, and for other purposes)

At the appropriate place, add the following:

SEC. 5. ARMOR PIERCING AMMUNITION.

(a) UNLAWFUL ACTS.—Section 922(a) of title 18, United States Code, is amended by striking paragraphs (7) and (8) and inserting the following:

"(7) for any person to manufacture or import armor piercing ammunition, unless—

"(A) the manufacture of such ammunition is for the purpose of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

"(B) the manufacture of such ammunition is for the purpose of exportation; or

"(C) the manufacture or importation of such ammunition is for the purpose of test or experimentation and has been authorized by the Attorney General.

"(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless sale or delivery is prohibited by law (as defined in section 921).

"(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

"(B) is for the purpose of exportation; or

"(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General.

(b) PENALTIES.—Section 924(c) of title 18, United States Code, is amended by adding at the end the following:

"(2) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for enhanced punishment authorized by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

"(A) be sentenced to a term of imprisonment of not less than 15 years;

"(B) if death results from the use of such ammunition—

"(i) if the killing is murder (as defined in section 1111), be punished as provided in section 1112; or

"(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112;".

(c) STUDY AND REPORT.—

(1) STUDY.—The Attorney General shall conduct a study to determine whether a uniform standard for the uniform testing of projectiles against Body Armor is feasible.

(2) ISSUES TO BE STUDIED.—The study conducted under paragraph (1) is to include—

(A) variations in performance that are related to the length of the barrel of the handgun or centerfire rifle from which the projectile is fired; and

(B) the amount of powder used to propel the projectile.

(3) REPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report containing the results of the study conducted under this subsection to—

(A) the chairman and ranking member of the Judiciary Committee of the Senate; and

(B) the chairman and ranking member of the Judiciary Committee of the House of Representatives.

Mr. CRAIG. Mr. President, Senator KENNEDY has a copy of this straight-forward amendment that strengthens the current armor-piercing bullet law.

It does a couple of things:

It says the Attorney General shall commission a study to determine whether a uniform standard for the uniform testing of projectiles against body armor is feasible and what impact it would have on sporting and hunting rifles. It includes issues to be studied variations in performance that are related to the length of the barrel of the handgun or the
centerfire rifle from which the projectile is fired and the amount of powder used to propel the projectile. The Attorney General shall deliver such report to the chairman and the ranking member of the House and Senate Judiciary Committee within 2 years of the date of the enactment of this legislation.

This became the core of the debate between the Senator from Massachusetts and myself. What does ‘performance standards’ mean, and how do they impact legitimate sporting and hunting ammunition?

Also, insert as new, 18 USC, 924:

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction (under title 18 USC 924) 

(a) if he is a prior violent felony offender, a term of imprisonment of not less than 15 years;

(b) if death results from the use of such ammunition—

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years, and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in subsection (a) of section 1111.

What are we doing? We are adding real teeth to current law. We are saying to the criminal element and the drug trafficking element in our country, if you use armor-piercing ammunition in your firearm and it maims or kills a law enforcement officer, we will put you away for life.

That is what we are going to do. We do not tolerate it. We never have. The current law serves effectively, but if it wounds or takes the life of a law enforcement officer, we will put you away for life. I think that is about as clear and direct as we can become with the already strong prohibition that is in place for armor-piercing bullets that would be used in handguns. With that, I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will oppose the amendment because it does nothing to protect our law enforcement officers from armor-piercing bullets. All it does say, as I understand it, is if law enforcement officers are killed, under the current statutes are going to be greater, including even in the death penalty.

My amendment says, let’s stop the armor-piercing bullets now to save lives. Let’s be proactive and prevent the kind of loss that the amendment from the Senator from Idaho says, well, after they are killed we are going to penalize these people more. My amendment would effectively save lives because we would effectively prohibit the kind of armor-piercing bullet that I am concerned with and those who want to do our law enforcement personnel harm.

So it just misses the point, the idea that we are going to do something after that police officer is killed. That will not do anything about these numbers I mention. We have just seen 20 officers killed over the last 10 years, and 17 of them by armor-piercing bullets. That is what they were killed by; and that is what my amendment is focused on. The amendment will do nothing about preventing that kind of activity. I appreciate his efforts in trying to do something, but this fails the mark.

Withholding my time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, in response to the Senator from Massachusetts, his legislation goes at long guns, rifles, and their ammunition. What I did not say, with him coming back into the Chamber, is do we direct the Attorney General to look at, over a period of time, 2 years—no later than that—and report to the Senate Judiciary Committee, on which the Senator serves, a study to see whether what the Senator is proposing with his amendment wipes from the shelves of this country the kind of hunting ammunition we believe it will, and that certainly a good many others do.

I am not insensitive to what the Senator is saying, but I am saying, let’s get the facts. We do not want to wipe out half the hunting or two-thirds of the hunting ammunition and the target ammunition in this country. That is legitimate. It is law abiding. Does it get misused? Yes. Does some of it have armor-piercing capability, to some extent? Yes.

Certainly this is what our intent is. In the meantime, let’s toughen the law. Let’s say the armor-piercing element in our country that armor-piercing ammunition is flat off limits or you pay a phenomenal price for it.

Is it a deterrent? The Senator from Massachusetts would say it is. In most instances, we find good, tough law enforcement, and a reality known by those who would commit crimes with this kind of ammunition in this country, does serve as a deterrent. That is the intent of the amendment. We believe it is a good amendment.

I am prepared to yield back the remainder of my time if the Senator believes he has adequately covered this issue.

Mr. KENNEDY. No. I just want to respond to—

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. If I may, Mr. President, I yield myself time.

Let me remind my colleagues that armor-piercing ammunition for rifles and assault weapons is virtually unregulated in the United States of America. A Federal license is not required to sell such ammunition unless firearms are sold as well. Anyone over the age of 18 may purchase this ammunition without a background check, and there is no Federal minimum age for possession. Purchases may be made over the counter, by mail order, by fax, or by Internet, and there is no Federal requirement that dealers retain sale records.

It is this current lawlessness that jeopardizes the safety of police officers. It is this failure of the existing law that has led to 20 fatal shootings of police officers, and will lead to many more unless Congress acts, not studies—acts, not studies.

The facts are well established. The FBI statistics do not lie. We do not need another study. We do not need another report. All we need to do is adopt the underlying legislation that gives the Attorney General the authority and the power to ensure the kind of armor-piercing bullets that are being used, that pierce the armor and kill law enforcement officers, will be prohibited from use today.

As I outlined in my amendment: "a projectile for a centerfire rifle, designed or marketed as having armor-piercing capability, that the Attorney General determines, is—" and the Senator from Idaho or the Senator from Massachusetts—"to be more likely to penetrate body armor than standard ammunition of the same caliber."

We either have a problem or we do not believe we do. Certainly the families of those brave police officers who have died believe we do—their families and those police departments. We have an opportunity to do this on next Tuesday. I
hoping the Craig amendment will be defeated and that the amendment I offered will be accepted.

I am prepared to yield back the remainder of time if the Senator is.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I thank the Senator. I too am prepared to yield back the remainder of our time.

Let me conclude my comments by saying this: I let the role of the Attorney General of the United States to determine what can or cannot be used in this country as forms of ammunition. It is our job, if we are going to do it. And we should not do it. The marketplace taxes it. The Senator has shaped legislation that has controlled types of it, and that has been supported.

I do not think we need to get as arbitrary as some Attorneys General can be and have been in the past as it relates to what we believe ought to be illegal or legal in this country.

Our job is to make it the law. That is what we are about here at this moment. It is important that we establish parameters and understandings clearly to determine the kinds of tests that are performance based in what they do to what is now currently legal ammunition in this country.

With that, I yield back the remainder of my time, and ask that the Frist-Craig amendment be set aside.

Mr. KENNEDY. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The amendment will be set aside.

The Senator from Washington.

AMENDMENT NO. 267.

Ms. CANTWELL. Mr. President, I call up my amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant Journal clerk read as follows:

The Senator from Washington [Ms. CANTWELL] proposes an amendment numbered 267.

Ms. CANTWELL. Mr. President, I ask unanimous consent of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To extend and expand the Temporary Extended Unemployment Compensation Act of 2002, and for other purposes)

At the end, add the following:

-TITLE -UNEMPLOYMENT COMPENSATION-

SEC. 01. EXTENSION OF THE TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002.

(a) IN GENERAL.—Section 208 of the Temporary Extended Unemployment Compensation Act of 2002, as amended by Public Law 108-1 (117 Stat. 3), and the Unemployment Compensation Amendments of 2003 (Public Law 108-28; 117 Stat. 751), as follows:

(1) in subsection (a)(2), by striking "December 31, 2003" and inserting "June 30, 2004";

(2) in subsection (b)(1), by striking "December 31, 2003" and inserting "June 30, 2004";

(3) in subsection (b)(2)—

(A) in the heading, by striking "December 31, 2003" and inserting "June 30, 2004"; and

(B) by striking December 31, 2003" and inserting "June 30, 2004"; and

(4) in subsection (c), by striking "February 28, 2004" and inserting "June 30, 2004";

(5) in subsection (d)(2), by striking "(A) in the heading, by striking "December 31, 2003" and inserting "June 30, 2004"; and

(6) in subsection (e)(2), by striking "(A) in the heading, by striking "December 31, 2003" and inserting "June 30, 2004"; and

(7) in subsection (f)(1)(A) of such Act, by striking ''June 30, 2004'' and inserting ''December 31, 2003''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107-147; 116 Stat. 21).
rather have that paycheck than an unemployment check, and it can provide a real stimulus because for every dollar in unemployment insurance, it generates $2 of economic stimulus into the local economy.

We must continue to see these projections versus reality. The President's economic advisers said in 2002 that we were only going to lose a few jobs. We ended up actually losing 1.4 million jobs. In 2003, they said we were going to grow 1.7 million jobs, but we ended up losing another almost 500,000 jobs. Now in 2004, they say we are going to grow 2.6 million jobs in what is left of this year. So far we have only gained 112,000 jobs.

The economy is moving very slowly. We should not leave people out in the cold. That is exactly what we are doing by not passing Federal benefits on to those unemployed workers when they exhausted their State benefits. As of December, we left out lots of workers: in Illinois, about 17,000 people; Texas, about 23,000; North Carolina, 10,000; Ohio, over 10,000; Pennsylvania, 17,000 people; Georgia, 14,000 people. At the end of the month that the benefits program expired at the State level, these people were no longer eligible for benefits at the Federal level because we curtailed the Federal program.

What that means is that every month more and more people exhaust their State benefits as no jobs are found and thereby are denied Federal benefits. For example, for the first 6 months of this year, over 50,000 additional people from Washington State would be eligible, but they would not receive help. On a national level, 2 million people would be eligible to receive Federal benefits.

These numbers represent what happened to people in these States in December of 2003, when the other side of the aisle, a dozen or so of the colleagues' towns meetings, listened to people across America and found out that this was a pretty big issue. People wanted to know, where am I going to find a job? Where is my spouse going to find a job? People were relying on loans from families just to make mortgage payments.

So the House of Representatives came in and passed unemployment benefits extension because they got the message.

We are still down in our economy. The key question is, How have we as a nation responded to this economic recession? How has the previous administrations, both Democrat and Republican, responded to recessions? We know that in the early 1990s we had a recession. The first Bush administration and the Clinton administration became aggressive about unemployment benefits and had a very expansive program that was in place for a total of 27 months.

During that time, we ended up creating 2.9 million new jobs, a very positive outcome. In this recession and recovery, which began in 2001, we have lost 2.4 million jobs. The difference between this recession and the last is that we have cut off the Federal benefit program. And yet, we haven't yet had a net creation of jobs.

We started to slowly shrink the jobs deficit, with 112,000 jobs in January, but we have curtailed the program before we have seen real results. Why would we do that when we have previous experience, from two different administrations, that shows that continuing the program really does help stimulate the economy?

That is what we want to do. That is why I am not surprised that other people around the country such as the Akron Beacon Journal said:

The recovery has aptly been called jobless. Offer a bridge to a better time, and Congress won't simply aid those struggling to find work. The country will benefit.

This is not solely about helping individuals who are unemployed. It is a stimulus to the economy. What happens if the 2 million people who will lose Federal benefits over the next 6 months can't make mortgage payments and end up defaulting on their home mortgages. How is that good for the American economy? Or say, for example, individuals can't make health insurance payments and end up costing more in uncompensated health care? How is that good for the American economy?

I was not surprised when I saw in the San Jose Mercury News that the other side of the aisle had been accused of being of little interest or being silent on this issue.

Basically, the San Jose Mercury News said:

Despite a recent uptick in hiring across the country in 2004, they could bring more hardship for million of Americans out of work. America's billions behind as their hope for receiving extended unemployment benefits fades.

The PRESIDING OFFICER (Mr. BURNS). The Chair advises the Senator she has used 10 minutes. Ms. CANTWELL. Mr. President, I thank the Chair for that information. I would like to continue until other of my colleagues from different regions of the country, which have been hit with high unemployment, come to the Chamber.

I wish to focus on reality versus rhetoric. We have been promised 2.6 million jobs, but instead, we have seen a loss of 2.3 million. The rhetoric doesn't stand up. If the President is going to deny his own economic report and say we are not going to create 2.6 million jobs, then give American workers a hand—extend unemployment benefits as a lifeline to help stimulate their family incomes and help stimulate our national economy.

I ask the President and the other side of the aisle to take a little bit of time and go back in history. I know not everybody on the other side of the aisle agrees with the policies of a Democratic administration juxtaposed to this administration, but let's take a look at what the last Bush administration did and see if we had a downturn of our economy and how President George H. W. Bush handled the economy.

He had a similar problem when he came into office: the 1990s recession. In April of 1992, the President saw that we had tremendous job loss in the millions, but the economy had started to grow again. The first President Bush saw that the economy had picked up 379,000 jobs. He could have stopped the unemployment benefit program right then and there. He could have said: My job is over; the economy is starting to grow again; I don't have to do anything else about this issue. But the President did not.

The first President Bush extended unemployment benefits for an additional 9 months. He did it for 9 months, and what was a program with more weeks of benefits than the current program. It was 20 weeks instead of the 13 weeks we have for basic unemployment States.

The second President Bush said: Yes, there was a little bit of job growth going on, but the negative impact of the recession means we should not stop Federal unemployment benefits.

What has the second Bush done? He has been faced with a similar recession. As we saw from the previous chart, we have lost 2.4 million jobs in the last 2 years and this President sees a little uptick in the economic numbers and sees a program that expired in January. And what does he say? That's it; that's it; no more Federal unemployment benefit program. No unemployment benefits. No weeks, no program.

Basically, we have left the American workers out in the cold as it relates to this opportunity to sustain themselves and sustain our economy in great economically challenging times.

I ask my colleagues on the other side of the aisle to look at this history, to look at what the first Bush administration did under similar circumstances, to look at his results. They were very positive for the U.S. economy and for the U.S. worker. Analyze that juxtaposed to the positions we have taken in this body today, primarily because the other side of the aisle, a dozen times now, has refused us the right to have a vote on this issue. We are going to find that vote, and our colleagues will stand up for the American worker and, most importantly, for the American economy that needs this stimulus.

I see some of my colleagues have joined me in the Chamber. I say to the Senator from Maryland, who has been eloquent on these issues, I don't know how much time the Senator is seeking, but I will be happy to yield to the Senator.

Mr. SARBANES. Is the Senator controlling time?

Ms. CANTWELL. Yes, I am. Mr. President, how much time remains?
The PRESIDING OFFICER. The Senator has 15 minutes 9 seconds remaining.

Ms. CANTWELL. I am happy to yield the Senator 3 minutes.

Mr. SARBANES. I thank the Senator.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I rise in very strong support of the amendment offered by the able Senator from Maryland, Ms. CANTWELL, of which I am pleased to be a cosponsor. This amendment will extend the unemployment benefits which lapsed at the end of December—they have lapsed and are not available—and continue the program for 6 months, through the end of June.

The program lapsed not because the fundamental economic problem which led to its creation—the very weak labor market—has been solved. That market's weakness remains a serious concern.

Long-term unemployment—the problem for which this program was created—is near record levels. There are nearly 1.9 million unemployed workers in America who are long-term unemployed. That is, they have been unemployed for more than 26 weeks. They constitute almost 23 percent of all unemployed workers. This level has been above 20 percent for the past 16 months, the longest stretch of long-term unemployment at this level in more than 20 years.

If it has been 34 months since the recession began, the economy has almost 2 percent fewer jobs than it had 34 months ago. Jobs are not being created in sufficient number to close this gap. Job creation is far below what is needed to reverse the situation for unemployed workers.

Some colleagues have argued that we do not need the program because we are no longer losing jobs. However, the job growth that the economy is producing—40,000 a day—is nowhere near what it was before we lost those jobs. There are those who have lost their jobs. Of course, the administration predicted after they passed the 2003 tax cut, that by last month, the economy would have created over 2 million jobs. It created 200,000 jobs over that period.

This amendment's proposal is not excessive by historical standards. In fact, the administration, in itsΥχ makes it clear that the payroll survey is not a job. Listening to the other side, they are saying to somebody who is self-employed that they do not have a job. Well, I am sorry, but when I was a self-employed veterinarian working 100 hours a week, I thought that was work. I thought that was a job. Listening to the other side, they are saying it is not a job.

I have just gone through a series of community meetings at home, and it came up again and again. So I hope, in the name of compassion, but also in the name of these middle-class folks who are enduring so much economic hurt, that my colleagues will support this legislation. It is essential to provide a measure of relief to those who are enduring such economic hurt.

I have just gone through a series of community meetings at home, and it came up again and again. So I hope, in the name of compassion, but also in the name of those who are losing their jobs. They had the temporary extension of the program, to terminate the extension of the program this time, the unemployment rate this time, the unemployment rate was 7.8 percent. The Democrats went up to 7.8 percent. The peak of the program in the 90s, the unemployment rate was at 6.4 percent. The Democrats controlled the Senate, the House, and the White House, the unemployment rate at the start of the program was 7.0 percent. When we started the program this time, the unemployment rate was at 5.7 percent. At the peak of the program in the 90s, the peak unemployment rate under the Democrats went up to 7.8 percent. The peak unemployment rate this time was at 6.3 percent.

When the Democrats voted to end the program, to terminate the extension of unemployment benefits, the unemployment rate was at 6.4 percent. What is that unemployment rate today? It is at 5.6 percent, almost a full percentage point less than when the Democrats controlled the Senate, the House, and the White House, and they voted to terminate the program. Why did they vote to terminate it? Because
the extension of unemployment benefits is put in during times of high unemployment rates.

Well, they are saying times have changed. Statistics back then do not compare with statistics now. I do not know why, but that is what they are saying.

Let's point out what this Senate and the House did last year. We gave the States $8 billion to help fund their own unemployment programs—especially those States that have high unemployment like Oregon. The Senator from Oregon was just on the floor speaking. We gave that money to the States to handle serious problems with individuals facing long-term unemployment.

What have the States done with that money? We gave them that money 2 years ago. In March 2002, we gave $8 million to the States. What have they done with it? Well, there is $4.3 billion the States have not used. Are our States not compassionate? Do they not care about people, as the other side would have us believe?

They have not spent over half of the money we gave from the Federal Government to the States.

So I think it just goes to look at what is going on with this amendment. I believe this is very well intentioned by the other side, but what has happened is our mindset has changed. What used to be considered full employment is now considered high unemployment.

All of us back in the early 1990s thought a 5.5 percent unemployment rate would be considered full employment in this economy, because there are always people who are changing jobs so they are temporarily unemployed. There are always people who have difficulty because of training, they are getting some new training so it takes them longer to find a job. Then sometimes, frankly, in a changing economy, people do have to move to find one sometimes it takes a long period of unemployment for people to make that decision. It is a very difficult decision to make.

I think we need to be sensitive to people, but we also have to look at the reality we are facing. We are facing huge budget deficits today. How many of the people running for President have been talking about the budget problem? On the other side of the aisle, they paid over a lifetime of work—then what do we do to get out of this dilemma. What do we do to get out of it is to make sure we have a strong enough economy so new jobs will be created.

What are all of the economists—and I do not think the economists subscribe to, the one thing everybody agrees with is these large budget deficits we are experiencing today and that are projected out into the future are the No. 1 single threat to our economy. So if we want to have a secure future going forward, we must watch and curtail additional Federal spending.

The reason we have the deficit today, over half of it, is because of the poor economy. So when businesses and individuals are not making as much money, they do not pay as much in taxes. Over half of the budget deficit is caused by that. About another 27 or 28 percent of the budget deficit was caused by increased Federal spending. And about 20 percent of it were the last two tax cuts that were enacted. But without those tax cuts—it is widely accepted now those tax cuts have helped the economy—we would be in even worse shape.

The number one thing we can do for the economy, as a Federal Government is to create the atmosphere where those jobs are created. So the number one thing we can do is keep our fiscal house in order by restraining Federal spending.

Looking back at the payroll survey, eight months prior to the tax cuts we lost 380,000 jobs; eight months after the tax cuts we produced 300,000 jobs. That is just the payroll survey statistics. That does not count the household survey, or all of those self-employed people I was talking about earlier. There are literally thousands of millions of jobs that have been produced since the tax cut, when you count self-employed people.

The other side says that doesn't count. Just ask somebody who is self-employed who think their job counts and should count in the national statistics. I think everybody who is self-employed out there, if you have a mom-and-pop business, if you are a doctor who used to work for a hospital and have your own practice, or you are a nurse-midwife and you decided to take the risk and go out on your own, does your job count? A nurse practitioner or a physical therapist, whatever the job is, should that job count? I believe it should. I believe that is why there are two different surveys, the household survey and a payroll survey. It is important that we have both of them so we can look at the big picture. The economy is changing. We have to have policies that reflect those changes.

I yield the floor at this time so we can go back and forth and continue the debate. I see my friend from Oklahoma. Next time I get recognized, I will yield some time to him.

Ms. CANTWELL. I yield to the Senator from Massachusetts for 4 minutes.

Mr. KENNEDY. Will the Chair let me know when 3½ minutes has passed?

Mr. CROMWELL. The PRESIDING OFFICER. Mr. Kennedy from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I thank the Senator from Washington for being our leader on this issue about concern for the unemployed. She has, along with our colleagues, on over 12 different occasions challenged the Senate to try to do the constructive and positive thing, in terms of the unemployed in this country.

I listened to my friend from Nevada. I wonder what world he is living in. It probably is the world of the President of the United States. First, he gave us the State of the Union and said the economy is wonderful and getting better. Then he made a speech on the State of the economy and said very few things are just rosy. Then he spoke to the National Governors Association just this last 2 days ago and said everything is just fine; everything is doing well.

Here I have three of this week's magazines talking about what is happening. "Jobs Going Abroad." What is happening? "New Jobs Migration." What is happening? "Will America still be able to be a strong economy?" This is what is happening in the world. And we have silence by this body.

Look at this chart. Thirteen million children are going hungry every day in America, 3 million more Americans are living in poverty than 3 years ago, and 90,000 workers are losing their unemployed compensation every single week.
of the Senator from the State of Washington will do. It will give them a life-line for the next 13 weeks so they will be able to keep their families together, have a sense of dignity, have a sense of pride, have a sense of optimism in their future and their family’s future. We ought to be into the business of preserving that and I hope we do this afternoon.

I withhold the remainder of my time. The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I am going to reclaim 30 seconds, if I can.

I will just take the time to read from this letter. I have a score, but this one says it all. It is from Tim O’Neal of Lexington, MA.

I strongly urge your immediate action to support and to implement supplemental federal funding of unemployment benefits. I have been unemployed for approximately 18 months, though I’m a Vietnam veteran with a baccalaureate, a recent J.D., and more than 20 years of computer industry experience.

Here you have in the paper today, number of mass layoffs rose sharply in January. More than 2,400 employees across the country reported laying off 50 or more workers in January, the third highest number of so-called mass layoffs since the Government began tracking them a decade ago. That is in today’s Washington Post. There is the need.

Senator CANTWELL has the answer.

The PRESIDING OFFICER. Who yields time? The Senator from Nevada?

Mr. ENSIGN. I would like to ask the Senator from Washington a question.

I mentioned before that we gave the States about $8 billion a couple of years ago and that there is still over half of that money unexpended. I wanted to know if the Senator from Washington was aware that her State was given about $367 million and so far the unexpended available balance to the State of Washington is about $165 million out of $167 million that was given to your State.

I realize you have a higher unemployment rate than the rest of the country, I am kind of curious why your State has not spent the money we gave from the Federal Government?

Ms. CANTWELL. I am happy to answer the Senator’s question. I would like to do so on your time, since you have a little more time left than I do. Mr. ENRIO. I will yield you 1 minute.

Ms. CANTWELL. I thank the Senator.

As the Senator from Massachusetts said, the States have that money obligated. They are committed to use it. The issue about the Federal program is that the Federal program is to lay on top of the State program.

The amount about $15.4 billion being in the Federal trust fund is that $15.4 billion is continually added to by the American employer on behalf of them and the employee and that fund grows.

So the amount at the Federal level can be dedicated to help with this Federal extension program.

The PRESIDING OFFICER. Who yields time?

Mr. ENSIGN. Mr. President, I will take my time while the Senator from Oklahoma is getting ready to make a couple of other points.

At some point we have to have some fiscal discipline around the Senate. There are good arguments to make in support of extending unemployment benefits. There is always anecdotal evidence, stories of hardship cases. You can always find those. If we had a 1-percent unemployment rate, you could find people out there who were unemployed, and unemployed for a long period of time, no matter how low the unemployment rate.

The question is, by extending these benefits, do you create more of a problem than you are solving? In other words, we know that about 50 percent of the people who are on unemployment will get a job in the last 2 weeks before their benefits run out.

We have to have some discipline around here, put our fiscal house in order so that in the future we don’t harm the economy, so that those jobs will be there for those people who want employment. For every person who wants to get a job and is willing to work, we need to have a job available.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant Journal clerk proceeded to call the roll.

Ms. CANTWELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. CANTWELL. Mr. President, how is the time being counted under the quorum call?

The PRESIDING OFFICER. The time has been charged to the Senator who put the quorum call in.

Ms. CANTWELL. Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

If neither yields time, the time will be shortened on both sides of the aisle equally.

Ms. CANTWELL. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator’s time is 4 minutes 29 seconds; 14 minutes 34 on the opposite side.

Ms. CANTWELL. Mr. President, I will take a minute to report something to my colleagues. Hopefully this debate has stimulated some great thinking.

As I pointed out, we can look at the history of the two different Bush administrations. The first Bush administration decided after creating 379,000 new jobs that it was going to extend unemployment benefits for 9 months—20 weeks for individuals who had already received State benefits could get a Federal benefit. This administration, having a similar recession in challenging economic times, only created 112,000 jobs in January and decided there would be no benefit program and no weeks for employees.

I am not surprised to see the Washington Post headline “Number of Mass Layoffs Rose Sharply”—“2,400 employers let go 50 or more people.” That is the economic news facing the country.

This administration and the other side of the aisle are not promising jobs or promising unemployment benefits. If someone wants to step up and say we are going to have real job creation in 2004 and stand by the President’s numbers, that is one thing. But if you are not promising either growth or economic assistance, then we have a serious problem.

I reserve the remainder of my time.

Mr. LEVIN. Mr. President, extending unemployment benefits would be one of the most important and significant actions Congress takes this year. The economy and jobs are consistently the top areas of concern back home. The people that I speak to are far more interested in extending unemployment benefits than extending tax cuts to the wealthy. The House recently acted in a bipartisan fashion and passed an amendment to extend unemployment insurance benefits to workers who have exhausted their state and federal benefits. Now it is time for the Senate to act as well.

According to the Center for Budget and Policy Priorities, the number of individuals exhausting their regular State unemployment benefits and not qualifying for further benefits is higher than at any other time on record—about 90,000 workers a week. Painful history is being made. This Senate cannot stay silent. In January alone, about 375,000 unemployed workers exhausted their regular state benefits and are not eligible for any Federal unemployment aid. This is on top of the 395,000 unemployed workers who exhausted their state benefits last December 2003.

Action is needed now. President Bush predicted that in 2003, we would create 1.7 million new jobs. Instead, the Nation lost 53,000 jobs. On Monday, President Bush said he thought the current unemployment numbers are “good.” Not where I’m from.

In earlier slow economic times, previous Congresses have acted. In the 1974-75 recession, Congress provided 29 weeks of Federal unemployment benefits. In the 1981-82 recession, Congress provided 26 weeks of Federal unemployment benefits. In the 1990-91 recession, Congress provided 26 weeks of Federal unemployment benefits. The program that expired on December 31, 2003, Congress provided 13 weeks of Federal unemployment benefits. That was below previous levels of Federal weeks but it was something.

Federal extended benefits program implemented during the last recession was not allowed to end until the economy had produced nearly three
million jobs above its pre-recession levels. The current program has ended when there are 2.4 million fewer jobs than when the recession began.

The recently expired Federal unemployment program was closed to new enrollees last December 31, 2003. Workers currently receiving federal unemployment benefits will be phased out by the week of March 29, 2004. The recently expired federal unemployment program not only provided an added 13 weeks of Federally funded unemployment benefits for workers who have run out of State benefits—it provided an additional 7 weeks in States with the highest unemployment. Renewing this program—and hopefully expanding it to more traditional levels—is crucial.

The Federal unemployment trust fund has over approximately $15 billion in it—for this exact purpose—to allow unemployed Americans and their families to pay their bills and keep their homes. The trust fund is not the workers' money, made up from their contributions. Keeping money in consumers' hands will help sustain the economy, too. Without it, more families will postpone medical care, watch their savings dry up, and lose their homes.

The Bush administration has told us that a 1 percent national unemployment rate drop is proof positive that his tax cuts and other economic initiatives are beginning to work. However, what President Bush did not tell the American people that factory employment declined for the 42th consecutive month by eliminating approximately 24,000 manufacturing jobs. Despite last month's growth, America's manufacturing core has shed an average of 53,000 jobs per month for the last 12 months. If a recovery is going on, it is essentially a jobless recovery. A jobless recovery is no recovery at all. The term is an oxymoron.

The Labor Department statistics also reveal that five million Americans have moved overseas or relied on work- ers overseas. Companies move overseas or rely on workers overseas.

Michigan has been particularly hard hit, losing approximately 225,000 jobs since January 2001 of which 185,000 were manufacturing jobs. Our states and our nation cannot sustain such losses. On Labor Day President Bush acknowledged that "thousands of" manufacturing jobs were lost in recent years. He was off by about 2.6 million.

Let us pass an extension of unemployment benefits now. It is simply the right thing to do. It is the traditional thing to do in times like this.

I ask unanimous consent that the following chart be printed in the RECORD, illustrating previous Congressional action.

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Cumulative Extension of UI Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989–1990</td>
<td>33 weeks (with high unemployment).</td>
</tr>
<tr>
<td>1993–1994</td>
<td>32 weeks (all other states).</td>
</tr>
<tr>
<td>1995–1996</td>
<td>26 weeks (all other states).</td>
</tr>
<tr>
<td>1997–1998</td>
<td>23 weeks (all other states).</td>
</tr>
<tr>
<td>Proposed legislation</td>
<td>26 weeks (with high unemployment).</td>
</tr>
<tr>
<td></td>
<td>26 weeks (all other states).</td>
</tr>
</tbody>
</table>

Mr. DODD. Mr. President, I thank Senator CANTWELL for offering a very important amendment on unemployment insurance. This amendment is absolutely necessary because this administration has put this country on the wrong economic path.*

The economy is not improving, jobs are not being created, and workers and their families are suffering. Since this administration took office, America has lost 3 million jobs, including over two and a half million in manufacturing. More than 9 million Americans are out of work. Unless we see an unbelievable turnaround in the next 8 months, this administration will be the first since that of Herbert Hoover to preside over an economy where more jobs are lost than created.

And what is the President's plan for economic recovery and job creation? More tax cuts for the wealthy; exacerbating overtime pay for hard-working Americans; shipping service and manufacturing jobs overseas; all while raising our deficits to record levels.

It is not just the President alone who supports these policies—his administration supports these and other irresponsible policies as well. They have been forthcoming about their priorities and the priorities of this administration of stop with the American people. Therefore, no one should be surprised when instead of receiving a paycheck they receive a pink slip. No one should be surprised when they lose their house because the administration refuses to extend unemployment insurance benefits. No one should be surprised when retirees see their social security benefits slashed. No one should be surprised when companies move overseas or rely on workers overseas.

Also troubling, just yesterday the Fed Chairman encouraged Congress and the Administration to make cuts into future Social Security payments in order to bring down the deficit. So now, the only way our nation can help men and women who have worked hard their whole lives and are relying on Social Security to help them during their retirement years is that they are better off cutting Social Security benefits rather than eliminating the tax cuts that go to the wealthy.

The chairman of the President's Council of Economic Advisors is quoted as saying, "Outsourcing is just a new way of doing international trade. More things are tradable than were tradable in the past. And that's a good thing." American workers are losing their jobs and the Administration says it's a "good thing". That is an extraordinary statement.

In fact, not once in the past month has the President mentioned extending Federal unemployment benefits. What more must happen for this administration to wake up and begin to take meaningful action?

The President talks about tremendous job growth this year. This prediction would only be met if job growth averaged more than 450,000 new jobs each month, about four times the level of job growth in January according to the Economic Policy Institute.

Americans are hurting and instead of taking steps to ensure job creation, this administration continues to call for more tax cuts—tax cuts that will favor the most wealthy, but do nothing for the families that are struggling today. These tax cuts will cost an additional $1 trillion dollars over the next 10 years. What is even more alarming about this is that this is coming at the worst possible time—right when the baby boomers begin to retire.

It is dumbfounding to me that just 3 years ago we were looking at the biggest surplus in our Nation's history—an annual surplus of $236 billion. We were actually having intense discussions about the effects of paying down the debt too fast. If only we were debating that today. Instead, we are facing an unsustainable fiscal path with the largest deficit in history—a deficit of $521 billion this year, a deficit that if not tackled soon, will have dangerous consequences.

It has been projected that by 2009, if we continue on this irresponsible path, each person's share of the debt will top $25,293. This will reduction in consumer demand, an increase in interest rates, and it will make it enormously difficult for families across this country to achieve financial security.

Today, the Labor Department reported that 350,000 people filed new claims for State unemployment benefits last week. Just yesterday, the Center on Budget and Policy Priorities estimated that from late December, when the Federal unemployment benefits program expired, through the end of February, 760,000 jobless workers will have exhausted their regular unemployment benefits without receiving any additional Federal aid. More than 4,700 jobless workers in Connecticut will exhaust their benefits without qualifying for additional Federal aid.

So that is why I wholeheartedly support extending Federal unemployment benefits right now. At the very least, we need to reach out to American workers and offer them a lifeline. This ought not be a partisan issue. I urge my colleagues to support this important amendment.
Mrs. FEINSTEIN. Mr. President, I rise to support Senator CANTWELL’s amendment to reinstate the temporary emergency unemployment compensation program.

The amendment will reinstate the 13-week Federal unemployment insurance programs approved by the Senate in 1997 and 1999. It will ensure that “high unemployment” States continue to be covered.

Given all of the pressures that workers face today—outsourcing, a political environment hostile to organized labor, and a lack of high-paying jobs—there is no more pressing issue facing our nation’s workforce. And yet although Senate Democrats have asked more than a dozen times to unani-
mously pass the unemployment extension—each time Senate Republicans have said no. It is time that the Senate stop putting partisanship ahead of what nearly everyone agrees is smart policy.

On February 4, the House of Rep-
resentatives voted to reinstate unem-
ployment benefits by a vote of 227 to 179, with 39 Republicans defying their leadership and voting in favor of the benefits.

But until the Senate acts, hundreds
of thousands of workers will be in the impossible position of trying to feed, clothe, and house their families with no work and no benefits.

These are people who are persistently
trying to re-enter the workforce, and yet they are dealing with an economy that has less than one job opening for every three workers.

Today we can change this. This amend-
ment provides crucial temporary assistance to those who have been hardest hit by the recent economic downturn, and provides them a chance to support themselves and their fami-
lies while they look for work.

Although the amendment would not provide more than 13 weeks of addi-
tional benefits to California, since my State’s unemployment rate is 6.4 per-
cent, not high enough to meet the 6.5 percent unemployment rate trigger in the amendment, it provides a meaning-
ful extension for Californians by allow-
ing unemployed Californians who were previously unqualified for unem-
ployment benefits to collect 13 weeks of benefits as they look for new work.

As of today, 2.3 million Americans have lost their jobs since President Bush took office in January 2001.

In California 2.3 million Americans are out of work, including discouraged and underemployed workers.

Historically, job loss during a reces-
sion is about 50 percent temporary and 50 percent permanent. Today, nearly 80 percent of the job loss is permanent. As a result, many of the unemployed will not return to work soon.

In his Annual Economic Report, President Bush said that the outsourcing of jobs was the inevitable bypro-
duct of an ever-expanding economy.

The White House says the “benefits” of exporting American jobs “eventually will outweigh the costs as Americans are able to buy cheaper goods and services and new jobs are created in growing sectors of the economy.”

How are people without jobs supposed to buy all these goods and services? How do you keep a consumer economy going when you lose the jobs?

The chairman of the President’s Coun-
cil of Economic Advisors, the office
that wrote the report, says the “government should try to save the money by short-term helping dis-
placed workers obtain the training they need to enter new fields, such as health care.”

As Senator DASCHLE pointed out, that sounds like a cruel joke. The President’s proposed budget for next year cuts money for Federal job train-
ing programs. And how do they know that the jobs they are training for will not be the next jobs targeted to be shipped overseas? It certainly will not be because the President is fighting to keep them here.

It seems to me that the jury is in on the course we must take. I think it is wrong to move to a protectionist stance by raising tariffs or promoting a weak U.S. currency. Historically, such strategies have led to more problems than they have solved.

U.S. companies should not be re-
warded through our tax code for mov-
ing jobs offshore and then be allowed to bring foreign earned profits back into the U.S. at a tax rate that is a fraction of what they pay on their U.S. earned profits—just 5 percent, as compared to 38 percent in some cases.

You and I pay more than five times that in personal income taxes. We should be encouraging firms to keep jobs here by producing the best trained, best educated workforce in the world.

And, we must help those who are dis-
placed by outsourcing by providing emergency unemployment insurance.

This amendment provides just such a safety net for those who are tempo-
rarily displaced by economic changes that are engulfing us.

I ask the President Bush to put his weight behind this effort to get unem-
ployment benefits extended to those who have been looking for a job more than 13 weeks.

If you are the President, you should be cheerleader number one for the American worker. And you should be supporting workers when they find themselves overcome by economic cir-
cumstances beyond their control.

When the national economy was booming 4 years ago, California was particu-
larly blessed. California’s econ-
omy grew at double-digit rates, and
California became the fifth-largest economy in the world. Billions of dollars of investment flowed into our State, and thousands of talented workers moved to California to take advantage of opportunities in Silicon Valley and other growth en-
gines of the New Economy. Now that picture is dramatically different.

After dropping to a decade-long low of 4.7 percent in December of 2000, the unemployment rate in California is back up to 6.4 percent as of the end of 2003.

During this period of economic hard-
ship, we have a duty to give people the chance to get back onto their feet. This is an obligation that we have met in the past, most recently when faced with an economic downturn during the first Bush Administration. The Senate voted in 1991 to extend temporary un-
employment insurance on five separate occasions. Each time such extensions were approved by overwhelming bipartisan majorities.

I urge my colleagues to support this amendment and those Americans who have fallen on hard times.

Mr. ENSIGN. Mr. President, how much time does the Senator from Oklah-
oma wish?

I yield to the Senator 10 minutes.

The PRESIDING OFFICER. The Sen-
ator from Oklahoma is recognized for
10 minutes.

Mr. NICKLES. Mr. President, I com-
pliment my colleague and friend from Nevada for his statement.

It is important that we create an en-
vironment to create jobs. We did that last year. We didn’t have bipartisan support, with the exception of Senator MILLER. But we passed a jobs bill last year. We passed a bill to help grow the economy. Guess what, it is working.

We passed a bill last year that cut the tax on individuals about in half—15 percent. We passed a bill last year that cut the tax on capital gains from 20 to 15 percent. We passed a bill that re-
duced marginal rates; that took the rate from 27 percent, for example, and made it 25 percent.

As a result of that, the economy is growing. With a rather stagnant econ-
omy, the stock market a year ago was less than 8,000; that is, the Dow Jones. It was over 10,500 today. The Nasdaq is over 50 percent. For the last three quarters, we now have significant eco-
omic growth. During the last two quarters, one quarter was 8 percent and the other quarter was 4.4 percent.

We have had the most significant rapid expansion of job growth and eco-
omic growth in the last several months. In the last 6 months, accord-
ing to the Wade survey, we have added about 300,000 jobs. If you look at the household survey, it is a couple of million jobs. The household survey includes self-employed, working at home on their computers, and so on.

Also, I know this amendment says let us continue this Federal program. We have a State program of 26 weeks. We had a temporary Federal program for an additional 13 weeks. Many tried to make that a permanent program and many tried to double it. They weren’t successful in doubling it. Now they are trying to make it permanent.

They want to take a 13-week program that is temporarily and usually phases out when the unemploy-
ment rate drops down. The unemploy-
ment rate has been dropping down. In
2003, it was 6.3 percent, and it has declined almost every month to 5.6 percent. We have had significant improvement in the number of jobs, and the unemployment rate is 5.6 percent.

But I notice that the proponents of the amendment said: What about the early 1990s? In the early 1990s we had 8.2 percent continued unemployment temporary assistance when the rate was 6.4 percent. Today, it is 5.6 percent—a full percentage point less than it was several years ago when we had this temporary assistance.

Some people do not like the idea that it is a temporary program. They would like it to be a permanent program. It is not.

A couple of other things:

The number of unemployed is falling. If you go back to last year, it dropped from 9.2 million to 8.3 million—a significant improvement by almost a million.

The number of Federal extended unemployment benefit claims has fallen dramatically as well. It is declining. That is because economic growth is going up. Yes. Sometimes there is a lag between economic growth and the number of new jobs created because you have a lot of inefficiency in the system.

You have a more productive system. People are producing more with less, people are more efficient, and people are very productive. The productivity index is skyrocketing. We have had a very productive, efficient workforce. So that is contributing.

I want to make these points. We spent about $30 million in the last 36 months for this program. Again, some people would like it to continue forever. When you have a national unemployment rate of 5.6 percent—I don’t know that we have had the Federal temporary unemployment assistance apply at a rate that low. I mention that.

I also might mention that almost half the States have less than 5 percent unemployment. I used to be in manufacturing. When the unemployment rate was less than 5 percent, it was almost full employment.

You are always going to have an unemployment rate. You are always going to have some people moving from job to job. With a dynamic economy, people transfer from job to job. Their job may be phased out, but they are going to another job. That is part of high tech. That is part of modernizing industry. This is part of keeping up. That is part of the dynamics of the marketplace which maybe a lot of people have been slow to replace. People change jobs. That is not all that unhealthy. Sometimes that next job is a better job. Sometimes that next job might have great growth potential.

This program is a Federal temporary program, and it shouldn’t be made permanent. To make it permanent will add $5.4 billion on to the deficit this year. The deficit this year is already over $500 billion, according to OMB. CBO is going to say it is less than that. I happen to agree with the Congressional Budget Office. If you have a deficit of 400-plus or 500-plus billion dollars, let us not add on another 5.4 billion on top of it for this year. Enough is enough.

How long are we going to continue the program? Do we continue this program if the unemployment rate gets below 5 percent? There has to be a time when we say enough is enough.

The current law is in the process of phasing out. When we passed the last bill, we avoided a cliff by December 30. If somebody was in the 13-week program by the end of December, they got the full Federal 13-week extension. We didn’t have somebody automatically losing their benefit after 1 week on the Federal program.

We also have a program for high unemployment States. That is a permanent Federal Extended Benefits program. Right now, Alaska qualifies for extended benefits. Nationally, they already get a 13-week Federal on top of the State 26 weeks. So Alaska already has 39 weeks. That is three-fourths of the year.

We have to determine when is enough. I think we have crossed the line. There is a direct relationship—and the Senator from Nevada alluded to this—when we discontinue making extra payments, more people will find work. That is important. We have to get out and find that job, to make sure you get a job, to make sure you can take care of your family.

Tradition has shown—and we saw this in the 1990s—when this program stopped in the 1990s, the unemployment rate declined by another percentage point because a lot of people went out and found jobs. In other words, the more you pay people not to work, the less inclined they are to work. There is a direct relationship. So, stand, at some point, I draw this program to a conclusion.

We are saying keep the 26 week State program, keep the permanent Federal program for high unemployment States, those States that are really suffering through economic decline. But for the rest of the country, this is not called for. It is not affordable. It will be adding to the deficit. It is out of order as far as the budget is concerned. I will vote against the order on this, but I withhold the vote until all time has expired on both sides. The pending amendment No. 2617 offered by the Senator from Washington increases direct spending in excess of the allocation to the Judiciary Committee. Therefore, I raise a point of order against the amendment pursuant to section 302(f) of the Budget Act.

The PRESIDING OFFICER. The Chair advises the Senator the point of order is not timely. It can be made when all time has expired.

Mr. NICKLES. I will reserve the point and see if additional Senators wish to speak.

I yield the floor. The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. How much time do I have remaining?

The PRESIDING OFFICER. Six minutes and 30 seconds.

Mr. ENSIGN. I will take a couple of minutes.

I asked the Senator from Washington a question a little while ago. Of the $3 billion we gave to the States, each of the States was allocated a certain amount of money and the State of Washington was allocated around $167 million. Up to this point, the State of Washington—this is money on which the legislature in the State of Washington has to act; they take that money and spend it on unemployment benefits—so far has only used about $3.5 million of the $167 million.

Earlier, the Senator from Massachusetts was in the Senate discussing with the Senator from Washington, saying it is difficult to access. Massachusetts has used every dollar they were given at that time—every dollar. So the Senator from Washington, the sponsor of this amendment, her own State has not used the money the Federal Government has made accessible to them. It seems to me they ought to at least use that money to help the people in their own State.

Also, we had the Workforce Reinvestment Act that passed unanimously in the Senate. This act would help about 900,000 people in the United States to be retrained for new jobs. The other side is filibustering the appointment of conferees. We need to complete that bill if we want to help those people out of work get retrained so we can get them into other jobs.

Mr. NICKLES. Will the Senator yield?

Mr. ENSIGN. I yield.

Mr. NICKLES. I want to make sure everyone is aware, when you talk about the State has money it has not utilized, are you referring to $8 billion Congress appropriated as part of the package in 2002?

Mr. ENSIGN. Yes.

Mr. NICKLES. There was $8 billion and there is still $4 billion on the table the States have not utilized for the unemployment compensation?

Mr. ENSIGN. There is $4.3 billion that has not been used that we gave them.

Mr. NICKLES. My colleague mentioned the Workforce Investment Act that passed unanimously through the Senate and for whatever reasons our colleagues on the minority side have not agreed to the appointment of conferees. This is still a bill that would help train people to get jobs.

Mr. ENSIGN. They are filibustering the appointment of conferees.

For those people who do not know what that is, we have to appoint people to be able to work out the differences between the House and the Senate so we can bring the final bills back to both before we take it to the White
House. They are filibustering a bill that was passed unanimously.

Mr. NICKLES. A further clarification. I find it totally unacceptable and I cannot imagine not agreeing to appointment conferees on a bill that will help get people back to work.

Also, I make an editorial comment. There is way too much of that happening. Our colleagues should be advised, this not agreeing to appointment of conferees is a travesty on the Senate procedures that people think is commonplace. It is not commonplace in the tradition of the Senate.

Mr. ENSIGN. The Senator from Oklahoma is correct. It is a rarely used tactic from the past that has been used increasingly more. It is obstructing the work of the Senate.

I reserve the remainder of my time.

Ms. CANTWELL. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Washington has 3 minutes 7 seconds and the other side has 2 minutes 3 seconds.

Ms. CANTWELL. Mr. President, I will take 2 minutes to try to explain for my colleagues that while I have a great deal of respect for both my colleagues on the other side of the aisle as they argue their points, obviously, we all hope for a better economy; we all hope things are going to get better.

I have some experience with these issues. I have been in the private sector myself, been part of an organization that was about job creation, been part of an industry that has great hope for the future.

The question is whether we want to take stimulus out of the economy by denying people unemployment benefits.

I will not debate the chairman of the Budget Committee about his budget point of order, but I will say most Americans know that they pay into a trust fund through their employers, and those funds are available at the Federal level in a trust fund for this program. So you can call it what you want as it relates to the Budget Act; these dollars are in a trust fund, paid into by employers on behalf of employees, and those funds can only be used for this purpose.

We can decide we do not want to use them because we think the economy is getting better. That is what the other side says. Unfortunately for both of us, that is not what the administration is willing to own up to. Basically, it will not promise job growth after issuing a report saying there will be 2.6 million jobs. And the other side will not own up to the need for job growth or own up to helping unemployed workers.

The last Republican administration took the same problem and had a different outcome. It stepped up its efforts. Even though unemployment was dropping, even though the rate of unemployment was month by month by month, dropping, and even though employment or new job creation was happening, the first Bush administration said, we believe 9 more months of unemployment benefits is needed.

I am only asking for 6 months today. I ask my colleagues to take that into consideration when they are thinking about all the economic assistance we could have. I would say the tax cut is working. Great. Then ask the President to stick by his economic plan of 2.6 million jobs.

Mr. NICKLES. I am finding out more about this amendment. As I find out, the less I like it. The sponsor of the amendment has written it in a way that her State receives extra benefits that most States do not. So this is not a simple extension. It is a simple extension, except a few States will get additional high unemployment assistance.

I am bewildered. I came to the floor and thought it was a simple extension. It is not. It rewrites the definition of high unemployment. It changes the criteria and benefits for the State of Washington, and a probably one or two other States. The State of Washington has money on the table that we have already appropriated that the State legislature says, no, as the Senator from Nevada alluded to.

One final note. We discontinued the Federal temporary assistance program in the early 1990s when the unemployment rate was at 6.4 percent. The unemployment rate today is 5.6 percent. It is much lower. It is time to say, let’s go back to the program that has permanent extended benefits only for high-unemployment States, not for every State.

The PRESIDING OFFICER. Who yields time?

The Senator from Nevada.

Mr. ENSIGN. Mr. President, I will wrap up my remarks. I have a couple comments.

First of all, the economy is improving now, it is not just going to improve in the future. We are in the middle of a recovery. We just had the strongest quarter of GDP growth in 20 years. Jobs are being created.

Payroll versus household—I do not know how many times we have to say it, but self-employed people count. They count in the household survey. Over 2 million jobs have been produced within the last year. When you count the households and all those self-employed people, those jobs should count in what we are talking about here.

Mr. CRAIG. I yield the floor.

Hearing none, it is so ordered.

The PRESIDING OFFICER. Is there a sufficient second?

Theyeas and nays were ordered.

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, shortly the majority leader will send an amendment to the desk to provide for a permanent extension of the Voting Rights Act of 1965. This was one of the truly landmark pieces of legislation in American history.

Last Congress, Senator DODD and I spearheaded, along with Senator BOYD, what became a 2-year quest to reform the way elections are conducted in this country. Senator DODD was correct in saying the election reform legislation we passed was the most important civil rights bill of this century, the 21st century.

With the support of 92 Members of this Chamber, we were successful in protecting the rights of all Americans—all Americans—to cast a vote and have it counted, but to do so only once. Gone will be the days of dogs and dead people registering and voting, and so, too, will be the days of faulty equipment and being turned away at the
polls. Now the majority leader will offer an amendment which makes permanent the most important civil rights bill of the previous century, the 20th century.

If I may, let me recall a personal experience I had during that period in the 1960s that continues to be etched in my mind. The day was August 28, 1963. It was the day Martin Luther King Jr. made that “I Have A Dream” speech from the steps of the Lincoln Memorial. The Mall was crowded with folks from all over the country, and my family and I went down to the Lincoln Memorial. And in that crowd I found myself. I was there in the March on Washington and the day of the “I Have A Dream” speech. Unfortunately, I could not hear it because I was so far down the Mall, and there were so many people I did not hear the speech. But you had the sense, if you were in the crowd that day, and sympathetic with the effort to get voting rights, public accommodations, and desegregation, that you were in the presence of one of those seminal moments in American history.

Of course, we now all reflect on that day. August 28, 1963, with great reverence, and Rev. Martin Luther King Jr. remembered and recited some of the great speeches in American history, delivered that day on the steps of the Lincoln Memorial, August 28, 1963. I will always remember that I had an opportunity to be a part of that most important day.

A couple years after that, we passed the Voting Rights Act of 1965. There were three things that march was about: public accommodation, passed in 1964; voting rights, which passed in 1965; and fair housing, 1968. But voting, in 1964; voting rights, which passed in that time. Unfortunately, though, the Voting Rights Act has successfully addressed truly important times and places in those States as well.

I cannot think of any reason why anyone on either side of the aisle would oppose the protection of the franchise of all Americans. If so, we potentially jeopardize the fundamental tenet of our representative democracy. In conclusion, I commend the majority leader for this amendment. It is an excellent amendment. This is a step we should have taken years ago. I commend him for offering the amendment today. I hope it will be adopted by the Senate on an overwhelming bipartisan basis.

I suggest the absence of a quorum. The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. FRIST. Mr. President, I send an amendment to the Constitution and myself in response, in part, to the expiration of a portion of the Voting Rights Act. I will speak to the details of it shortly.

By way of introduction, 2 weeks ago, Congressman John Lewis and I participated in a trip to sites in Alabama and in Tennessee that reflected important times and places in those States as they pertained to civil rights and the movement of nonviolence and the struggle for voting rights. We had a chance to see the powerful Selma’s Edmund Pettus Bridge where almost 40 years ago Congressman Lewis had led marchers in the name of voting rights for all.

The stories were powerful. They endure. The beating, the taunting, the looting back, and they faced the hatred with the power of compassion and love.

Their courage captured a victory that has been to the benefit of millions today, not just for African Americans but for all others and our country. I was deeply moved by their courage and their sacrifice at the time, and I am grateful for their service.

This year, the 50th anniversary of the Voting Rights Act occurs. That act enshrined fair voting practices for all Americans. The act reaffirms the 15th amendment to the Constitution and prohibits individuals and governments from sabotaging the ability of African-American citizens to vote.

Dorothy Cotton, one of the participants with Congressman Lewis and I, who ran the Citizenship Education Project of the Southern Christian Leadership Council with Andrew Young, remarked that she remembers when voting registration offices were open only when most African Americans were working during that time of day. Rev. Bernard Lafayette, who was also with us, another great civil rights leader, remembers routine harassment at the registration office, such as being required, to interpret the obscure sections of the U.S. Constitution or—and his words are so vivid in my mind—being required to give the number of bubbles in a bar of soap.

Clearly this was wrong. It was ugly, and it was unconstitutional. That is why the Congress moved to pass the Voting Rights Act of 1965, to once and for all protect the right of every American to vote.

The Voting Rights Act also includes section 4, and it will be up for reauthorization in 2007. President Reagan reauthorized it for 25 years in 1982. Section 4 is the section that contains the
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temporary preclearance provision that applies to certain States: Alabama, Georgia, Louisiana, Mississippi, South Carolina, Texas, Virginia, and parts of Alaska, Arizona, Hawaii, Idaho, and North Carolina. These States must submit any voting changes to the Department of Justice for preclearance and, if the Department of Justice concludes that the change weakens the voting strength of minority voters, it can refuse to approve the change.

Section 4 is an important measure of assurance that the full force of the U.S. Government stands behind voting rights for all Americans. That is why Senator MCDONNELL and I today are offering an amendment to permanently reauthorize section 4 of the Voting Rights Act. With or without section 4, every American has the right to vote. That will never change. However, Senator MCDONNELL and I want to make clear that America will never regain the rights gained in the civil rights movement. We don’t want anyone to fear that their right to vote will ever be taken away. Those shameful days are over.

Some of the heroes of the civil rights movement have endorsed this particular amendment. Congressman John Lewis supports it.

Rev. Bernard Lafayette, who joined Congressman Lewis and I—actually Bernard Lafayette went with us on our pilgrimage last week, but also he and JOHN LEWIS were together at that fateful time in 1965 for the march in Selma. His words were this amendment would be an “important psychological and political victory for democracy.”

It is my fervent hope that one day soon racism and discrimination will be totally a thing of the past. Until that time, it is critical that the Justice Department retain this preclearance authority to review changes to State voting requirements, not only to allay fears that might arise but also to enshrine our progress to date.

I do hope all of my colleagues will join me in ensuring the Federal Government will do all it can to protect the right to vote for all Americans. I ask my colleagues on both sides of the aisle for their support of this amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself such time as I may consume.

I commend Senator MCDONNELL for his strong statement and commitment of ensuring that the Voting Rights Act, which is of fundamental and key importance in terms of what American democracy is all about, is something that we see and will extend here and that he is fully committed to working in every possible way to make that commitment come true. I also commend my friend and colleague from Kentucky, Senator MCCONNELL, for expressing similar sentiments. But this is not the best way to achieve that goal.

What is important to come out of this debate is that the Senate, as an institution, is firmly committed, as we hear from the majority leader and from the leadership from that side, to making sure we continue the Voting Rights Act. The real question is, How is the best way to make sure that is possible?

In my view, what we addressed in the public accommodations laws and offered the amendment to eliminate the poll tax, and it was defeated. I was here in 1965. I am very familiar with the weeks we spent on that bill to actually get the Voting Rights Act. I was on the Judiciary Committee in 1962 and listened to the Republican Attorney General William French Smith—I can remember it almost as if it were yesterday—because the extension of the Voting Rights Act had been offered by myself and my wonderful friend and a great Senator, a Republican Senator, Senator Mathias. We had 32 votes. The Reagan administration was opposed to extending the Voting Rights Act. That is the history.

Until the Representatives passed the Voting Rights Act overwhelmingly, we were unable to get to 50 votes and get a majority of the Judiciary Committee to vote to pass that out. It was only in the final hours actually that we were able to accept what was the Dale amendment.

Those who are interested in looking at the history, we were able to get up to more than a veto-proof majority, and President Reagan signed the bill. This is not an issue to be lightly dealt with. This right to vote is a core issue in our country. We enshrined slavery into the Constitution. We fought a civil war to free ourselves from the pains of discrimination. It was Dr. King, quite frankly, who awakened the conscience of the Nation and the Nation came together and we saw the great progress that was made in the early 1960s to move us ahead with voting rights and public accommodations.

I remember with some regret the Housing Act which really did not do a great deal in housing until actually the 1988 act.

This has been a long march, as the Senators have pointed out. We have to ask ourselves whether now is the time to take this action.

Let me read into the RECORD the letter I have received from the Leadership Conference on Civil Rights. I read it at this time.

On behalf of the Leadership Conference on Civil Rights, the Nation’s oldest, largest, and most diverse civil and human rights coalition, we write to express our opposition to the amendment offered by Majority Leader Frist to the protection of the Lawful Commerce in Arms Act, S. 1805, to make the preclearance of the minority language provisions of the Voting Rights Act permanent.

The Voting Rights Act is one of the most important civil rights statutes ever enacted by Congress. This law, which enforces the Fifteenth Amendment, has been successful in removing direct and indirect barriers to voting for African Americans, Asian Americans, Latino Americans, and Native Americans. And since its passage, it has survived narrow interpretations by the United States Supreme Court only to be amended by Congress to restore its original strength. Nevertheless, voting disenfranchisement still exists today.

As you know, the VRA’s preclearance and minority language provisions are scheduled for reauthorization in 2007. We in the civil rights community plan to actively engage in the process, including working to establish a strong legislative record in support of reauthorization.

I underline, Mr. President, the language that says “establish a strong legislative record in support of reauthorization.” That is a key phrase in terms of the terminology and for reasons to which I will refer in a moment.

Nevertheless, we oppose the Frist amendment because it is premature. Critical analysis of issues surrounding preclearance of minority language provisions of the Voting Rights Act have not yet been fully examined and analyzed carefully to reflect the current status of our laws, court decisions, enforcement actions, and society.

The Supreme Court has made it clear in recent years that it will require Congress to establish a detailed record through hearings and legislative findings in order to ensure that provisions such as these survive constitutional scrutiny.

Therefore, while we plan to strongly support the reauthorization of these important provisions, we urge you to vote no on the Frist amendment.

The reasons for this urging are the relevant parts of this letter which have strong justification, given holdings by the Supreme Court on other actions that the Congress has taken in trying to expand rights and liberties for American citizens, and which have been struck down.

Time in and time out and time again the courts have referred to the legislative record that has been made on the Voting Rights Act. I remember it. I was a member of the Judiciary Committee. I remember the days and months of hearings and testimony, an extraordinary record was made, unparal- leled in history, certifying that act, respected by the Supreme Court. And we are going to say that last night at 11 o’clock the Senate agreed to take up an amendment with a 1-hour time limitation that is going to extend this, and the possibility of the Supreme Court looking back, when it is challenged—as we know it will be challenged—at the legislative history, the background, and they will find we had 1 hour of debate on the floor of the Senate and put at risk the Voting Rights Act.

There are some—not the Senator from Tennessee, the majority leader, or the Senator from Kentucky, but there are those who want to see this under- mined. We know that. We have to be guarded against that possibility. Voting rights are too important to risk it.

Those families, those individuals, those American citizens who are concerned about the issue of voting rights and in so many instances have been denied the right to vote and whose families have been denied the right to vote and have suffered, and in some instances have friends and family members who lost their lives in the struggle for civil
rights, say to us, let us do what we believe is necessary to do. Let us not have an abbreviated legislative process. Let us go to what the Supreme Court has recognized as being the way to ensure we will have the kind of protection for this most basic and fundamental right, and that is do it through the legislative process, through the hearings, through the testimony, through the evidence that will be collected. That is effectively what is being said by the leadership conference.

That is why I am instructed, under more careful consideration, that Congressmen Laws having read this and consulted with lawyers and constitutional authorities this afternoon, is opposed to this amendment.

As I say, I am sure the majority leader understands the Supreme Court decision, but it is my understanding it is to require a substantive record is made, and we do not have that record on the basis of an hour’s debate this afternoon.

The recent experience in the courts, in the Supreme Court decision of Nevada Department of Human Resources v. Gibbs, and City of Burns v. Florida, show the Court will require a substantial legislative record when reviewing any case. We refer to the provision made permanent by this record. That is the holding of the Supreme Court, that they will require a substantial legislative record.

We do not have a substantial legislative record. That is not a part of this debate. As a result, the Senate should take every necessary step to develop that substantial record that will ensure any amendment will withstand the constitutional scrutiny.

I want to say how important it is to require a substantive record be made, and we do not have that record on the basis of an hour’s debate this afternoon.

I yield myself 5 minutes. Mr. President, we have to understand, as I think all of us do, that obviously the underlying legislation is important. I have spoken on this issue. I take strong exception to what is special interest legislation singling out a particular industry from liability. That is important. The provisions that have been debated earlier this afternoon on the conceivably weapons are very important as well in terms of safety and second Amendment, and the armor-piercing bullet. That is important in terms of lives and family. When we are talking about the right to vote and ensuring the right to vote, this reaches the core value of our society and what this Nation is all about. We know the history of our Nation. I mentioned very briefly slavery was enshrined in the Constitution. We fought a civil war in order to free ourselves from it. But it was only in the early 1960s that we began to make the real progress. The right of all of those kinds of civil rights was the right to vote and the extension of that right and the elimination of the poll tax, the literacy tests, all of the other kinds of tests that were put up there. This country has been reminded once again about the importance of the right to vote in the recent Presidential elections where we saw this enormous fissac that took place in the State of Florida, the future of this country ultimately may be decided by the Supreme Court of the United States rather than the hands of the American people.

So the American people understand the importance. It is almost like a sacred right. If we were to talk about sacred rights in terms of what this society and country is about, it is about the right to vote. Nothing else is possible unless we have the right to vote, guaranteed to all of those citizens in our country who are eligible to have that right. It is fundamental to everything else this country is about.

We know it is being challenged and we know there are many who would set it aside. We have seen that in recent times. We have seen the threat to the right to vote. Even after we understand some of the difficulties we had in the last Presidential election, we have seen the difficulty we have had in this body and around the States to make sure we were not going to have that problem again and again. We have not solved the problems we had, but we have to preserve it and protect it and we cannot tamper with this very important and significant responsibility we have.

I said before, we should only look forward to working with our colleagues, who have spoken eloquently about their strong commitment, in ensuring that we are going to have an extension of the Voting Rights Act.

I look forward to working with them in the Judiciary Committee. I know our two colleagues are not members of the Judiciary Committee, but we have enormous respect for them and their strong support will make an incredible difference in ensuring we will get the extension, we will build the record, and we will ensure the next time we pass this, we will have the kind of record that will be sustained in this Supreme Court and any future Supreme Court.

We do not want to put that at risk now. We do not want that. That is not a wise decision. The people who have suffered too long and been denied that right to vote believe very strongly that is to be the case. I think we should observe their very serious concerns, follow those, and work to build the kind of record that will survive any constitutional scrutiny and ensure that we are going to work with the existing protections we have, we are going to create even greater ones.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The assistant legislative clerk proceeded to call the roll.

Mr. CRAIG. Might I inquire how much time is remaining on either side? The PRESIDING OFFICER. The Senator from Idaho has 16 minutes and the Senator from Massachusetts has about 16 minutes 48 seconds.

Mr. CRAIG. Might I inquire of the Senator from Massachusetts if he has anyone further who wishes to speak in opposition to the Frist amendment?

Mr. KENNEDY. First, I will make a few comments. I have been notified I have to be away from the Senate floor and will be on my way in the next 4 or 5 minutes. If not, we will be glad to go on.

Mr. CRAIG. Fine.

The PRESIDING OFFICER. The Senator from Idaho has the floor. Does the Senator yield the floor?

Mr. CRAIG. I do.

The PRESIDING OFFICER. The Senator from Idaho yields the floor.

The Senator from Massachusetts.

Mr. KENNEDY. I yield myself 5 minutes.

Mr. President, we have to understand, as I think all of us do, that obviously the underlying legislation is important. I have spoken on this issue. I take strong exception to what is special interest legislation singling out a particular industry from liability. That is important. The provisions that have been debated earlier this afternoon on the conceivably weapons are very important as well in terms of safety and second Amendment, and the armor-piercing bullet. That is important in terms of lives and family. When we are talking about the right to vote and ensuring the right to vote, this reaches the core value of our society and what this Nation is all about. We know the history of our Nation. I mentioned very briefly slavery was enshrined in the Constitution. We fought a civil war in order to free ourselves from it. But it was only in the early 1960s that we began to make the real progress. The right of all of those kinds of civil rights was the right to vote and the extension of that right and the elimination of the poll tax, the literacy tests, all of the other kinds of tests that were put up there. This country has been reminded once again about the importance of the right to vote in the recent Presidential elections where we saw this enormous fissac that took place in the State of Florida, the future of this country ultimately may be decided by the Supreme Court of the United States rather than the hands of the American people.

So the American people understand the importance. It is almost like a sacred right. If we were to talk about sacred rights in terms of what this society and country is about, it is about the right to vote. Nothing else is possible unless we have the right to vote, guaranteed to all of those citizens in our country who are eligible to have that right. It is fundamental to everything else this country is about.

We know it is being challenged and we know there are many who would set it aside. We have seen that in recent times.
Am I correct that this is a Frist amendment to this bill? The PRESIDING OFFICER. That is correct. The majority leader offered the amendment.
Mr. DODD. The Frist amendment is amending the Voting Rights Act; is that correct? It would make the preclearance and minority language provisions of the Voting Rights Act permanent; is that correct?

The PRESIDING OFFICER. That is the Chair's understanding.
Mr. DODD. I thank the Chair very much for that.
First let me express my gratitude to the minority leader for having a strong interest in this. As someone who for the last several years, since the election of 2000, has spent a great deal of time on the conduct of Federal elections, I worked closely with MITCH McCUIZZIN, who has spent a great deal of time on the conduct of Federal elections over the other Chamber, along with a number of other people. There were a lot of things involved in this, but we were able to put together the HAVA Act, the Help America Vote Act. It is in the view of many the first civil rights legislation of the 21st century. Some have called it the most significant legislation affecting the right to vote since the Voting Rights Act of 1965.

Certainly, one of the issues we looked at and discussed rather briefly was the issue of the reauthorization of the Voting Rights Act when it comes to language minorities. But when we were dealing with that bill, we did not vote to make permanent those provisions. And for good reason.
The most important part of the Voting Rights Act, these language minority and preclearance provisions. It is hardly the place, I suggest, with all due respect to those who are interested in this, as a floor amendment to any bill where people are on a bill addressing the issue of guns, and rather suddenly we are asked to permanently change one of the most profoundly important laws in our nation.

Just to cite one example to my colleagues, if we adopt this today—there is a group very much in the news at this very hour. And that is the people of Haiti. Now, there is a substantial population in the State of Florida of people who are formerly from Haiti, Haitians. If this language is adopted, some have raised concerns that it could have the effect of making it more difficult for Americans of Haitian background, who do not speak English as a first language, to obtain the voting information and technologies to which they might otherwise be entitled and which they might require in order to cast a ballot. The same concern has been raised about Americans of other backgrounds, as well, whom English is not a first language.

I don't think there is a single Member in this Chamber who wants to vote today on a provision that could make it more difficult, if not impossible, for thousands if not tens of thousands of citizens, in effect, to vote. But we are told by those who deal in this issue every day that this amendment could have that effect. I am confident that none of us wants to see that happen.

This is hardly the time, place, and manner to make such a profound change in law. Frankly, I don't have a prepared speech. I was just listening to this debate in my office, and having worked on this issue, I know how much time you take to get this right. To come over and have an amendment adopted that could permanently exclude a substantial part of our citizenry from minority language minorities, I don't think we want to be on record on that today.

These provisions of the Voting Rights Act, by the way, doesn't expire until the year 2007. We have 3 years. I think it is the time to get something done when you can get it done. But the normal way you proceed is to sit down, work these things out, listen to people, and examine whether or not certain groups qualify or should qualify. But I don't think we would exclude from the Voting Rights Act potentially countless people who have come to this country for reasons with which we are all unfortunately too familiar, and who clearly qualify as language minorities.

I, for one, cannot vote for this. I wouldn't want to be on record supporting this. I would like to work with the majority leader and others who would like to figure out how to get this done. I will do my best.

The Leadership Conference on Civil Rights has stated as much themselves in a letter they sent to the majority leader. It was dated today, to give you some idea of how fast this is moving. They say in their concluding paragraph:

While we plan to strongly support the reauthorization of these important provisions, we urge you to vote no on the Frist amendment. The reasons are that this is a complicated process that takes some time to make sure you are including those who deserve to be included and excluding those who may not be. I will do my best.

They believe it is premature. Their critical analysis of the issues surrounding the preclearance and minority language provisions has not been fully examined and analyzed. I hope no one would suggest otherwise. A floor amendment is hardly the place.

If you hold a vote and exclude multiple language minority groups because you've made this law permanent after 3 years, I think you would ask your leadership to pause a minute and analyze whether this is correct. If it is correct, should we amend this language? Should we include them? If not, why not? Shouldn't there be a more thoughtful way to proceed on a matter of this import?

There is no other right, in my view, that is as important as the right to vote, which is a right upon which all other rights depend. It is the central ingredient for our democracy—the right of people to vote.

We have understood over the years that there are those who come to our country who have language barriers. I am confident that none of us wants to see that happen.

I am very much interested in seeing us make permanent, if we can, these language minority and preclearance provisions of the Voting Rights Act. I would like to do so. But the way we have done it is far more deliberate than a 1-hour debate on the floor of the Senate dealing with a gun manufacturer bill. This is not the way we ought to be doing business on something as fundamental as the right to vote.

I prefer not to vote no on this. I would prefer this amendment be withdrawn and then resubmit it under proper circumstances so we can have the opportunity to do the analysis necessary to arrive at right conclusions.

I am the only one speaking about this at this particular moment. I don't know what the time frame is. Is there a limited time of debate? I make an inquiry of the Chair.

Are we going to vote on this matter in a few minutes?

The PRESIDING OFFICER. The Senator's side has 3 minutes 16 seconds remaining. The Senator from Idaho has 12 minutes 52 seconds remaining. The Senator from Wyoming has 4 minutes 11 seconds remaining. The Senator from Kansas has 14 minutes 30 seconds remaining. The Senator from North Carolina has 12 minutes remaining. The Senator from Wisconsin has 10 minutes 17 seconds remaining. The Senator from Oregon has 14 minutes 25 seconds remaining. The Senator from Connecticut has 9 minutes 17 seconds remaining. The Senator from New York has 7 minutes remaining. The Senator from Tennessee has 6 minutes 52 seconds remaining. The Senator from Pennsylvania has 5 minutes 41 seconds remaining. The Senator from Puerto Rico has 1 minute 45 seconds remaining.

Mr. DODD. Do I understand that at the conclusion of roughly 15 or 16 minutes we will then vote on amending major provisions of the Voting Rights Act?

The PRESIDING OFFICER. After voting on the Cantwell amendment, under the previous order, the Senate will vote on this amendment.

Mr. DODD. Mr. President, I urge colleagues to think twice about this. It is the Voting Rights Act of 1965 that we are talking about. We are talking about amending this act permanently and possibly excluding major ethnic groups in this country permanently. Please. This issue requires more thought than it can be given here. This is not the way to go about changing one of the most important laws ever enacted in our great country. We should not in effect tell our colleagues that they have 15 minutes to decide on whether or not potentially millions of Haitians, Africans, Asians, Hispanics,
and Europeans would be permanently excluded from key protections of the Voting Rights Act when we have 3 more years to make that decision.

To do this on an amendment to a gun manufacturer bill is stunning to me. Why would we take something so critical and important as the Voting Rights Act and throw it on the table without further consideration and thought?

I urge my colleagues in the time they have to please talk to the majority leadership. We can’t pull this back by unanimous consent and let those of us who spend time on these issues sit and work on this. This is no way to be dealing with millions of people in our country who deserve the right to vote and to be protected properly under language minority and preclearance provisions.

I make that plea to my colleagues. I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Idaho.

Mr. CRAIG. Mr. President, I think all of us prefer when we deal with certain subjects that all amendments to the underlying subject be germane. That isn’t the way the Senate works. Certainly my colleague from Connecticut knows there are other amendments being discussed today that by no stretch of the imagination are germane.

But this is a critical issue. It is timely. It is necessary. We speak to it. That is why the majority leader brought it to the floor. It is critical to our country that we continue to show our openness as we reach out and become inclusive with all of those who as citizens have the right to participate in the electoral process. That is exactly what we are about.

We have one colleague who still wishes to speak. He will be here in moments.

How much time remains?

The PRESIDING OFFICER. The Senator has 11 minutes 57 seconds, and counting.

Mr. CRAIG. Mr. President, I will put us into a quorum call for a few moments anticipating his arrival.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I join in support of this important amendment for permanent extension of the Voting Rights Act. Voting is fundamental in our democracy. It has yielded enormous returns.

We know of the historical discrimination against minorities, against African Americans.

The essence of a democracy is a free electorate. Voting rights are very important. It ought to be on our books on a permanent basis.

I think it is so fundamental that it doesn’t take long to express the underlying reasons for its importance and the fundamental reason why it should be in existence of the law on a permanent basis.

I support this amendment.

In the absence of any other Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. CRAIG. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAIG. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. The Senator has 6 minutes 51 seconds.

Mr. CRAIG. I yield the remainder of our time to the Senator from the State of Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I come to the Chamber in a hurry because it has come to my attention that this amendment, which is perhaps in a technical sense not germane to the main bill in the Senate—but I understand there is an agreement that it could be considered and would not be out of order—but my concern is this: The Voting Rights Act of 1965 was an important landmark in the Nation’s history. It was passed by the Congress in an attempt to make sure that no person, regardless of race, regardless of color, was denied their right, their fundamental right to vote. This was long overdue, very important, and certainly a result to which we all continue to aspire. Perhaps Members of the Senate who have, like me, not had a chance to study this amendment in great detail, or perhaps what the ramifications of this amendment are, might be interested to know a few facts; that is, that the Voting Rights Act does not apply to all the States in the Nation. In other words, we are being asked to extend the Voting Rights Act only as it applies to a handful of primarily Southern States.

In 1965, it makes it possible to apply the Voting Rights Act to just a handful of States that historically and, yes, tragically, had a history of denying minorities their rights to be American citizens and enjoy the franchise uninhibited by those who would deny them that right. But this is not 1965. This is the year 2004.

If, indeed, this presumption, in essence, that says in order to change the way in which you conduct your elections, before you restrict your State and electoral unit, you must seek permission from the Department of Justice, if indeed, that is still good policy for the States that are covered by the Voting Rights Act, I submit it is good policy for the Nation as a whole. I doubt in all seriousness that many Members of this body understand what they are being asked to do, which is to extend this act only to a handful of Southern States.

As I say, if it is good policy, I believe it should be extended to the entire Nation. Obviously, we have come a long way in this country since 1965. Some may argue that some States should have a presumption of guilt while others should have a presumption of innocence. But, indeed, I believe there ought to be a uniform policy that applies to the entire Nation when we are talking about something as important as voting rights and when we are talking about something as important as protecting the voting rights of all Americans, including minorities who have, in fact, suffered discrimination in the past.

I raise the question for my colleagues, those who are listening, to ask whether we truly understand what the implications are of this amendment and how it would affect the entire country, and how in practice, if I understand the amendment correctly, it would apply only to a handful of States. There is an agreement under which second-degree amendments are out of order, or I would offer an amendment to apply to the entire Nation, if that were permitted. But under this arrangement, under this agreement, I can merely ask the question for my colleagues to ponder if this policy should apply nationwide and not just to a handful of States, including my State of Texas.

I yield back any remaining time to the Senator from Idaho.

Mr. CRAIG. I thank my colleague from Texas.

I inquire as to the time remaining on both sides.

The PRESIDING OFFICER. The Senator from Idaho has 1 minute 10 seconds, and the Senator from Massachusetts has 1 minute 10 seconds.

Mr. CRAIG. The Senator from Idaho is prepared to yield back. The Senator from Massachusetts is prepared to do so.

Mr. REID. He is not ready yet.

The PRESIDING OFFICER. Does the Senator yield back his time?

Mr. CRAIG. I do not.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. CRAIG. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I yield back time on this side.

The PRESIDING OFFICER. The Senator from Nevada yields back remaining time on his time.

Mr. CRAIG. I yield back the remainder of my time. The unanimous consent we are operating under moves us
Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained, and the amendment fails.

Mr. CRAIG. Mr. President, I move to reconsider this point of order, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. CANTWELL. Mr. President, while there were 58 votes—a majority voted for this amendment—we will come back to address this again and again because I think we are going to see job growth is not happening at the pace people believe. While we have postponed it today, thinking the UI trust fund is not being used as part of our deficit, the UI trust fund should go towards these unemployed workers. We will be back to debate this issue again. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I thank the majority leader and others for agreeing to vitiate the vote on the Voting Rights Act. I underscore the comments made by the senior Senator from Massachusetts. Mr. KENNEDY. Mr. President, I thank the majority leader for his superlative statement, and I also thank the Senator from Kentucky for his comments in support of the extension of the Voting Rights Act. He made an eloquent statement and sent a message which I know is well received across this country. As a member of the Judiciary Committee, I want to work with him and the Senator from Kentucky to try to achieve what he wants, and that is the permanent extension of the Voting Rights Act. We will work closely with him to try to get it done in a timely way. I thank him very much for focusing attention on this issue. I am grateful to him for his leadership.

Mr. President, on a final point, I draw the attention of the Senate to this request for unemployment compensation. A wide majority, a broad majority of Republicans and Democrats in the Senate voted for extension of unemployment benefits. I commend the Senator from Washington for her leadership on this issue. I know she believes, as I do, that this is not the end of the fight but just one of the innings of flight. I thank her for her leadership.

The PRESIDENT. The Senator from Connecticut.

Mr. DODD. Mr. President, briefly, I also thank the majority leader and others for agreeing to vitiate the vote on the Voting Rights Act. I underscore the comments made by the senior Senator from Massachusetts to work with the majority leader and others interested in getting this done. It can be done rather simply. We do need to build a record on the issue. That is exactly the point.

I commend the majority leader for moving on this. We do not want to wait until the year 2007. I thank him.
and terrified to go into a Home Depot. What was happening was that 10 innocent people were killed while they were mowing their lawn or getting gas or while a new bride was going shopping at Home Depot to gussy up her home, or one driver getting ready to do his duty. These families had experienced tremendous loss, and the Nation mourned with them.

We so thank our law enforcement agencies for helping us catch the snipers and the judicial system that is working to try them, but now we also need to make sure that we protect the victims and the victims’ families.

I bring to the attention of my colleagues that the legislation Congress is considering now could inflict further pain on the families. It could slam the courthouse door on the families of the sniper victims and on all Americans who believe they are harmed by negligent actions related to guns. It gives gun dealers and manufacturers a free pass. It provides records to account for every gun store or a manufacturer was negligent.

If this legislation passes, one could still go to court over a toy gun but not a real gun. I think that is wrong.

My amendment is to make sure the sniper victims and their families have a right to go to court. Before I tell my colleagues about those families, let me tell my colleagues what my amendment will do. My amendment protects the legal rights of the families. It allows current and future cases by sniper victims and their families to proceed.

Currently, one case is pending in Washington State court. It creates an exemption in the bill text of S. 1805 for all cases involving a victim of John Allen Muhammad or Lee Boyd Malvo. This is a very narrowly drawn bill. It does not exempt any other cases. It does not impact on any of the legal standards of the bill, and it does not prevent a court from dismissing a case if there is no negligence.

What it does is create an exemption only, and I emphasize “only,” for cases involving a victim of John Allen Muhammad or Lee Boyd Malvo. This is the Maryland-DC-Virginia sniper case. I do not want to create any ambiguity in this bill or create a loophole in this bill. But this is a very serious matter. I am here in behalf of those families.

Conrad Johnson, who was the sniper’s last victim, I remember hearing the news when he was shot at a bus stop in Montgomery County. He was killed by the sniper just as he was getting ready to get on his route. He was so beloved in that community that 5,000 people came to his funeral. He drove this route for so many years. They loved him. Thirty members of his family gathered at the hospital after he was shot. He was always finding ways to take care of his family and his community. Conrad Johnson was one of the many Marylanders whose families are still grieving because of this reign of terror. Five Maryland families lost their loved ones in the sniper’s first 24 hours.

Today I stand here for the rights of those families, to have their day in court: the rights of Jim Martin’s family; he was shot when he stopped to buy groceries for his church program; James “Sonny” Buchanan, a landscape architect who was soon to be married; or the husband and the 7-year-old son of Sarah Rankin, who was shot 25 minutes later as she sat on a bench waiting for a ride to go to her babysitting job; also for the little boy named Iran Brown, who was shot in the chest as he was dropped off to go into middle school. Thanks to a guardian angel, it was his aunt, a nurse, who was with him that day when he was dropped off so she could sweep him up and be with him as he lay hemorrhaging in the hospital. Thank God, for the genius of American medicine that little boy is alive.

Family after family has endured incredible pain. Also, there are other cases that are pending. These families have been through so much they can never recover their tremendous loss. We owe it to them to make sure they have their day in court. That is why my amendment is offered to protect them, and that is why it is in such plain and simple language. It is limited to victims of John Muhammad and Lee Boyd Malvo. I don’t need any legal experts to interpret this amendment. No judge has to decide if the case fits one exemption or another. That is because, under my amendment, any case involving them must.

This is very serious. When we look at the matter, there is evidence that indicates the snipers bought something called a Bushmaster from the Bull’s Eye Shooter Supply Company in 3 years, it managed to lose 237 other guns. Imagine a gun shop that not only couldn’t find records on this gun, it had lost 237 guns.

I am not going to prejudge cases, but I am going to point fingers. Something was terribly, terribly wrong at this place.

When we look at this, Bull’s Eye could not account for 238 guns. Bull’s Eye’s missing gun rate was greater than 99 percent of all Federal arms licenses. Eighty percent of all dealers that sell at least 50 firearms a year can provide records to account for every one of them. Why couldn’t that happen there?

There is item after item about this case. When you look at Malvo and look at Muhammad, what you find is the snipers obtained a one-shot, one-kill assault weapon that was from the Bull’s Eye Shooter.
they don’t have a right to recovery, so be it. But should we pass a law to say these families do not even have a chance to go after the reckless misconduct of these gun dealers that resulted in the deaths of their loved ones? That is what this bill is all about. The Senator from Maryland has dramatized it in terms that everyone who works in this Capitol will understand.

There was a time when you couldn’t go home from work, from this building, for fear of being shot in the street. It happened over and over and over again. Why in the world would the Senate pass a bill to insulate this reckless gun dealer from his civil liability for selling these guns?

I thank the Senator for her leadership. Ms. MIKULSKI. I yield such time as he may consume to the Senator from Rhode Island.

Mr. REED. Mr. President, Senator MIKULSKI is here, doing something that is, unfortunately, necessary because the underlying legislation would cause cement pending suits on behalf of the families and the estates of these victims of the snipers to be thrown out of court. That is not unfortunate but it is unconscionable.

There are arguments that this legislation is crafted so these suits go forward. But that is not the case at all. The two salient facts in the sniper shootings with respect to this legislation are, first, the sniper, Malvo, claims he shoplifted the gun. The store manager claims that he was unaware of these weapons being missing until he was contacted after the shooting by the ATF.

As a result, none of the appropriate exemptions from the preemption to sue would apply in this particular situation.

There are two particular exemptions that are often pointed to. One talks about the negligent entrustment, which is a theory of law, and negligence per se. None would apply because it requires the defendant to have knowledge of a violation of the statute or knowledge that something untoward would happen. Under the facts as we know them, the defendant alleges he was unaware of the missing weapons.

In addition, the other exemption would be if there was a violation of Federal and State statute and that violation was the proximate cause, almost directly the substantial cause of the harm caused to the plaintiff.

That, too, can be substantiated. We have a situation where this statute not only does not cover this situation and would require these cases be thrown out of court, but it raises the extraordinary question about what other cases there might be in the future that would cry out for justice, to bring a suit and demand some type of compensation because of negligence caused by a gun dealer, a manufacturer or trade association. They, too, would fall. That would be as compelling as these cases of the Washington area sniper victims.

I commend Senator MIKULSKI for standing up for these families. They are good people. This is a cutout of these cases from law and allowing them to go forward. But it just begs the question of how many other worthy cases will be frustrated by this legislation, if we pass it. Of course, urge that we do not pass the legislation. But I certainly urge the amendment proposed by Senator MIKULSKI be agreed to.

I yield my time.

Mr. CRAIG. Mr. President, may I inquire as to the time?

The PRESIDING OFFICER. The Senator from Idaho has 20 minutes, and the Senator from Maryland has 5 minutes.

Mr. CRAIG. Mr. President, I will use some of my time at this moment.

At the outset, let me say Senator MIKULSKI and I are best of friends. We appreciate our friendship, and we work closely on a variety of pieces of legislation. There is nothing I would do nor is there anything S. 1805 will do to damage the argument and passion and concern Senator MIKULSKI has put before us today with her amendment. If you believe in the underlying bill, S. 1805, there is a problem, and the problem is Senator MIKULSKI carves out a very big exception and guts the bill in the underlying principle. Let me talk about that principle.

I ask the Senator to go with me to page 7 of the bill and to look at section 4 of the bill. Let us talk about that in relation to the phenomenal tragedy that hit this city and the families she is discussing.

Not only did her friends and neighbors hunker down in fear, but so did we as John Lee Malvo and John Allen Muhammad terrorized the neighborhoods in Maryland and Virginia.

Here is the problem. What are the facts? The Senator said I am not going to try the case on the floor, but I am going to point fingers. I am not going to try the case on the floor, but I am going to point fingers.

We probably have reasonable cause to point fingers at Bull’s Eye in Tacoma, WA. Something went wrong up there. There are over 300 guns missing. Lee Malvo himself said, I stole the Bushmaster I used in the sniper incidents in Virginia and in Maryland. “I stole the gun.” He said so. It is on the record. Already he sets up an interesting scenario.

As a result of that, the BATF pulled the license of the gun dealer and recommended felony charges be brought by the Justice Department. This case is maturing at this moment.

What does our bill do? It tries to very narrowly create an environment and an exception.

Let us go to that bill and to page 7. Let me read starting on page 6 of the bill because I think it is important. Many Senators have ignored this in the rhetoric of the day. They shouldn’t ignore it.

In general, the term “qualified civil liability action” means a civil action brought by any person against a manufacturer or seller of a qualified product or a trade association for damages resulting from the criminal or unlawful misuse of a qualified product by a person or a third party but shall not include—

In other words, the exceptions under which the Malvo and Muhammad case can be tried in which those parties the Senator is talking about contain compensation are the following:

No. 1, an action brought against the transactor convicted under section 924 of title 18 United States Code or a comparable or identical State felony law by a party directly harmed by the conduct for which the transferee is convicted.

Parties harmed. In other words, did the transferee, the gun dealer, mal-function? Did he break the law? There is a strong appearance that he might have.

No. 2, an action brought against a seller for negligent entrustment or negligent per se.

No. 3, an action in which a manufacturer or a seller of a qualified product knowingly or willingly violated a Federal or State statute applicable to the sale or marketing of a product and the violation was a proximate cause of the harm and for which the relief is sought.

No. 4, an action for breach of contract or warranty in connection with—

And then we go on to deal with basically product liability.

My point is quite simple. I believe we are protecting those families. I would not write the kind of law that is being suggested would be written. What I am concerned about are lawsuits in which we are trying to hold accountable the innocent party—in this case potentially a manufacturer of a product—unless there is criminal intent, or unless they have broken the law.

Mr. DURBIN. Mr. President, will the Senator yield?

Mr. CRAIG. I can’t yield. My time is limited. I am sorry. The Senator has had time. Let me continue.

That is the sense of the argument we are dealing with here. Negligent entrustment.

In subparagraph (a)(2), the term “negligent entrustment” means the supplying of a qualified product by a supplier for use by another person when the supplier knows or should know—

That is very important.

—the person to whom the product is supplied is likely to and does use the product in a manner involving unreasonable risk of physical injury to the person or to others. What are we trying to do here?

Again, I have said time and time again over the last 24 hours it is a very narrow exception, but to entrust us to a century of tort law that says innocent parties are not guilty nor should they be swept into lawsuits if they have met certain standards of the law—in this case, licensed gun dealers and manufacturers.

Did the folks up at Bull’s Eye in Tacoma meet those standards? We don’t know. But I will tell you the BATF pulled the Federal firearms license. There is an investigation underway. If they lost that many firearms and they didn’t notice it and they didn’t report
it, I am not an attorney, but I have to assume they have a big violation on their hands. If Malvo walks in and pulls a Bushmaster from off the rack and walks out with it and that is not detected, they have a problem on their hands. I believe they have a problem on their hands and they are not detecting it.

The argument is—and some have used it—they do not even make it to the courthouse. That is not a valid statement.

This is a basis from which you argue before the court and a knowledgeable, and I hope trusting, judge will take these evaluations in hand and make the determination that this is not a frivolous or a junk lawsuit; that there is basis, and the reason there is basis is because there has been a clear violation of Federal law.

If there has not been a violation of Federal law, even though many of us can certainly have great concern about the families involved, do we continue to support them or go out and harass through the courts legal, law-abiding citizens and producers of a legal product in this country simply because it fits the passion of the day or the politics of the moment? I think not. I don’t think any of us do that. The reason there is ambiguity is because there is a basis, and that section 4 could preempt the ability of these families to bring this case.

The distinguished Senator from Idaho has his opinion. I have my two cents from Maryland. I say the Senator from Idaho does not hold water. If there has not been a violation of Federal law, even though many of us have great concern about the victims and their families, then the Senator from Idaho has an opinion, but he did not believe the victims of Malvo and Muhammad because it is in such plain English limited to those cases by the name of the perpetrator and predator. This does not create a loophole.

Talk about loophole, talk about the gun shield loophole, talk about all the other loopholes in the gun bills. My amendment does not create a loophole. That is the reason there is ambiguity in S. 1805 and that section 4 could preempt the ability of these families to bring this case.

His point and my legal opinions prove the necessity of the amendment, to clear up the confusion, end the ambiguity, protect these victims and the families and their right to pursue.

I yield to the Senator from Illinois, a distinguished lawyer himself, to further amplify this argument.

Mr. DURBIN. I thank the Senator from Maryland.

I say to the Senator from Idaho who stood up here and said he did not believe the survivors of the DC sniper shooting had a right to go to court and therefore he was going to oppose the Senator’s amendment, I guess that is clearly his point of view, but he said just the opposite. He said he reads this law to allow the victims and their families of the DC sniper to go court against the dealer.

If that is his opinion, then he ought to accept the amendment from the Senator from Maryland and because that is all he is asking for.

If you do not believe the victims of the DC sniper should have a day in court against the dealer to determine whether or not he is guilty of wrongdoing, then just say it. But if you believe that these sniper victims and their families should have a day in court, for goodness’ sake, accept the amendment of the Senator from Maryland. If you do not, it really tells the story of your opposition.

If your bill is going to stop the families and victims of the DC snipers from holding a gun dealer guilty for irresponsible, reckless misconduct, frankly, that is another good reason for us to defeat the bill. Let us stand behind the innocent victims of the DC snipers.

Talk about people who hate guns. I do not hate guns but I hate snipers who shoot children and innocent people on the street and I hate the people who teach them how to do it. I think they ought to be held accountable. That is all the Senator from Maryland is asking.

Ms. MIKULSKI. Continuing my argument, there is ambiguity and there is honest disagreement. I know the Senator from Idaho might bring us a CRS opinion saying the cases might survive. My colleague from Rhode Island has an earlier CRS opinion that says the opposite. The point is, there is ambiguity both in the law and in opinions about the law.

My amendment is a simple, straightforward way to clear up the ambiguity and let these cases move forward.

The PRESIDING OFFICER. The Senator from Idaho has 10 minutes 30 seconds remaining.

Ms. MIKULSKI. parliamentary inquiry: Did I do something wrong?

The PRESIDING OFFICER. The Senator from Illinois referred to the Senator from Idaho in the first person.

Mr. DURBIN. I beg your pardon. Parliamentary inquiry: I referred to the Senator from Idaho on the floor; is that improper?

The PRESIDING OFFICER. The Senator several times during his talk used the pronoun “you.”

Mr. DURBIN. I apologize for using the pronoun “you.” I will never do it again.

Mr. CRAIG. Mr. President, may I inquire as to the time remaining on both sides of the Mikulski amendment?

The PRESIDING OFFICER. Ten minutes 20 seconds for the Senator from Maryland and 14 seconds for the Senator from Idaho.

Mr. CRAIG. With 14 seconds remaining for the Senator from Maryland to argue, this is her amendment, and under the unanimous consent I will then offer the Frist-Craig amendment. As we know, then they will be stood up to be voted on, Frist-Craig first, Mikulski second.

If the Senator would like to make any concluding remarks about her amendment, I would certainly welcome them. She then controls 20 minutes of the 40 that would be on my amendment and the debate could go on.

Ms. MIKULSKI. Excuse me, Senator. The Frist-Craig amendment is on what topic, is it proper?

Mr. CRAIG. On your topic.

Ms. MIKULSKI. What is the Frist-Craig amendment?

Mr. CRAIG. I have not offered it yet. Ms. MIKULSKI. You want to eliminate the debate on this amendment.

Mr. CRAIG. These certain cases aside for the Frist-Craig debate on the same subject matter and then stand these up for votes.
Mr. MIKULSKI. I have no objection to that.

Mr. CRAIG. With that, I assume all time is yielded back.

The PRESIDING OFFICER. All time is yielded back.

AMENDMENT NO. 2628

Mr. CRAIG. Mr. President, I ask the clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAIG], for Mr. Frist, for himself and Mr. CRAIG, proposes an amendment numbered 2628.

Mr. CRAIG. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To exempt any lawsuit involving a shooting victim of John Allen Muhammad or John Lee Malvo from the definition of qualified civil liability action that meets certain requirements.)

On page 9, line 2, strike the period at the end and insert `" or "`

On page 9, between lines 2 and 3, insert the following:

(v) an action involving a shooting victim of John Allen Muhammad or John Lee Malvo that meets 1 of the requirements under clauses (i) through (vi).

Mr. DASCHLE. Reserving the right to object, I will not object, but I am told we have not had the opportunity to see the text of these amendments. If we are going to work in good faith, it is very important that on all of these alternative amendments the text be provided if they are available and certainly before they are offered.

Mr. CRAIG. If the minority leader will yield, it is my fault. I apologize. We will place ourselves in a quorum until they have copies. It is brief and to the point and easy to understand for everyone.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAIG. Mr. President, I apologize once again to the Senator from Maryland that the stand-beside amendment I offer in conjunction with hers was not to her. We have a stand-beside Frist-Craig amendment to the Corzine amendment, which may follow immediately. We are copying that now to make sure Senator CORZINE and the other side has a copy of it.

My amendment, as you can see, is really very simple, but it is also extremely important. It is simple in this respect: 55 cosponsors of S. 1805 have cosponsored S. 1805 because of its narrowness, of its cleanliness in the fact that we do not clutter up a lot of laws and we create one very limited but very important exemption, and that is that junk lawsuits filed by a third party cannot reach through and suggest that someone who produces a legal product can be held liable for that product unless they have broken the law or a person selling that product is not held liable for that product unless they have broken the law.

My amendment says, in essence, if an action involving a shooting victim of John Allen Muhammad or John Lee Malvo meets any of the exceptions of S. 1805, the action will not be barred by this bill.

Again, what are those exceptions? Well, I have read them earlier. Let me repeat them. They are very clearly outlined in section 4 of the bill, and what we say is:

The term "qualified civil liability action" means a civil action brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages resulting from the criminal or unlawful misuse of a qualified product by the person or a third party.

In other words, if that third party is a guy who breaks the law, but the seller and the manufacturer are not, then the judge looks at that and makes that determination and says no.

But here in the Maryland and in Virginia, it is found that:

(an action brought against a transferee convicted under section 924b of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted—

"Transferee," in this case, in my opinion, at least, is Bull's Eye. They are the ones responsible for that fire-arm. They are the ones that would have sold it to him. It was stolen from their shop. It appears to have gone unreported.

Secondly:

an action brought against a seller for negligent entrustment or negligence per se.

So we have not swept that away nor will we sweep that away. In fact, I believe we strengthen it, and so does the Congressional Research Service. While there may be a difference of opinion on that, I think what is significant is that Senator DASCHLE and I agree. We teamed up together to strengthen this and to clarify the Congressional Research Service, our amendment:

would strike "knowingly and willfully" in the preceding sentence, potentially increasing the likelihood that this exception to the general immunity afforded under the bill would be applicable in any given case.

In this case, it probably strengthens the position we are dealing with here, as the Senator from Maryland and I visit about it. It probably strengthens the position but, I believe, fulfill the concern and the arguments of the Senator from Maryland.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, the Senator from Idaho points to every exception because he can't point to one exception that will clearly establish the right of these plaintiffs to go forward to make their case. The way this legislation is structured, for this qualified civil liability action may not be brought in any Federal or State court. You are thrown out of court unless you can get yourself back in by an exemption. In these cases, you are dismissed, you are thrown out. You are out the door. The intent is very clear. It is to stop individuals from suing dealers, manufacturers, and trade associations.

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What about these exemptions? The first exemption deals with the transferor or convicted. There have been no charges in Bull’s Eye, no conviction. What happens? The case is already dismissed. Is there language the Senator from Idaho will apply reinstating the case automatically?

The second is a possibility that is negligent entrustment or negligence per se. All of these require knowledge on the part of the defendant. The facts of Bull’s Eye clearly suggest there is no evidence so far presented that the owner knew the gun was shoplifted and, in fact, he alleges he was not aware of any missing weapons until he was confronted by the ATF after the crime. This does not apply.

Finally, there is the violation of a Federal or State statute. The Senator from Idaho often talks about, well, if there is a violation of Federal and State statute, that, of course, allows a person to go forward with this case.

But there are two parts of this test. State or Federal statute violated, and that violation causes proximately, substantially the injury. In effect, what would have to be shown for any type of liability to adhere to the Bull’s Eye case under this arrangement is that he was aware of the missing weapons more than 48 hours before he was confronted by the ATF, and he consciously disregarded his obligation to report not just a missing weapon but the particular weapon that was taken by Malvo. None of these exceptions apply to Bull’s Eye or, if they apply, it is a very tortured reach to make the application.

Then this amendment simply says: Well, if you fall under the statute, you get to use the statute. This is a circular, is a kind way to describe what this is. You could substitute anybody’s name in the United States. It doesn’t have to be John Allen Muhammad or John Lee Malvo. It could be the victim of any criminal today walking around the streets of America with a handgun. Because if you are injured by that individual with a handgun and you fall into these categories, you get to go to court.

But this is an easy amendment because very few people, if any, will qualify under these criteria. That is the whole point of this carefully worded, excruciatingly arcane approach to shutting people out of court. That is what this is about.

Essentially you can’t have it both ways. You can’t stand up here and claim you are protecting the industry from frivolous suits but every suit we bring up is a possible worthy and meritorious suit. Well, of course, that will get into court. Of course, it is one of the exceptions. You don’t get it both ways.

You get it one way in this bill, innocent people injured by the negligence of dealers, of manufacturers lose. And they win.

We are not just giving out Federal firearms licenses, if this legislation passes. We are giving a license to be negligent and reckless—grossly negligent and grossly reckless. That is what a Federal firearms license means, if this legislation passes.

I yield the floor and retain the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. REED. I yield 5 minutes to the Senator from New Jersey.

Mr. LAUTENBERG. I thank the Senator for yielding the time to me. I associate myself with the amendment that was initially introduced by my colleague from Maryland, Senator Mikulski. I rise to raise questions about that which is currently now being offered by the Senator from Idaho.

There is no doubt about the appropriateness of the amendment, as it was presented by the Senator from Maryland, because it was her constituents, seven of them, who were shot by the sniper, six of whom were fatalities.

For over a month in the fall of 2001, John Muhammad and John Lee Malvo terrorized the Washington metropolitan area through a series of vicious sniper attacks on innocent men, women, and children. In the area, around Washington, DC, Maryland, and Virginia. Ten of the 13 died.

We have heard the names of those such as Linda Franklin, 47-year-old FBI analyst, standing with her husband in the Home Depot parking lot in Virginia. She was killed. Another was Pascal Charlot, a 72-year-old retired carpenter standing on a street corner, shot and killed. Another victim was Iran Brown, a 13-year-old boy who had just been dropped off at school.

My fellow Senators now prepare to tell mothers and victims throughout the United States that they don’t have a right to file a civil lawsuit against individuals and businesses that helped cause this tragic event.

We had a debate on the floor yesterday. There was a question, a semantic question, about whether or not the Bull’s Eye store was really closed. One of my staff called the numbers and they said: Yes, we are open until 7 o’clock. Do you want anything—this is my edition: if you want anything shipped out, we will get you guns.

So we argued about whether or not they were really closed or who had the license or what. Those are extraneous things having no significance in the debate.

We see the same thing replicated here. If you meet certain conditions, you are still able to bring suit. But if one of the conditions is present, then you can’t bring suit.

Why don’t we tell it like it is? And that is, by whatever stretch of the imagination you want to bring, these people, the victims of the sniper attacks, are unable to bring a suit. There is no doubt about it. We can discuss language all you want, but it is the intent.

I throw another obstacle in the way for these victims to get some justice, some sense of what it is that took place that was wrong and how we can help prevent it in the future.

To hear these discussions immersed in language changes, I suppose if you study it closely enough, you will find punctuation changes. Bull’s Eye claimed they didn’t have any record of sale. They cannot explain how the snipers obtained the assault weapon. I have not heard any condemnation of their poor practices; that 227 weapons were lost. What a shame. If any normal store lost items that cost this much, they would be in a state of panic. Apparently, these guys did not care that much, but we still want to prevent the public from being injured by their poor behavior from getting compensation that is justly theirs under normal circumstances.

Why we have to take away people’s rights is something, frankly, I do not understand. I hope the public at large begins to raise questions: What is this? Do you mean if I am injured in an automobile accident and the automobile manufacturer has been negligent, that they did not protect the consumer? Or when computers crash, when it was hit in the back, I shouldn’t be able to get compensation for that small error? It may have burned you alive. Or if there was such a casual structure of behavior with a pharmaceutical company, and they put the wrong tablets in a bottle, and if someone there, in a moment of madness, put the wrong tablets in a bottle and a person becomes ill or dies, they shouldn’t be able to bring an action? This strikes me as something that the citizenry, who is expecting us to take care of them, is unable to comprehend.

This debate goes on and there is always another trick, another maneuver to try and interrupt the flow of what we would consider normal justice. I hope we will defeat the amendment because it adds nothing to the compromise that we have to arrive at to get the kind of voting pattern—the record that says, yes, we made sure the people who suffer these terrible damages have a right to compensation or to a review by an impartial body to decide that issue.

I hope we will defeat the Frist-Craig amendment and get on to the Mikulski amendment, which approaches the problems directly. These people have been severely injured by the actions of the snipers who got the gun illegally, inappropriately, improperly—call it what you will.

I yield back the remaining time.

Mr. REED. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. The Senator has 8 minutes 22 seconds.
video. I was unaware of that. If that is true, that is apparently more evidence. But once again, here we are with a jumble of facts that we really do not know because we were not the investigators; we were not on the scene. We are taking this from newspaper reports.

What I am saying is if the Bull’s Eye shop is in violation of the law, then the Frist-Craig amendment or the underlying S. 1805 clearly does protect all of these victims so they have their day in court. The other door is not shut; would not be shut by S. 1805 or the amendment at hand.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, before giving all the remaining time to Senator MIKULSKI, I would like to make one point. In the CRS report to which the Senator referred, essentially he failed to note a footnote that says essentially that evidence does not appear that any evidence has been produced of actual violations of these provisions by Bull’s Eye in the case at hand.

If you assume they violated the law, then, of course, the exemption applies. The CRS report suggests they knew nothing about the disappearance of the weapons, and this legislation will bar the individuals from court.

I add one simple point. Even if we are slightly in doubt debating this issue, the proper question they should have asked was Mikulski’s amendment which puts them in court.

I yield the remaining time to Senator MIKULSKI.

Ms. MIKULSKI. Mr. President, this amendment is needed.

The plain language of section (5)(A) of the bill S. 1805 reiterates what the bill says. It says that the sniper cases have to fit in to one of the exceptions revealed in (v) of section 4. He talked about a car not functioning properly and somebody being injured. That is called product liability. It says:

(v) an action for physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended.

Please read the bill when you make those kinds of statements because if the Senator had, that would have been, in my opinion, improper. We are not talking product liability.

Mr. LAUTENBERG. Is the question being referred to me directly?

Mr. CRAIG. No, I am only responding.

The PRESIDING OFFICER. The Senator from Idaho has the floor.

Mr. CRAIG. The Senator knows I am only responding to a comment he made. I am simply suggesting that for the next few moments he might wish to read the Senator’s question. Here we are not dealing with product liability. It appeared the Bushmaster tragically operated very well. What is at hand is, Are the people at Bull’s Eye involved in wrongdoing? That is the question at hand. And should we go after them?

We are carving that out in a way so that the victims can go after them if they are found guilty of a Federal violation. Let me read what CRS suggests the Daschle-Craig amendment does:

In the case at hand—

They are referring to the DC snipers—

it has been asserted that the firearm—

And we can only say “asserted” at this moment because it is under investigation—

it has been asserted that the firearm used in the D.C.-area sniper shootings “disappeared from Bull’s Eye’s place of business “[o]n or about August or September of 2002,” and was not reported as missing until November 5, 2002. Pursuant to 18 U.S.C. 923(j)(6)(a) a license—

That is Bull’s Eye’s—

is required to report the theft or loss of a firearm within 48 hours after the theft or loss is discovered. Thus, in the event that it is established that Bull’s Eye was aware that the firearm was missing from its inventory more than 48 hours prior to November 5, 2002, the amendment would appear to lend further support to the application of the exception to immunity under 4(5).

My point is quite simple: If the evidence is there—and I believe the Senator from New Jersey yesterday referenced the presence of Lee Malvo on a...
I really do believe the Frist-Craig amendment would gut their ability to move ahead. It is trying to shoehorn into these exceptions and yet at the same time these very exceptions would prohibit them from bringing their claim. I really ask on behalf of these families to be able to do this. Also, in another section, the negligent entrustment/negligence per se exceptions embodied in paragraph (5)(A)(iii) will not save them. As an initial matter, these exceptions are limited to a seller, and it goes on and on. What it says in a nutshell is that it would preclude them from moving forward.

For the information of my colleagues, this legal opinion letter was printed in yesterday’s Record. I also acknowledge that the Senator from Idaho has a different view than this legal opinion but that is the point of the amendment. I have a legal opinion. He has his expertise and the CRS opinion.

I think it is the opinion of the American people, that when someone brings a whole community to a paralyzing halt, when people have been ghoulishly and pathetically shot down in a deliberate, predatory, and cruel manner that in this country one ought to at least be able to go to court to seek some redress. All I am doing is preserving their right to do so.

When we say we want to stand up for American people, that when someone brings a whole community to a paralyzing halt, when people have been ghoulishly and pathetically shot down in a deliberate, predatory, and cruel manner that in this country one ought to at least be able to go to court to seek some redress. All I am doing is preserving their right to do so.

I yield the floor.

Mr. LAUTENBERG. I would like to ask the Senator from Maryland a question.

The PRESIDING OFFICER. The Senator from Maryland has 25 seconds remaining.

Mr. LAUTENBERG. I ask the Senator from Maryland, is there anything that is in the CRAIG amendment that changes the ability of these victims to sue?

There are conditions, are there not, that he places in there that make them jump through another hoop in order to be able to sue?

Ms. MIKULSKI. Yes, it gives a whole set of other obstacles.

Mr. LAUTENBERG. They may have not met these conditions but they still have had the damage and the tragedy that befell them.

Ms. MIKULSKI. Yes, and they have also filed suits. What we are concerned with is this bill will preempt those suits. They will be thrown out. They will be dismissed and the families will face yet another injustice at the hands of the Congress.

Mr. LAUTENBERG. I thank the Senator.

The PRESIDING OFFICER. The Senator’s time has expired. The Senator from Idaho.

Mr. CRAIG. Mr. President, I have 8 minutes remaining. I will try not to use it and will yield it back so we can get to the votes on these two amendments.

The Senator from Maryland talked about an American principle, and I agree with him. There is an American principle that says everyone should have their day in court, and she is right. There is a second American principle that says that law-abiding citizens who do law-abiding things should not be dragged into court for frivolous purposes or junk lawsuits. That is the other American principle. It is as old as tort law itself. The responsibility is tied to the individual, unless the individual under law is found totally negligent.

She and I have agreed the case cannot be tried here because we simply do not know the facts. We know a little bit about it. We know bits and pieces about it but we have not seen the BATF’s report. We have not seen the kind of investigation that has gone on. Is this agreement with the Senator; everyone should have their day in court. I do not know how many are saying that S. 1805 does not even allow them to get to court.

It allows them to argue before the judge the basis of the law, and the judge will make the determination. I suggest that that is called “in court” and that is exactly what my amendment does. That is what S. 1805 does. It is very clear.

The Senator might be suggesting that this is just one small group. No, no, this is not one small group. This happens to be a tragically large group, by all of our estimation in Virginia and Maryland, but once this is decided how will this precedent be used by others?

She talks about gutting the opportunity. I suggest her amendment guts S. 1805. Proponents of the amendment claim that it provides an exception for a small group, but any carve-out that is made part of this legislation would have the Government turned on its own principles of equity and justice. Insofar as the amendment would designate a particular group of people, though sympathetic—and all of us agree to that—different in the eyes of the law than others and justice so far as it would be required to hold remote other responsibilities for the independent actions of two men.

That is the essence of the two amendments. They are very clear before us. It is three votes on these issues. The Senator from New Jersey is now in the Chamber with his amendment.

Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 5 minutes 45 seconds remaining.

Mr. CRAIG. I yield the remainder of my time. I ask for the yeas and nays on the two amendments.

The PRESIDING OFFICER. There is objection to asking for the yeas and nays on both amendments at once.

Is there objection, it is so ordered.

Is there a sufficient second?

VOTE ON AMENDMENT NO. 2628

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2628. The yeas and nays have been ordered. The clerk will call the roll.

The senior Journal clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) and the Senator from Alaska (Ms. MURKOWSKI) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote “nay.”

The PRESIDING OFFICER (Mr. CHAMBLISS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 59, nays 37, as follows:

[Rollcall Vote No. 19 Leg.]

YEAS—59

Alexander
Allen
Baucus
Bayh
Benner
Bond
Boxer
Brownback
Bunning
Burns
Chambliss
Cooper
Cranston
Collins
Corzine
Cochran
Clements
Cochran
Craio
Craig
DeWine
Dole

Domenici
Dorgan
Risch
Frist
Graham (SC)
Grassley
Gregg
Hagel
Hatch
Inhofe
Johnson
Kyl
Landrieu
Lincoln
Loe
Craio
Crapp
Dodd

Miller
Nelson (FL)
Nelson (NE)
Nickles
Pryor
Reid
Roberts
Rockefeller
Santorum
Sessions
Shelby
Smith
Snowe
Specter
Stevens
Summum
Talent
Voinovich

NAYS—37

Akaka
Biden
Baucus
Boxer
Byrd
Cantwell
Carper
Chafee
Clinton
Conrad
Corzine
Dayton
DeWine

Dodd
Durbin
Enzi
Feinstein
Fitzgerald
Graham (FL)
Harkin
Hollings
Byrue
Jeffords
Kennedy
Kohl
Lautenberg

Leahy
Levin
Lieberman
Milinkski
Murray
Reed
Sarbanes
Schumer
Stabenow
Warner
Wyden

NOT VOTING—4

Campbell
Edwards
Frist

Kerry
Murkowski

The amendment (No. 2628) was agreed to.

Mr. CRAIG. I move to reconsider the vote.

Mr. BOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2627

The PRESIDING OFFICER. There are now 2 minutes of debate on the Mikulski amendment, evenly divided, to
be followed by a vote. And the yeas and nays have already been ordered.

The Senator from Maryland.

Ms. MIKULSKI. Mr. President, my amendment, I believe, is far superior to the amendment the Senate just adopted. It is a straightforward amendment. It exempts from the bill all cases related to those committed by the despicable predators John Malvo and John Muhammad. This is a very specific, very limited exemption. I urge the Senate to consider it.

If we really want to honor the victims of the sniper cases, please give them the opportunity to pursue their cases in court. We have a substantial legal opinion from an eminent scholar such as Lloyd Cutler, who says if this bill passes, and passes with Frist-Craig, the victims’ cases will be thrown out of court absolutely or, at the very least, be left in great ambiguity.

Please, let us do justice to the victims and least give them the opportunity to seek justice.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I say to my colleagues, you have just voted for the Frist-Craig amendment. If you now vote for the Mikulski amendment, you have totally reversed your vote. The Mikulski amendment guts the underlying bill. S. 1805, carves out a substantial exception. If you are supportive of S. 1805, then you vote no.

But do we protect the right of the victims for their day in court? We absolutely do. There are four major exceptions in which we say, if these parties are found guilty, if there was a negligent manufacturer—and that is a fact and it is proven—then their day in court is there, as it should be.

But we do not allow frivolous third-party claims. That is the underlying premise of the bill. Again, if you voted for Frist-Craig, I would ask you to vote against Mikulski.

I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the Mikulski amendment. The yeas and nays have previously been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

If further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote “aye.”

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 40, nays 56, as follows:

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The amendment (No. 2627) was rejected.

Mr. REID. I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The next order of business is an amendment by the Senator from New Jersey with 30 minutes of debate equally divided.

Mr. CORZINE. Mr. President, on behalf of myself, Senator LAUTENBERG, Senator MIKULSKI, Senator KENNEDY, Senator CLINTON, and Senator BOXER, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. CORZINE], for himself, Mr. LAUTENBERG, Ms. MIKULSKI, Mr. KENNEDY, Mrs. CLINTON, and Mr. BOXER proposes an amendment numbered 2629.

Mr. CORZINE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Purpose: To protect the rights of law enforcement officers who are victimized by crime to secure compensation from those who participate in the arming of criminals.

On page 11, after line 19, insert the following:

SEC. 5. LAW ENFORCEMENT EXEMPTION.

Notwithstanding any other provision of this Act, nothing in this Act shall be construed as limiting the right of an officer or employee of any Federal, State, or local law enforcement agency to recover damages authorized under Federal or State law.

Mr. CORZINE. Mr. President, I strongly oppose the underlying legislation before the Senate which waives liability for gun dealers and manufacturers. In my view, the legislation strips away the legal rights of victims of gun violence and shields wrongdoers from accountability. It provides special exemptions for the narrowest of special interests, and it would make our country less safe.

The bill uses a variety of complicated legal concepts, narrowly drawn exemptions, to shield irresponsible gun dealers and manufacturers from accountability. When we get beyond the legalese and Washington speak, the bottom line is the bill will limit the legal rights of our police officers, our first responders.

I think that is wrong. In my view, no victim of gun violence should be denied their day in court. Each should be allowed an opportunity—a chance—to make their case. That is why I believe this whole bill is a mistake.

That said, I am a realist. I recognize the majority of my colleagues, based on the cosponsorship, disagree. On Tuesday, this legislation will likely be approved. That is why my amendment is so important and needs to be dealt with.

My hope is we can at least reach an agreement that even if we are going to strip away the rights for most Americans, we will not take away the rights from the men and women who serve as our Nation’s law enforcement officers, the protectors of the peace, the people who serve on our streets, in our neighborhoods, our first responders.

I know all my colleagues appreciate the tremendous service and risk our law enforcement on our streets provides to our communities, so I hope they will share my interest in protecting their rights.

The importance of protecting the rights of our police officers was brought home to me and, I am sure, Senator LAUTENBERG through a case of two police officers in the State of New Jersey; New Jersey Police Detective David Lemongello and Officer Ken McGuire.

In 2001, they were seriously injured when a career criminal shot them while they were working undercover. This criminal was prohibited from purchasing a firearm but he obtained his gun illegally from a trafficker. As it turns out, the trafficker also was prohibited from buying weapons and had used a so-called straw purchaser to make multiple gun purchases from a store in West Virginia.

The cash sale for thousands of dollars was so obviously suspicious that the dealer apparently felt guilty. On the same day, he took the money and after the guns walked out the door, the dealer called into the ATF and identified him. But that was
after the guns were gone. Unfortunately, at the time of the sale the dealer apparently thought it was more important to make a profit than to protect the lives of innocent victims.

Sure enough, Officers Lemongello and McGuire are heroes. They honorably suffered a serious injury and came very close to losing their lives. Their families suffered from their loss and both of them lost their careers and are no longer able to serve as policemen.

I want to tell you a personal statement from one of these officers, Ken McGuire, because I think it expresses better than I can just how outrageous it would be for the Senate to strip them of their rights. This is some of what Officer McGuire said:

During a stake-out, Detective Lemongello and I were shot by a felon. I ended up getting into a gunfight with the criminal in a snowy backyard. That has changed my life forever. I was shot in the right femur, and it blew apart my femur and also caused extensive damage to my leg. I lost 17 units of blood that night. . . . Because of the injuries I suffered from that shooting, I will never be a police officer again.

This is the same for Officer Lemongello.

He goes on to say:

I’ve heard some people say, “Well, criminals can just get guns,” as if there is nothing anybody can do to stop them from getting guns. Well, guns don’t fall from the sky, or grow from trees, this one didn’t either. The man who shot us got the gun because of an irresponsible gun dealer in West Virginia . . . who sold 12 handguns to a straw purchaser who gave them to a gun trafficker. What legitimate reason would two people have to buy 12 handguns? . . . Why wouldn’t the gun dealer even ask the purchaser: Why would you need 12 guns? Why? Did I mention the purchasers paid for all of this in cash? If there is one thing that would indicate the destination of these guns, which was northern New Jersey, months earlier I arrested a suspect with the same gun make and model from the same shipment in town.

Officer McGuire continues:

We have filed a lawsuit in West Virginia to hold the irresponsible dealer accountable. The dealer argued in court that it had no responsibility to use reasonable care in its business, but a judge in West Virginia disagreed. She ruled that we have a legitimate case under West Virginia law, and that a jury should decide whether this dealer acted reasonably.

That’s all I want today: my day in court, to exercise my right as an American to press forward before a jury of my peers and let them decide, under the law, whether these gun sellers were reasonable or whether they contributed to my shooting.

Officer McGuire says:

If this bill is passed, Congress will be changing the policy for gun traffickers, overruling the West Virginia judge, and taking away our rights. That is shameful.

I think it is, too.

I call on all Senators to do everything in their power to prevent this bill from becoming law.

That was the message from Officer McGuire, but it could have just as easily come from the countless other law enforcement officers who have been injured or killed by guns trafficked by irresponsible gun dealers and manufacturers.

I was talking to Senator Durbin about a situation in Chicago. There is a case in a lower court. How can any of us look into the hearts and minds of these officers, such as Officer McGuire, and tell them we are going to take away their rights? How can we tell David Lemongello he risked his life on behalf of our community, and he almost lost it because of an irresponsible gun dealer, that he will be suffering from the attack for the rest of his life but if he wants to go to court, if he wants justice, our answer to him is no?

Remember, the question before the Senate is not whether these two police officers, or any police officer, has a good case. It is simply whether they have a right to make their case. It is whether they have a right to try to convince a jury that a gun dealer acted irresponsibly and whether they deserve compensation as a result.

I do not call this a frivolous lawsuit. I consider this a right for a law enforcement officer to have a right to make their case in court before a jury. This is who we are. There was that day in court. Not only would it strip these two heroes of their legal rights, it would do so retroactively.

I know we are going to hear about narrowly defined exceptions that will not allow for it. I do not think law enforcement officers should be limited in their ability to make their case before a jury. As far as I am concerned, it is an affront to these officers and an insult to every police officer who puts his or her life on the line for the community, and it sends precisely the wrong message when we are supposed to be enhancing homeland security and reinforcing the risks that people are taking to protect our families and our communities across this country.

My amendment is very simple. In fact, I will read it word for word:

Notwithstanding any other provision of this Act, nothing in this Act shall be construed as limiting the right of an officer or an employee of any Federal, State or local law enforcement agency to recover damages authorized under Federal or State law.

I suspect we will hear about amendments that draw these narrow lines of exception. Why is it that a law enforcement officer cannot go into a court and get redress if they have been wronged in the illegal sale or the negligent sale of firearms to criminals? I do not get it.

That is the entire amendment. That is what we are about. In essence, this amendment stands for the proposition that we should not strip police officers of their rights. It says that members of law enforcement who are victims of gun violence should have their day in court—no new rights, nothing guaranteed, just their day in court.

The advocates of this legislation argue that it is necessary to prevent frivolous litigation. I think they are wrong. But does this Senate really believe that law enforcement officers are flooding the courts with frivolous lawsuits? Is that what our law enforcement officers are doing? Do we really believe men and women who die on their job and those whose lives are jeopardized by irresponsible gun dealers and manufacturers are trivializing the judicial process, that Congress needs to take away their rights because they are? I do not believe that and I do not believe anybody in this body does.

Sure enough, there is no evidence of it, and even to suggest it seems out of place given the trust that we give to these men and women in our local communities.

Our men and women in uniform put their lives on the line for us every day. The least they should be able to expect from us is that we would not strip away their rights when they suffer from gun violence, and that is what I think we are doing. I hope my colleagues will stand with me and the men and women of law enforcement and support this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. CORZINE. How much time is remaining?

The PRESIDING OFFICER. The Senator from New Jersey has 5 minutes 25 seconds.

Mr. CORZINE. I yield to my colleague from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I thank my colleague and good friend from New Jersey whom I have worked very closely on many issues. There is not anything that we have done that binds us more closely than this action because we are witnessing it firsthand. We talked to the two officers who were mentioned in Senator Corzine’s commentary.

To me, this whole situation is surreal. The fact that when there is a photo opportunity with a cop who is in uniform, we can see him chased by six men and women of law enforcement and awarded a serious injury and came very close to losing their lives. That was the message from Officer McGuire.

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and lose your life. The difference is the military takes some care of you. There are insurance programs, other programs. Many of these small police departments don’t have the kind of resources to provide on their own for the well-being of those families.

This is an outrage that is being perpetrated on these law enforcement people. It is an outrage. I hope the public understands what we are doing here. We want the people to work in those dangerous jobs and if we don’t want to let them on their own go to the courts. That is the process in this country of ours. We will not let them go to court to see if there are any damages. They never repair the damage to the mind. They never repair the damage to the heart. You can’t repair the damage to the soul. But we at least ought to be able to say: Listen, if you can bring a suit that shows either the manufacturer or the distributor or the retailer, like the shop in Oregon, was negligent in these dangerous weapons—the weapons—safeguards on these weapons—we ought to be able to say to them, if anything happens to you, you can go to court and you can seek damages.

But there is a group here who says no, we want to take away your right to sue. Do you know why? Because the NRA doesn’t like it—putting it straight up. The NRA doesn’t want that to happen. The NRA writes the legislation, for goodness sake. They don’t want it to be available. They don’t want these people to have the same rights everybody else has. If you are killed in an airplane crash or a car crash or otherwise, you have a right to go to court.

I have heard the story about product liability. We are not going through that again. We don’t worry about product liability. We worry about negligence and recklessness and you are blocked from bringing suit. It is outrageous.

In the year 2003, 148 law enforcement officers across the nation were killed in the line of duty; 52 of those fallen officers were shot to death. I would like it if the managers of the bill who so desperately want this to pass would go to those families and say: You know what, we are sorry. Gosh, Joe was a great guy. We heard about him. He was a Boy Scout leader, all of those things. But that is the nature of the job. So you lose him. Go find another way, Madam Speaker, to see if you can support your kids. See if you can get a job. You may have to leave the kids at home because you don’t have enough money to take care of them and buy other things.

Every law enforcement officer fatality is a national tragedy. The only place it doesn’t ring true is here. They don’t want you to have the same rights ordinary citizens have when they are injured. It is incredible to me. We go through all semantic schemes here about: No, it doesn’t really mean that. But it does block their right to collect damages if they are injured.

The PRESIDING OFFICER. The time controlled by the Senator from New Jersey has expired. Who seeks time?

Mr. LAUTENBERG. Mr. President, I ask unanimous consent to have printed in the RECORD a list of police officers who have been killed in the line of duty and feel they are not protected, including an ad run by the Brady Campaign.

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

POLICE ORGANIZATIONS THAT OPPOSE THE IMMUNITY BILL

Major Cities Chiefs Association represents police executives from over 50 of the largest cities in the United States of America.

National Black Police Association (NBPA) (nationwide organization of African American Police Associations representing approximately 35,000 individual members)

Hispanic American Police Command Officers Association (HAPCOA) (represents over 1,500 command law enforcement officers from local, state and federal agencies)

Police Foundation (a private, nonprofit research institution supporting innovation in policing)

Michigan State Association of Chiefs of Police

Rhode Island State Association of Chiefs of Police

Chief Randall J. Ammerman, Two Rivers, WI Police Department

Chief Ron Attenapas, Blackstone, MA Police Department

Chief William Bratton, Los Angeles, CA Police Department

Commander (Ret.) Lloyd Bratz, Cleveland, OH Police Department

Chief (Ret.) Neil K. Brodin, Minneapolis, MN Police Department

Ronald J. Brown, D.A.R.E. America, Special Agent (Ret.) DEA

Chief Thomas V. Brownell, Amsterdam, NY Police Department

James L. Buchanan, Officer (Ret.) Montgomery County, MD Police Department

Detective Sean Burke, Lawrence, MA Police Department

Chief John H. Drage, Wilmington, NC Police Department

Chief Michael J. Chitwood, Portland, ME Police Department

Superintendent Philip J. Cline, Chicago, IL Police Department

Chief Kenneth V. Collins, Maplewood, MN Police Department

Agent Patrick J. Connaire, U.S. DOJ

Deputy Javier Custodio, Passaic County Sheriff’s Department, NJ

Chief James Deloach, South Bethany, DE Police Department

Chief Gary P. Dias, Rhode Island Division of Sheriffs, East Providence, RI Police Department

Chief Jed Dolnick, Jackson, WI Police Department

Chief Martin Duffy, Newton Township, PA Police Department

Officer David Elliott, Scranton, PA Police Department

Chief Robert E. Faherty, Baltimore City, MD Police Department

Chief David G. Farrington, Burnsville, MN Police Department

Officer Linden Franco, Chicago, IL Police Department

Enrique Gallegos, Department of Homeland Security, U.S. Border Patrol

Officer Doris Garcia, New York City Police Department

Chief Charles Gruber, South Barrington, IL Police Department

Patrick Gulton, Asst. Special Agent in Charge, Treasury Dept., Seattle, WA

Chief (Ret.) Thomas K. Hayselden, Shawnee, KS Police Department

Former Superintendent Jerry G. Hillard, Chicago, IL Police Department

Sven Higgins, Director (Ret.), ATF

Officer Otis Hosley, Chicago, IL Police Department

Deputy Chief Victor E. Hugo, Amsterdam, NY Police Department

Chief Ken James, Emeryville, CA Police Department

Chief Calvin Johnson, Dumfries, VA Police Department

Captain Michael Johnson, Philadelphia, PA Police Department

Officer Bernard Kelly, Chicago, IL Police Department

Agent Lavra A. Kelso, U.S. Marshals’ Service

Chief R. Gil Kerlikowske, Seattle, WA Police Department

Sergeant Robert Kirchner, Chicago, IL Police Department

Chief Michael F. Knapp, Medina, WA Police Department

Officer Chad Knorr, Amity Township, PA Police Department

Officer Edward Krely, Philadelphia, PA Police Department

Deputy Chief Jeffery A. Kumorek, Gary, IN Police Department

Detective John Kutnour, Overland Park, KS Police Department

Lieutenant Curtis S. Lavarello, Sarasota County, FL, Sheriffs Department

Sheriff Ralph Lopez, Bexar County Sheriffs Department, San Antonio, TX

Chief Cory Lynn, Ketchum, Idaho Police Department

Chief Larry W. Mathieson, Ormond Beach, FL Police Department

Officer J.R. Malveiro, Philadelphia, PA Police Department

Officer Joseph Markler, Philadelphia, PA Police Department

Chief Mark A. Marshall, Smithfield, VA Police Department

Chief Burnham E. Matthews, Alameda, CA Police Department

Captain Michael McCarrick, Philadelphia, PA Police Department

Sergeant Michael McGuire, Essex County, NJ Police Department

Chief Jack McKeever, Lindenhurst, IL Police Department

Chief Roy Meisner, City of Berkeley, CA Police Department

Jill B. Musser, Legal Advisor, Boise, Idaho Police Department

Chief William Musser, Meridian, Idaho Police Department

James Nestor, NJ Attorney General’s Office

Detective Kevin Nolan, Salem, NH Police Department

Gerald Nunziato, Special Agent-In-Charge (Ret.), ATF

Chief Howard O’Neal, Neptune Township, NJ Police Department

Chief Albert Ortiz, San Antonio, TX Police Department

Chief Richard J. Pennington, Atlanta, GA Police Department

Officer Thomas Pierce, Chicago, IL Police Department

Chief Charles C. Plummer, Alameda County, CA Sheriff’s Office

Chief Irvin Portis, Jackson, MI Police Department

Chief Sonya T. Proctor, Bladensburg, MD Police Department

Agent Michael J. Prout, U.S. Marshals’ Service

Lieutenant Raj Ramnarace, LaCrosse, WI Police Department

Chief Edward Reines, Yaapaai-Pescott Tribal Police, AZ

Jerry Roblin, Acting Deputy Superintendent, Bureau of Investigative Services, Chicago, IL Police Department

February 26, 2004

CONGRESSIONAL RECORD — SENATE

S1665

IMMUNITY BILL

In the year 2003, 148 law enforcement officers across the nation were killed in the line of duty; 52 of those fallen officers were shot to death. I would like it if the managers of the bill who so desperately want this to pass would go to those families and say: You know what, we are sorry. Gosh, Joe was a good guy. We heard about him. He was a Boy Scout leader, all of those things. But that is the nature of the job. So you lose him. Go find another way, Madam Speaker, to see if you can support your kids. See if you can get a job. You may have to leave the kids at home because you don’t have enough money to take care of them and buy other things.

Every law enforcement officer fatality is a national tragedy. The only place it doesn’t ring true is here. They don’t want you to have the same rights ordinary citizens have when they are injured. It is incredible to me. We go through all semantic schemes here about: No, it doesn’t really mean that. But it does block their right to collect damages if they are injured.

In the year 2003, 148 law enforcement officers across the nation were killed in the line of duty; 52 of those fallen officers were shot to death. I would like it if the managers of the bill who so desperately want this to pass would go to those families and say: You know what, we are sorry. Gosh, Joe was a great guy. We heard about him. He was a Boy Scout leader, all of those things. But that is the nature of the job. So you lose him. Go find another way, Madam Speaker, to see if you can support your kids. See if you can get a job. You may have to leave the kids at home because you don’t have enough money to take care of them and buy other things.

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of legal standards in this country we believe all people should stand under.

The Senator from New Jersey is a man who creates law. The picture beside him is of a man who enforces law. We have open and obvious respect for both, and we stand in this country, because of the country of laws. That gentleman you talked about so eloquently who is pictured beside you is a man who puts on the uniform every day and goes in harm’s way. There is no doubt about it; he is a Senator on this floor who does not respect men and women in uniform, whether they be civil police in this country or are men and women in the armed services.

At the same time, that man enforces law. His life oftentimes is put in much more jeopardy by plea-bargaining the criminal back onto the street day after day in urban America, and they have to go out and re-arrest them and re-arrest them again. Tragically enough, those cops get shot, and they steal guns. Sometimes they buy them. And sometimes they lie when they buy them. But most of them are stopped by background checks today. That officer has to face them again.

We understand that principle. That is the history of America. That is the history of law enforcement. The great tragedy today in law is criminal law, in my opinion, that we keep kicking them back to the streets instead of doing the time for the crime. That is putting the gentleman to have to go out and face them once again because they are a repeat, repeat, repeat offender.

What S. 1805 attempts to establish is plaintiffs’ rights should be dependent on settled principles of law, not emotion and not sympathy. If a lawsuit has enough merit under traditional tort standards to be allowed by the bill, we believe that cause of action should be available to all plaintiffs, regardless of their occupation or the area or whether particularly an attacker had harmed them. In other words, we are not suggesting there be carve-outs and special exemptions.

But clearly, and I can argue and the Senator has already said, I would come back to those five very key exceptions we have placed in S. 1805. I am not going to repeat those. I have repeated them several times tonight. They are in the bill. They are in the bill a majoritily of our colleagues, Democrat and Republican, Why do they? Because they bring stability to the law. They create clear standards. They don’t say that a law-abiding citizen producing a lawful product is somehow liable if someone takes it and misuses it; that the person who misuses it is the person who ought to be liable. That person ought to be the criminal, if so found guilty. That is a premise of the law and it is an important premise of the law.

I hope my colleagues tonight will oppose the Corzine amendment. It guts the underlying bill. I doubt the Senator from New Jersey planned to vote for S. 1805. I can’t view this as a friendly amendment. I don’t think it is intended to be. I think it is intended to tear down the fundamental structure built under S. 1805, to establish solid principles, clear understandings, not to allow junk lawsuits to move through, that this gentleman pictured beside you his day in court. Because the courthouse door is not locked. The opportunity to argue before the judge still remains so that suit can be filed, so that case can move on if the principles of law are met and the standards meet the test.

With that, I yield back the remainder of my time and ask the Corzine amendment be laid aside.

Mr. CRAIG. I send to the desk the Frist amendment.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. CRAIG), for Mr. Frist for himself and Mr. CRAIG, proposes an amendment numbered 2630.

Mr. CRAIG. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To protect the rights of law enforcement officers who are victimized by crime to secure compensation from those who participate in the arming of criminals)

On page 9, between lines 21 and 22, insert the following:

(E) LAW ENFORCEMENT EXCEPTION.—Nothing in this Act shall be construed to limit the right of an officer or employee of any Federal, State, or local law enforcement agency to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).

Mr. CRAIG. I will be brief. I think our colleagues wish that of us tonight. This amendment is not unlike the amendment the Senate accepted a few moments ago in relation to the Mikulski amendment. Law enforcement is every bit as simple and straightforward as the amendment of the Senator from New Jersey:

Law enforcement exception—Nothing in this Act shall be construed to limit the right of an officer or employee of any Federal, State, or local law enforcement agency to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clause (i) through (v) of subparagraph (A).
to pay because somebody misused and damaged or took someone’s life. We have never done that as a country, and we shouldn’t. We have found negligence, and we should where it exists, where there has been willingness, where there has been a violation of a law that is found. People ought to pay the price if they don’t play by the rules.

In the gun community, I know how important this right is in America, and with this right goes phenomenal responsibility.

That statute, time and time again, down through the decades has established very specifically those responsibilities because we view this as an extremely valuable right.

I say to the Senator from New Jersey that I am not going to keep that policeman out of the courthouse. I and Americans respect him and his profession too much to say you cannot go after redress, but you must find that the laws that you enforce are the same laws that you respect and must live by. I retain the remainder of my time.

The PRESIDING OFFICER. Who seeks time? The Senator from Illinois.

Mr. DURBIN. Mr. President, who controls time in opposition to the Craig amendment?

The PRESIDING OFFICER. The minority manager controls the time. That would be the Senator from Rhode Island.

Mr. REED. Mr. President, I yield 5 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 5 minutes.

Mr. DURBIN. I thank my colleague from Rhode Island, and I thank the Presiding Officer.

The Senator from Idaho says when he wrote this bill, he did it without emotion and without sympathy. Clearly, if he is going to oppose this amendment offered by the Senator from New Jersey, he must have been doing it without sympathy for the 54 law enforcement officers who are killed each year in the line of duty with guns. That is what the Senator said.

Mr. CRAIG. Mr. President, will the Senator yield?

Mr. DURBIN. Of course I will not because you would not yield when you had the floor.

Mr. CRAIG. Fine. I will take my time.

Mr. DURBIN. I will say this to the Senator from Idaho: It is hard for me to imagine, to believe that you believe that a lawsuit brought by that police officer or his family for being shot in the line of duty is a junk lawsuit as you have characterized these over and over again. The Senator from Idaho should join me in the city of Chicago where I have visited officers of that police force shot in the line of duty who are quadruplec for the rest of their lives because a gang banger shot them in the line of duty. And you tell that officer and his family—the Senator from Idaho should tell that officer and his family—that if they are going to seek redress from a gun dealer who sold those guns to the gang bangers, that that lawsuit for that officer and his family is a junk lawsuit—a junk lawsuit. Please.

How in the world can we in the Senate stand for respect, admiration and respect for the men and women in uniform who protect us every single day, and then when they are stricken in the line of duty, when they are shot defending us, tell them when they want to go against the gun deal, any gun deal, any gun on the street, these Saturday night specials through straw purchasers and gun traffickers, that that lawsuit brought by that officer and his family is a junk lawsuit that you want to stop with this legislation?

That troubles me. It troubles me because, frankly, I think we understand if we are going to ask anyone in our community to risk their lives every single day for us by wearing that badge, we ought to stand by them when they are hurt and file a junk lawsuit. You had hurt and file a junk lawsuit. You had hurt and file a junk lawsuit.

The choice we have with the Corzine amendment is a clear choice: Stand by the police or stand by the gun dealers. The Senator from Idaho says we need to stand by the gun dealers; that this is a jobs bill. We need to stand by the gun manufacturers; this is a jobs bill. What about the men and women in uniform and our law enforcement agencies across America? What about their jobs? Are they worth standing by or standing by their families?

I say to those who are going to oppose the Corzine amendment that if you have a problem in your neighborhood and there is crime in the neighborhood, don’t call 9–1–1. No, dial up your local gun dealer because if you dial 9–1–1, you are going to get one of these men and women who just might get hurt and file a junk lawsuit. You had better dial up that gun dealer. Call the gun dealer and ask him to please come out and protect your family.

I cannot imagine that we are going to allow this to occur. The Frist-Craig amendment is meaningless when it says whatever the bill said originally it applies to law enforcement officials. It doesn’t do a thing for them.

The Corzine amendment does. It says we are going to stand behind the police. If he is in the line of duty, we will stand by him and his family to go after the wrongdoer and the gun dealer who is selling those guns to the gang bangers and street killers, the cop killers on the street.

If you want to vote for the Frist-Craig amendment in this underlying bill, frankly, we are turning our back on those men and women who are risking their lives every single day for us. I thank the Senator from New Jersey for offering this amendment. We should be offering this amendment not only for law enforcement officials but for firefighters, medical responders, and every single person in America who puts their life on the line for us every single day and risk death by firearms because this underlying bill is saying to them, if you are hurt and you sue, you are filling a junk lawsuit.

Mr. CRAIG. Mr. President, may I ask how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Idaho has 12 minutes 28 seconds. The Senator from Rhode Island has 9 minutes 49 seconds.

Mr. CRAIG. Mr. President, I yield to the Senator from Sessions.

I am not going to respond to the Senator from Illinois only to say that he impugned my heart. He suggested I was a person without sympathy. I have never done that to him. I believe he is a person of good will who comes here to represent the citizens of the State of Illinois.

When I talk about sympathy, I talk about the impartiality of law. He is an attorney and I am a legislator. He knows that the law is impartial and it is clear.

So I must tell you that I grit my teeth a little bit when he suggests that this Senator has no passion or concern for the loss of life. That is a step too far.

Let me yield 5 minutes to Senator Sessions.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 5 minutes.

Mr. SESSIONS. Mr. President, I was a prosecutor for a number of years. Some of my best friends are police officers. I try to meet with them when I am in my State. I met with 11 or 12 of them in Cherokee on the Georgia line last week. They are not telling me that if they are shot or one of their fellow officers are shot they want to sue the gun manufacturers. None of them have ever suggested that to me. They believe that criminals with guns ought to be prosecuted aggressively and go to jail when they catch them. They ought to be punished. And if they shoot and kill a police officer, they want to see them go to jail or be executed. A lot of people who are opposing this legislation oppose the death penalty for those who kill police officers.

The point of this is very simple. In American law, from our ancient traditions, wrongdoers are the people who ought to be sued. If a terrorist comes in here and shoots a policeman, a cold-blooded, criminal, an American citizen, you should sue the person who shot you. That is what we are all about. That is what the law has been about.

Now we are in a situation in which the law has been politicized and used to carry out an agenda. To say that a gun dealer or a gun manufacturer that has complied with all the extensive regulations for the sale of firearms, has done everything right, that somehow they should be the ones to be sued if a criminal, an intimate, takes a weapon from another person perhaps and commits a crime with it and shoots someone, that is not what
American law is about. It is an abuse of the liability system in America. It is consistent with current law and our traditions. It is why, to date, none of these lawsuits against gun manufacturers has been successful and why few are successful against gun dealers.

However, if a gun dealer or if a gun manufacturer or if a gun dealer, in particular, sells a weapon contrary to the complex and detailed regulations the Federal Government, State, and cities required, that person can be not only sued for damages, that person can be prosecuted.

When I was a Federal prosecutor, I prosecuted criminals who used guns; I prosecuted gun dealers who sold guns illegally. They have to get an ID from the purchaser. They make him sign an affidavit that he is not a felon. They do a gun check. They have to be a resident of the State, as I recall. They cannot be a drug addict. If they know there is an impropriety and sell the gun anyway, they are responsible and be sued for it and should be—and should be prosecuted, for that matter.

What we need to focus on in America today is that the Constitution of this country allows the American people to keep and bear arms. Those who do not agree, get over it. That is where the American people are. That is what the Constitution says. That is what the rules are. If you want to offer legislation to put further controls on the right of an individual in America to keep and bear arms, put it out here and make him sign an affidavit, keep him from obtaining a license to be negligent. He can follow the rules but he can be negligent. There is no Federal statute or Federal legislation, in many cases, that requires the storage at a facility of weapons, so you can leave them lying around. That is what they apparently did at Bull’s Eye.

That is negligence, and that negligence harmed several individuals. And this particular law, if adopted, will prevent people from exercising their rights for compensation based upon that activity.

All this discussion leads to the inescapable belief on my part that the proponents want it both ways. They stand here and decry the attack on the industry, the gun industry besieged by lawsuits, and then turn and say: Of course, Officer Lemongello will get to court and Officer McGuire will get to court and the sniper victims will get to court. They cannot have it both ways. The law is not impartial. The law is what we make it. We are making a law today that favors, in an unprecedented way, the plaintiffs—especially federal, state, and the National Rifle Association. That is our making. It is not some cosmic event taking place and suddenly we have the law. We are telling them, be negligent, be irresponsible, be reckless, do not worry about it, we have taken care of you.

What do we say to the victims of the crimes? Tough luck. You were in the wrong place, officer. You were in the wrong place, Conrad Johnson, starting your day early in the morning. Your family will look for naught from the companies or individuals who were negligent.

I yield 3 minutes to the Senator from New Jersey.

Mr. REED. How much time do we have?

The PRESIDING OFFICER. The Senator has 7 minutes.

Mr. REED. I yield 3 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. Mr. President, I ask of you to call attention to the fact when I have 30 seconds remaining.

We listen to the same rhetoric, decry the risk that our law enforcement people take when they go out to work and how we really respect them—except that we do not want to give them the same environment that every ordinary citizen in this country has.

We hear about the fact that if you get the criminals off the streets and they do not come out again, and then they go back again, what does it have to do with whether or not we block the suit from law enforcement personnel who have been injured, who have families who want redress for them having been killed at work? It has nothing to do with it.

That is the whole thing. It is an obfuscation of what this bill is about. This bill does not change a bill with the gun manufacturer, it reinforces what the bill says, and that is, take away people’s rights to sue, people’s rights for redress. Whether it is an errant gun manufacturer, a dealer, a distributor, an errant airline, or an errant car manufacturer, people should have the right to sue.

There have been opinions thrown around that, unfortunately, do not match that of a distinguished attorney such as David Boies who says this bill will cause a dismissal of the suit of Lemongello and McGuire immediately.

The proposed immunity legislation would require the immediate dismissal of these claims.

I ask unanimous consent to have printed in the RECORD what the office of David Boies, one of the prominent criminal attorneys in the country, has confirmed.

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

Lemongello v. Will Company, No. Civ.A. 02-C-2962, 2003 WL 21488208 (W. Va. Cir. Ct. Mar. 19, 2003). New Jersey Police Detective David Lemongello and Officer Kenneth McGuire were seriously injured in January 2001 when they were shot by a known criminal while performing undercover police work. Even though the shooter was a person vaccinated by law from purchasing a firearm, he obtained his weapon, a nine millimeter semi-automatic Ruger handgun, illegally from a gun trafficker. The trafficker, in turn, was also prohibited from buying weapons due to a prior felony, so he used an accomplice (a so-called ‘‘straw purchaser’’) to make multiple gun purchases from defendant Will Jewelry & Loan of New Jersey. In their lawsuit against Will Jewelry & Loan and others, the plaintiffs alleged that the gun dealer acted negligently in selling the straw purchase the twelve guns (including the Ruger used in the shooting of the two officers) that had been selected in person by the gun trafficker and paid for in a single cash transaction. The circumstances of that sale were so suspect that the defendant dealer reported it to the AFT—but only after the purchase price had been collected and the guns had left the store. The trafficking group further charged gun manufacturer Sturm Ruger & Company with negligently failing to monitor and train its distributors and dealers and negligently failing to monitor them from engaging in straw and multiple firearm sales. Although a West Virginia trial court has held that the plaintiffs have stated valid negligence and public interest claims under state law, the proposed immunity legislation would require the immediate dismissal of those claims. Notwithstanding the plaintiffs’ claims that the defendants failed to exercise reasonable care in their sales of firearms, neither the dealer nor the manufacturer violated any statute prohibiting in selling the gun. Nor could the plaintiffs point to the fact that their case falls within the ‘‘negligent entrustment’’ exception to the proposed immunity legislation because the gun dealer supplied the firearm to the straw purchaser—not to someone whom the seller knew or should have known was likely to, and did, use the
product in a manner involving unreasonable risk of physical injury to the person or others.

The PRESIDING OFFICER. The Senator has 30 seconds remaining.

Mr. LAUTENBERG. Many police officers and police chiefs wrote in their opposition to this bill, law enforcement personnel from various police departments around the country, including Chief William Musser of Meridian, OH, Police Department. He writes that he is opposed to this. We have officers from other States as well, including Chief Cory Lynn from Ketchum, ID, Police Department. He writes that he is opposed to this. We have officers around the country, including personnel from various police departments.

ments around the country, including police and police chiefs wrote in their opposition to this bill, law enforcement officers—law enforcement officers—not just generally. These are not frivolous suits. These are people who know the law. They are not bringing up frivolous suits, and I do not think I am hearing that. So if we are going to have these frivolous lawsuits, which is the argument we are trying to make, we need this legislation.

Why are we taking away the right to sue from law enforcement across this country? I ask my colleagues to stand with me. I think we are undermining the safety and the security and the principles and the rights of law enforcement. I think the Senate ought to be standing with law enforcement to make sure they are protected. If we vote no against my amendment, we are doing the opposite. I hope we will stand strong and stand firmly with law enforcement because that is what we need to do if we say we appreciate what they are doing for our families and our communities.

I yield back the remainder of my time.

Mr. CRAIG. Mr. President, I understand the opposition has yielded back all their time.

The PRESIDING OFFICER. That is correct.

Mr. CRAIG. I will be as brief as possible. The hour is late.

I know the Senator from New Jersey speaks with a good heart, and I appreciate that. I think we all do. He mentioned two important words just in the last two minutes. He mentioned the word “criminal.” Criminal action, the right to sue, and he mentioned “negligence” and the right to sue. Then he said: We block that policeman from the courthouse door. I must ask him to return to page 7 of the bill, exception one and exception two:

an action brought against a transferee convicted under section 924(h) of title 18, United States Code, or a comparable or identical State law, by a party directly harmed by the conduct of which the transferee is so convicted.

He is talking about criminal action. That action is deemed as a criminal act in the law.

How about negligence? Well, it is the next one down.

It is No. 2:

an action brought against a seller for negligent entrustment or negligence per se.

Let me tell you what the FOP says. I think we all know what the FOP is. That is the Fraternal Order of Police, some 311,000 strong. They oppose the Corzine amendment. We have just visited with them. They called us and they said: Why? Because they do not believe it accomplishes what they would like accomplished, and they like the underlying law.

I think it is fundamentally important that we try to build clean principles within the law. I would have to agree with the Senator from New Jersey that policeman is not going to file or have his attorneys file a junk lawsuit. The Senator is absolutely right.

But 31 apparently have been filed, some are under appeals, and 21 of them have been thrown out of court by judges who said: Go away, because that is what this lawsuit is.

Now, oftentimes the municipality and/or the individuals and/or the county will file it in the name of a fallen officer. I can understand the emotion. I think we all feel it. But the judge said the law is the law and there was no basis, and he threw them out. Yet it cost the industry—the law-abiding industry—hundreds of millions of dollars. It is beginning to weaken many of our law-abiding, legal gun manufacturers, that oftentimes build the firearm that officer carries on his side to protect himself and his fellow officers in the commission of their responsibilities.

We should not be doing that as a country. But clearly we must insist that the law be clear, unambiguous, and that the officer have his day in court if he is harmed by a criminal or by someone who has acted in a criminal way, someone who has violated the law, someone, through negligence, has somehow caused a firearm to get into the hands of a criminal.

Then the case is brought, and S. 1805 does not block that.

I yield back the remainder of my time, and I ask for the yeas and nays on the Frist-Craig amendment and the Corzine amendment.

The PRESIDING OFFICER. Is the Senator seeking the yeas and nays on both amendments with one show of hands?

Mr. CRAIG. If there is no objection. The PRESIDING OFFICER. Without objection, it is so ordered. The yeas and nays are requested.

Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 2630. The clerk will call the roll.

The assistant journal clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from New Mexico (Mr. DOMENICI), and the Senator from Alaska (Ms. MURKOWSKI) are necessarily absent.

Mr. REID. I announce that the Senator from Arizona (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.
I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote “nay.”

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 60, nays 34, as follows:

[Rollcall Vote No. 21 Leg.]

YEAS—60

Alexander

Dayton

McConnell

Alford

Dayton

McConnell

Allen

Dayton

McConnell

Baucus

Ensign

Nelson (FL)

Bayh

Enzi

Nickle

Bennett

Frist

Frist

Bond

Graham (SC)

Reid

Brown

Grassley

Roberts

Brownback

Gregg

Rockefeller

Bunning

Hagel

Santorum

Burns

Hatch

Sessions

Chambliss

Hutchison

Shelby

Coehran

Inhofe

Smith

Coleman

Johnson

Snowe

Collins

Kyl

Specter

Conrad

Landrieu

Stevens

Corzine

Lincoln

Sununu

Craig

Lott

Talent

Daschle

McConnell

Voinovich

NAYS—34

Akaka

Durbin

Levin

Biden

Feingold

Lieberman

Bingaman

Feinstein

Mikulski

Boxer

Fitzgerald

Murray

Byrd

Graham (FL)

Reed

Cantwell

Harkin

Sarbanes

Carper

Hollings

Sarbanes

Chafee

Inouye

Schumer

Clinton

Jeffords

Warner

Corzine

Kohl

Wyden

DeWine

Launtenberg

Dodd

Leahy

NOT VOTING—6

Campbell

Edwards

Kerry

Domenici

Kennedy

Murkowski

The amendment (No. 2630) was agreed to.

Mr. CRAIG. Mr. President, I move to reconsider the vote.

Mr. WYDEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2629

The PRESIDING OFFICER. The next order of business is consideration of the Corzine amendment. There are 2 minutes equally divided to be followed by a vote. The yeas and nays have already been ordered.

Who yields time?

The Senator from New Jersey.

Mr. CORZINE. Mr. President, my amendment is very simple. In fact, I will read it:

Notwithstanding any other provision of this Act, nothing in this Act shall be construed as limiting the right of an officer or employee of any Federal, State or local law enforcement agency to recover damages authorized under Federal or State law.

This is a police officer who was shot, injured, and is no longer able to work in New Jersey. Fifty-two were killed in 2002 by guns in the hands of criminals, sold negligently—people should have the ability to go to court and get redress. These are not junk lawsuits, not frivolous lawsuits.

Law enforcement officers ought to have the ability to protect their rights in court. They should have their day in court. That is what this amendment does, and the narrow definitions that are allowed for in the underlying bill will keep Officers McGuire and Lemangello out of court.

The PRESIDING OFFICER. The Senator’s time has expired.

The Senator from Idaho.

Mr. CRAIG. Mr. President, I ask my colleagues to vote against the Corzine amendment. I ask it on behalf of the Fraternal Order of Police, some 311,000 strong, who oppose this amendment, who oppose a suit in a law that is meant to treat all fairly and equitably. This amendment would gut the underlying bill, S. 1885, and I ask my colleagues to oppose it and vote against it.

I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2629. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from New Mexico (Mr. DOMENICI), and the Senator from Alaska (Ms. MURKOWSKI) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote “yea.”

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 38, nays 56, as follows:

[Rollcall Vote No. 22 Leg.]

YEAS—38

Akaka

Dayton

Levin

Biden

Feingold

Lieberman

Bingaman

Feinstein

Mikulski

Boxer

Fitzgerald

Murray

Byrd

Graham (FL)

Reed

Cantwell

Harkin

Sarbanes

Carper

Hollings

Sarbanes

Chafee

Inouye

Schumer

Clinton

Jeffords

Warner

Corzine

Kohl

Wyden

DeWine

Launtenberg

Dodd

Leahy

NAYS—56

Akaka

Dayton

Levin

Biden

Feingold

Lieberman

Bingaman

Feinstein

Mikulski

Boxer

Fitzgerald

Murray

Byrd

Graham (FL)

Reed

Cantwell

Harkin

Sarbanes

Carper

Hollings

Sarbanes

Chafee

Inouye

Schumer

Clinton

Jeffords

Warner

Corzine

Kohl

Wyden

DeWine

Launtenberg

Dodd

Leahy

NOT VOTING—6

Campbell

Edwards

Kerry

Domenici

Kennedy

Murkowski

The amendment (No. 2629) was rejected.

Mr. CRAIG. Mr. President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRAIG. Mr. President, we have worked a long day and through what this time last night was appearing to be a very complicated unanimous consent. But I think it worked well today. All of our colleagues worked hard, and we have been able to meet all but one vote we had on that unanimous consent.

It is my understanding that it is possible Senator BINGAMAN will offer his amendment in the morning.

Mr. REID. Mr. President, if my friend will yield, on our side, Senator DAYTON will be here in the morning to offer his amendment. Following that, Senator LEVIN will offer an amendment. Senator BINGAMAN wishes to offer his amendment on Monday.

I also say to my friend that Senator REED has told me he will come tomorrow or Monday to start laying the groundwork for his amendment and the amendment with Senator FEINSTEIN.

The votes on those amendments will occur Tuesday morning. When they get the floor, they can talk about their amendments either tomorrow or Monday.

Mr. CRAIG. Mr. President, I thank the Senator from Nevada for his cooperation in working with us to facilitate this bill today, to move it in a timely way and get the votes necessary throughout the day. He has worked hard, along with all of us, to get that accomplished. We have had several votes.

Let me also thank, midway through this, my staff and certainly the staff of the Judiciary Committee and others who worked to make sure we had the information in a timely way to move forward.

It is my understanding this is the last vote of the day.

Mr. REID. Mr. President, I rise in support of this most important legislation. In fact, I am a cosponsor of this bill, which is sponsored by Senators CRAIG and BAUCUS.

This legislation protects firearm and ammunition manufacturers from lawsuits related to deliberate and illegal misuse of their products. Even more important, it protects the rights of Americans who legally purchase and use their products.

As a gun owner since I was a young boy, I strongly support the constitutional right of law-abiding citizens to keep and bear arms. This constitutional right of responsible citizens should not be compromised or jeopardized by a small handful who use firearms to commit crimes.
In my native State of Nevada, many people own firearms and the vast majority of them use their guns responsibly and safely. It is their right to do so, guaranteed in the United States Constitution. It is not some privilege granted at the whim of Congress or any other part of government. So I will work on a bipartisan basis to protect and safeguard that right.

I will work to pass this bill, and I think we have the votes to pass it.

Toward the end of last year, we tried to consider this bill in the United States Senate. Unfortunately, we didn’t have enough time left in the first session of this Congress to consider this bill in a fair manner.

Now the time has come to pass this bill.

We will now debate and vote on the amendments that Senators want to offer to this bill, and then we will pass it. And when we do, we will be standing up for the Constitution and the rights of every American citizen.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant Journal clerk proceeded to call the roll.

Mr. McCONNEL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. McCONNEL. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

SECOND NOTICE OF PROPOSED PROCEDURAL RULEMAKING

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached statement from the Office of Compliance be entered into the Record today pursuant to section 303(b) of the Congressional Accountability Act of 1995 (2 U.S.C. 1384(b)).

OFFICE OF COMPLIANCE


On September 4, 2003, a Notice of Proposed Amendments to the Procedural Rules of the Office of Compliance was published in the Congressional Record at S1130, and H794. As specified by the Congressional Accountability Act of 1995 ("Act") at Section 303(b) (2 U.S.C.1384(b)), a 30 day period for comments from interested parties ensued. In response, the Office received a number of comments regarding the proposed amendments.

At the request of a commenter, for good reason shown, the Board of Directors extended the 30 day comment period until October 20, 2003. The extension of the comment period was published in the Congressional Record at S1299, and H794.

On October 15, 2003, an announcement that the Board of Directors intended to hold a hearing on December 2, 2003 regarding the proposed procedural rule amendments was published in the Congressional Record at H9475 and S12299. On November 21, 2003, a Notice of the cancellation of the December 2, 2003 hearing was published in the Congressional Record at S13394 and H12391.

The Board of Directors of the Office of Compliance has determined to issue this Second Notice of Proposed Amendment to the Procedural Rules, which includes changes to the initial proposed amendments, together with a revised text of the proposed amendments. As set forth in greater detail herein below, interested parties are being afforded another opportunity to comment on these proposed amendments.

The complete existing Procedural Rules of the Office of Compliance may be found on the Office’s web site at www.compliance.gov.

How to submit comments:

Comments regarding the proposed amendments to the Rules of Procedure of the Office of Compliance set forth in this NOTICE are invited for a period of thirty (30) days following the date of the appearance of this NOTICE in the Congressional Record. In addition to being posted on the Office of Compliance’s section 508 compliant web site (www.compliance.gov), this NOTICE is also available in an alternative format: Large Print, Braille. Requests for this NOTICE in an alternative format should be made to: Bill Thompson, Executive Director, or Alma Cast, Executive Director, Office of Compliance, at 202–724–9250 (voice) or 202–426–1912 (TDD). Submission of comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA–200, Washington, D.C. 20540–1999. It is requested, but not required, that an electronic version of any comments be provided on an accompanying computer disk. Comments may also be submitted by facsimile to the Executive Director at 202–426–1913 (a non-toll-free number). Those wishing to receive confirmation of the receipt of their comments are requested to provide a self-addressed, stamped post card with their submission.

Copies of submitted comments will be available for review on the Office’s web site at www.compliance.gov, and at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540–1999, on Monday through Friday (non-Federal holidays) between the hours of 9:30 a.m.—5:00 p.m.

Supplementary Information: The Congressional Accountability Act of 1995 (CAA), PL 104–1, was enacted into law on January 23, 1996. The CAA applies the rights and protections of 11 federal labor and employment statutes to covered employees and employing offices within the Legislative Branch of Government. Section 301 (2 U.S.C. 1381) establishes the Office of Compliance as an independent office within that Branch. Section 303 (2 U.S.C. 1383) directs that the Executive Director, as the Chief Operating Officer of the agency, adopt rules of procedure governing the Office of Compliance, subject to approval by the Board of Directors of the Office of Compliance. The rules of procedure generally establish the process by which alleged violations of the laws made applicable to the Legislative Branch under the CAA will be considered and resolved. The rules include procedures for counseling, mediation, and election between filing an administrative complaint with the Office of Compliance or filing a civil action in U.S. District Court. The rules also include the procedures for processing Occupational Safety and Health investigations and enforcement actions as well as the process for the conduct of administrative hearings held as the result of the filing of an administrative complaint under all of the statutes applied by the Act, and for appeals of a decision by a hearing officer to the Board of Directors of the Office of Compliance, and for the filing of an appeal to the United States Court of Appeals for the Federal Circuit. The rules also contain other matters of general applicability to the procedures of the Office of Compliance and to the operation of the Office of Compliance.

These proposed amendments to the Rules of Procedure are the result of the experience that has been gained over the past 8 years of the Office of Compliance operations under the CAA during the period since the original adoption of these rules in 1995.

How to read the proposed amendments:

The text of the proposed amendments shows [deletions within brackets], and added text in italic. Textual deletions which have been made for the first time in this second notice of the proposed amendments are shown as italicized bold. Textual deletions where it has been decided to be unnecessary to publish the text have been struck out. The Office of Compliance web site at www.compliance.gov.

PROPOSED PROCEDURAL RULE AMENDMENTS

PART I—OFFICE OF COMPLIANCE

Office of Compliance Rules of Procedure

As Amended—February 12, 1998 (Subpart A, section 1.02, "Definitions"), and as proposed to be amended in 2004.

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Subpart I—Other Matters of General

§1.05 Designation of Representative.

AMENDMENT DELETED (a) An employee, other charging individual or party, a wit-ness, a labor organization, an employing office, an entity alleged to be responsible for correcting a violation wishing to be represented by another individual must file with the Office a written notice of designation of representative. The representative may be, but is not required to be, an attorney. [(During the period of counseling and me-diation, upon request of a party, if the Exec-utive Director concludes that a representative of an employee, of a charging party, of a labor or-ganization, of an employing office, or of an en-ty alleged to be responsible for correcting a violation has a conflict of interest, the Executive Director may, after giving the representative an opportunity to respond, disqualify the rep-representative. In that event, the period for coun-seling or mediation may be extended by the Exec-utive Director for a reasonable time to afford the party an opportunity to obtain another representa-tive.)]

Discussion: Upon further consideration, the Board has deleted this proposed amendment. The Board does not agree with the asser-tion by a commenter that the current version of this rule is in excess of the author-ity of this Board under the Act.

§1.03 Filing and Computation of Time.

(a) Method of Filing. Documents may be filed in person or by mail, including express,

overnight and other expedited delivery. When specifically authorized by the Executive Director, or by the Board of Directors in the case of an appeal to the Board, any document may also be filed by electronic transmission in a designated format. Requests for counseling under section 2.03, requests for mediation under section 2.04 and complaints under section 2.01 of these rules may also be filed by facsimile (FAX) transmission. . . .

Discussion: The electronic filing option is in addition to existing filing procedures, and represents the decision of this agency to begin the process of migration toward electronic filing. In response to comments, the Board has added Board of Direc-tors authorization authority to ensure that the Executive Director cannot unilaterally assume Board authority regarding a matter specifically required in Sections 2.03(l), 2.04 and 2.01 of these rules. In available technology, it will remain neces-sary to designate a particular format for electronic transmission. Requiring a des-ignation for a file format is an undue burden, since electronic filing is not re-quired. Stipulating a web address and system for confirmation of receipt of electronic transmittal is not appropriate for a formal rule, since all documents will not necessarily be filed at the same address, and not all fil-ing requires marking. Not including such information also better safeguards the security of document filing.

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dents by certified mail, return receipt requested, (d) Service or filing of documents by certified mail, return receipt requested. Whenever these rules permit or require service or filing of docu-ments by certified mail, return receipt requested, such documents may also be served or filed by express mail or other forms of expedited delivery in which proof of [delivery to] date of receipt by the addressee is provided.

Discussion: Section 2.03(a)(2)(i) permits "other expedited delivery" of documents being filed for which proof of delivery is not required. However, there is no similar provi-sion in Section 2.04(e), which requires return receipt. Such a service method is specifically required in Sections 2.03(1), 2.04(i), and 5.01(e). Particularly in view of the lengthiness required to process mail through the U.S. Postal Service since 9-11, the Board has determined that additional flexibility in the use of other mail delivery services is also needed as an alternative to certified mail, return receipt requested.

§4.00(i), and 5.01(e). Particularly in view of the

Discussion: Upon further consideration, the Board has deleted this proposed amendment. The Board does not agree with the asser-tion by a commenter that the current version of this rule is in excess of the author-ity of this Board under the Act.

§4.02 Posting of Citations

§4.01 Filing, Service and Size Limitations of Mo-
dents by certified mail, return receipt requested. Whenever these rules permit or require service or filing of docu-

§3.12 Confidentiality

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§3.06 Consolidation and Jinder of Cases

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§3.02 Acceptance of the Hearing Officer

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§2.06 Consolidation and Jinder of Cases

§2.05 Motion to Quash

§2.04(i), and 5.01(e). Particularly in view of the

Discussion: The electronic filing option is in addition to existing filing procedures, and represents the decision of this agency to begin the process of migration toward electronic filing. In response to com-ments, the Board has added Board of Direc-tors authorization authority to ensure that the Executive Director cannot unilaterally assume Board authority regarding a matter specifically required in Sections 2.03(l), 2.04 and 2.01 of these rules. In available technology, it will remain neces-sary to designate a particular format for electronic transmission. Requiring a des-ignation for a file format is an undue burden, since electronic filing is not re-quired. Stipulating a web address and system for confirmation of receipt of electronic transmittal is not appropriate for a formal rule, since all documents will not necessarily be filed at the same address, and not all fil-ing requires marking. Not including such information also better safeguards the security of document filing.

§2.03 Counseling.

(a) Initiating a Proceeding: Formal Re-quest for Counseling. In order to initiate a proceeding under these rules, an employee shall [formally] file a written request for an employee shall [formally] file a written request for counseling alleging an alleged violation of the Act, as referred to in section 2.01(a) above. All [formal] requests for counseling shall be confidential, unless the employee agrees to waive his or her right to confidentiality under section 2.03(e)(2), below.

Discussion: The purpose of this amendment is to delete the cumbersome term "formal", and require simply that the request be made in written form. Several commenters sug-gested that institution of a requirement that the counseling request be in writing would constitute a "waiver" of the statutory re-quirement of absolute confidentiality in counseling mandated by section 416(a) of the Act. Requiring a written counseling request does not constitute or suggest a "waiver" of confidentiality in any way. Such a waiver may only occur when "the Office and a covered employee... agree to notify the employing office of the allegations." 2 U.S.C. 1416(a). The process for such a waiver is set out in the existing Procedural Rules at section 2.04. This written waiver form. A written request for counseling is an entirely different document.

(c) When, How, and Where to Request Counseling. A [formal] request for counseling must be in writing, and (1) shall be [made] filed with the Office of Compliance at Room LA-200, 110 Second Street S.E., Washing-
don, D.C. 20540-1999; [telephone 202–724–9250;] FAX 202–426–1913; TDD 202–426–1912; not later than 180 days after the alleged viola-
tion of the Act.; (2) may be made to the Of-fice in person, by telephone, or by written re-
quest; (3) shall be directed to: Office of Com-

Discussion: This amendment conforms to the requirement that a written request for counseling must be filed with the Office.

(i) Conclusion of the Counseling Period and Notice. The Executive Director shall notify the employee in writing of the end of the counseling period, by certified mail, return receipt requested, or by personal delivery evidenced by a written receipt. The Executive Director shall, as part of the notification of the end of the counseling period, shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the Office a request for mediation within 15 days after receipt by the employee of the notice of the end of the counseling period.

Discussion: This amendment reflects the provision of flexibility to the Office in pro-viding notice. In response to comments, we have added the requirement for appropriate documentation in the case of personal deliver-ey. A suggestion that a copy of the end of counseling notice be served on "opposing counsel" would cause a violation of the con-fidentiality requirement required by section 416(a) of the Act, and would contradict the non-adversarial nature of counseling.

(m) Employees of the Office of the Archi-tect of the Capitol and the Capitol Police.

(1) Employees of the Office of the Archi-tect of the Capitol and the Capitol Police requests counseling under the Act and
(ii) After having contacted the Office and having received a referral to the grievance procedures of the Architect of the Capitol or of the Capitol Police Board, the employee may notify the Office that he or she wishes to return to the procedures referred to within 20 days after the expiration of the period recommended by the Executive Director, if the matter has not [(been resolved)] resulted in a final decision resulting from the grievance procedures of the Architect of the Capitol or the Capitol Police Board.

(b) Extending the Time Period

(i) During which the matter is pending in the internal grievance procedure, the Office shall not count against the time available for completion of the procedures under the Act any time during which the complaint is being processed by the Office or any appeal thereof. If, however, the time period required for completion of the procedures under the Act and the grievance procedures of the Architect of the Capitol and the Capitol Police Board, when the Executive Director makes such a recommendation, the following procedures shall apply:

2.04 Mediation.

(a) procedure referred to internal procedures of the Architect of the Capitol and the Capitol Police that can provide a resolution of the matter(s) about which counseling was requested under section 401 of the Act, and by agreement with the Architect of the Capitol and the Capitol Police Board, when the Executive Director makes such a recommendation, the following procedures shall apply:

(1) The mediation period shall be 30 days beginning on the date the request for mediation is received, unless the Office grants an extension.

(2) The Office may extend the mediation period upon the joint written request of the parties or of the appointed mediator on behalf of the parties to the attention of the Executive Director. The request may be oral or shall be written and [shall be noted and] filed with the Office no later than the last day of the mediation period. The request shall set forth the reasons for the request and immediately for the reasons therefor, and specify when the parties expect to conclude their discussions. Request for additional extensions may be made in the same manner. Approval of any extensions shall be within the sole discretion of the Office.

(b) Conclusion of the Mediation Period and Notice. If, at the end of the mediation period, the parties have not resolved the matter, the Office shall request mediation, the Office shall provide the employee, and the employing office, and their representatives, with written notice that the mediation period will automatically extend for 60 days after issuance of the written notice to the employee will be sent by certified mail, return receipt requested, or will be [hand] personally delivered, evidenced by a written receipt, and it will also notify the employee of his or her right to elect to file a complaint with the Office in accordance with section 5.01 of these rules or to file a civil action pursuant to section 408 of the Act and section 2.06 of these rules.

(c) Discussion: The purpose of this amendment is to reflect the provision of the flexibility of personal delivery. In response to comments, the Board has also formalized the requirement that proof of delivery be evidenced by a written receipt.

2.06 Filing of Civil Action.

(a) Procedure Regarding Civil Actions Filed with District Court. [(1) The party filing any civil action with the United States District Court pursuant to sections 402 or 403 related to said civil action, unless said party notifies the other party of the filing of such action, shall request information from the Office that forms the basis of the request for mediation, the Office shall provide the employee, and the employing office, and their representatives, with written notice that the mediation period will automatically extend for 60 days after issuance of the written notice to the employee will be sent by certified mail, return receipt requested, or will be [hand] personally delivered, evidenced by a written receipt, and it will also notify the employee of his or her right to elect to file a complaint with the Office in accordance with section 5.01 of these rules or to file a civil action pursuant to section 408 of the Act and section 2.06 of these rules.]

(b) Discussion: The purpose of this amendment is to reflect the provision of the flexibility of personal delivery. In response to comments, the Board has also formalized the requirement that proof of delivery be evidenced by a written receipt.

§4.16 Comments on Occupational Safety and Health Reports. [(The General Counsel will provide to responsible employing office(s) a copy of any report issued for general distribution not less than seven days prior to the scheduled issuance date. If a responsible employing office wishes to have its written comments appended to the report, it shall submit such comments to the General Counsel no later than 48 hours prior to the scheduled issuance date. The General Counsel shall either include the written comments without alteration as an appendix to the report or shall request information from the Office that forms the basis of the request for mediation, the Office shall provide the employee, and the employing office, and their representatives, with written notice that the mediation period will automatically extend for 60 days after issuance of the written notice to the employee will be sent by certified mail, return receipt requested, or will be [hand] personally delivered, evidenced by a written receipt, and it will also notify the employee of his or her right to elect to file a complaint with the Office in accordance with section 5.01 of these rules or to file a civil action pursuant to section 408 of the Act and section 2.06 of these rules.]

Discussion: Upon further consideration, the Board has deleted this proposed amendment.

§5.03 Dismissal, Summary Judgment, and Withdrawal of Complaints.

(a) Discussion: The Hearing Officer may, after notice and an opportunity for the parties to address the question of summary judgment, [(if respond,)] issue summary judgment on any or all of the claims. The Board has also added a requirement that any General Counsel declination must be provided in writing to the employing office.

(d) Appeal. (A dismissal) final decision by the Hearing Officer made under section...
§7.02 Sanctions

(a) The Hearing Officer may impose sanctions on a party's representative (including an order for the taking of a deposition, for the production of evidence within the party's control, or for production of witnesses), the Hearing Officer may:

(1) Filing with the Office; Number. One original and seven copies of both any appeal brief and any responses must be filed with the Office. The Hearing Officer, Hearing Officer, or Board may also (require) request a party to submit an electronic disk of any submission on a disk in a designated format.

(b) Failure to Comply with an Order. When a party fails to comply with an order (including an order for the taking of a deposition, for the production of evidence within the party's control, or for production of witnesses), the Hearing Officer may:

(1) [The Board or its designee] may also require a party to file an attorney's fee application with the Board of Directors.

§8.01 Appeal to the Board.

(b) Unless otherwise ordered by the Board, within 21 days following the filing of a petition for review by the Board, the appellant shall file and serve a supporting brief in accordance with section 9.01 of these rules. That brief shall identify with particularity those findings or conclusions in the decision and orders that are challenged and shall refer specifically to the portions of the record and the provisions of statutes or rules that are alleged to support each assertion made on appeal.

(c) [The Board or its designee] may also require a party to file an attorney's fee application with the Board of Directors.

§9.03 Attorney's fees and costs.

(a) Request. No later than 20 days after the entry of a Hearing Officer's decision under section 7.16 of these rules, or after service of a Board decision under section 7.16 of these rules, except as authorized pursuant to section 7.13 of these rules.

§9.05 Informal Resolutions and Settlement Agreements.

(b) Formal Settlement Agreement. The parties may agree formally to settle all or part of a disputed matter in accordance with section 414 of the Act. In that event, the agreement shall be submitted to the Executive Director for review and approval. If the Executive Director does not approve the settlement, such disapproval shall be in writing, shall set forth the reasons therefor, and shall render the settlement ineffective.

(c) Requirements for a Formal Settlement Agreement. A formal settlement agreement requires the signature of all parties on the agreement document before the agreement can be submitted to the Executive Director. A formal settlement agreement cannot be rescinded after the signatures of all parties have been affixed to the agreement, unless by written revocation of the agreement voluntarily signed by all parties, or as otherwise (required) permitted by law.

(d) Violation of a Formal Settlement Agreement. If a party should allege that a formal settlement agreement has been violated, the issue shall be determined by reference to the formal settlement agreement. If the particular formal settlement agreement does not have a stipulated method for dispute resolution of an alleged violation of the agreement, the following dispute resolution procedure shall be deemed to be a part of each formal settlement agreement approved by the Executive Director pursuant to section 414 of the Act. Any dispute under a formal settlement agreement may be filed with the Executive Director no later than 60 days after the party to the agreement becomes aware of the alleged violation. Such complaints may be referred by the Executive Director to a Hearing Officer for a final and binding decision. The procedures for hearing and determining such complaints shall be governed by subparts F, G, and H of these rules.

Discussion: The Board disagrees with comments that assert the Board has statutory authority to settle disputes regarding the alleged violation of settlement agreements. Under section 414 of the Act, the Executive Director does not have clear statutory authority to approve all settlement agreements under the Act entered into at any stage of the administrative or judicial process. No settlement agreement can “become effective” unless and until such approval has been given. The Office is concerned that many settlement agreements do not include provisions for the disposition of controversies regarding alleged violations of the agreement. Rather than consider initiating a practice of withholding approval of settlement agreements which do not include provisions setting forth dispute resolution procedures, the Office is providing all parties, by notice and rule, the option to include their own dispute resolution provisions, or to specify the resolution procedure stipulated in this proposed Rule when they enter into a settlement agreement. The word “permitted” was inserted to avoid any implication of “approval” as a clarification, since in this context a rescission of an approved agreement would rarely, if ever, be required by operation of law.
strains found in these States carry no risk to humans, this discovery illustrates how easily an animal-borne disease can break out in the United States. Only four farms and one live chicken market have tested positive for the disease. Yet this discovery resulted in one outbreak of over 92,000 chickens in the U.S. to date and a ban on American poultry exports in a number of Asian countries and the European Union.

We should learn two things from these recent outbreaks: No. 1, the cost to the agriculture community for even a small outbreak is high. And, No. 2, we must be prepared for the unexpected.

While the emergence of mad cow and the avian flu in American agriculture has been detrimental, it has not come close to causing the amount of damage a larger outbreak could create.

Imagine if either of these diseases spread across the Nation instead of being contained to just a few farms. Or imagine what happens if the strain of the avian flu that is currently claiming human lives in Asia was found in the United States.

In these scenarios, the outbreak would have been far more difficult to contain and much more costly to our Nation.

A 1994 Department of Agriculture study said that if a foreign animal disease became entrenched in the United States, it would cost the agriculture industry at least $5.4 billion. A 2002 report by the National Defense University predicted that this figure would be three to five times greater today. On a smaller scale, an outbreak that only penetrated 10 farms could have as much as a $2 billion economic impact.

Earlier this month, the President released Homeland Security Presidential Directive 9, HSPD-9, aimed at addressing many of these concerns. HSPD-9 is a great first step. It signals the administration’s capability to draw together and in our agriculture sector and considers this to be a homeland security priority.

Under HSPD-9, the President directed the Department of Homeland Security to ensure the execution of a number of much needed security measures, including the following: Develop surveillance and monitoring systems for animal and plant disease and the food supply that provide early detection of poisonous agents; develop national technology networks for food, veterinary, and plant health that ensures communication and coordination between related facilities; and develop a National Veterinary Stockpile that contains enough vaccine and antiviral products to respond to the most damaging animal diseases.

But the President’s initiative does not go far enough because it fails to address a number of serious shortcomings with the current governmental response to agriculture security, such as: Lack of communication between Federal agencies; insufficient coordination with, and funding for, State and local officials; inadequate international collaboration; and the impending nature of some State and local laws to effective response plans.

To address these many concerns, I introduced two bills, S. 427, the Agriculture Security Assistance Act, and S. 435, the Agricultural Security Preparedness Act, to increase the coordination in confronting the threat to America’s agriculture industry and provide the needed resources. My legislation provides for more targeted State and local funding and a better-coordinated Federal system.

The Agriculture Security Assistance Act would assist States and communities in responding to threats to the agriculture industry by authorizing funds for: Animal health professionals to participate in community emergency planning activities to assist farmers in strengthening their defenses against a terrorist threat; a biosafety grant program for farmers and ranchers to provide needed funding to begin to ensure the safety and security were found and the use of sophisticated remote sensing and computer modeling approaches to agricultural diseases.

The Agriculture Security Preparedness Act would ensure better coordination within the Federal Government by: Establishing senior level liaisons in the Departments of Homeland Security, DHS, and Health and Human Services to coordinate with the Department of Agriculture, USDA, and the National Veterinary Stockpile against a terrorist threat; a biosecurity grant program for farmers and ranchers to provide needed funding to plan for and protect their animals and their land; and providing the use of sophisticated remote sensing and computer modeling approaches to agricultural diseases.

Mr. AKAKA. Mr. President, I rise today to call attention to the urgent need to prepare America against an attack on our agriculture. The Nation’s agriculture industry is crucial to our prosperity. Yet it does not receive the protection it needs. Our food supply system is vulnerable to accidental or intentional contamination that would damage our economy, and, most importantly, could cost lives.

There is no need to question whether animal-borne diseases can actually threaten the United States. Look to last December’s mad cow disease outbreak: only one cow was found to be infected, and yet the U.S. beef industry was thrown into a tailspin from which it still has not recovered. As a result: American cattle prices fell by 20 percent; some predict beef exports will fall by 90 percent from 2003 to 2004; and more than 40 foreign countries have instituted bans on American beef, most of which will not be lifted in the near future. This resulted from the infection of only two cows.

In the beginning of February, a version of the avian influenza, a disease sweeping through Southeast Asian poultry that has killed at least 22 people to date, was discovered on two Delaware chicken farms. It also surfaced in New Jersey and Pennsylvania, and a far more contagious strain was later reported in Texas. While the two
lines of defense for American agriculture. Without adequate resources, both in terms of funding and advice, these defenses will fail. While the presidential directive mandates the creation of a coordinated response plan that includes Federal, State, and local partners, it falls short of supplying the State and local officials with the necessary funding and guidance to better protect their jurisdiction. Surprisingly, the administration proposes huge cuts in fiscal year 2004 homeland security grants for the States.

We have witnessed the impact a small, unintentional outbreak of mad cow disease had on our country. We cannot wait for a far more damaging and widespread attack on our agricultural system. While I commend the President’s initiative in this area, further action is needed. I urge my colleagues to support this overdue legislation to protect America’s breadbasket.

GAO HUMAN CAPITAL REFORM ACT OF 2000

Mr. GRASSLEY. Mr. President, I come before this body to state that I would object to any unanimous consent or other requests to address H.R. 2751, S. 1522, entitled the GAO Human Capital Reform Act of 2003, as amended. The bill would, among other things, allow new authority to the General Accounting Office, GAO, to modify its human capital system. While I commend the President’s initiative in this area, further action is needed. I urge my colleagues to support this overdue legislation to protect America’s breadbasket.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

The Council of 15-year-old girl allegedly approached two other girls who were holding hands and assaulted them saying she was “tired of seeing them hold hands and kissing.” The girl has been accused of assaulting the girls because of their sexual orientation. I believe that Government’s first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Act is symbolic in becoming substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

TRIBUTE TO ADMIRAL (RETIRED) THOMAS MOORER

Mr. SESSIONS. Mr. President, I rise today before the Senate to recognize a great American and one of the finest patriots this Nation, and my home State of Alabama, has ever produced. We are truly saddened by the loss of Retired U.S. Navy Admiral Thomas Moorer, former Chairman of the Joint Chiefs of Staff from July 1970 to June 1974 and former Chief of Naval Operations from 1967 to 1970.

Admiral Moorer’s distinguished service in our great Navy spanned 41 remarkable years during which he dutifully stood the watch against our adversaries. He was 7th Chairman of the Joint Chiefs of Staff and the 18th Chief of Naval Operations. These accomplishments were consistent with his outstanding service record that had placed Admiral Moorer on our front lines throughout his career. Admiral Moorer was serving in Pearl Harbor with Patrol Squadron Twenty-Two on December 7, 1941. He witnessed that “day of infamy” and answered with bravery as he was one of the first pilots to get his aircraft airborne after the Japanese attack.

Never shying from battle, he was wounded in aerial combat when his aircraft was shot down near the Australian coastline. Indeed, indicative of the ferocity of the combat, the rescue ship that recovered him was sunk by enemy action the same day as his rescue. Still, he would not quit and went on to receive the Distinguished Flying Cross for valor. He flew through hostile battle with full knowledge of overpowering enemy aircraft superiority flying badly needed supplies into the besieged island of Timor and flying evacuations of the wounded. He also stood watch during the Korean conflict, during the Cuban Missile crisis, and in engagement in Vietnam and during our outreach to China.

Admiral Moorer distinguished himself in many positions including command of our Seventh Fleet, arriving at full Admiral in June 1964 when appointed to Commander in Chief of the Pacific Fleet. He was the first naval officer to command both the Pacific and Atlantic Fleets. Admiral Moorer stood his watch as Chairman of the Joint Chiefs of Staff, the highest position any military officer has ever held. Commander President Nixon as the Nation extracted itself from our conflict in Vietnam. Writing in White House Years, Dr. Henry Kissinger remarked that Admiral Moorer “had spent the 1960s in command positions which, while not without their frustrations, did not produce the physical and psychological exhaustion of high-level Washington. A canny bureaucratic infighter, Moorer made no pretense of academic subtlety. If anything, he exaggerated the attitude of an innocent country boy caught up in a jungle of sharpies. What his views lacked in elegance they made up in explicitness. By the time he took office, Vietnam had become a rearguard action. He conducted its heartbreaking phaseout with dignity. No President could have had a more stalwart military advisor.”

He did not waiver. Admiral Moorer strongly disagreed with the Panama Canal giveaway. In fact, he testified before the Senate Armed Services Committee several years ago on this subject. The public had again become concerned about this issue as a Chinese company had won the contract to operate both ends of the canal. Admiral Moorer noted the danger this posed to the movement of our fleet.

As a young Alabamian, I followed Admiral Moorer’s career. He was from the small rural community of Mt. Willing. Mt. Willing was on the road to Montgomery from my home in the rural community of Hybart near Camden. I would frequently go through Camden up Highway 21 through Mt. Willing on my way to Huntingdon College in Montgomery where I was a student. I would pass Moorer’s grocery operated by a relative, and have the chance to think of the extraordinary accomplishments of this remarkable Admiral from the small part of Alabama. He carried those values with him as can be seen from Dr. Kissinger’s comments and those who knew him. Mt. Willing is an old
community. Its post office was established not long after Alabama became a State in 1819.

Admiral Moorer actually attended a one-room schoolhouse. Later, his family moved to Montgomery where he graduated from high school. He was then a cadet at the Alabama Military Institute, graduating at the age of 15. Two years later he entered the Naval Academy. During this period his family moved to Eufaula, AL, which is where he met his wonderful wife, Carrie. Mrs. Moorer, a most delightful person in her own right, was tremendously supportive of Admiral Moorer's career and his beliefs, and remains proud of his exceptional service, as well she should.

It is appropriate that we reflect today on the sacrifices made by this veteran Sailor and great military leader. I am proud of him for serving our great country through challenging times. And I join all of the citizens of Alabama in prayer for one of our own, this country boy from Mt. Willing, Alabama who turned top Admiral. His story is one that all Americans can be proud of. We wish him and his family Godspeed and fair winds and following tomorrow after 20 years of service as a military officer can achieve—Chairman of the Joint Chiefs of Staff. He delivered for his beloved homeland there just as he did in all his previous positions. These values, taught best in our small towns, sustain us in difficult times. Admiral Moorer, like all the other wonderful Soldiers, Sailors, Airmen and Marines, fully understood that when he put on that uniform, he was prepared for his beloved homeland there just as well as the appropriate state and federal agencies and interested consumer and business organizations.

GULFSTREAM AEROSPACE CORPORATION

Mr. CHAMBLISS. Mr. President, I rise today to commend a company based in Georgia which, with its partners, has won the prestigious Collier trophy, the aviation equivalent of the Super Bowl, for the second time in 8 years. Gulfstream Aerospace Corporation, a world-renowned business jet aircraft, and the other members of the aircraft development team, which include Honeywell International, Kollisman, Rolls-Royce, and Vought Aircraft Industries, have won the 2003 Collier Trophy for their outstanding contribution to aviation. In 1998, the firm’s Gulfstream V jet won the 1997 award for its combination of high technology avionics, speed, and range. This year, the Collier Trophy recognizes the G550 Development Team for the large-cabin, ultra-long-range Gulfstream G550 business jet. The aircraft can fly as high as 51,000 feet, at speeds up to Mach .885, and 6,750 nautical miles non-stop. It also has an avionics system which enhances the pilot’s ability to fly the aircraft safely.

The trophy, named for Orville Wright for an automatic stabilizer, the U.S. Post Service for air

ABSTENTION FROM VOTE

Mr. GRAHAM of South Carolina. Mr. President, today the Senate Armed Services Committee met to vote on several military and civilian nominations before the committee. Included on the list of military nominations was that of my own to be Colonel in the United States Air Force Reserve.

While I take my responsibility as a member of this committee which holds oversight authority over the United States military very seriously, I would like to note for the record that I abstained from the voice vote on this subject to avoid the impression of a conflict of interests.

TRIBUTE TO ALMA KRISTOFFERSSEN

Mr. LAUTENBERG. Mr. President, today I rise to commend one of the many unsung heroes of our Senate family, Alma Kristoffersen, who will retire tomorrow after 20 years of service as a transcriber and reporting technician for the CONGRESSIONAL RECORD.

I worked in the private sector for more than 30 years before I first came to the Senate. One of the things that struck me about this institution as I came to know it is the dedication, skill, and professionalism shown by the people who work in all capacities here. Senators and committees have their own staff, and we rely on them, to be sure. But we also rely on the hundreds of staffs that make up what I call the “infrastructure” of the Senate. For the most part, they go about their business unnoticed and certainly underappreciated. We have to remind ourselves now and then that this place would screech to a halt without their tireless devotion to their jobs and to our Nation.

Alma is a fine example of that tradition. She has many talents, including a strong knowledge of grammar, spelling, and punctuation. A good writer, she reads and dry sense of humor. But her most enduring asset is her absolute commitment to teamwork. She is always willing to volunteer for extra duties.

Alma, was born in Liverpool, England, and moved to the United States in 1968. She became a citizen in the early 1990s, qualifying for a high security clearance to work on classified material. She and her husband Tom have a son, Alex, who lives in Brooklyn, NY. Alma plans to enjoy all her various hobbies in retirement, including gardening, tennis, travel, and actually being able to attend her book club on week nights.

I know that I speak on behalf of the entire Senate when I say how much I appreciate Alma’s service to this institution and to the Nation. Alma’s colleagues and friends here in the Senate, particularly in the Office of Official Reports of the Senate, but also in the U.S. to protect the health and safety of our citizens, livestock, and economy. Be it further

Resolved, That this resolution be forwarded to our local, state and federal legislators, as well as the appropriate state and federal agencies and interested consumer and business organizations.

ADDITIONAL STATEMENTS

MARATHON COUNTY RESOLUTION RELATING TO BSE

- Mr. KOHL. Mr. President, this weekend members of the National Association of Counties will be meeting in Washington for their annual legislative conference. County officials across the nation deal with a wide variety of issues before the committee. Included in the agenda is the oath of local officials to the U.S. to protect the health and safety of our citizens, livestock, and economy. Be it further

Resolved, That the Board of Supervisors of the County of Marathon does hereby resolve and ordain that Federal, State and local agencies continue to judiciously enforce the standards set forth by the Federal Food and Drug Administration to prevent the establishment of BSE; and

Resolved, That countries that export livestock or meat to the United States, meet or exceed U.S. standards of care regarding BSE; be it further

Resolved, That livestock or meat from countries which do not meet or exceed the U.S. standard of care be banned from importation into the U.S. to protect the health and safety of our citizens, livestock, and economy. Be it further

Resolved, That this resolution be forwarded to our local, state and federal legislators, as well as the appropriate state and federal agencies and interested consumer and business organizations.

Whereas in 1997 the United States Food and Drug Administration banned the use of protein derived from mammalian tissue in food for ruminant animals to prevent the establishment of BSE; and

Whereas agriculture is a $40 billion industry in the State of Wisconsin; and

Whereas Marathon County is a leader in Wisconsin agriculture, notably the dairy and beef industry; and

Whereas Marathon County is concerned about the health, safety and economic impact related to BSE; and

Whereas in 1997 the United States Food and Drug Administration banned the use of protein derived from mammalian tissue in food for ruminant animals to prevent the establishment of BSE; and

Whereas many countries that export livestock and meat to the United States do not have the same standard of safety. Now, therefore be it

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The trophy, named for Orville Wright for an automatic stabilizer, the U.S. Post Service for air
mail, and MAJ E. L. Hoffman, United States Army Air Corps, for the development of a practical parachute.

While I am, of course, proud of the Gulfstream Development Team for winning this award, I am even more proud of the folks down in Savannah, GA, who build these world-class aircraft. Without their skill and dedication to superior quality, Gulfstream's G550 aircraft could never have earned this recognition for excellence in aviation.

COMMENDING WTOC-TV

- Mr. CHAMBLISS. Mr. President, I wish to congratulate an important news organization in the beautiful coastal city of Savannah, WTOC-TV.

The station was founded as an AM radio station in 1929 by Savannah's Junior Board of Trade. Just as the Junior Board of Trade became Savannah's Jaycees, WTOC evolved into Savannah's first television station, beginning its first broadcasts on Valentine's Day, 1954.

In May 2002, WTOC scored yet another Savannah first by starting the area's first digital high definition broadcasts.

During its 50 years of service to Savannah and coastal Georgia, WTOC has provided news coverage for the community. Its news team has won awards for their coverage of issues, including Emmies and Edward R. Murrow awards for news gathering efforts in 2003.

I commend the station's owners and staff for serving Savannah and its entire community for the past 50 years. I am confident they will continue covering issues and giving back to Savannah in the years to come.

THE SESQUICENTENNIAL ANNIVERSARY OF THE CITY OF GREEN BAY, WI

- Mr. FEINGOLD. Mr. President, today I commemorate the sesquicentennial of Green Bay, WI, one of the most famous cities in America, and one of Wisconsin's most beloved places.

Green Bay is Wisconsin's oldest European settlement dating back to the explorations of Jean Nicolet in 1634. Early fur traders and explorers used Green Bay and the Fox River as an important access point from the Great Lakes to the Western lands of the New World. Early French settlers called the bay, "La Baie Verte," because of its green waters. In the second half of the 19th century, European immigrants flocked to Green Bay for the good farming soil and ample business opportunities. The paper industry became a vital part of the Green Bay economy and remains the leading employer in the city today. Green Bay became a city when it was incorporated by the Wisconsin Legislature on February 27, 1854. Today, Green Bay stands with a population of over 100,000 people as Wisconsin's third-largest city.

Today visitors can get a taste of Green Bay's long history at the Heritage Hill State Historic Park which offers a rare opportunity to visit one of Wisconsin's oldest working homes, the Tank Cottage. Green Bay is also home to the National Railroad Museum, home of the world's largest steam locomotive and General Dwight D. Eisenhower's WWII command train.

Green Bay is known as the "City of Champions," as it is home to the world-famous Green Bay Packers, the real "America's Team." In 1919, Curly Lambeau, who worked for a packing plant, organized the original Packers football team. The team's popularity led to the packing plant backing Lambeau in obtaining a franchise in the new professional football league. Early financial problems were overcome by making the team publicly owned, an honor that I am proud to say I am now a part of. The rest, as they say, is history. The Packers have gone on to win 12 championships, more than any other pro football team. Green Bay has been the stage for such great games as the 1967 Ice Bowl and such talents as Vince Lombardi, Don Hutson, Bart Starr and Brett Favre. Every year, people from all over the country make a pilgrimage to Green Bay to see the frozen tundra of the beautifully renovated Lambeau Field and visit the Green Bay Packers Hall of Fame.

Green Bay is a city with a distinguished history, a proud tradition of hardworking families and a bright future. Happy birthday, Green Bay. We are looking forward to the next 150 years.

TRIBUTE TO BILL PARDUE

- Mr. INHOFE. Mr. President, I would like to pay tribute to Bill Pardue, who until recently was the CEO of LexisNexis of Dayton, OH, which now owns Dolon Information of Oklahoma City, OK.

I have had the privilege of working with Bill and LexisNexis on various initiatives to help secure the homeland, and wanted to say a sincere thank you, on behalf of all Americans to Bill, to Lexis-Nexis, and to the thousands of people who make up that fine company.

IN REMEMBRANCE OF FREDERICK BOOKER NOE II

- Mr. BUNNING. Mr. President, today I would like to take the opportunity to remember Frederick Booker Noe II of Bardstown, Kentucky, the master distiller of Jim Beam Bourbon. He passed away on Tuesday at age 74 in his home in Bardstown, and will be greatly missed by his surviving family and the Jim Beam Brands Company.

In 1950, Mr. Noe entered the family business, the bourbon that is the namesake of his grandfather, Jim Beam. He directed the production and aging of bourbon at Jim Beam and was named master distiller in 1965. While he oversaw production of Jim Beam Bourbon, production increased and innovations were made that revitalized the bourbon industry forever.

His contributions to the bourbon industry were recognized with him "larger than life," and "one of the crown jewels of American distilling." Jim Beam Brands honored him upon his retirement in 1992 by placing his photo on the bottle labels alongside the family distillers who preceded him.

We are proud of Mr. Noe's contributions to the industry. He will be greatly missed, and our hearts go out to his family during this time.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and three withdrawals which were referred to the appropriate committees.

(REPORT RELATIVE TO EXPANDING THE SCOPE OF THE NATIONAL EMERGENCY AND INVOCATION OF EMERGENCY AUTHORITY RELATING TO THE REGULATION OF THE ANCHORAGE AND MOVEMENT OF VESSELS INTO CUBAN TERRITORIAL WATERS—PM 64)

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Pursuant to section 1 of title I of Public Law 65–24, ch. 30, 50 U.S.C. 191, and sections 201 and 301 of the National Emergencies Act, 50 U.S.C. 1001 et seq., I hereby report that I have exercised my statutory authority to continue the national emergency declared in Proclamation 6887 of March 1, 1996, in response to the Cuban government's destruction of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba.

Additionally, I have exercised my authority to expand the scope of the national emergency as, over the last year, the Cuban government, which is a designated state-sponsor of terrorism, has taken a series of steps to destabilize relations with the United States, including threatening to abrogate the Migration Accords with the United States.
and to close the U.S. Interests Section. This conduct has caused a sudden and worsening disturbance of U.S. international relations.

In my proclamation (copy attached), I have authorized and directed the Secretary of Homeland Security to make and issue such rules and regulations as may be appropriate to prevent unauthorized U.S. vessels from entering Cuban territorial waters.

I have authorized these rules and regulations as a result of the Cuban government’s demonstrated willingness to use reckless force, including voluntary force, in the ostensible enforcement of its sovereignty. I have also authorized these rules and regulations in an effort to deny resources to the repressive Cuban government that may be used by that government to support terrorist activities and carry out excessive use of force against innocent victims, including U.S. citizens and other persons residing in the United States, and threaten a disturbance of international relations. Accordingly, I have continued and expanded the national emergency in response to these threats.

GEORGE W. BUSH.

REPORT RELATIVE TO EFFORTS TO OBTAIN THE FULLEST POSSIBLE ACCOUNTING OF CAPTURED OR MISSING UNITED STATES PERSONNEL FROM PAST MILITARY CONFLICTS OR COLD WAR INCIDENTS—PM 65

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations:

To the Senate of the United States:

Consistent with Condition (3) of the resolution of advice and consent to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia, adopted by the United States Senate on May 8, 2003, and based on the recommendation of the Department of State, I hereby certify to the Senate that:

(i) the inclusion of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia in NATO will not have the effect of increasing the overall percentage share of the United States in the common budget of NATO; and

(ii) the inclusion of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia in NATO does not detract from the ability of the United States to meet or to fund its military requirements outside the North Atlantic area.

GEORGE W. BUSH.

MESSAGES FROM THE HOUSE

At 12:15 p.m., a message from the House of Representatives, delivered by Ms. Noland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2571. An act to provide new human capital flexibilities with respect to the GAO, and for other purposes.

H.R. 3690. An act to designate the facility of the United States Postal Service located at 2 West Main Street in Batavia, New York, as the “Barber Conable Post Office Building.”

At 4:30 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:


At 5:42 p.m., a message from the House of Representatives, delivered by Ms. Noland, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 287. Concurrent resolution recognizing and honoring the life of the late Raul Julia, his dedication to ending world hunger, and his great contributions to the Latino community and the performing arts; to the Committee on the Judiciary.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 3850. An act to provide an extension of the Highway Trust Fund pending enactment of a law authorizing the Transportation Equity Act for the 21st Century.

MEASURES REFERRED

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 287. Concurrent resolution recognizing and honoring the life of the late Raul Julia, his dedication to ending world hunger, and his great contributions to the Latino community and the performing arts; to the Committee on the Judiciary.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–6144. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, a report relative to the emigration laws and policies of Armenia, Azerbaijan, Kazakstan, Moldova, the former Russian, Pakistan, Ukraine, and Uzbekistan; to the Committee on Finance.

EC–6433. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Special Federal Aviation Regulations—Regulation No. 36, Development of Major Repair Data; Direct Final Rule; Request for Comments” (RIN2120–AI09) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6434. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Limitation on Construction or Alteration in the Vicinity of the Private Residence of the President of the United States; Disposition of Comments on Interim Final Rule; Doc. No. FAA–2003–1497” (RIN2120– A135) received on February 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6435. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Limitation on Construction or Alteration in the Vicinity of the Private Residence of the President of the United States; Disposition of Comments on Interim Final Rule; Doc. No. FAA–2003–1497” (RIN2120–A135) received on February 22, 2004; to the Committee on Commerce, Science, and Transportation.
entitled “Regulation of Frational Aircraft Ownership Programs and On Demand Operations; Doc. No. FAA–2001–10047” (RIN2120–AH06) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6436. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Transport Airplane Fuel Tank Ignition Source Review; Flammability Reduction, and Maintenance and Inspection Requirements; Doc. No. FAA1999–6411” (RIN2120–AG62) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6437. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Flightdeck Security on Large Cargo Airplanes; Request for Comments; Doc. No. FAA–2003–15053” (RIN2120–AF96) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6438. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E and E airspace; Calverton, NY Doc. No. 03–AEA–16” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6439. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E airspace; Oskaloosa, IA Doc. No. 03–ACE–84” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6440. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E airspace; Waverly, IA Doc. No. 03–ACE–85” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6441. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Establishment of Class D airspace; Hilton Head, SC Correction Amendment Doc. No. 09–AAL–16” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6442. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Establishment of Class D airspace; Great Bend, KS Doc. No. 05–ACE–72” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6443. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Removal of Class E airspace; New Port Richey, FL Doc. No. 05–ASO–22” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6444. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E airspace; Philadelphia, PA Doc. No. 03–AEE–06” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6445. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Amendment of Class E airspace; Springfield, MO Doc. No. 03–ACE–100” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6446. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E airspace; Winterset, IA Doc. No. 03–ACE–87” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6447. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E airspace; Polson, MT Doc. No. 03–ANM–10” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6448. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E airspace; Osceola, IA Doc. No. 03–ACE–83” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6449. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E airspace; Tipton, IA Doc. No. 03–ACE–85” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6450. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E airspace; Marysville, KS Doc. No. 05–ACE–99” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6451. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E airspace; Lawrenceville, VA Doc. No. 03–AEE–10” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6452. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E airspace; New York, NY Doc. No. 03–AEE–16” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6453. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E airspace; Tarbert, AL Doc. No. 03–ACE–97” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6454. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E airspace; Beloit, KS Doc. No. 03–ACE–09” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6455. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E airspace; Greenfield, IA Doc. No. 03–ACE–88” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6456. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E airspace; Manokotak, AK Doc. No. 03–AAL–19” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6457. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E airspace; Kingman, KS Doc. No. 03–ACE–73” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6458. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification of Class E airspace; Columbus, NE Doc. No. FAA–2006–13235” (RIN2120–AG96) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6459. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification and Revocation of Federal Airways; AK Doc. No. 02–AAL–9” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6460. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Certification of Airports Area 2202D, Big Delta, AK, Doc. No. 03–AAL–07” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6461. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Modification and Revocation of Federal Airways; AK Doc. No. 02–AAL–9” (RIN2120–AA66) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6462. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Special Air Traffic Rules; Flight Restrictions in the Vicinity of Niagara Falls; Doc. No. FAA–2000–7479” (RIN2120–AG96) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC–6463. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Special Air Traffic Rules; Flight Restrictions in the Vicinity of Niagara Falls; Doc. No. FAA–2002–13253” (RIN2120–AH79) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.
EC-6464. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Collision Avoidance Systems; Request for Comments;” Doc. No. FAA–2003–15571” (RIN2120–A100) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6465. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Digital Flight Data Recorder Requirements for Small Airports:” Doc. No. FAA–2003–15585” (RIN2120–A100) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6466. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Aging Aircraft Safety Doc. No. FAA–1999–5401” (RIN2120–A242) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6467. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board” (FCCC–11) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6468. A communication from the Deputy Chief, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “Contact Administration; Removal of Miscellaneous, Obsolete, or Redundant Regulations” (RIN225–A101) received on February 9, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6469. A communication from the General Counsel Product Security Commission, transmitting, pursuant to law, the report of a rule entitled “Exemption for Model Rocket Propellant Devices for Use with Model Rocket “Model Cars”” (RIN3123–A240) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6471. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled “Final Rule to Implement Amendment 10 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico” (RIN0648–AM23) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6472. A communication from the Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled “Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations” (RIN0648–AQ13) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6474. A communication from the Attorney, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Economy Manufacturing Incentives for Alternative Fueled Vehicles” (RIN2127–A141) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6475. A communication from the Senior Attorney, Research and Special Programs Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Hazardous Materials: Enhancing Hazardous Materials Transportation Security” (RIN2135–AD79) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6476. A communication from the Assistant Secretary for Commerce, Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Chemical Weapons Convention Regulations: Electronic Submission of Declarations and Reports through the Web-Data Entry System for Industry” (RIN0694–AC97) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6477. A communication from the Senior Legal Advisor, International Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “In the Matter of Amendment of Parts 2 and 25 to Implement the Global Personal Communications System (PCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration to Revoke the Rules to Establish Emission Limits for Mobile and Portable Earth Stations Operating in the 1610–1690.5 MHz Band” (FCC03–283) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6478. A communication from the Deputy Chief, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “In the Matter of Rural Health Care Support Mechanism in WC Docket No. 02–60; FCC04–15” (FCC04–15) received on February 24, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6479. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Montgomery)” (MB Doc. No. 03–164) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6480. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Hobbs, New Mexico)” (MB Doc. No. 03–183) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6481. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “Amendment of Section 73.202(b), Table of Allotments, DTV Broadcast Stations (Knoxville)” (MB Doc. No. 03–182) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6482. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Saluda and Irmo, South Carolina)” (MM Doc. No. 00–133) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6483. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Shawnee, Big Lake, and Turkey, Texas)” (MB Doc. No. 02–251, 254, and 370) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6484. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Crito Amalie, Frederiksted, and Christiansted, Virgin Islands)” (MM Doc. No. 00–102) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6485. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Hart, Pentwater, and Coopersville, Michigan)” (MB Doc. No. 02–335) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6486. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Shawnee and Topeka, Kansas)” (MB Doc. No. 03–26) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6487. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Amherst and Lynchburg, Virginia)” (MM Doc. No. 96–100) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6488. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Portland, Maine)” (MM Doc. No. 00–136) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6489. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “Amendment of Section 73.202(b), Table of Allotments, DTV Broadcast Stations (Knoxville)” (MB Doc. No. ) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.

EC-6490. A communication from the Senior Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled “Amendment of Section 73.202(b), Table of Allotments, DTV Broadcast Stations (Knoxville)” (MB Doc. No. ) received on February 26, 2004; to the Committee on Commerce, Science, and Transportation.
Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Ketchum, Jerome, and Rupert, Idaho; Coalville, Naples, Huntsville, South Jordan, Tooele, Wellington, Castle Dale, Salina, Parowan, and Payson, Utah)" (MB Doc. No. 02–014) received on February 26, 2004, to the Committee on Commerce, Science, and Transportation.

EC–6492. A communication from the Senate Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Fargo, North Dakota)" (MB Doc. No. 03–234) received on February 26, 2004, to the Committee on Commerce, Science, and Transportation.

EC–6493. A communication from the Senate Legal Advisor to the Chief, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.606(b), Table of Allotments, DTW Broadcast Stations (Tupelo, MS)" (MB Doc. No. 03–221) received on February 26, 2004, to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROBERTS, from the Select Committee on Intelligence, without amendment: S. 2136. An original bill to extend the report date and termination date of the National Commission on Terrorist Attacks Upon the United States, to provide additional funding for the Commission, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WAGNER for the Committee on Armed Services.

*Kiron Kanian Skinner, of Pennsylvania, to be a Member of the National Security Education Board for a term of four years.


Mr. WARNER. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

Air Force nominations beginning Michel L. Bunning and ending Debra M. Niemeyer, which nominations were received by the Senate and appeared in the Congressional Record on October 16, 2003.

Air Force nominations beginning Raan R. Aagaard and ending Steven R. Zwicker, which nominations were received by the Senate and appeared in the Congressional Record on October 16, 2003.

Air Force nominations beginning Donald L. Buege and ending Samuel R. Weinstei, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2004.

Air Force nominations beginning Alan C. Dickerson and ending Phillip Phillips, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2004.

Air Force nominations beginning Walter F. Burghardt, Jr. and ending Phillip Y. Yoshimura, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2004.

Air Force nominations beginning Monica M. Allisoncruci and ending Mark J. Tost, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2004.

Air Force nominations beginning Patricia S. Angelamb and ending Kathleen L. Zygowicz, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2004.

Air Force nomination of Virginia A. Schmelier.

Air Force nominations beginning Perry L. Amerine and ending James R. Patterson, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Air Force nominations beginning Stewart J. Hazel and ending William W. Pond, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Air Force nominations beginning William E. Betti and ending Michael P. Vanhoomissen, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Air Force nominations beginning Michael A. Alday and ending David J. Smell, which nominations were received by the Senate and appeared in the Congressional Record on January 28, 2004.

Air Force nominations beginning Troy A. Tyre, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Air Force nominations beginning Loring P. Ohman.

Marine Corps nominations beginning Edward M. Willis.

Marine Corps nominations beginning Samuel R. Ames and ending Peter T. Elsesser, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Marine Corps nominations beginning Richard C. Barlow and ending Michael E. Thomas, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Marine Corps nominations beginning John A. Wisnewski, Jr., which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Marine Corps nominations beginning John A. Wise and ending Michael E. Thomas, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Marine Corps nominations beginning Seeley E. Davis and ending David H. Stephens, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Marine Corps nominations beginning Todd P. Ohman.

Marine Corps nominations beginning Peter D. Charbonneau and ending John A. Taninecz, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Marine Corps nominations beginning Alda A. Cummings and ending John M. McElroy, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Marine Corps nominations beginning Michael D. Smith.

Marine Corps nominations beginning Ronald W. Cochran and ending Paul J. Miner, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Marine Corps nominations beginning Bernard K. Rawalayvandevoort and ending Troy A. Tyre, which nominations were received by the Senate and appeared in the Congressional Record on February 5, 2004.

Marine Corps nominations beginning Steve E. Howells.

Marine Corps nominations beginning Richard K. Rohr.

Marine Corps nominations beginning William E. Hines.

Marine Corps nominations beginning Donald L. Bohannan.

Marine Corps nominations beginning Peter D. Charbonneau and ending John A. Taninecz, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Marine Corps nominations beginning Michael D. Smith.

Army nominations beginning David H. Fedor and ending Gerald E. Stone, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Army nominations beginning David H. Fedor and ending Gerald E. Stone, which nominations were received by the Senate and appeared in the Congressional Record on February 11, 2004.

Army nominations beginning Randy M. Adair and ending Andrew N. Sullivan, which nominations were received by the Senate and appeared in the Congressional Record on February 2, 2004.

Army nominations beginning Jose Gonzalez and ending Jeffrey G. Young, which nominations were received by the Senate and appeared in the Congressional Record on February 2, 2004.

Army nominations beginning Edward N. Lianitos and ending Matthew E. Sutton, which nominations were received by the Senate and appeared in the Congressional Record on February 2, 2004.

Army nominations beginning Thomas E. Blake and ending James A. Griffiths, which nominations were received by the Senate and appeared in the Congressional Record on February 2, 2004.

Army nominations beginning Gerald A. Cummings and ending John M. Marinakis, which nominations were received by the Senate and appeared in the Congressional Record on February 2, 2004.

Army nominations beginning Paul J. Smith.

Army nominations beginning Robert P. Johnson.

Army nominations beginning Paul J. Smith.

Army nominations beginning Paul J. Smith.

Army nominations beginning Paul J. Smith.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)
INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. GRAHAM of South Carolina (for himself, Mr. SESSIONS, and Mr. McCAIN):

S. 2130. A bill to contain the costs of the Medicare prescription drug program under part D of title XVIII of the Social Security Act, and for other purposes; to the Committee on Finance.

By Mr. BURNS (for himself, Mr. WYDEN, and Mrs. BOXER):

S. 2131. A bill to prohibit the unauthorized installation of computer software, to require clear disclosure to computer users of certain computer software features that may pose a threat to user privacy, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. FEINGOLD (for himself, Mr. CORZINE, Mrs. CLINTON, Mr. LAUTENBERG, Mr. KENNEDY, Mr. SCHUMER, Mr. DURBIN, Mr. KERRY, Mrs. BOXER, Mr. REID, Mr. DODD, Ms. CANTWELL, Mr. MUKULSKI, and Mr. EDWARDS):

S. 2132. A bill to prohibit racial profiling; to the Committee on the Judiciary.

S. 2133. A bill to amend title XVIII of the Social Security Act to improve the provision of items and services provided to Medicare beneficiaries residing in rural areas; to the Committee on Finance.

By Mr. ROBERTS:

S. 2134. An original bill to extend the final report and implementation date of the National Commission on Terrorist Attacks Upon the United States, to provide additional funding for the Commission, and for other purposes; from the Select Committee on Intelligence; placed on the calendar.

By Mr. DORGAN (for himself, Ms. SNOWE, Ms. STABENOW, Mr. MCCAIN, and Mr. DASCHLE):

S. 2135. A bill to authorize the Secretary of Agriculture and the Secretary of the Interior to enter into an agreement or contract with Indian tribes meeting certain criteria to carry out projects to protect Indian forest land; to the Committee on Indian Affairs.

By Mrs. MURRAY (for herself and Ms. CANTWELL):

S. 2136. A bill to amend title XVIII of the Social Security Act to improve the provision of items and services provided to Medicare beneficiaries residing in rural areas; to the Committee on Finance.

By Mr. ROBERTS:

S. 2137. A bill to authorize the Secretary of Health and Human Services to promulgate regulations for the reimportation of prescription drugs, and for other purposes; read the first time.

By Mr. GRAHAM of South Carolina:

S. 2138. A bill to protect the rights of American consumers to diagnose, service, and repair motor vehicles purchased in the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mrs. CLINTON:

S. 2139. A bill to provide coverage under the Energy Employees Occupational Illness Compensation Program for individuals employed at atomic weapons employer facilities during periods of residual contamination; to the Committee on Health, Education, Labor, and Pensions.

By Ms. CANTWELL (for herself and Mrs. MURRAY):

S. 2140. A bill to expand the boundary of the Mount Rainier National Park; to the Committee on Energy and Natural Resources.

By Mr. LUGAR:

S. 2141. A bill to amend the Farm Security and Rural Investment Act of 2002 to enhance the ability to produce fruits and vegetables on soybean-based; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

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

S. Con. Res. 93. A concurrent resolution authorizing the use of the rotunda of the Capitol by the Joint Congressional Committee on Inaugural Ceremonies; considered and agreed to.

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

S. Con. Res. 94. A concurrent resolution establishing the Joint Congressional Committee on Inaugural Ceremonies; considered and agreed to.

ADDITIONAL COSPONSORS

S. 983. At the request of Mr. CHAFFEE, the names of the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Connecticut (Mr. DODD) were added as co-sponsors of S. 983, a bill to establish the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 985. At the request of Mr. DODD, the names of the Senator from Mississippi (Mr. LOTT) and the Senator from Wisconsin (Mr. KOHL) were added as co-sponsors of S. 985, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers.

S. 1120. At the request of Mr. DODD, the name of the Senator from Montana (Mr. BURTON) was added as a co-sponsor of S. 1120, a bill to establish an Office of Trade Adjustment Assistance, and for other purposes.

S. 1123. At the request of Mr. BAUCUS, the name of the Senator from Montana (Mr. BURTON) was added as a co-sponsor of S. 1123, a bill to establish a program to provide a wage-related benefit to trade-affected workers.

S. 1170. At the request of Mr. WYDEN, the name of the Senator from New Jersey (Mr. LATTENBERGER) was added as a co-sponsor of S. 1170, a bill to designate certain conduct by sports agents relating to signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

S. 1180. At the request of Mr. SANTORUM, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a co-sponsor of S. 1180, a bill to amend the Internal Revenue Code of 1986 to modify the work opportunity credit and the welfare-to-work credit.

S. 1189. At the request of Mr. DURBIN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a co-sponsor of S. 1189, a bill to ensure an appropriate balance between resources and accountability under the No Child Left Behind Act of 2001.

S. 1298. At the request of Mr. AKAKA, the name of the Senator from Maine (Ms. SNOWE) was added as a co-sponsor of S. 1298, a bill to amend the Farm Security and Rural Investment Act of 2002 to ensure the humane slaughter of non-ambulatory livestock, and for other purposes.

S. 1780. At the request of Mr. BIDEN, the name of the Senator from Florida (Mr. NELSON) was added as a co-sponsor of S. 1780, a bill to amend the Controlled Substances Act to clarify the definition of anabolic steroids and to provide for research and education activities relating to steroids and steroid precursors.

S. 1783. At the request of Mr. AKAKA, his name was added as a cosponsor of S. 1783, a bill to require employees at a call center who either initiate or receive telephone calls to disclose the physical location of such employees, and for other purposes.

S. 1902. At the request of Mr. REED, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1902, a bill to establish a National Commission on Diagnostic Diseases.

S. 2002. At the request of Mrs. BOXER, the names of the Senator from Washington (Ms. MURRAY) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. 2002, a bill to provide assistance and security for women and children in Afghanistan and for other purposes.

S. 2038. At the request of Mr. WYDEN, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 2038, a bill to waive time limitations specified by law in order to allow the Medal of Honor to be awarded posthumously to Rex T. Barber of Terrebonne, Oregon, for acts of valor during World War II in attacking and shooting down the enemy aircraft transporting Japanese Admiral Isoroku Yamamoto.

S. 2053. At the request of Mr. WYDEN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 2053, a bill to reduce the costs of prescription drugs for medicare beneficiaries, and for other purposes.

S. 2078. At the request of Mr. DAYTON, the names of the Senator from New Jersey
Today, we continue on that path by introducing the “SPY BLOCK” Act, together with our colleague Senator BOXER.

This legislation will put the brakes on the growing problem of software being installed secretly on people’s computers, for purposes they might object to if given the chance. Sometimes, the problem is a “double whammy download” where the consumer’s mere visit to a website or decision to click on an advertisement secretly triggers the downloading of software onto the consumer’s machine. Or, it can be a “double whammy download” where the consumer’s voluntary download of one software program also triggers the inadvertent download of a second software program which, although it may serve a very different purpose, has been bundled together with the first one.

Once installed, the unwanted software operates in the background, performing functions that ordinary computer users cannot detect. As a result, the computer user may never even know the software is there, let alone what it is doing. And to add insult to injury, software that spreads in this fashion often is designed to be nearly impossible to uninstall.

What might such software do, once it is installed? The legislation we are introducing today identifies several possible functions that pose concerns.

First, some software, often referred to as “spyware,” collects information about the computer and transmits that information over the Internet to the spyware’s author. Second, software designed to establish some basic, intrusive, and anti-consumer practices aimed at protecting ordinary computer users from the tricks and schemes of those who would abuse the open and interconnected nature of the Internet. From online privacy to spam, we have sought to establish some basic, commonsense rules that address sleazy, intrusive, and anti-consumer practices that have arisen in the new world of the Internet. In each case, our goal has not been to stifle or restrict legitimate and innovative modes of e-commerce, but rather to promote them by reining in tools and actions that undermine consumer confidence and use of the Internet.

From online privacy to spam, we have sought to establish some basic, commonsense rules that address sleazy, intrusive, and anti-consumer practices aimed at protecting ordinary computer users from the tricks and schemes of those who would abuse the open and interconnected nature of the Internet. From online privacy to spam, we have sought to establish some basic, commonsense rules that address sleazy, intrusive, and anti-consumer practices that have arisen in the new world of the Internet. In each case, our goal has not been to stifle or restrict legitimate and innovative modes of e-commerce, but rather to promote them by reining in tools and actions that undermine consumer confidence and use of the Internet.
them for the third party’s own purposes. The software is essentially a parasite—it attaches itself without consent to the host computer and taps into the host’s resources, making use of them for its own selfish purposes. Our bill would make such unauthorized practices unlawful.

How common is all this? There is little hard data, but one report last year estimated that 20 million people have downloaded software that serves them targeted ads but without their knowledge or consent. I have found that many of these downloads did not involve informed consent. It has also been widely reported that many of the mobile phones sold in this country are pre-installed with software that is not clearly disclosed to the user. The number of affected users is likely very high.

The bill we are introducing today would, for the first time, establish a clear legal principle that you cannot cause software to be installed on someone else’s computer without that person’s knowledge and consent. This general notice and consent requirement could be satisfied by something as simple as an on-screen dialogue box telling the user that clicking “ok” will trigger the download, which is, a particular program. In addition, the bill says that software must be capable of being uninstalled without resorting to extraordinary and highly technical procedures.

Beyond these general requirements, the legislation calls for certain types of software features—that performing the four functions I discussed a moment ago—to be specifically and separately brought to the user’s attention prior to installation. For example, if a software program has a spyware feature designed to collect and transmit information about the user, the user would need to be provided with sufficient notice based on criteria set forth in the bill. This notice would be required to explain the types of information that would be collected and the purposes for which the information would be used. Following this notice, the user would have the option of granting or withholding consent. In the absence of such notice and consent, it would be unlawful to download the software onto the user’s computer, or subsequently to use the software to gather information about that user.

The bill contains some exceptions, for example, for pre-installed software and software features that are necessary to make basic features like e-mail or Internet browsing function properly. Enforcement under the bill would be by the Federal Trade Commission and state Attorneys General.

I recognize that the bill we introduce today may benefit from further attention and input on the particular wording of the definitions, on the types of software features that should be listed in the exceptions, and so forth. Senator BURNS, Senator BOXER, and I are open to further discussion about fine tuning the scope of the bill, so that we don’t create a regime that ends up being impractical or imposing undue burdens on legitimate and useful software. This is the starting point, not the end point.

It is important, however, to get this process right. It is time to send a clear message that unauthorized and privacy-compromising spyware, adware, and other software are unlawful and punishable. I urge my colleagues to join Senators BURNS, BOXER, and myself in supporting this bill.

Mr. BURNS. Mr. President, I rise in support of a measure that I introduce today, with the support of my colleague, Senator WYDEN. We worked closely on the CAN SPAM bill together, and after four years of effort finally saw its successful passage last year. I am pleased to work with Senator WYDEN again on another critical issue which is potentially of even greater concern than junk email given its invasive nature—that of spyware. I also appreciate the support of another of my colleagues on the Senate Commerce Committee, Senator BOXER. Together, we have crafted legislation aimed at ending the insidious operation of spyware, the SPYBLOCK Act of 2004.

Today, we take the first step in giving consumers the control to stop this deceitful practice. Spyware refers to software that is downloaded onto users’ computers without their knowledge or consent. This sneaky software is then often used to track the movements of consumers online or even to steal passwords. The porous gaps spyware creates in a computer’s security may be difficult to close. For example, one popular peer-to-peer file sharing network routinely installs spyware to track users’ information and retrieves targeted banner ads and popups. As noted by a recent article in PC Magazine these file-sharing programs have been "blacklisted" but at the cost of privacy, not money. Of the 60 million users, few know they are being watched. Of those who do discover spyware, uninstalling it may prove more difficult than other software programs. Some spyware includes tricklers, which reinstall the files as you delete them. Users may think they are getting rid of the problem, but the reality of the situation is far different.

The creators of spyware have engineered it so that once it is installed on a computer, it is difficult and sometimes impossible to remove and in some cases requires the entire hard drive to be erased to get rid of this poisonous product. Such drastic measures must be taken, because often spyware tells the installer what websites a user visits, steals passwords or other sensitive documents on a personal computer, and also redirects Internet traffic through certain web servers.

One of the most disturbing aspects about the spyware problem is that so few consumers are even aware of it. Bearing this factor in mind, the SPYBLOCK bill relies on a commonsense approach which prohibits the installation of software on consumers’ computers without notice, consent and reasonable “uninstall” procedures.

The notice and consent approach which SPYBLOCK takes would end the practice of so-called “drive-by downloads” which some bad actors use to secretly download programs onto users’ computers without their knowledge. Under SPYBLOCK, software providers must give consumers clear and conspicuous notice that any program will be downloaded to their computers and requires user consent. This simple provision could be fulfilled by clicking “yes” on a dialog box, for example.

SPYBLOCK also requires notice and consent for other types of software. In the case of “Adware,”’ providers are required to tell consumers what types of ads will pop up on users’ screens and with what frequency. Consent is required for software that modifies user settings or uses “distributed computing” methods to utilize the processing power of individual computers to create larger networks. Finally, software providers must allow for their programs to be easily “uninstalled” by users after they are downloaded. As with the CAN-SPAM law, enforcement authority would be given to the Federal Trade Commission. States attorneys general could take action against the purveyors of spyware.

Clearly, it is time to get the bad actors to account. It is impossible to understand how any of the individuals or companies using spyware believe tracking Internet usage, stealing passwords, and hijacking the processors of someone else’s computer, all without their knowledge, is justifiable.

Working closely with my colleagues Senator WYDEN and Senator BOXER, I am confident we can make major progress on this critical legislation, before spyware infects a critical mass of computers and renders them useless. Just trying to keep up with the latest anti-spyware software poses a tremendous cost to businesses, let alone individuals who have to spend their time online worried about the next spyware infestation. Again, I would like to thank Senators WYDEN and BOXER for their hard work on this vital issue, and I urge my colleagues to support this measure. 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. 231

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 “Controlling Invasive and Unauthorized Software Act”.

SEC. 2. UNAUTHORIZED INSTALLATION OF COMPUTER SOFTWARE

(a) NOTICE, CHOICE, AND UNINSTALL CHECKS.—It is unlawful for any person who is
not the user of a protected computer to install computer software on that computer, or to authorize, permit, or cause the installation of computer software on that computer, unless:

1. the user of the computer has received notice that satisfies the requirements of section 3; and
2. the user of the computer has granted consent that satisfies the requirements of section 3; and

3. the computer software’s uninstall procedures satisfy the requirements of section 3.

SEC. 3. NOTICE, CONSENT, AND UNINSTALL REQUIREMENTS.

(a) Notice.—For purposes of section 2(a)(1), notice to the user of the computer shall:

(1) include a clear notification, displayed on the screen until the user either grants or denies consent to the installation, of the name and general nature of the computer software that will be installed if the user consents; and

(2) include a separate disclosure, with respect to each information collection, advertising, distributed computing, and settings modification feature contained in the computer software, that:

(A) remains displayed on the screen until the user either grants or denies consent to that feature; (B) in the case of an information collection feature, provides a clear description of—

(i) the type of personal or network information to be collected and transmitted by the computer software; and

(ii) the purpose for which the personal or network information is to be collected, transmitted, and used; and

(C) in the case of an advertising feature, provides—

(i) a representative full-size example of each type of advertisement that may be delivered by the software;

(ii) a clear description of the estimated frequency with which each type of advertisement may be delivered; and

(iii) a description of how the user can distinguish each type of advertisement that the computer software delivers from advertisements generated by other software, Internet website operators, or services;

(D) in the case of a distributed computing feature, provides a clear description of—

(i) the types of information or messages the computer software will cause the computer to transmit; (ii) the estimated frequency with which the computer software will cause the computer to transmit such messages or information;

(iii) the estimated volume of such information or messages, and the likely impact, if any, on the processing or communications capacity of the user’s computer; and

(iv) the nature, volume, and likely impact on the computer’s processing capacity of any computational or processing tasks the computer software will cause the computer to perform in order to generate the information or messages the computer software will cause the computer to transmit;

(E) in the case of a settings modification feature, provides a clear description of the nature of the modification, its function, and any collateral effects the modification may produce; and

(F) provides a clear description of procedures the user may follow to turn off such features or uninstall computer software.

(b) Consent.—For purposes of section 2(a)(2), consent requires—

(1) consent by the user of the computer to the installation of the computer software; and

(2) separate affirmative consent by the user of the computer to each information collection, advertising, distributed computing feature, and settings modification feature contained in the computer software.

(c) Uninstall Procedures.—For purposes of section 2(a)(3), computer software shall—

(1) appear in the “Add/Remove Programs” menu or any similar feature, if any, provided by each operating system with which the computer software functions;

(2) be capable of being removed completely using the normal procedures provided by each operating system with which the computer software functions for removing computer software; and

(3) in the case of computer software with an advertising feature, include an easily identifiable link clearly associated with each advertisement that the software causes to be displayed, such that selection of the link by the user of the computer software will cause the software to provide a pop-up screen window that informs the user about how to turn off the advertising feature or uninstall the computer software.

SEC. 4. UNAUTHORIZED USE OF CERTAIN COMPUTER SOFTWARE.

It is unlawful for any person who is not the user of a protected computer to use an information collection, advertising, distributed computing, or settings modification feature contained in the computer software:

(1) repeatedly or for a commercially significant period of time; or

(2) for any purpose in which the computer software is directly related to such capability and that the user knowingly chooses to use; or

(3) determine whether or not the user of the computer is licensed or authorized to use the computer software or other software;

(4) provide technical support for the use of the computer software by the user of the computer;

(5) cause the computer to transmit;

(6) provide the computer with a distributed computing feature, or

(7) cause the computer to perform any other function in which the computer software is directly related to such capability and that the user knowingly chooses to use; or

(8) cause the computer to transmit such messages or information; or

(9) cause the computer to transmit;

(10) provide the computer with an advertising feature, or "PASSIVE TRANSMISSION, HOSTING, OR LINK.—For purposes of this Act, a person shall not be deemed to have installed computer software, or authorized, permitted, or caused the installation of computer software, on a computer solely because that person—

(1) the Internet connection or other transmission capability through which the software was delivered to the computer for installation;

(2) the storage or hosting, at the direction of another person and without selecting the content to be stored or hosted, of the software or of an Internet website through which the software was made available for installation;

(3) a link or reference to an Internet website the content of which was selected and controlled by another person, and through which the computer software was made available for installation;

(4) SOFTWARE RESIDENT IN TEMPORARY MEMORY.—In the case of an installation of software into the computer and the meaning of section 7(10)(B) but not within the meaning of section 7(10)(A), the requirements set forth in subsections (a)(1), (b)(1), and (c) of section 3 shall not apply.

(e) Features Activated by User Options.—In the case of an information collection, advertising, distributed computing, or settings modification feature that remains inactive or turned off unless the user of the computer subsequently selects certain optional settings or functions provided by the computer software, the requirements of subsections (a)(2) and (b)(2) of section 3 may be satisfied by providing the applicable disclosure and obtaining the applicable consent at the time the user selects the option that activates the feature, rather than at the time of initial installation.

SEC. 5. EXCEPTIONS.

(a) Passively Transmitted Software.—A person installs, authorizes, permits, or causes the installation of computer software on a protected computer before the first安装 setting change is made or where the user consents to the initial and any additional settings or functions provided by the computer software in accordance with the requirements set forth in subsections (a)(1), (b)(1), and (c) of section 3 shall not apply.

(b) Enforcement by Certain Other Agencies or Agencies in Compliance with This Act shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than branches of foreign banks), 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 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), by the Board of Directors of the Federal Reserve System;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured thrift institutions, by the Office of Thrift Supervision, in the case of a savings association the deposits of which are directly related to such capability and that the user knowingly chooses to use; or

(2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of such associations the deposits of which are directly related to such capability and that the user knowingly chooses to use; or

(3) determine whether or not the user of the computer is licensed or authorized to use the computer software or other software;

(4) provide technical support for the use of the computer software by the user of the computer;

(5) cause the computer to transmit;

(6) provide the computer with a distributed computing feature, or

(7) cause the computer to perform any other function in which the computer software is directly related to such capability and that the user knowingly chooses to use; or

(8) cause the computer to transmit such messages or information; or

(9) cause the computer to transmit;

(10) provide the computer with an advertising feature, or...
are insured by the Federal Deposit Insurance Corporation;
(3) the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration with respect to any credit union; and
(4) part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;
(5) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), except as provided in section 444(a) of the Federal Reserve Act (7 U.S.C. 226, 227), by the Secretary of Agriculture with respect to any activities subject to that Act; and
(6) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may, for the purpose of enforcing compliance with any requirement imposed under the Act, exercise the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any agency that violates any provision of that section is subject to the penalties and enforcement procedures, and with the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.

(d) PRESERVATION OF COMMISSION AUTHORITY.—Nothing contained in this section shall be construed to limit the authority of the Commission under any other provision of law.

SEC. 7. ACTIONS BY STATES.

(a) IN GENERAL.—
(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that this Act prohibits, 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 of appropriate jurisdiction:
(A) to enjoin that practice;
(B) to enjoin compliance with the rule;
(C) to obtain damage, restitution, or other compensation on behalf of residents of the State; or
(D) to obtain such other relief as the court may consider to be appropriate.

(2) EXEMPTION.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before the filing of the action.

(b) INTERVENTION.—If, in the right to intervene in an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this subtitle shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—
(1) conduct investigations;
(2) administer oaths or affirmations; or
(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE COMMISSION.—In any case in which an action is brought by an attorney general under subsection (a) against any defendant named in the complaint in that action for violation of that section—

(e) VENUE; SERVICE OF PROCESS.—

(f) SERVICE OF PROCESS.—In an action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(g) INTERVENTION.—If the Commission intervenes in an action under subsection (a), the right to intervene in the action that is the subject of the notice.

(h) EFFECT OF INTERVENTION.—If the Commission intervention intervenes in an action under section 2 of title 25, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that section.

(i) VENUE; SERVICE OF PROCESS.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(j) CONDUCT OF INVESTIGATIONS.—In an action brought under subsection (a), process may be served in any district in which the defendant—
(A) is an inhabitant;
(B) may be found.

SEC. 8. DEFINITIONS.

This Act:

(1) ADVERTISEMENT.—The term "advertisement" means a commercial promotion for a product or service, but does not include promotions for products or services that appear on computer software help or support pages that are displayed in response to a request by the user.

(2) ADVERTISING FEATURE.—The term "advertising feature" means a function of computer software that, when installed on a computer, delivers advertisements to the user of that computer.

(3) AFFIRMATIVE CONSENT.—The term "affirmative consent" means consent expressed to any other party on an automatic basis or at the direction of a party other than the user of the computer.

(4) INSTALL.—The term "install" means—
(A) to write computer software to a computer's persistent storage medium, such as the computer's hard disk, in such a way that the computer software is retained on the computer after the computer is turned off and subsequently restarted; or
(B) to write computer software to a computer's temporary memory, such as random access memory, in such a way that the software is retained and continues to operate after the user of the computer turns off or exits the Internet service, interactive computer service, or Internet website from which the computer software was obtained.

(5) NETWORK INFORMATION.—The term "network information" means—
(A) an Internet protocol address or domain name of a user's computer; or
(B) a cookie or other unique identifier of a computer user or a computer user's computer;

(6) PERSONAL INFORMATION.—The term "personal information" means—
(A) a first and last name, whether given at birth or adoption, assumed, or legally changed;
(B) a home or other physical address including street name, name of a city or town, and zip code;
(C) an electronic mail address or online user name;
(D) a telephone number;
(E) a social security number;
(F) any personal identification number;
(G) a credit card number or access code associated with the credit card, or both;
(H) a birth date, birth certificate number, or place of birth;
(I) any password or access code.

(7) PERSON.—The term "person" has the meaning given that term in section 3(32) of the Communications Act of 1934 (47 U.S.C. 153(32)).

(8) PROTECTED COMPUTER.—The term "protected computer" has the meaning given that term in section 1038(e)(2)(B) of title 18, United States Code.

(9) SETTINGS MODIFICATION FEATURE.—The term "settings modification feature" means
a function of computer software that, when installed on a computer—
(A) modifies an existing user setting, without direction from the user of the computer, with respect to another computer software application previously installed on that computer; or
(B) enables a user setting with respect to another computer software application previously installed on that computer to be modified in the future without advance notification to and consent from the user of the computer.

(15) USER OF A COMPUTER.—The term “user of a computer” means an individual who operates a computer with the authorization of the computer's lawful owner.

SEC. 9. EFFECTIVE DATE.
This Act shall take effect 180 days after the date of enactment of this Act.

By Mr. FEINGOLD (for himself, Mr. CORZINE, Mrs. CLINTON, Mr. LAUTENBERG, Mr. KENNEDY, Mr. SCHUMER, Mr. DURBIN, Mr. KERRY, Mrs. BOXER, Mr. REID, Mr. DODD, Ms. CANTWELL, Ms. MIKULSKI, and Mr. EDWARDS):
S. 2132. A bill to prohibit racial profiling; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, three years ago, tomorrow, in his first address to a joint session of Congress, President Bush declared that racial profiling is wrong and pledged to end it in America. He then directed his Attorney General to implement this policy.

It is now three years later, and the American people are still waiting for the President to follow through on his pledge to end racial profiling.

So, today I join with Representative JOHN CONyers, the distinguished ranking member of the House Judiciary Committee, in re-introducing the End Racial Profiling Act. We first introduced this bill in 2001, shortly after the President made his pledge and the Attorney General asserted that he would work with us on our legislation.

The End Racial Profiling Act would do exactly what the President promised to do: it would ban racial profiling once and for all and require Federal, State, and local law enforcement to take steps to end and prevent racial profiling.

I am very pleased that several of my distinguished colleagues have joined me on this bill Senators CORZINE, CLINTON, LAUTENBERG, KENNEDY, SCHUMER, DURBIN, KERRY, BOXER, REID, DODD, CANTWELL, and EDWARDS.

Racial profiling is the practice by which some law enforcement agents routinely stop African Americans, Latinos, Asian Americans, Arab Americans and others simply because of their race, ethnicity, or national origin. Reports in States from New Jersey to Florida, and Maryland to Texas all show that African Americans, Hispanics, and members of other minority groups are being stopped by some police far in excess of their share of the population; that these are the groups of which they engage in criminal conduct.

I might add that the urgency for legislation banning racial profiling is compounded by concerns post-September 11 that racial profiling—not good police work and following up on legitimate leads—is being used against Arab and Muslim Americans, or Americans perceived to be Arab or Muslim.

The September 11 attacks were horrific and I share the determination of many Americans that finding those responsible and preventing future attacks should be this Nation's top priority. This is a challenge that our country can and must meet. But we need improved intelligence and law enforcement, not racial, ethnic or religious stereotypes, to protect our Nation from crime and future terrorist attacks.

In fact, I believe that the End Racial Profiling Act is a pro-law enforcement bill. It will help to restore the trust and confidence of the communities our law enforcement have pledged to serve and protect. That confidence is crucial to our success in stopping crime, and in stopping terrorism. The End Racial Profiling Act is good for law enforcement and good for America.

I'm very pleased that many state and local law enforcement officials stand with the sponsors of this bill in condemning racial profiling.

Many law enforcement officials across the country agree that racial profiling is wrong and should not take place in America. In fact, many State and local law enforcement officials have begun to take steps to address this perception or even the perception of a problem. For example, in my own State of Wisconsin, law enforcement officials have taken steps to train police officers, improve academy training, establish model policies prohibiting racial profiling, and improve relations with our State's diverse communities. I applaud the efforts of Wisconsin law enforcement.

But the Federal Government has a vital role in protecting civil rights and ensuring accountability for State and local law enforcement. Last June, the Justice Department issued a policy guidance to Federal law enforcement agencies banning racial profiling. But while this guidance is a useful first step, it does not achieve the President's stated goal of ending racial profiling in America. It does not carry the force of law and does not apply to State and local law enforcement. Federal legislation is still very much needed.

Our End Racial Profiling Act would ban racial profiling and allow the Justice Department or individuals the ability to enforce this prohibition by filing a suit for injunctive relief. The bill would also require Federal, state, and local law enforcement agencies to adopt policies prohibiting racial profiling; to implement effective complaint procedures; to implement disciplinary procedures for officers who engage in the practice; and to collect data on stops. In addition, it requires the Attorney General to report to Congress to allow Congress and the American people to monitor whether the steps outlined in the bill to prevent and end racial profiling have been effective.

Like the bill we introduced last Congress, the bill also authorizes the Attorney General to provide incentive grants to help law enforcement comply with the ban on racial profiling, including grants to conduct training of police officers or purchase in-car video cameras.

Finally, we have revised the bill to conform with the definition of racial profiling in the Justice Department's guidance, which reflects concerns about racial profiling based on religion in a post-September 11 America.

Let me emphasize that local, State, and Federal law enforcement agents play a vital role in protecting the public from crime and protecting the Nation from terrorism. The vast majority of law enforcement agents nationwide discharge their duties professionally and without bias and we are all indebted to them for their courage and dedication. This bill should not be misinterpreted as a criticism of those who put their lives on the line for the rest of us every day. Rather, it is a statement that the use of race, ethnicity, religion, or national origin in deciding which persons should be subject to traffic stops, stops and frisks, questioning, searches, and seizures is wrong and ineffective, except where there is specific information linking persons of a particular race, ethnicity, religion, or national origin to a crime.

Now, perhaps more than ever before, our Nation cannot afford to waste precious law enforcement resources or alienate Americans by tolerating discriminatory practices. It is past time for Congress and the President to enact comprehensive federal legislation that will end racial profiling once and for all.

I urge the President to make good on his pledge to end racial profiling, and I urge my colleagues to join me in supporting the End Racial Profiling Act.

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

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.
(a) SHORT TITLE.—This Act may be cited as the “End Racial Profiling Act of 2004”.
(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.

TITLE I—PROHIBITION OF RACIAL PROFILING
Sec. 101. Prohibition.
Sec. 102. Enforcement.

TITLE II—PROGRAMS TO ELIMINATE RACIAL PROFILING BY FEDERAL LAW ENFORCEMENT AGENCIES
Sec. 201. Policies to eliminate racial profiling.
SEC. 2. FINDINGS AND PURPOSES.
(a) FINDINGS.—Congress finds the following:
(1) Federal, State, and local law enforcement agents play a vital role in protecting the public from crime and protecting the Nation from terrorism. The vast majority of law enforcement agents nationwide discharge their duties professionally and without bias.
(2) The use by police officers of race, ethnicity, religion, or national origin in deciding which persons should be subject to traffic stops, stops and frisks, questioning, searches and seizures is improper.
(3) In his address to a Joint Session of Congress on February 27, 2001, President George W. Bush declared that “racial profiling is wrong. We will not tolerate it in America.” He directed the Attorney General to implement this policy.
(4) In June 2003, the Department of Justice issued a Policy Guidance regarding racial profiling by Federal law enforcement agencies which stated: “Racial profiling in law enforcement is not merely wrongful, but also incoherent. Race-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy, and materially impair our efforts to maintain a fair and just society.”
(5) The Department of Justice Guidance is a useful first step, but does not achieve the Presidential goal of ending racial profiling in America: it does not apply to State and local law enforcement agencies, does not contain a meaningful enforcement mechanism, does not require data collection and contains an overbroad exception for immigration and national security matters.
(6) Current efforts by State and local governments to address racial profiling and redress the harms it causes, while also laudable, have been limited in scope and insufficient to address this national problem. Therefore, Federal legislation is needed.
(7) Statistical evidence from across the country demonstrates that racial profiling is a real and measurable phenomenon.
(8) As of July 2000, the Department of Justice had 14 publicly noticed, ongoing, pattern or practice investigations involving allegations of racial profiling, and had filed 8 pattern and practice lawsuits involving allegations of racial profiling, with 4 of those cases resolved through consent decrees.
(9) A large majority of individuals subjected to stops and other enforcement activities based on race, ethnicity, religion, or national origin are found to be law abiding and therefore racial profiling is not an effective means to uncover criminal activity.
(10) A 2001 Department of Justice report on citizen-police contacts in 1999 found that, although African-Americans and Hispanics were stopped and searched, they were less likely to be in possession of contraband. On average, searches and seizures of African-American drivers yielded evidence only 8 percent of the time, searches and seizures of Hispanic drivers yielded evidence only 10 percent of the time, and searches and seizures of white drivers yielded evidence 17 percent of the time.
(11) A 2000 General Accounting Office report on the activities of the United States Customs Service during fiscal year 1998 found that—
(A) black women who were United States citizens were 8 times more likely than white women who were United States citizens to be x-rayed after being frisked or patted down; and
(B) black women who were United States citizens were twice as likely as white women who were United States citizens to be found carrying contraband; and
(12) In some jurisdictions, local law enforcement practices such as ticket and arrest quotas, and similar management practices, may have the unintended effect of encouraging law enforcement agents to engage in racial profiling.
(13) Racial profiling harms individuals subjected to it because they experience fear, anxiety, humiliation, anger, resentment, and cynicism when they are unjustifiably treated as criminal suspects. By discouraging individuals from traveling freely, racial profiling impairs both interstate and intrastate commerce.
(14) Racial profiling damages law enforcement and the criminal justice system as a whole by undermining public confidence and trust in the police, the courts, and the criminal law.
(15) In the wake of the September 11, 2001, terrorist attacks, many Arabs, Muslims, Central and South Asians, and Sikhs, as well as other immigrants and Americans of foreign descent, were treated with generalized suspicion and subjected to searches and seizures based upon religion and national origin, without trustworthy information linking specific individuals to criminal conduct. Such profiling has failed to produce tangible benefits, yet has created a fear and mistrust of law enforcement agencies in these communities.
(17) Racial profiling is not adequately addressed through suppression motions in criminal cases. First, the Supreme Court held, in Whren v. United States, 517 U.S. 806 (1996), that the racially discriminatory motive of a police officer in making an otherwise justified traffic stop does not warrant the suppression of evidence. Second, since most stops do not result in the discovery of contraband, there is no criminal prosecution and no evidence to suppress.
(18) A comprehensive national solution is needed to address racial profiling at the Federal, State, and local levels. Federal support is needed to combat racial profiling through specialized training of law enforcement agents, improved management systems, and the acquisition of technology such as in-car video cameras.
(b) PURPOSES.—The purposes of this Act are—
(1) to enforce the constitutional right to equal protection of the laws, pursuant to the Fifth Amendment and section 5 of the 14th Amendment to the Constitution of the United States;
(2) to enforce the constitutional right to protection against unreasonable searches and seizures, pursuant to the Fourth Amendment to the Constitution of the United States;
(3) to enforce the constitutional right to interstate travel, pursuant to section 2 of article IV of the Constitution of the United States; and
(4) to regulate interstate commerce, pursuant to clause 3 of section 8 of article I of the Constitution of the United States.

SEC. 3. DEFINITIONS.
Sec. 501. Definitions.
Sec. 502. Seizures clause.
Sec. 503. Savings clause.

MISCELLANEOUS PROVISIONS

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covered program shall include a certification that such unit and any agency to which it is
redistributing program funds
(1) maintains adequate policies and procedures
designed to eliminate racial profiling; and
(2) has ceased any existing practices that encourage racial profiling;
(b) the collection of data on routine investigatory activities sufficient to determine if law enforcement agents are engaged in racial profiling, and submission of that data to the Attorney General;
(c) independent procedures for receiving, investigating, and responding meaningfully to complaints alleging racial profiling by law enforcement agents;
(d) procedures to discipline law enforcement agents who engage in racial profiling; and
(e) such other policies or procedures that the Attorney General deems necessary to eliminate racial profiling.
(c) NONCOMPLIANCE.—If the Attorney General determines that a grantee is not in compliance with conditions established under this title, the Attorney General shall withhold the grant, in whole or in part, until the grantee comes into compliance. The Attorney General shall provide notice regarding State grants and opportunities for private parties to present evidence to the Attorney General in support of its determination. The Attorney General shall provide immeasurable assistance in
(d) a description of any other policies and procedures that the Attorney General believes would facilitate the elimination of racial profiling.
(c) DATA COLLECTION.—Not later than 6 months after the enactment of this Act, the Attorney General shall by regulation establish standards for the collection of data under sections 301(b)(2) and 301(b)(2), including standards for setting benchmarks for the collection of data, including data with respect to stops, searches, seizures, and arrests, that is sufficiently detailed to determine whether law enforcement agencies are engaged in racial profiling and to monitor the effectiveness of policies and procedures designed to eliminate racial profiling.
(d) PUBLIC ACCESS.—Data collected under sections 301(b)(2) and 301(b)(2) shall be available to the public.
SEC. 402. LIMITATION ON USE OF DATA.
Information released pursuant to section 401 shall not reveal the identity of any individual who is detained or any law enforcement officer involved in a detention.
In this Act:
(a) COVERED PROGRAM.—The term "covered program" means any program or activity funded in whole or in part with funds made available under
(b) the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs (part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.));
Mr. CORZINE. Mr. President, I am very pleased to be joining my colleague Senator RUSSELL FEINGOLD and 12 others in reintroducing the End Racial Profiling Act.
I first want to recognize Senator RUSSELL FEINGOLD who has been a tremendous leader on this issue—during the last two sessions he held the first Senate hearings on racial profiling and he and his staff have done a lot to elevate the importance of this issue as a matter of civil rights. I also want to commend Representative JOHN CONyers, who is introducing companion legislation in the House of Representatives. This is one of his indefatigable work to address inequities in our society. I also want to thank Reverend Reginald Jackson, Executive Director of the New Jersey Black Ministers' Council. He and the entire council have worked closely for months to address the issue of racial profiling in New Jersey and have provided immeasurable assistance in crafting this legislation.
The practice of racial profiling is the antithesis of America’s belief in fairness and equal protection under the law.

Stopping people on our highways, our streets, and at our borders because of the color of their skin tears at the very fabric of American society.

We are a Nation of laws and everyone should receive equal protection under the law. Our Constitution tolerates nothing less. We should demand nothing less.

There is no equal protection—there is no equal justice—if law enforcement agencies engage in policies and practices that are premised on a theory that the way to stop crime is to go after black and brown people on the hunch that they are more likely to be criminals.

Let me add, that not only is racial profiling wrong, it is simply not an effective law enforcement tool. There is no evidence that stopping people of color is nothing but bouncing bad apples.

In fact, there is statistical evidence which points out that singling out black motorists or Hispanic motorists for stops and searches doesn’t lead to a higher percentage of arrests. Minority motorists are simply no more likely to be breaking the law than white motorists.

But unfortunately racial profiling persists.

In 2001, minority motorists accounted for just over a fourth of those searched on the New Jersey turnpike. But even the State Attorney General admitted that State troopers were twice—I repeat twice—as likely to find drugs or other illegal items when searching vehicles driven by whites.

Or take the example of the March 2000 Government Accounting Office report on the U.S. Customs Service.

The report found that black, Asian, and Hispanic women were four to nine times more likely than white women to be subjected to X rays after being frisked or patted down.

But on the basis of the X ray results, black women were less than half as likely as white women to be found carrying contraband.

This is law enforcement by hunch. No warrants. No probable cause.

And what is the hunch based on? Race—plain and simple.

No where was this more evident, than in my own home State six years ago. For you see men on the New Jersey Turnpike in a minivan—on their way to North Carolina, hoping to go to school on basketball scholarships.

Two State troopers pulled them off the road, the frightened driver lost control of the van, two dozen shots rang out. Three of the four kids were shot.

I spoke to these kids a while ago. One of the them told me he was asleep when the van was pulled over.

He told me, “What woke me up was a bullet.”

Stories like this should wake us all up.

The practice of racial profiling broadly undermines the confidence of the American people in the institutions that we depend on to protect and defend us. Different rules for different people do not work.

But, as I pointed out, that many law enforcement agencies, including some from my home State, have acknowledged the danger of the practice and have taken steps to combat it. Indeed, I am proud to report that New Jersey recently banned racial profiling. I commend them for their efforts.

That said, it is clear that this is a national problem that requires a national response applicable to all.

That is why Senator FEINGOLD and I and many others introduced the End Racial Profiling Act in 2001 to end this practice. The legislation provided a clear, enforceable ban on racial profiling and established a “carrot and stick” approach to encourage law enforcement to take steps to end the practice.

The legislation helped bring much-needed attention to this critical issue and was positively received by the civil rights community. It led to new state law enforcement. Soon after introduction, Senator FEINGOLD held very informative hearings on the bill, at which I testified. We heard from several law enforcement leaders, including Oakland Police Chief Ronald Davis and Raymond Kelly, former Commissioner of the U.S. Customs Service and the New York City Police Department, on the pernicious impact of racial profiling on the trust between law enforcement and communities that is essential for successful police work. They testified that racial profiling is contrary to effective law enforcement and indeed takes energy and focus away from finding real criminals.

Then in June 2002, the U.S. Department of Justice issued guidelines to prohibit racial profiling by federal law enforcement agencies, following up on President Bush’s statement in his February 27, 2001, address to a Joint Session of Congress, that racial profiling is “wrong and we will end it in America.”

In this guidance, the Department stated:

Racial profiling in law enforcement is not merely wrong, but also ineffective. Race-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy, and materially impede our efforts to maintain a fair and just society.

These guidelines, as well as current efforts by State and local governments, to eradicate racial profiling and readdress the harms it causes, while laudable, are not the panacea we need to address this national problem. Quite simply, federal legislation is still very much needed.

In most respects the legislation we are now introducing today is very similar to the bill that we introduced in 2001.

It clearly defines racial profiling and bans it.

No routine stops based solely on race, religion, national origin or ethnicity.

Religion is a new addition to the category of protected classes, in acknowledgment of some of the new law enforcement tactics developed after the September 11, 2001 attacks. For example, in the wake of the attacks, Arab-American, Muslim-American, South Asian-American and Sikh-American communities were made the target of generalized suspicion and subjected to searches and seizures based upon their religion and national origin, which has created a fear and mistrust of law enforcement agencies and failed to produce tangible investigative benefits.

We will also require the collection of statistics to accurately measure whether progress is being made. By collecting this data, we will get a fair picture of law enforcement at work. And we will provide law enforcement with the information they need to detect problems early on.

It is not our intention to micro-manage law enforcement. Our bill does not tell law enforcement agencies what to do. Instead, we direct the Attorney General to develop the standards for data collection, and he presumably would work with law enforcement in developing those standards. Our legislation also specifically directs the Attorney General to establish standards for setting benchmarks against which the collected data should be measured—so that no data is taken out of context, as some in law enforcement rightly fear.

If the numbers reveal a portrait of continued racial profiling, then the Justice Department or independent third parties can seek relief in Federal court ordering that remedies be put into effect to end racial profiling.

Our bill will allow in place procedures to receive and investigate complaints alleging racial profiling.

It will require procedures to discipline law enforcement officers engaging in racial profiling.

Finally, we will encourage a climate of cultural change in law enforcement with a carrot and a stick.

First, the carrot: We recognize that law enforcement shouldn’t be expected to do this alone. So we are saying that if you do the job right—fairly and equitably—you can be eligible to receive a best practices development grant—to help pay for programs dealing with advanced training.

To help pay for the computer technology that is necessary to collect the data and statistics we have demanded.

We’ll help pay for video cameras and recorders for your patrol cars.

We’ll help pay for establishing or improving systems for handling complaints alleging ethnic or racial profiling.

We’ll help to establish management systems to ensure that supervisors are held accountable for the conduct of subordinates.

But if you don’t do the job right, there is the stick. If State and local
law enforcement agencies refuse to implement procedures to end and prevent profiling, they will be subject to a loss of Federal law enforcement funds.

Let me be clear, this bill is not about blaming law enforcement, and it is not designed to prevent law enforcement from doing its job. In fact, we believe that it will help our officers maintain the public trust they need to do their jobs.

If race is a part of a description of a specific suspect involved in an investigation, this law does not prevent that information from being distributed. But stopping people on a random or race-based hunch will be outlawed. Race has been a never-ending battle in this country. It began with our constitution, when the founding fathers argued over the rights of slaves. And then we fought a war over race. We fought a war that ripped our country apart.

Our country emerged whole, but discrimination continued for decades—discrimination sanctioned in part, unfortunately, by our own Supreme Court.

But our country's history has always been about change, about growth, about recognizing those things that weaken us from within.

A generation ago, we began to fight another war—a war founded in peaceful principles, but a war that killed our heroes, burned our cities, and shook us once again to the very core.

But within that war, we learned with important civil rights initiatives like the Voting Rights Act. Like the public accommodations law. We demanded and gained laws to fight discrimination in employment, in housing, in education. Today, it is time for us to take another step. Racial profiling has bred humiliation, anger, resentment and cynicism throughout this country. It has weakened respect for the law—by everyone, throughout this country. It has weakened respect for the law—by everyone, throughout this country. It has weakened respect for the law—by everyone, throughout this country.

This is not just a theoretical problem, as tribes from my State know all too well.

Last fall's devastating wildfires in Southern California caused disproportionate suffering for Native Americans: Over 30,000 acres burned on 11 tribal reservations. Most tragically, 10 lives were lost on or near reservations.

I am determined to give the tribes of my State and from around the country the opportunity to prevent this tragedy from recurring. The bill sets up a process for the Forest Service or the Bureau of Land Management to enter into contracts with the tribes for fuel reduction purposes. If a tribe requests a brush-clearing project on federal lands near its reservation, the agencies are encouraged to respond within specific timeframes and suggest remedies for any agency concerns with the tribe's proposal. There remains free and open competition for timber contracts on Federal land. However, in determining the recipients of the contracts, the agencies are encouraged to consider the tribe's proposal, and the tribe's proposal.

100 Native American tribes support this legislation, including most, if not all, the tribes in the State of California.

So I am pleased to introduce this bill today, and I hope my colleagues will support it.

By Mrs. MURRAY (for herself and Ms. CANTWELL):
S. 2135. A bill to amend title XVIII of the Social Security Act to improve the provision of items and services provided to Medicare beneficiaries residing in rural areas, to the Committee on Finance.

S. 2135. A bill to amend title XVIII of the Social Security Act to improve the provision of items and services provided to Medicare beneficiaries residing in rural areas, to the Committee on Finance.

Mrs. MURRAY. Mr. President, I rise today to again join my colleague, Senator CANTWELL, in introducing the MediFair Act of 2004. My bill will restore fairness to the Medicare program and provide equity for health care providers participating in Medicare. Most importantly, it will open doors of care to more seniors and the disabled in my State.

Today, unfair Medicare reimbursement rates are causing doctors to limit their care for Medicare beneficiaries. Throughout my State, seniors and the disabled are having a hard time finding a doctor who will accept new Medicare patients.

Unfortunately, the recently-passed Medicare Prescription Drug, Improvement and Modernization Act of 2003 further compromises health care in Washington State because it reduces Washington State's per beneficiary payments from 42nd to 45th nationwide. This reduction places health care providers in my State at an economic disadvantage and further limits access to health care in Washington State.

In addition to ensuring that no State receives less than the national average, my legislation will encourage healthy outcomes and efficient use of Medicare payments. The current Medicare system punishes health care providers who practice efficient, cost-effective medicine. Hospitals in my State are proud of the pioneering role they have played in providing high quality, cost-effective medicine. Unfortunately, they have been rewarded for their exceptional service by being paid a fraction of their actual costs.

On the other hand, States that are inefficient and that over-utilize the system are rewarded with higher rates of reimbursement. As we grapple with an ever-increasing budget deficit. We need to be more responsible about the way we spend the Medicare dollars produced by our patients.

I want to acknowledge the lead sponsor of the MediFair bill in the Senate, Representative ADAM SMITH, as well as the other cosponsors, Representative BONNIE LAEMMLEY, Representative INSLEE, Representative LARSEN, and Representative MCDERMOTT.

I have been working on addressing the issue of inequitable Medicare reimbursement policies for a number of years, and I am pleased that we have made inroads in addressing this issue. I especially appreciate the efforts of the Department of Health and Human Services (HHS) to reward healthy outcomes, and I look forward to working with HHS in the future to meet these goals.

Medicare should reward States like Washington that have a proven tradition of efficient and effective health care. Passing the MediFair Act will go a long way to improving health care access for seniors in States like Washington and ensuring that Federal health care dollars produce the best results possible for our patients.

By Mr. ROBERTS:
S. 2136. An original bill to extend the final report date and termination date
of the National Commission on Terrorist Attacks Upon the United States, to provide additional funding for the Commission, and for other purposes; from the Select Committee on Intelligence; placed on the calendar.

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

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

S. 2136

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

SECTION 1. EXTENSION OF NATIONAL COMMISION ON TERRORIST ATTACKS UPON THE UNITED STATES.

(a) FINAL REPORT DATE.—Subsection (b) of section 610 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 6 U.S.C. 101 note; 116 Stat. 2413) is amended by striking “18 months” and inserting “20 months”.

(b) TERMINATION DATE.—Subsection (c) of that section is amended—

(1) in paragraph (1), by striking “60 days” and inserting “30 days”; and

(2) in paragraph (2), by striking “60-day peiod” and inserting “30-day period”.

(c) ADDITIONAL FUNDING.—Section 611 of that Act (6 U.S.C. 101 note; 116 Stat. 2413) is amended—

(1) by redesignating subsection (a) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection:

“(b) ADDITIONAL FUNDING.—In addition to the amounts made available to the Commission under subsection (a) and under chapter 2 of title II of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11; 117 Stat. 591), of the amounts appropriated for the programs and activities of the Federal Government for fiscal year 2004 that remain available for obligation, not more than $1,000,000 shall be available for transfer to the Commission for purposes of the activities of the Commission under this title.”;

and

(3) in subsection (c), as so redesignated, by striking “subsection (a)” and inserting “this section”.

By Mrs. CLINTON:

S. 2139. A bill to provide coverage under the Energy Employees Occupational Illness Compensation Program for individuals employed at atomic weapons employer facilities during periods of residual contamination; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CLINTON. Mr. President, I rise to introduce an important piece of legislation to assist our atomic weapons workers. The legislation addresses a major flaw in the Energy Employees Occupational Illness Compensation Program by expanding eligibility for benefits.

Under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), workers are eligible for a payment of $150,000 and medical coverage for expenses associated with the treatment of disability sustained due to exposure to radiation at atomic weapons plants. However, under EEOICPA, workers who became sick from working in contaminated atomic weapons plants after weapons production ceased are not eligible for benefits.

In 2003, the National Institute of Occupational Safety and Health released a Congressionally-mandated report, entitled “Residual Radioactive and Beryllium Contamination in Atomic Weapons Employer and Beryllium Vendor Facilities.” The report concluded that “significant” residual radioactive contamination existed in many of the plants for years and decades after weapons production ceased, posing a risk of radiation-related cancers or disease to unknowing workers.

In fact, the report found that, 97.44 percent of such facilities have little potential for significant residual radioactive contamination outside of the periods in which atomic weapons-related production occurred; 88.40 percent of such facilities have insufficient information to make a determination.

Despite this important mandate, the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) has been met. We are very concerned about the Administration seems to have no sense of urgency in addressing this issue. But each day that passes only delays long overdue justice for the Cold War heroes who worked in our weapons facilities.

As a result, I am introducing an important piece of legislation to address this major flaw in the Energy Employees Occupational Illness Compensation Program. The Act would extend eligibility for benefits under EEOICPA to workers who were employed at facilities where NIOSH has found potential for significant radioactive contamination.

In expanding eligibility to workers employed at facilities where NIOSH has found potential for significant radioactive contamination, the Residual Radioactive Contamination Compensation Act would require NIOSH to update the list of such facilities annually. This addresses the fact that there was insufficient information for NIOSH to characterize a number of sites in its 2003 report.

I would also like to take the opportunity to draw attention to another important issue—the special cohor rule. Under EEOICPA, the Department of Energy and certain of its contractors, subcontractors, and their representatives are precluded from seeking compensation for the radiation doses they received. This means that they have no recourse for the program—if their radiation doses are difficult to estimate but it is likely that they have radiation-caused illnesses.

Despite this important mandate, the letter retard. Thirty months after EEOICPA was signed into law, the promise of “timely, uniform and adequate compensation” has not been met.

As a result, I sent a letter to Secretary Thompson, along with Senator Voinovich and 16 of my other Senate colleagues—Senators Harkin, Kennedy, Schumer, Murray, DeWine, Alexander, Craig, Bond, and Talent, Bingaman, box, Hollings, Dodd, Cantwell, Domenici, Campbell, and Bingaman. The letter requested that the Secretary immediately put out the special cohort rule. I asked unanimous consent that a copy of that letter be printed in the RECORD.

Yet nearly 39 months after EEOICPA was signed into law, the promise of “timely, uniform and adequate compensation” has not been met.

In my State of New York, 16 of 31 covered facilities were found to have the potential for significant contamination, 10 had little potential for significant contamination, and 5 of the 31 had insufficient information.

In other words, more than half of the New York Atomic Weapons Employer Facilities in New York were contaminated after weapons production ceased. As a result, workers were exposed to radiation, and covered facilities have insufficient information to make a determination.

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


Hon. TOMMY G. THOMPSON, Secretary, U.S. Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, DC.

Dear Mr. Secretary:

On October 30, 2000, the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) was signed into law (PL 106–386) as part of the FY 2000 Defense Authorization Act. The enactment of EEOICPA was recognition by Congress and the President that the federal government needed to act quickly to remedy long-standing demands for fair and adequate reparation by workers who worked at sites of the Department of Energy and certain of its contractors, subcontractors, and their representatives were driven by fears of adverse publicity, liability, and employee demands for hazardous duty pay.

The Act further states that: “The purpose of the compensation program is to provide for timely, uniform, and adequate compensation of covered employees, where applicable, survivors of such employees, suffering from illnesses incurred by such employees in the performance of duty for the Department of Energy and certain of its contractors and subcontractors.”

Yet nearly 39 months after EEOICPA was signed into law, the promise of “timely, uniform and adequate compensation” has not been met. We are very concerned about the delay in finalizing the “special exposure cohort” petition procedures by the Department of Health and Human Services (HHS) pursuant to 42 USC 7346.

In this regard, EEOICPA specifically provides:

members of a class of employees at a Department of Energy facility, or at an atomic weapons employer facility, may be treated as members of the Special Exposure Cohort Program for purposes of the program if the President, upon recommendation of the Advisory Board on Radiation and Worker Health, determines that—

it is not feasible to separate or, with sufficient accuracy, the radiation dose that the class received; and
(2) there is reasonable likelihood that such radiation dose may have endangered the health of members of the class.”

The law further states that, “the President shall not approve any petitions pursuant to procedures established by the President.”

Procedures for Designating Classes of Employees: The Special Exposure Cohort were first proposed through a rule-making, and then subsequently withdrawn in 2002 after uniform criticism. Revised rules were proposed in March of 2003, but to date they have not been finalized. Workers have and continue to be blocked from filing petitions to become members of the Special Exposure Cohort. The report from HHS has failed to meet its statutory responsibility to issue these regulations.

Further delay is denying long-overdue justice for those who were unwittingly exposed to radioactive contamination outside of the periods in which which atomic weapons-related production occurred;

(A) 97 (44 percent) of such facilities have potential for significant residual radioactive contamination outside of the periods in which in which atomic weapons-related production occurred; and

(B) 88 (40 percent) of such facilities have little potential for significant residual radioactive contamination outside of the periods in which atomic weapons-related production occurred; and

(C) 94 (16 percent) of such facilities have insufficient information to make a determination.

Congress is now aware that workers were employed at or on the bases as those atomic weapons employees or any update to such report, found that significant residual contamination was present for each facility for which such report, or any update to such report, found that significant residual contamination was present as of the date of the report, determine the date on which such contamination ceased to be present;

3. COVERAGE UNDER ENERGY EMPLOYERS OCCUPATIONAL ILLNESS COMPENSATION PROGRAM OF INDIVIDUALS EMPLOYED AT ATOMIC WEAPONS EMPLOYER FACILITIES DURING PERIODS OF RESIDUAL CONTAMINATION

Paragraph (3) of section 3621 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384h) is amended to read as follows:

(3) The term atomic weapons employee means any of the following:

(A) An individual employed at an atomic weapons employer facility during a period when the employer was operating or producing, for the use of the United States, material that emitted radiation and was used in the production of atomic weapons, or any update to that report, found that there is a potential (not including a case in which the Institute found that there is little potential) for significant residual contamination outside of the period in which which atomic weapons-related production occurred;

(i) during a period, as specified in such report or any update to such report, of significant residual contamination at that facility.

SEC. 4. PUBLICATION IN FEDERAL REGISTER

The Director shall ensure that the report referred to in section 4, and each update required by section 4, are published in the Federal Register not later than 15 days after being released.

Ms. CANTWELL. Mr. President, I rise today to introduce—along with my colleague Senator MURRAY—the Expanding and Making Mount Rainier National Park More Accessible Act. This bill authorizes a boundary expansion of Mount Rainier National Park to allow the National Park Service to acquire 800 acres of land from private landowners, on a willing seller basis. These lands are located near the Carbon River and, if acquired, they would be included in Mount Rainier National Park, one of America’s greatest national parks.

If enacted, the proposed expansion will improve access for visitors, allow for a new campsite to be built, and save taxpayers money that will no longer be needed to repair a frequently washed out road.

While this legislation will make Mount Rainier National Park safer and
more accessible for families and outdoor enthusiasts, it is important to note that this expansion will also promote the local economy. Outdoor recreation is more than an activity in the Northwest; it is also a key part of our economy. By improving access to the park, my legislation will make it easier for visitors to enjoy the park and to purchase goods and services in nearby communities.

This expansion will ensure continued access to the park because the northwest ski trails that currently wash out by seasonal fluctuations of the glacier-fed Carbon River. The river, which flows at a higher elevation than the roadbed, has blocked visitors from accessing the National Park Service's Icicle Creek campground and nearby hiking trails inside the park. The repairs to this road have proven both costly and short-lived and have strained the National Park Service's already limited maintenance budget. In the long run, the expansion will save taxpayers money because the road will not have to be maintained to current standards. If this bill is enacted, the National Park Service plans to provide a shuttle service to take visitors to the Carbon Glacier trailhead. That way, visitors will still be able to hike to the Carbon Glacier during day trips.

If this bill is enacted, local conservation groups and the National Park Service will work to reach agreements with landowners in the proposed expansion area. I am pleased that the current landowners actively participated in the process and enthusiastically support this legislation. In fact, they are eager to sell their land to the National Park Service so that these lands will be permanently protected for the enjoyment of future generations.

I look forward to working with my colleagues in the Senate as well as other members of the Washington state congressional delegation to ensure swift passage of this important legislation.

SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 93—AUTHORIZING THE USE OF THE ROTUNDA OF THE CAPITOL BY THE JOINT CONGRESSIONAL COMMITTEE ON INAUGURAL CEREMONIES

Mr. LOTT (for himself and Mr. Dodd) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 93
Resolved by the Senate (the House of Representatives concurring).

SECTION 1. USE OF THE ROTUNDA OF THE CAPITOL BY THE JOINT CONGRESSIONAL COMMITTEE ON INAUGURAL CEREMONIES.

The rotunda of the United States Capitol is authorized to be used on January 20, 2005, by the Joint Congressional Committee on Inaugural Ceremonies in connection with the proceedings and ceremonies conducted for the inauguration of the President-elect and the Vice President-elect of the United States.

SENATE CONCURRENT RESOLUTION 94—ESTABLISHING THE JOINT CONGRESSIONAL COMMITTEE ON INAUGURAL CEREMONIES

Mr. LOTT (for himself and Mr. Dodd) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 94
Resolved by the Senate (the House of Representatives concurring).

SECTION 1. ESTABLISHMENT OF JOINT COMMITTEE.

There is established a Joint Congressional Committee on Inaugural Ceremonies (in this resolution referred to as the "joint committee"), consisting of 3 Senators and 3 Members of the House of Representatives appointed by the President of the Senate and the Speaker of the House of Representatives, respectively. The joint committee is authorized to make the necessary arrangements for the inauguration of the President-elect and the Vice President-elect of the United States.

SEC. 2. SUPPORT OF THE JOINT COMMITTEE.

The joint committee:
(1) is authorized to utilize appropriate equipment and services of appropriate personnel of departments and agencies of the Federal Government, under arrangements between the joint committee and the heads of the departments and agencies, in connection with the inaugural proceedings and ceremonies; and
(2) may accept gifts and donations of goods and services to carry out its responsibilities.

AMENDMENTS SUBMITTED & PROPOSED

SA 2619. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others.

SA 2620. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

On page 11, after line 13, add the following:

SEC. 5. ARMOR PIERCING AMMUNITION.

(a) EXPANSION OF DEFINITION OF ARMOR PIERCING AMMUNITION.—Section 921(a)(17)(B) of title 18, United States Code, is amended—
(1) in clause (i), by striking "or" at the end; and
(2) in clause (ii), by striking the period at the end and inserting a semicolon.

(b) DETERMINATION OF THE CAPABILITY OF PROJECTILES TO PIERCE BODY ARMOR.—Section 926 of title 18, United States Code, is amended by adding at the end the following:

"(d)(1) Not later than 1 year after the date of enactment of this subsection, the Attorney General shall promulgate standards for the uniform testing of projectiles against Body Armor Exemplar.
"(2) The standards promulgated pursuant to paragraph (1) shall take into account, among other factors, variations in performance that are related to the length of the barrel of the handgun or centerfire rifle from which the projectile is fired and the amount and kind of powder used to propel the projectile.
"(3) As used in paragraph (1), the term ‘Body Armor Exemplar’ means body armor that the Attorney General determines meets minimum standards for the protection of law enforcement officers."

SA 2620. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

On page 11, after line 19, add the following:

SEC. 5. REQUIREMENT OF CHILD HANDGUN SAFETY DEVICES.

(a) SHORT TITLE.—This section may be cited as the “Child Safety Device Act of 2004”.

(b) DEFINITIONS.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(d)(1) Not later than 1 year after the date of enactment of this subsection, the Attorney General shall promulgate standards for the uniform testing of projectiles against Body Armor Exemplar.
"(2) The standards promulgated pursuant to paragraph (1) shall take into account, among other factors, variations in performance that are related to the length of the barrel of the handgun or centerfire rifle from which the projectile is fired and the amount and kind of powder used to propel the projectile.
"(3) As used in paragraph (1), the term ‘Body Armor Exemplar’ means body armor that the Attorney General determines meets minimum standards for the protection of law enforcement officers.

SA 2620. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

On page 11, after line 19, add the following:

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(b) DEFINITIONS.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

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"(2) The standards promulgated pursuant to paragraph (1) shall take into account, among other factors, variations in performance that are related to the length of the barrel of the handgun or centerfire rifle from which the projectile is fired and the amount and kind of powder used to propel the projectile.
"(3) As used in paragraph (1), the term ‘Body Armor Exemplar’ means body armor that the Attorney General determines meets minimum standards for the protection of law enforcement officers."
on the handgun with which the device or locking mechanism is sold, delivered, or transferred and that—

"(A) if installed on a firearm and secured by means of key or a mechanically, electronically, or electromechanically operated combination lock, is designed to prevent the firearm from being discharged without first deactivating or unlocking the device by means of a key or mechanically, electronically, or electromechanically operated combination lock;

"(B) incorporated into the design of a firearm, is designed to prevent discharge of the firearm by any person who does not have access to the key or other device designed to unlock the firearm and thereby allow discharge of the firearm; or

"(C) is a safe, gun safe, gun case, lock box, or other device that is designed to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.

(c) UNLAWFUL ACTS.—

(1) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(2) Locking Devices.—

"(1) except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, transfer, or possess any firearm for purposes of a firearm for purposes of law enforcement (whether on or off duty).''.

"does not preclude any administrative suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) of subparagraph (A) of this section, shall take effect on the date which is 6 months after the date on which the Commission promulgated a final consumer product safety standard for locking devices. The Commission may extend this 12-month period for good cause.

"(B) EFFECTIVE DATE.—The consumer product safety standard promulgated under this paragraph shall take effect on the date which is 6 months after the date on which the final standard is promulgated.

"(D) Standard Requirements.—The standard promulgated under this paragraph shall require locking devices that—

"(1) are sufficiently difficult to defeat or disable so that a minor or child cannot use the device to de-activate or remove; and

"(ii) prevent the discharge of the handgun unless the locking device has been de-activated or removed at the time of discharge.

"(2) INAPPLICABLE PROVISIONS.—

"(A) Provisions of this Act.—Sections 7, 9, and 30(d) shall not apply to the rulemaking proceeding described under paragraph (1). Section 11 shall not apply to any consumer product safety standard promulgated under paragraph (1).

"(B) Chapter 6 of Title 5.—Chapter 6 of title 5, United States Code, shall not apply to this section.

"(D) Standard Requirements.—The standard promulgated under this paragraph shall require locking devices that—

"(B) Enforcement.—Notwithstanding subsection (d) of subsection (a)(3)(A) of the consumer product safety standard promulgated by the Commission, any person who is not the person who purchased the product may bring an action for declaratory judgment or injunctive relief to enjoin the lawfulness of the sale or other disposition of a qualified product.

"(E) Authorization of Appropriations.—Section 921(a)(17) of title 18, United States Code, is amended by adding at the end the following:

"(9) UNLAWFUL MISUSE.—The term ‘unlawful misuse’ means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

SA 2621. Mr. DASCHLE (for himself, Mr. CRAIG, and Mr. BAUCUS) proposed an amendment to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

On page 7, line 19, strike ‘‘including’’ and all that follows through page 8, line 19, and insert ‘‘including, but not limited to—

"(i) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, leaving a reasonable cause to believe that the act or omission of a person in possession of the qualified product was prohibited by law; or

"(ii) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, leaving a reasonable cause to believe that the act or omission of a person in possession of the qualified product was prohibited by law; or

"(ii) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, leaving a reasonable cause to believe that the act or omission of a person in possession of the qualified product was prohibited by law; or

On page 9, line 1 and 2, strike ‘‘or in a manner that is reasonably foreseeable’’ and insert ‘‘, or when used in a manner that is reasonably foreseeable, except that such reasonably foreseeable use shall not include any criminal or unlawful misuse of a qualified product, other than possessory offenses.’’

On page 9, strike lines 12 through 21, and insert the following:

"(C) Rule of Construction.—The exceptions enumerated under clauses (1) through (9) of subparagraph (A) are intended to be construed to not be in conflict, and no provision of this Act shall be construed to create a Federal or private cause of action or remedy.

On page 10, strike lines 13 through 18, and insert the following:

"(B) or 2 or more members of which are manufacturers or sellers of a qualified product, and that is involved in promoting the business interests of its members, including organizing, advising, or representing its members with respect to their business, legislative, or other activities in relation to the manufacture, importation, or sale of a qualified product.

On page 11, strike lines 1 through 15, and insert the following:

"SA 2622. Mr. KOHL proposed an amendment to amendment SA 2620 submitted by Mrs. BOXER to the bill S.}
1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

In lieu of the matter proposed to be inserted, insert the following:

**TITLE II—CHILD SAFETY LOCKS**

**SEC. 201. SHORT TITLE.**

This title may be cited as the “Child Safety Lock Act of 2004”.

**SEC. 202. PURPOSE.**

The purposes of this title are—

(1) to promote the safe storage and use of handguns by consumers;

(2) to prevent unauthorized persons from gaining access to or use of a handgun, including children who may not be in possession of a handgun; and

(3) to avoid hindering industry from supplying firearms to law abiding citizens for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

**SEC. 203. FIREARMS SAFETY.**

(a) UNLAWFUL ACTS.—

(1) MANDATORY TRANSFER OF SECURE GUN STORAGE OR SAFETY DEVICE.—Section 922 of title 18, United States Code, is amended by inserting at the end the following:

"(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

(i) suspend for not more than 6 months, or (ii) subject the licensee to a civil penalty in an amount equal to not more than $2,500.

"(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed as provided under section 922(f).

(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.

(c) LIABILITY; EVIDENCE.—

(1) LIABILITY.—Nothing in this title shall be construed to—

(A) create a cause of action against any Federal firearms licensee or any other person for any civil action by the agency;

(B) establish any standard of care.

(2) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the regulations made by this title shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action relating to section 922(z) of title 18, United States Code, as added by this section.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to bar a governmental action to impose a penalty under section 922(p) of title 18, United States Code, for a failure to comply with section 922(z) of that title.

**SEC. 204. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect 180 days after the date of enactment of this Act.

**SA 2623. Mr. HATCH (for Mr. CAMPBELL (for himself, Mr. LEAHY, Mr. HATCH, Mr. DEWINE, Mr. SESSIONS, Mr. CRAIG, Mr. REID, and Mrs. BOXER)) proposed an amendment to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows: On page 11, after line 19, add the following:

SEC. 5. LAW ENFORCEMENT OFFICERS SAFETY ACT.

(a) SHORT TITLE.—This section may be cited as the “Steve Young Law Enforcement Officers Safety Act”.

(b) EXEMPTION OF QUALIFIED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.—

(1) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926A the following:

"§ 926B. Carrying of concealed firearms by qualified law enforcement officers

“(a) Notwithstanding any other provision of the law of any State...subsection thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce...;

“(b) This section shall not be construed to supersede or limit the laws of any State that—

“(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

“(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

“(c) As used in this section, the term ‘qualified law enforcement officer’ means an employee of a governmental agency who—

“(1) is authorized by law to engage in...;

“(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is, or was, employed as a law enforcement officer.

“(e) DEFINED TERM.—As used in this section, the term ‘firearm’ does not include—

“(1) any machinegun (as defined in section 921); and

“(2) any firearm silencer (as defined in section 921); and

“(3) any destructive device (as defined in section 922)."

(2) CLERICAL AMENDMENT.—The table of sections for chapter 44 of title 18, United States Code, is amended by inserting after the item relating to section 926A the following:

"926B. Carrying of concealed firearms by qualified law enforcement officers..."
"§926C. Carrying of concealed firearms by qualified retired law enforcement officers".

(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) The section shall not be construed to supersede or limit the laws of any State that—

"(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property;

"(2) prohibit or restrict the possession of firearms on State or local government property, installation, building, base, or park;

"(3) as used in this section, the term "qualified retired law enforcement officer" means an individual who—

"(1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

"(2) before such retirement, was employed as a law enforcement officer for an aggregate of 15 years or more; or

"(3) during the most recent 12-month period before such retirement, was regularly employed as a law enforcement officer for a period of at least 50% of such period, by a service-provider, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

"(4) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term "compensatory damages" means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(b) As used in this section, the term "economic damages" means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of a limb or function of a limb, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(c) The term "noneconomic damages" means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of a limb or function of a limb, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(d) PUNITIVE DAMAGES.—The term "punitive damages" means damages awarded, for the purpose of punishment or deterrence, and not solely to compensate against a health care provider. Punitive damages are neither economic nor noneconomic damages.

(e) RECOVERY.—The term "recovery" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' overhead costs or charges legal services are not deductible disbursements or costs for such purpose.

(f) 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, the Trust Territories of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 03. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

(a) In General.—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit

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SA 2624.—Mr. WARNER submitted an amendment intended to be proposed by him to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms for damages resulting from the misuse of their products by others; which was ordered to lie on the table as follows:

TITLE XII—MEDICAL LIABILITY REFORM

SEC. 91. SHORT TITLE.

This title may be cited as the "Protecting the Practice of Medicine Act".
shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever is later.

(b) General Exception.—The time for the commencement of a health care lawsuit shall be suspended for the period of time that the claimant was substantially unreasonably precluded from knowledge of the injury or time that the claimant was substantially certain to suffer.

(c) Provisions Related to Presumption of Understanding.—(1) A court, in determining the amount of damages awarded to a claimant, may, taking into consideration all the circumstances, assume that the claimant understood any risks or hazards which caused the claimant to sustain injury.

(d) Limitations on Amount of Damages.—(1) In general.—The amount of any collateral source benefits shall be reduced either by the amount of money the claimant is, or becomes, entitled to receive, or is entitled to receive, by reason of the injury; or by the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(e) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(f) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(g) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(h) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(i) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(j) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(k) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(l) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(m) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(n) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(o) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(p) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(q) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(r) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(s) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(t) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(u) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(v) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.

(w) Limitations on Amount of Damages.—(1) In general.—The amount of damages awarded to a claimant, or to a person other than the claimant shall not exceed the amount of payments made by reason of the injury to any person other than the claimant unless such person is a member of the claimant’s family.
SEC. 08. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) In General.—Any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other asset sufficient to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that such damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this title.

SEC. 09. EFFECT ON OTHER LAWS.

(a) VACCINE INJURY.—(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this title shall not affect the application of the rule of law to such an action; and

(B) provisions prescribed by this title in conflict with a rule of law of such title shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action under a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this title or otherwise available under Federal or State law; or

(C) affect the scope of preemption of any other Federal law.

SEC. 11. APPLICABILITY; EFFECTIVE DATE.

This title shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of enactment of this Act, except that health care lawsuit arising from an injury occurring prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

SA 2625. Mr. CRAIG (for Mr. FRIST) proposed an amendment to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

At the appropriate place, add the following:

SEC. 5. ARMOR PIERCING AMMUNITION.

(a) UNLAWFUL ACTS.—Section 922(a) of title 18, United States Code, is amended by striking paragraphs (7) & (8) and inserting the following:

‘‘(i) if the killing is murder (as defined in section 1112), be punished as provided for in section 1112,”

(b) PENALTIES.—Section 924(c) of title 18, United States Code, is amended by adding at the end the following:

‘‘(i) if the killing is manslaughter (as defined in section 1112), be punished as provided for in section 1112.”

(c) REPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report containing the findings of the study conducted under this subsection to—

(A) the chairman and ranking member of the Judiciary Committee of the Senate; and

(B) the chairman and ranking member of the Judiciary Committee of the House of Representatives.

SA 2626. Mr. FRIST (for himself and Mr. MCCONNELL) proposed an amendment to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

At the end, add the following:

SEC. 11. MAKING THE PROVISIONS OF THE VOTING RIGHTS ACT OF 1965 PERMANENT.

(a) PERMANENCY OF PRECLEARANCE REQUIREMENTS.—Section 4(a) of the Voting Rights Act of 1965 (42 U.S.C. 1973b(a)) is amended to read as follows:

‘‘(b) The provisions of this section shall not expire at the end of such amendment,”

(b) PERMANENCY OF BILINGUAL ELECTION REQUIREMENTS.—Section 203(b)(1) of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a(b)(1)) is amended by striking “Before August 6, 2007, no covered State” and insert “No covered State”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

SA 2627. Ms. MIKULSKI (for herself, Mr. SARBANES, Mr. LAUTENBERG, Mr. CORZINE, and Mrs. CLINTON) proposed an amendment to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

On page 8, line 22, strike “or”;

On page 9, line 2, strike the period and insert “;”;

On page 9, between lines 2 and 3, insert the following:

‘‘(4) except to the extent that a greater minimum sentence is otherwise provided under this subsection, by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted under United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

‘‘(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided for in section 1112.”

‘‘(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided for in section 1112.”

(2) P ENALTIES.—Section 924(c) of title 18, United States Code, is amended by adding at the end the following:

‘‘(i) if the killing is manslaughter (as defined in section 1112), be punished as provided for in section 1112.”

(2) P ENALTIES.—Section 924(c) of title 18, United States Code, is amended by adding at the end the following:

‘‘(i) if the killing is manslaughter (as defined in section 1112), be punished as provided for in section 1112.”

(3) R EPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report containing the findings of the study conducted under this subsection to—

(A) the chairman and ranking member of the Judiciary Committee of the Senate; and

(B) the chairman and ranking member of the Judiciary Committee of the House of Representatives.

On page 9, between lines 2 and 3, insert the following:

‘‘(4) except to the extent that a greater minimum sentence is otherwise provided under this subsection, by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted under United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

‘‘(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided for in section 1112.”

(2) P ENALTIES.—Section 924(c) of title 18, United States Code, is amended by adding at the end the following:

‘‘(i) if the killing is manslaughter (as defined in section 1112), be punished as provided for in section 1112.”

(3) R EPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report containing the findings of the study conducted under this subsection to—

(A) the chairman and ranking member of the Judiciary Committee of the Senate; and

(B) the chairman and ranking member of the Judiciary Committee of the House of Representatives.

(2) P ENALTIES.—Section 924(c) of title 18, United States Code, is amended by adding at the end the following:

‘‘(i) if the killing is manslaughter (as defined in section 1112), be punished as provided for in section 1112.”

(3) R EPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report containing the findings of the study conducted under this subsection to—

(A) the chairman and ranking member of the Judiciary Committee of the Senate; and

(B) the chairman and ranking member of the Judiciary Committee of the House of Representatives.
SA 2628. Mr. CRAIG (for Mr. FRIST (for himself and Mr. Craig)) proposed an amendment to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

On page 9, between lines 2 and 3, insert the following:

(v) an action involving a shooting victim of John Allen Muhammad or John Lee Malvo that meets 1 of the requirements under clauses (i) through (v).

SA 2629. Mr. CORZINE (for himself, Mr. LAUTENBERG, Ms. MINKULSKI, Mr. KENNEDY, Mrs. CLINTON, and Mrs. BOXER) submitted an amendment intended to be proposed by him to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

On page 11, after line 19, insert the following:

SEC. 4. LAW ENFORCEMENT EXCEPTION.

Notwithstanding any other provision of this Act, nothing in this Act shall be construed as limiting the right of an officer or employee of any Federal, State, or local law enforcement agency to recover damages authorized under Federal or State law.

SA 2630. Mr. CRAIG (for himself and Mr. Craig) proposed an amendment to the bill S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others; as follows:

On page 9, between lines 22 and insert the following:

(E) LAW ENFORCEMENT EXCEPTION.—Nothing in this Act shall be construed to limit the right of an officer or employee of any Federal, State, or local law enforcement agency to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).

NOTICES OF HEARINGS/MEETINGS
COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that the following hearing has been scheduled before the Committee on Energy and Natural Resources:

The hearing will be held on Thursday, March 4th, at 10 a.m. in Room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to review the Energy Information Administration’s Annual Energy Outlook 2004 regarding the supply, demand and price projections for oil, natural gas, nuclear, coal and renewable resources, focusing on oil and natural gas. In addition, commercial and market perspectives on the state of oil and natural gas markets will be considered. Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–304, Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Lisa Epifani at 202–224–5269 or Shane Perkins at 202–224–7555.

AUTHORITY FOR COMMITTEES TO MEET
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, February 26, 2004, at 10 a.m. to conduct a hearing on the nominations of the Hon. Alphonso R. Jackson, of Texas, to be Secretary of the Department of Housing and Urban Development; the Hon. Linda Myersi Conlin, of New Jersey, to be a member of the Board of Directors of the Export–Import Bank of the United States; and Ms. Rhonda Keenum, of Mississippi, to be Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Services.

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, February 26, 2004, at 2 p.m. to conduct a hearing on “Review of Current Investigations and Regulatory Actions Regarding the Mutual Fund Industry.”

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, February 26 at 9:30 a.m. to hold a hearing on “Higher Education Accountability: How Can the System Ensure Quality and Accountability?”

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 26 at 2:30 p.m. to hold a hearing on “Next Steps in U.S. Relations.”

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Intelligence be authorized to conduct a markup on Thursday, February 26, 2004, at 9:30 a.m. in Dirksen Senate Building 226.

Agenda:

I. Nominations:

1. Mr. Craig. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to conduct a hearing on Thursday, February 26 at 9:30 a.m. to consider and report on the nominations of Mr. John Allen Muhammad or John Lee Malvo that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).
Senate on February 26, 2004 at 2:30 p.m. to hold a closed business meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. CRAIG. Mr. President, I ask unanimous consent to extend the privilege of the floor for the remainder of this second session of the 108th Congress to Reed O’Connor, a detailedee from the Department of Justice to the majority staff of the Judiciary Committee.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEASURE READ THE FIRST TIME—S. 2137

Mr. MCCONNELL. I understand S. 2137, introduced earlier today by Senator DORGAN, is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The assistant legislative clerk read as follows:

A bill (S. 2137) to authorize the Secretary of Health and Human Services to promulgate regulations for the reimportation of prescription drugs, and for other purposes.

Mr. MCCONNELL. I ask its second reading and I object to my own request.

The PRESIDING OFFICER. The objection is heard.

The bill will be read the second time on the next legislative day.

SAFE, ACCOUNTABLE, FLEXIBLE, AND EFFICIENT TRANSPORTATION EQUITY ACT OF 2003

ROAD REPAIR AND CONSTRUCTION

Mr. CONRAD. Mr. President, it is my understanding that the chairman and ranking member of the Environment and Public Works Committee will shortly ask unanimous consent to correct certain errors in the enrollment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act, S. 1072. As the managers know, this unanimous consent agreement does not address two issues that are very important to me, and I would like to engage with the managers of the highway bill in a colloquy on these matters.

First, the consent agreement does not cover my amendment to address an emergency road situation in the Devils Lake Basin of ND. During consideration of the highway bill, the chairman and ranking member of the Environment and Public Works Committee agreed to include a modified version of my amendment in a managers’ amendment. The modified amendment would allow the State of North Dakota to use certain funds within its annual highway allocation to repair and reconstruct roads currently serving as dams and to receive reimbursement from the Emergency Relief program for that work. Unfortunately, this language was inadvertently left out of the managers’ amendment.

The amendment that was agreed to by the chairman and ranking member is not my preferred solution. I believe the solution to include my amendment in a emergency situation belongs to the Federal Highway Administration. Over the years, the Federal Highway Administration allowed these roads to be raised without first stabilizing them as dams. We now have a situation where 8 miles of roads are serving as dams and holding back water, yet the roads were not constructed as dams. It these roads were to fail, the Emergency Relief program would be activated to rebuild them. I believe the State of North Dakota should not have to divert its limited highway dollars to address this emergency situation created by the Federal Government and will continue to pursue a solution that does not require my state to take sole responsibility for this situation. But I want to stress that I greatly appreciate the help of both the chairman and ranking member in devising a compromise and agreeing to accept the modified amendment.

Mr. INHOFE. I understand the Senator’s position. Unfortunately, we do not agree on his preferred solution which is why compromise language was developed and the amendment was modified. I will agree with the Senator that the modified amendment was indeed cleared by both the majority and minority sides of the committee. However, as the Senator notes, this modified amendment was inadvertently left out of the manager’s package that was approved by the Senate. I commit to fixing this error at the earliest possible opportunity and will work in conference to protect the Senate position on this issue.

Mr. BAUCUS. I concur with the chairman. The Senator’s amendment should have been included in the managers’ amendment, and I will work with you and the chairman to resolve this matter as the process moves forward.

Mr. CONRAD. I greatly appreciate the help and cooperation of the Senator from Oklahoma and the Senator from Vermont on this very important issue and their willingness to accept my amendment. Let me now turn to the second issue, that of making sure this legislation is fully paid for within the six years for which programs are authorized in the highway bill. During Finance Committee consideration of the tax title of the SAFETEA bill, I was joined by the chairman of the Budget Committee, Senator Nickles, and Senator Baucus, in asking that the legislation be properly paid for over 6 years with no gimmicks. We filed an amendment to accomplish this, but I agreed to withdraw from offering it in return for a commitment from the chairman and ranking member of the Finance Committee to work with me to find appropriate offsets before the SAFETEA bill was voted off the Senate floor.

During floor consideration of the SAFETEA bill, I filed an amendment that would have fulfilled the commitment made to committee members during the Finance markup. Chairman GRASSLEY and Senator BAUCUS worked with me to include this in a managers’ amendment. Unfortunately, because some items in my amendment were nongermane, only a portion of the amendment was ultimately accepted as part of the managers’ amendment before the Senate voted on final passage of the SAFETEA bill.

It would be my preference to address that issue in the unanimous consent agreement that will be offered shortly, but I understand that is not possible at this time. However, it is my understanding that there will be another opportunity to fulfill the commitment to fully offset spending in the Senate’s highway bill before it is sent to the House for consideration. As the bill now stands, approximately $7.6 billion of spending over the next 6 years in the SAFETEA bill is not offset. I believe it is critical that this commitment be honored and that the remaining $7.6 billion be included back into the budget next year. But for an objection that was unrelated to the purpose of the Conrad-Nickles amendment, the highway bill would contain the full agreement between Senators BAUCUS, NICKLES, CONRAD, and me. I want to assure them that I fully intend to make the promise made to the managers’ amendment. As the legislative process moves forward, I pledge that I will continue working to address their concerns.

Mr. GRASSLEY. I support the amendments offered by my colleagues from North Dakota and Oklahoma. I was disappointed that, despite our best efforts, we were unable to clear the full text of the Conrad-Nickles amendment. But for an objection that was unrelated to the purpose of the Conrad-Nickles amendment, the highway bill would contain the full agreement between Senators BAUCUS, NICKLES, CONRAD, and me. I want to assure them that I fully intend to make the promise made in the committee markup. As the legislative process moves forward, I pledge that I will continue working to address their concerns.

Mr. GRASSLEY. I support the amendments of Senators Baucus, Nickles, and Conrad, and me. I want to assure them that I fully intend to make the promise made in the committee markup. As the legislative process moves forward, I pledge that I will continue working to address their concerns.

Mr. CONRAD. As I stated earlier, I concur with the statement of the chairman of the Finance Committee, and I, too, pledge to continue working to address the concerns of my colleagues from Oklahoma and North Dakota.

Mr. INHOFE. I agree with my colleagues that we ought to fully offset the spending that will occur over the next 6 years as a result of the authorizations in the SAFETEA bill. I am committed to working with my colleagues to ensure that this goal is achieved.

Mr. JEFFORDS. I thank Senator ConRAD and Senator NICKLES for their continued efforts on this issue. I, too, intend to make sure that the managers’ amendment to fully pay for the SAFETEA bill before the Senate completes action on the legislation.

Mr. CONRAD. I thank the managers for those commitments. With those assurances, I will not object to the unanimous consent request to make technical corrections in the Senate-passed bill.
further ask that the bill be printed as
strike pages 43 through 83, and pages
 Secretary of the Senate be authorized to
 ask unanimous consent that in the en-
 bill?

I am in agreement that a commitment
 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

Mr. INHOFE. I say to Senator MUR-
 RAY, the agreed upon level for inclusion in
 the SAFETEA bill for the Ferry
 Boat Discretionary Program is $120
 million per year of which $60
 million is provided in contract authority and $60
 million is authorized for appropriation.

Mrs. MURRAY. I also ask Senators
 BOND, JEFFORDS and REID, whether
 that is their understanding?

Mr. BOND. Yes, we agree that this is
 the amount we consider to be included in the
 SAFETEA authorization bill for the
 ferry boat discretionary program.

Mr. JEFFORDS. The Senior Senator
 from Washington State is correct. It
 was our understanding that the bill
 envisions $120 million per year for that
 program.

Mr. REID. I say to Senator MURRAY,
 I am in agreement that a commitment
 was made to include $120 million per
 year for the ferry boat discretionary program.

Mr. MCCONNELL. Mr. President, I
 ask unanimous consent that in the
 engrossment of the bill S. 1072, the Secre-
ty of the Senate be authorized to
 strike pages 43 through 83, and pages
 156 and 106 of amendment No. 2616. I
 further ask that the bill be printed as
 passed.

The PRESIDING OFFICER. Without
 objection, it is so ordered.

The text of S. 1072 is as follows:

S. 1072

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

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as
 the “Safe, Accountable, Flexible, and Effi-
cient Transportation Equity Act of 2004”.

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

Sec. 1. Short title; table of contents.

Sec. 2. General definitions.

Sec. 3. Definitions for title 23.

TITLE I—FEDERAL-AID HIGHWAYS

Subtitle A—Funding

Sec. 1101. Authorization of appropriations.

Sec. 1102. Obligation ceiling.

Sec. 1103. Apportionments.

Sec. 1104. Equity bonus programs.

Sec. 1105. Revenue aligned budget authority.

Subtitle B—New Programs

Sec. 1201. Infrastructure performance and
 maintenance program.

Sec. 1202. Future of surface transportation
 system.

Sec. 1203. Freight transportation gateways;
 freight intermodal connections.

Sec. 1204. Construction of ferry boats and
 ferry terminal and maintenance
 facilities; coordination of ferry
 construction and maintenance.

Sec. 1205. Designation of Daniel Patrick
 Moynihan Interstate Highway.

Sec. 1206. State-by-State comparison of
 highway construction costs.

Subtitle C—Finance

Sec. 1301. Federal share.

Sec. 1302. Transfer of highway and transit
 capital funds.

Sec. 1303. Transportation Infrastructure Fi-
nance and Innovation Act Amendments.

Sec. 1304. Facilitation of international reg-
 istration plans and international
 fuel tax agreements.

Sec. 1305. National Commission on Future
 Revenue Sources to Support the High-
 way Trust Fund and Finance
 the Needs of the Surface
 Transportation System.

Sec. 1306. State and local core banks.

Sec. 1307. Public-private partnerships pilot
 program.

Sec. 1308. Wagering.

Subtitle D—Safety

Sec. 1401. Highway safety improvement pro-
 gram.

Sec. 1402. Operation lifesaver.

Sec. 1403. License suspension.

Sec. 1404. Bus axle weight exemption.

Sec. 1405. Safe routes to schools program.

Sec. 1406. Purchases of equipment.

Sec. 1407. Workzone safety.

Sec. 1408. Worker injury prevention and free
 flow of vehicular traffic.

Sec. 1409. Identity authentication standards.

Sec. 1410. Open container requirements.

Subtitle E—Environmental Planning and
 Review

CHAPTER 1—TRANSPORTATION PLANNING

Sec. 1501. Integration of natural resource
 concerns into State and metro-
politan transportation plan-
ing.

Sec. 1502. Consultation between transpor-
tation agencies and resource
 agencies in transportation
 planning.

Sec. 1503. Integration of natural resource
 concerns into transportation
 project planning.

Sec. 1504. Public involvement in transpor-
tation planning and projects.

Sec. 1505. Project mitigation.

CHAPTER 2—TRANSPORTATION PROJECT
 Development Process

Sec. 1511. Transportation project develop-
 ment process.

Sec. 1512. Assumption of responsibility for
 categorical exclusions.

Sec. 1513. Surface transportation project de-
 livery pilot program.

Sec. 1514. Parks, recreation areas, wildlife
 and waterfowl refuges, and his-
toric sites.

Sec. 1515. Regulations.
Sec. 3001. Short title.

Sec. 3002. Policies, findings, and purposes.

Sec. 3003. Notice.

Sec. 3004. Definitions.

Sec. 3005. Metropolitan transportation plans.

Sec. 3006. Statewide transportation planning.

Sec. 3007. Transportation management areas.

Sec. 3008. Private enterprise participation.

Sec. 3009. Urbanized area formula grants.

Sec. 3010. Planning programs.

Sec. 3011. Capital investment program.

Sec. 3012. New freedom for elderly persons and persons with disabilities.

Sec. 3013. Formula grants for other than urbanized areas.

Sec. 3014. Research, development, demonstration, and deployment projects.

Sec. 3015. Transit cooperative research program.

Sec. 3016. National research programs.

Sec. 3017. National transit institute.

Sec. 3018. Bus testing facility.

Sec. 3019. Bicycle facilities.

Sec. 3020. Suspended light rail technology pilot project.

Sec. 3021. Crime prevention and security.

Sec. 3022. General provisions on assistance.

Sec. 3023. Special provisions for capital projects.

Sec. 3024. Contract requirements.

Sec. 3025. Project management oversight and review.

Sec. 3026. Project review.

Sec. 3027. Investigations of safety and security risk.

Sec. 3028. State safety oversight.

Sec. 3029. Sensitive security information.

Sec. 3030. Terrorist attacks and other acts of violence against public transportation systems.

Sec. 3031. Control of contraband substances and alcohol misuse testing.

Sec. 3032. Employee protective arrangements.

Sec. 3033. Administrative procedures.

Sec. 3034. Reports and audits.

Sec. 3035. Apportionments of appropriations for formula grants.

Sec. 3036. Apportionments for fixed guideway modernization.

Sec. 3037. Authorization.

Sec. 3038. Apportionments based on growing States formula factors.

Sec. 3039. Job access and reverse commute grants.

Sec. 3040. Over-the-road bus accessibility program.

Sec. 3041. Alternative transportation in parks and public lands.

Sec. 3042. Obligation ceiling.


Sec. 3044. Disadvantaged business enterprise.

Sec. 3045. Intermodal passenger facilities.

TITLE IV—SURFACE TRANSPORTATION

PART I—HIGHWAY SAFETY GRANT PROGRAM

Sec. 4101. Short title.

Sec. 4102. Authorization of appropriations.

Sec. 4103. Highway safety research and technology study.

Sec. 4104. Highway safety research and outreach programs.

Sec. 4105. National Highway Safety Advisory Committee technical correction.

Sec. 4106. Occupant protection grants.

Sec. 4107. School bus driver training.

Sec. 4108. Emergency medical services.

Sec. 4109. Repeal of authority for alcohol traffic safety programs.

Sec. 4110. Impaired driving program.

Sec. 4111. State traffic safety information system improvements.

Sec. 4112. NHTSA accountability.

PART II—SPECIFIC VIRUS-SAFETY-RELATED RULINGS

Sec. 4151. Amendment of title 49, United States Code.

Sec. 4152. Vehicle crash ejection prevention.

Sec. 4153. Vehicle backover avoidance technology study.

Sec. 4154. Vehicle backover data collection.

Sec. 4155. Aggressivity and incompatibility reduction standard.

Sec. 4156. Improved crashworthiness.

Sec. 4157. 15-passenger vans.

Sec. 4158. Additional safety performance criteria for tires.

Sec. 4159. Safety belt use reminders.

Sec. 4160. Missed deadlines reports.

Sec. 4161. Grants for improving child passenger safety programs.

Sec. 4162. Authorization of appropriations.

PART III—MISCELLANEOUS PROVISIONS

Sec. 4171. Driver licensing and education.

Sec. 4172. Amendment of Automobile Information Disclosure Act.

Sec. 4173. Child safety.

Sec. 4174. Safe intersections.

Sec. 4175. Study on increased speed limits.

PART B—Motor Carrier Safety and Uniform Carrier Registration

Sec. 4201. Short title; amendment of title 49, United States Code.

Sec. 4202. Required completion of overdue reports, studies, and rulemakings.

Sec. 4203. Contract authority.

PART II—MOTOR CARRIER SAFETY

Sec. 4221. Minimum guarantee.

Sec. 4222. Authorization of appropriations.

Sec. 4223. Motor carrier safety grants.

Sec. 4224. CDL worker verification.

Sec. 4225. CDL learner’s permit program.

Sec. 4226. Hobbs Act.

Sec. 4227. Penalty for denial of access to inspection facilities.

Sec. 4228. Medical program.

Sec. 4229. Operation of commercial motor vehicles by individuals who use insulin to treat diabetes mellitus.

Sec. 4230. Financial responsibility for private motor carriers.

Sec. 4231. Increased penalties for out-of-service violations and false records.

Sec. 4232. Elimination of commodity and service exemptions.

Sec. 4233. Intrastate operations of interstate motor carriers.

Sec. 4234. Authorized stop commercial motor vehicles.

Sec. 4235. Revocation of operating authority.

Sec. 4236. Pattern of safety violations by motor carrier management.

Sec. 4237. Motor carrier research and technology studies.

Sec. 4238. Review of commercial zone exemption provision.

Sec. 4239. International cooperation.

Sec. 4240. Performance and registration information system management.

Sec. 4241. Commercial vehicle information systems and networks deployment.

Sec. 4242. Outreach and education.

Sec. 4243. Operation of restricted property-carrying units on national highway system.

Sec. 4244. Operation of longer combination vehicles on national highway system.

Sec. 4245. Application of safety standards to certain foreign motor carriers.

Sec. 4246. Background checks for Mexican and Canadian drivers hauling hazardous materials.

Sec. 4247. Exemption of drivers of utility service vehicles.

Sec. 4248. Operation of commercial motor vehicles transporting agricultural commodities and farm supplies.

Sec. 4249. Safety performance history screening.

Sec. 4250. Compliance review audit.

PART III—UNIFIED CARRIER REGISTRATION

Sec. 4301. Short title.

Sec. 4302. Relationship to other laws.

Sec. 4303. Inclusion of motor private and exempt carriers.

Sec. 4304. Unified carrier registration system.

Sec. 4305. Registration of motor carriers by States.

Sec. 4306. Incorporation of vehicles.

Sec. 4307. Use of UCRA agreement revenues as matching funds.

Sec. 4308. Clerical amendments.

Sec. 4309. Household goods movers.

Sec. 4310. Short title; amendment of title 49, United States Code.

Sec. 4311. Findings; sense of Congress.

Sec. 4312. Definitions.

Sec. 4313. Payment of rates.

Sec. 4314. Household goods carrier operations.

Sec. 4315. Liability of carriers under receipts and bills of lading.

Sec. 4316. Dispute settlement for shipments of household goods.

Sec. 4317. Enforcement of regulations related to transportation of household goods.
Sec. 5431. Repeal of special occupational taxes on producers and market-ers of alcoholic beverages.

Sec. 5432. Suspension of limitation on rate of rum excise tax cover over to Puerto Rico and Virgin Islands.

PART V—SPORT EXCISE TAXES

Sec. 5541. Custom gunsmiths.

Sec. 5542. Modified taxation of imported archery products.

Sec. 5543. Treatment of tribal governments for purposes of Federal wagering excise and occupational taxes.

PART VI—OTHER PROVISIONS

Sec. 5641. Income tax credit for distilled spirits wholesalers and for distilled spirits in control State baltimore warehouses for costs of carrying Federal excise taxes on bottled distilled spirits.

Sec. 5642. Credit for taxpayers owning commercial power takeoff vehicles.

Sec. 5643. Credit for auxiliary power units installed on diesel-powered trucks.

Title II—Miscellaneous Provisions

Sec. 5501. Motor Fuel Tax Enforcement Ad- dition

Sec. 5502. National Surface Transportation Infrastructure Financing Commission.

Sec. 5503. Economic study of fuel tax compli- ance and interagency coopera-

Sec. 5504. Expansion of Highway Trust Fund ex- penditure purposes to include funding for studies of supplemental or alternative financing for the Highway Trust Fund.

Sec. 5505. Treasury study of highway fuels used by trucks for non-trans- portation purposes.

Sec. 5506. Delta regional transportation plan.

Sec. 5507. Treatment of employer-provided transit and van pooling bene-

Sec. 5508. Study of incentives for production of biodiesel.

Title G—Revenue Offsets

PART I—LIMITATION ON EXPENSING CERTAIN PASSENGERS AUTOMOBILES

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SEC. 2. GENERAL DEFINITIONS.
In this Act:
(1) DEPARTMENT.—The term “Department” means the Department of Transportation.
(2) SECRETARY.—The term “Secretary” means the Secretary of Transportation.
SEC. 3. DEFINITIONS FOR TITLE 23.

Section 101 of title 23, United States Code, is amended by striking subsection (a) and inserting the following:

"(a) DEFINITIONS.—In this title:

"(1) APPOINTMENT.—The term ‘appointment’ includes an unexpended appointment under a law enacted before the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003.

"(2) CARPOOL PROJECT.—

"(A) IN GENERAL.—The term ‘carpool project’ means any project to encourage the use of carpools and vanpools.

"(B) Inclusions.—The term ‘carpool project’ includes a project—

"(i) to provide carpooling opportunities to the elderly and individuals with disabilities;

"(ii) to develop and implement a system for locating potential riders and informing the riders of carpool opportunities;

"(iii) to acquire vehicles for carpool use;

"(iv) to designate highways lanes as preferential carpool highway lanes;

"(v) to provide carpool-related traffic control devices; and

"(vi) to designate facilities for use for preferential parking for carpools.

"(3) CONSTRUCTION.—

"(A) IN GENERAL.—The term ‘construction’ means the supervision, inspection, and actual building of, and incurring of all costs incidental to the construction or reconstruction of a highway, including bond costs and other costs relating to the issuance in accordance with section 122 of bonds or other debt financing instruments and costs incurred by the State in performing Federal-aid project related audits that directly benefit the Federal-aid highway program.

"(B) Exclusions.—The term ‘construction’ includes—

"(i) locating, surveying, and mapping (including the establishment of temporary and permanent markers in accordance with specifications of the National Oceanic and Atmospheric Administration);

"(ii) resurfacing, restoration, and rehabilitation;

"(iii) acquisition of rights-of-way;

"(iv) relocation assistance, acquisition of replacement housing sites, and acquisition and relocation of housing, relocation, and construction of replacement housing;

"(v) elimination of hazards of railway grade crossings;

"(vi) elimination of roadside obstacles;

"(vii) improvements that directly facilitate and control traffic flow, such as—

"(I) grade separation of intersections;

"(II) widening of lanes;

"(III) channelization of traffic;

"(IV) traffic control systems; and

"(V) passenger loading and unloading areas;

"(viii) capital improvements that directly facilitate an effective vehicle weight enforcement program, such as—

"(I) scales (fixed and portable);

"(II) scale pits;

"(III) scale installation; and

"(IV) scale houses;

"(ix) equipment directly relating to securing transportation infrastructures for detection, preparedness, response, and recovery;

"(x) operating costs relating to traffic monitoring, management, and control;

"(xi) operational improvements; and

"(xii) transportation system management and operations.

"(4) COUNTY.—The term ‘county’ includes—

"(A) a corresponding unit of government under any other name in a State that does not have a county government under State law;

"(B) in those States in which the county government does not have jurisdiction over highways, any local government unit vested with jurisdiction over local highways.

"(5) FEDERAL-AID HIGHWAY.—

"(A) IN GENERAL.—The term ‘Federal-aid highway’ means a highway eligible for assistance under this chapter.

"(B) Exclusions.—The term ‘Federal-aid highway’ does not include a highway classified as a local road or collector.

"(6) FEDERAL-AID SYSTEM.—The term ‘Federal-aid system’ means any of the Federal-aid highway systems described in section 106.

"(7) FEDERAL-AID TRANSPORTATION SYSTEM. The term ‘Federal-aid transportation system’ means—

"(i) the surface, shoulders, roadways, and structures of a highway;

"(ii) such traffic control devices as are necessary for safe, secure, and efficient use of a highway.

"(8) MAINTENANCE.—The term ‘maintenance’ means the preservation of a highway.

"(B) Inclusions.—The term ‘maintenance’ includes—

"(i) the surface, shoulders, roadways, and structures of a highway; and

"(ii) such traffic control devices as are necessary for safe, secure, and efficient use of a highway.

"(9) MAINTENANCE AREA.—The term ‘maintenance area’ means an area that was designated as a nonattainment area, but was later redesignated by the Administrator of the Environmental Protection Agency as an attainment area, under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

"(10) NATIONAL FOREST SYSTEM.—The term ‘National Forest System’ means the Federal-aid highway system described in section 103(b).

"(11) OPERATING COSTS FOR TRAFFIC MONITORING, MANAGEMENT, AND CONTROL.—The term ‘operating costs for traffic monitoring, management, and control’ includes—

"(A) labor costs;

"(B) administrative costs;

"(C) costs of utilities and rent;

"(D) costs incurred by transportation agencies for technology to monitor critical transportation infrastructure for security purposes; and

"(E) other costs associated with transportation systems management and operations and the continuous operation of traffic control, such as—

"(i) an integrated traffic control system;

"(ii) an incident management program; and

"(iii) a traffic control center.

"(12) OPERATIONAL IMPROVEMENT.—

"(A) IN GENERAL.—The term ‘operational improvement’ means—

"(i) a capital improvement for installation or implementation of—

"(I) traffic surveillance and control equipment;

"(II) traffic control centers; or

"(III) an integrated traffic control system;

"(ii) a transportation system management and operations program;

"(13) TRAFFIC AND TRANSPORTATION SECURITY SURVEILLANCE AND CONTROL.—

"(A) IN GENERAL.—The term ‘traffic and transportation security surveillance and control’ means—

"(i) the implementation of—

"(I) an integrated traffic control system;

"(II) an incident management program;

"(III) equipment and programs for transportation response to manmade and natural disasters; or

"(IV) a transportation demand management facility, strategy, or program; and

"(ii) such other capital improvements to a public road as the Secretary may designate by regulation.

"(B) Exclusions.—The term ‘operational improvement’ does not include—

"(I) a resurfacing, restorative, or rehabilitative improvement;

"(ii) construction of an additional lane, interchange, or grade separation; or

"(iii) construction of a new facility on a new location.

"(14) PARK ROAD.—The term ‘park road’ means a road planned primarily for pedestrian use, but with capacities or improvements by emergency vehicles that is located within, or provides access to, an area in the National Park System with title and
maintenance responsibilities vested in the United States.

(22) PARKWAY.—The term ‘parkway’ means a roadway authorized by an Act of Congress in a land which title is vested in the United States.

(23) PROJECT.—The term ‘project’ means—

(A) an undertaking to construct a particular highway or

(ii) if the context so implies, a particular portion of a highway so constructed; and

(B) any other undertaking eligible for assistance under this subchapter.

(24) PROJECT AGREEMENT.—The term ‘project agreement’ means the formal instrument to be executed by the Secretary and recipients of funds under this title.

(25) PUBLIC AUTHORITY.—The term ‘public authority’ means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

(26) PUBLIC FOREST SERVICE ROAD.—The term ‘public Forest Service road’ means a classified forest road—

(A) that is open to public travel; and

(B) for which title and maintenance responsibility is vested in the Federal Government; and

(C) that has been designated a public road by the Forest Service.

(27) PUBLIC LANDS DEVELOPMENT ROADS AND TRAILS.—The term ‘public lands development roads and trails’ means roads and trails that the Secretary of the Interior determines to be of primary importance for the development, protection, administration, and use of public lands and resources under the control of the Secretary of the Interior.

(28) PUBLIC LANDS HIGHWAY.—The term ‘public lands highway’ means—

(A) a forest road that is—

(i) under the jurisdiction of, and maintained by, a public authority; and

(ii) open to public travel; and

(B) any highway through unappropriated or unreserved public land, nontaxable Indian land, or any other Federal reservation (including a main highway through such land or reservation that is on the Federal-aid system) that is—

(i) under the jurisdiction of, and maintained by, a public authority; and

(ii) open to public travel.

(29) PUBLIC ROAD.—The term ‘public road’ means a road that is—

(A) under the jurisdiction of, and maintained by, a public authority; and

(B) open to public travel.

(30) PARKWAY.—The term ‘parkway’ means a parkway authorized by an Act of Congress in a land which title is vested in the United States.

(31) PRINCIPAL TRANSPORTATION SYSTEM.—The term ‘principal transportation system’ means the System of National Highways.

(32) RURAL AREA.—The term ‘rural area’ includes—

(A) all of that title—

(i) has a population of 5,000 or more; and

(ii) is not located within any urbanized area; and

(33) SECRETARY.—The term ‘Secretary’ means the Secretary of Transportation.

(34) STATE.—The term ‘State’ means—

(A) a State;

(B) the District of Columbia; and

(C) the Commonwealth of Puerto Rico.

(35) STATE FUNDS.—The term ‘State funds’ includes funds that are—

(A) raised under the authority of the State (or any political or other subdivision of a State); and

(B) made available for expenditure under the direct control of the State transportation department.

(36) STATE TRANSPORTATION DEPARTMENT.—The term ‘State transportation department’ means the department, agency, commission, board, or official of any State charged by the laws of the State with the responsibility for highway construction.

(37) TRANSPORTATION SYSTEM.—The term ‘transportation system’ means the system of arterial highways, collector roads, and necessary interurban roads on the American Samoan Islands, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands that have been designated by the appropriate Governor or chief executive officer of a territory, and approved by the Secretary, in accordance with section 215.

(38) TRANSPORTATION ENHANCEMENT ACTIVITY.—The term ‘transportation enhancement activity’ means, with respect to any project or the area to be served by the project, any of the following activities that the Secretary determines are appropriate to the implementation of the national transportation system and the national transportation policy:

(A) Provision of facilities for pedestrians and bicyclists.

(B) Provision of safety and educational activities for pedestrians and bicyclists.

(C) Acquisition of scenic easements and scenic or historic sites (including historic battlefield).

(D) Scenic or historic highway programs (including the provision of tourist and welcome centers).

(E) Landscaping and other scenic beautification.

(F) Historic preservation.

(G) Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals).

(H) Preservation of abandoned railroad corridors (including the conversion and use of the corridors for pedestrian or bicycle trails).

(I) Control and removal of outdoor advertising.

(J) Archaeological planning and research.

(K) Environmental mitigation—

(i) to address water pollution due to high runoff; or

(ii) reduce vehicle-caused wildlife mortality and habitat connectivity.

(L) Establishment of transportation museums.

(39) TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.—

(A) IN GENERAL.—The term ‘transportation systems management and operations’ means an integrated program to optimize the performance of existing infrastructure through the implementation of multimodal and intermodal, cross-jurisdictional systems, service, and transportation improvements designed to preserve capacity and improve security, safety, and reliability of the transportation system.

(B) INCLUSIONS.—The term ‘transportation systems management and operations’ includes—

(i) regional operations collaboration and coordination activities between transportation and public safety agencies; and

(ii) improvements to the transportation system such as traffic detection and surveillance, arterial management, freeway management, demand management, traffic management, emergency management, electronic toll collection, automated enforcement, traffic incident management, roadway weather information, travel information services, commercial vehicle operations, traffic control, freight management, and coordination of highway, rail, transit, bicycle, and pedestrian operations.

(40) URBAN AREA.—The term ‘urban area’ means—

(A) an urbanized area (or, in the case of an urbanized area encompassing more than 1 State, the portion of the urbanized area in each State); and

(B) any urban place designated by the Bureau of the Census that—

(i) has a population of 5,000 or more;

(ii) is not located within any urbanized area; and

(iii) is located within boundaries that—

(I) are fixed cooperatively by responsible State and local officials, subject to approval by the Secretary; and

(II) encompass, at a minimum, the entire urban place designated by the Bureau of the Census (except in the case of cities in the State of Maine and in the State of New Hampshire).

(41) URBANIZED AREA.—The term ‘urbanized area’ means an area that—

(A) has a population of 50,000 or more; and

(B) is designated by the Bureau of the Census; and

(C) is located within boundaries that—

(i) are fixed cooperatively by responsible State and local officials, subject to approval by the Secretary; and

(ii) encompass, at a minimum, the entire urbanized area within boundaries as designated by the Bureau of the Census.’’.

TITLE I—FEDERAL-AID HIGHWAYS

Subtitle A—Funding

SEC. 1101. AUTHORIZATION OF APPROPRIATIONS.

The following sums are authorized to be appropriated out of the Highway Trust Fund (except in the case of the Mass Transportation Account)

(1) INTERSTATE MAINTENANCE PROGRAM.—For the Interstate maintenance program under section 119 of title 23, United States Code—

(A) $5,442,371,792 for fiscal year 2004;

(B) $6,025,186,342 for fiscal year 2005;

(C) $6,683,176,289 for fiscal year 2006;

(D) $7,002,365,186 for fiscal year 2007;

(E) $7,036,621,314 for fiscal year 2008; and

(F) $7,139,130,081 for fiscal year 2009.

(2) NATIONAL HIGHWAY SYSTEM.—For the National Highway System under section 103 of that title—

(A) $6,593,922,257 for fiscal year 2004;

(B) $7,151,590,130 for fiscal year 2005;

(C) $8,129,341,450 for fiscal year 2006;

(D) $8,146,531,791 for fiscal year 2007;

(E) $8,554,231,977 for fiscal year 2008; and

(F) $8,678,581,297 for fiscal year 2009.

(3) BRIDGE PROGRAM.—For the bridge program under section 141 of that title—

(A) $4,650,745,076 for fiscal year 2004;

(B) $5,307,287,150 for fiscal year 2005;

(C) $5,713,860,644 for fiscal year 2006;

(D) $5,730,266,418 for fiscal year 2007;

(E) $6,016,042,650 for fiscal year 2008; and

(F) $6,103,714,622 for fiscal year 2009.

(4) SURFACE TRANSPORTATION PROGRAM.—For the surface transportation program under section 133 of that title—

(A) $6,677,178,900 for fiscal year 2004;

(B) $8,107,905,577 for fiscal year 2005;

(C) $8,147,741,127 for fiscal year 2006;

(D) $8,441,910,349 for fiscal year 2007;

(E) $8,862,919,976 for fiscal year 2008; and

(F) $8,962,134,975 for fiscal year 2009.

(5) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—For the congestion mitigation and air quality improvement program under section 109 of that title—

(A) $1,880,092,073 for fiscal year 2004;

(B) $2,192,716,180 for fiscal year 2005;

(C) $2,270,239,273 for fiscal year 2006;

(D) $2,276,707,659 for fiscal year 2007;

(E) $2,396,302,669 for fiscal year 2008; and

(F) $2,425,236,569 for fiscal year 2009.
February 26, 2004

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(6) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—For the highway safety improvement program under section 148 of that title—
(A) $1,187,426,572 for fiscal year 2004;
(B) $1,120,000,000 for fiscal year 2005;
(C) $1,377,448,548 for fiscal year 2006;
(D) $1,381,403,511 for fiscal year 2007;
(E) $1,430,285,966 for fiscal year 2008; and
(F) $1,471,607,029 for fiscal year 2009.

(7) APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM PROGRAM.—For the Appalachian development highway system program under section 170 of that title, $560,000,000 for each of fiscal years 2004 through 2009.

(8) RECREATIONAL TRAILS PROGRAM.—For the recreational trails program under section 157 of title 23, United States Code, $50,000,000 for each of fiscal years 2004 through 2009.

(9) FEDERAL LANDS HIGHWAY PROGRAM.—
(A) INDIAN RESERVATION ROADS.—For Indian reservation roads under section 204 of that title—
(i) $300,000,000,000 for fiscal year 2004;
(ii) $325,000,000,000 for fiscal year 2005;
(iii) $350,000,000,000 for fiscal year 2006;
(iv) $375,000,000,000 for fiscal year 2007;
(v) $400,000,000,000 for fiscal year 2008; and
(vi) $425,000,000,000 for fiscal year 2009.

(B) RECREATION ROADS.—For recreation roads under section 204 of that title, $50,000,000 for each of fiscal years 2004 through 2009.

(C) PARK ROADS AND PARKWAYS.—For park roads and parkways under section 204 of that title—
(i) $350,000,000,000 for fiscal year 2004;
(ii) $320,000,000,000 for fiscal year 2005; and
(iii) $320,000,000,000 for each of fiscal years 2006 through 2009.

(D) REFUGE ROADS.—For refuge roads under section 204 of that title, $30,000,000,000 for each of fiscal years 2004 through 2009.

(E) PUBLIC LANDS HIGHWAYS.—For Federal lands highways under section 204 of that title, $40,000,000,000 for each of fiscal years 2004 through 2009.

(F) SAFETY.—For safety under section 204 of that title, $40,000,000,000 for each of fiscal years 2004 through 2009.

(10) MULTISTATE CORRIDOR PROGRAM.—For the multistate corridor program under section 171 of that title—
(A) $12,500,000,000 for fiscal year 2004;
(B) $13,500,000,000 for fiscal year 2005;
(C) $157,500,000,000 for fiscal year 2006;
(D) $130,000,000,000 for fiscal year 2007; and
(E) $122,500,000,000 for fiscal year 2008 and 2009.

(11) BORDER PLANNING, OPERATIONS, AND TECHNOLOGY PROGRAM.—For the border planning, operations, and technology program under section 172 of that title—
(A) $12,500,000,000 for fiscal year 2004;
(B) $15,500,000,000 for fiscal year 2005;
(C) $15,500,000,000 for each of fiscal years 2006 and 2007;
(D) $18,000,000,000 for fiscal year 2008; and
(E) $202,500,000 for each fiscal year 2009 and 2010.

(12) NATIONAL SCENIC BYWAYS PROGRAM.—For the national scenic byways program under section 162 of that title—
(A) $34,000,000,000 for fiscal year 2004;
(B) $35,000,000,000 for each of fiscal years 2005 and 2006;
(C) $36,000,000,000 for fiscal year 2007;
(D) $37,000,000,000 for fiscal year 2008; and
(E) $38,000,000,000 for each of fiscal years 2009 and 2010.

(13) INFRASTRUCTURE PERFORMANCE AND MAINTENANCE PROGRAM.—For carrying out the infrastructure performance and maintenance program under section 189 of that title $2,000,000,000 for fiscal year 2004.

(14) CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.—For construction of ferry boats and ferry terminal facilities under section 171 of that title, $560,000,000 for each of fiscal years 2004 through 2009.

(15) COMMONWEALTH OF PUERTO RICO HIGHWAY PROGRAM.—For the Commonwealth of Puerto Rico highway program under section 173 of that title—
(A) $14,000,000,000 for fiscal year 2004;
(B) $14,500,000,000 for fiscal year 2005;
(C) $14,900,000,000 for fiscal year 2006;
(D) $15,400,000,000 for fiscal year 2007;
(E) $15,900,000,000 for fiscal year 2008; and
(F) $163,000,000,000 for fiscal year 2009.

(16) PUBLIC-PRIVATE PARTNERSHIPS PILOT PROGRAM.—For the public-private partnerships pilot program under section 109(p)(3) of that title, $10,000,000 for each of fiscal years 2004 through 2009.


(18) DELTA REGION TRANSPORTATION DEVELOPMENT PROGRAM.—For planning and construction activities authorized under the Delta Regional Authority, $80,000,000 for each of fiscal years 2004 through 2009.

SEC. 1102. OBLIGATION CEILING.

(a) GENERAL LIMITATION.—Subject to subsections (g) and (h), and notwithstanding any other provision of law, the obligations for the Federal-aid highway safety construction programs shall not exceed—
(1) $3,643,326,300 for fiscal year 2004;
(2) $3,700,000,000 for fiscal year 2005;
(3) $3,900,000,000 for each of fiscal years 2006 and 2007;
(4) $3,900,000,000 for fiscal year 2008; and
(5) $4,400,000,000 for fiscal year 2009.

(b) EXCEPTIONS.—The limitations under subsection (a) shall not apply to obligations under or for—
(1) section 125 of title 23, United States Code;
(2) section 147 of the Surface Transportation Assistance Act of 1978 (23 U.S.C. 147 note; 92 Stat. 1701); and

(c) OBLIGATION CEILING.—(1) Section 125; (2) section 147; and (3) section 9 shall be apportioned for the fiscal year in accordance with paragraphs (1) and (3) and the amounts distributable for the fiscal year are greater than $439,000,000, United States Code, so that the amount of obligation authority available for that section is equal to the amount determined by multiplying—
(A) the ratio determined under paragraph (3); by
(B) the amounts authorized to be appropriated for each such program for the fiscal year; and
(2) shall not distribute obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2), for each of the programs that are allocated by the Secretary under this Act and title 23, United States Code (other than to programs to which paragraph (1) applies), by multiplying—
(A) the ratio determined under paragraph (3); by
(B) the amounts authorized to be appropriated for each such program for the fiscal year; and
(6) shall distribute the obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2) and the amounts apportioned for the equity bonus program, but only to the extent that the amounts apportioned for the equity bonus program for the fiscal year are greater than $390,000,000, and the Appalachian development highway system program that are apportioned by the Secretary under this Act and title 23, United States Code, in the ratio that—
(A) the sums authorized to be appropriated for the programs that are apportioned to all States for the fiscal year; bear to
(B) the total of the amounts authorized to be appropriated for the programs that are apportioned to all States for the fiscal year; the same ratio that—
(1) shall not distribute obligation authority provided by subsection (a) for the fiscal year for—
(A) amounts authorized for administrative expenses and programs by section 104(a) of title 23, United States Code;
(B) the assistance made available under the administrative takedown authorized by section 104(a)(1) of title 23, United States Code; and
(C) amounts authorized for the highway use tax evasion program and the Bureau of Transportation Statistics; and
(2) shall redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during that fiscal year, giving priority to those States
 SEC. 1103. APPORTIONMENTS.

(a) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—There are authorized to be appropriated for the FY 2004 through the 2009, the Secretary is authorized to be appropriated for the

(b) METROPOLITAN PLANNING.—Section 104(f) of title 23, United States Code, is amended—

(c) A LASKA HIGHWAY.—Section 104(b)(1)(A) of title 23, United States Code, is amended—

(d) STATE PERCENTAGE.—The percentage referred to in subsection (a) for each State shall be—

(e) APPICLATION OF OBLIGATION LIMITATION TO SURFACE TRANSPORTATION RESEARCH PROGRAMS.—

(f) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.—

(g) SPECIAL RULE.—Obligation authority distributed for a fiscal year under subsection (c)(4) for the provision specified in subsection (c)(4) shall—

(h) ADJUSTMENT IN OBLIGATION LIMIT.—

(i) IN GENERAL.—A limitation on obligations imposed by section (a) for a fiscal year shall be adjusted by an amount equal to the administration in accordance with section 251(b)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 903(b)(1)(B)) for the fiscal year.

(j) NATIONAL HIGHWAY SYSTEM COMPONENT.

(k) EQUITY BONUS PROGRAM.

(l) PRIORITIES.

(m) APPOINTMENTS.

(n) APPORTIONMENTS.
"(K) metropolitan planning programs under section 104(f).

"(c) Special rules.—

"(1) Minimum combined allocation.—For each fiscal year, before making the allocations under subsection (a)(1), the Secretary shall allocate among the States amounts sufficient to ensure that no State receives a combination of amounts allocated under subsection (a)(1), apportionments for the programs specified in subsection (a)(2), and amounts allocated under this subsection, that is less than 110 percent of the average for fiscal years 1998 through 2003 of the annual apportionments for the State for all programs specified in subsection (a)(2), and no State shall receive, for any fiscal year, additional amounts under subsection (a)(1) to the apportionment of any State.

"(2) Minimum share of tax payments.—Notwithstanding subsection (d), for each fiscal year, the Secretary shall allocate among the States amounts sufficient to ensure that no State receives a percentage of apportionments for the fiscal year for the programs specified in subsection (a)(2) that is less than 90.5 percent of the percentage share of the total Federal-aid Highway Program available to users in the State paid into the Highway Trust Fund (other than the Mass Transit Account) in the most recent fiscal year for which data are available.

"(d) Limitation on adjustments.—

"(1) In general.—Except as provided in paragraphs (2) and (3) of subsection (c), no State shall receive, for any fiscal year, additional amounts under subsection (a)(1) if—

"(A) the total apportionments of the State for the fiscal year for the programs specified in subsection (a)(2) is equal to the amount determined by multiplying the amount to be apportioned to each State for all such programs for the fiscal year.

"(B) the percentage of the average, for the period of fiscal years 1998 through 2003, of the annual apportionments of the State for all programs specified in subsection (a)(2), and amounts allocated under subsection (b)(2), as specified in paragraph (2).

"(2) Percentages.—The percentages referred to in paragraph (1)(B) are—

"(i) for fiscal year 2004, 120 percent;

"(ii) for fiscal year 2005, 130 percent;

"(C) for fiscal year 2006, 134 percent;

"(D) for fiscal year 2007, 137 percent;

"(E) for fiscal year 2008, 145 percent; and

"(F) for fiscal year 2009, 250 percent.

"(e) Programmatic distribution of funds.—The Secretary shall apportion the amounts made available under this section so that the amount apportioned to each State under this section for each program referred to in subparagraphs (A) through (G) of subsection (a)(2) shall be determined by multiplying the amount to be apportioned under this section by the proportion that—

"(1) the amount of funds apportioned to each State for each program referred to in subparagraphs (A) through (G) of subsection (a)(2) for a fiscal year, bears to

"(2) the total amount of funds apportioned to each State for all such programs for the fiscal year.

"(f) Metro Planning SRT Aside.—Notwithstanding section 104(f), no set aside provided for under that section shall apply to funds allocated under this section.

"(g) Authorization of Appropriations.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to carry out this section for each of fiscal years 2004 through 2009.

"(h) Conforming Amendments.—

"(1) The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by striking the item relating to section 105 and inserting the following:

"105. Equity bonus program.”
provide for a strong and vigorous national economy are safe, efficient, and reliable—

(i) national and interregional personal mobility (including personal mobility in rural and urban areas) and reduced congestion;

(ii) flow of interstate and international commerce and freight transportation; and

(iii) critical developments essential for national security;

(E) special emphasis should be devoted to providing safe and efficient access for the type and size of commercial and military vehicles that access designated National Highway System intermodal freight terminals;

(F) it is in the national interest to seek ways to eliminate barriers to transportation investment created by the current modal structure of transportation financing;

(G) the connection between land use and infrastructure is significant;

(H) transportation should play a significant role in promoting economic growth, improving the environment, and sustaining the quality of life; and

(i) the Secretary should take appropriate actions to preserve and enhance the Interstate System to meet the needs of the 21st Century.

(b) NATIONAL SURFACE TRANSPORTATION SYSTEM STUDY.—

(1) IN GENERAL.—The Secretary shall—

(A) conduct a complete investigation and study of the current condition and future needs of the surface transportation system of the United States, including—

(i) the National Highway System;

(ii) the Interstate System;

(iii) the strategic highway network;

(iv) congressional high priority corridors;

(v) Intermodal connectors;

(vi) freight facilities;

(vii) navigable waterways;

(viii) mass transportation;

(ix) high-speed and intercity passenger rail infrastructure and facilities; and

(x) surface access to airports; and

(B) develop a conceptual plan, with alternative approaches, for the future to ensure that the surface transportation system will continue to serve the needs of the United States, including specific recommendations regarding operational standards, Federal policies, and legislative changes.

(2) SPECIFIC ISSUES.—In conducting the investigation and study, the Secretary shall specifically examine—

(A) the current condition and performance of the Interstate System (including the physical condition of bridges and pavements and operational characteristics and performance), relying primarily on existing data sources;

(B) the future of the Interstate System, based on a range of legislative and policy approaches for 15-, 30-, and 50-year time periods;

(C) the expected demographics and business changes that will impact the surface transportation system;

(D) the expected use of the surface transportation system, including the effects of changing vehicle types, modes of transportation, fleet size and weights, and traffic volumes;

(E) desirable design policies and standards for future improvements of the surface transportation system, including additional access points;

(F) the identification of urban, rural, national and international needs for the surface transportation system;

(G) the potential for expansion, upgrades, or other changes to the surface transportation system; and

(i) deployment of advanced materials and intelligent technologies;

(ii) critical multistate, urban, and rural corridors needing capacity, safety, and operational enhancements;

(iii) improvements to intermodal linkages;

(iv) security and military deployment enhancements;

(v) strategies to enhance asset preservation; and

(vi) implementation strategies;

(H) the improvement of emergency preparedness and evacuation using the surface transportation system, including—

(i) examination of the potential use of all modes of the surface transportation system in the safe and efficient evacuation of citizens during intermittent and emergency situations;

(ii) identification of the location of critical bottlenecks; and

(iii) development of strategies to improve system redundancy, especially in areas with a high potential for terrorist attacks;

(I) alternatives for addressing environmental concerns associated with the future development of the surface transportation system;

(J) the evaluation and assessment of the current and future capabilities for containing and reducing real-time transportation data collection and analysis, traffic monitoring, and transportation systems operations and management; and

(K) a range of legislative alternatives for addressing future needs for the surface transportation system, including funding needs and potential approaches to provide funds.

(3) TECHNICAL ADVISORY COMMITTEE.—The Secretary shall establish a technical advisory committee, in a manner consistent with the Federal Advisory Committee Act (5 U.S.C. App.), to collect and evaluate technical input from—

(A) the Department of Defense;

(B) appropriate Federal, State, and local officials with responsibility for transportation;

(C) appropriate State and local elected officials;

(D) transportation and trade associations;

(E) emergency management officials;

(F) freight providers;

(G) the general public; and

(H) other entities and persons determined appropriate by the Secretary to ensure a diverse range of perspectives.

(4) REPORT.—Not later than 4 years after the date of enactment of this Act, 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 Representa-
tives, and make readily available to the pub-
lic, a report on the results of the investiga-
tion and study conducted under this sub-
section.

SEC. 1203. FREIGHT TRANSPORTATION GATE-
WAYS; FREIGHT INTERMODAL CON-
NECTIONS.

(a) FREIGHT TRANSPORTATION GATEWAYS.—

Chapter 3 of title 23, United States Code, is amended by adding at the end the following:

* § 325. Freight transportation gateways

1. In General.—The Secretary shall establish freight transportation gateways to provide community and highway benefits by addressing economic, congestion, system reliability, security, safety, or environmental issues as associated with freight transportation gateways.

2. Eligible Projects.—A project eligible for funding under this section—

(A) may include publicly-owned intermodal freight transfer facilities, access to the facilities, and operational improvements for the facilities (including capital investments necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port; and
"(B) may involve the combining of private and public funds."

(b) ELIGIBILITY FOR SURFACE TRANSPORTATION PROGRAM FUNDS.—Section 133(b) of title 23, United States Code, is amended by inserting after paragraph (1) the following:

"(12) Intermodal freight transportation projects in accordance with section 323(d)(2)."

(c) FREIGHT INTERMODAL CONNECTIONS TO NHS.—Section 103(b) of title 23, United States Code, is amended by adding at the end the following:

"(7) FREIGHT INTERMODAL CONNECTIONS TO THE NHS:—

"(A) FUNDING SET-ASIDE.—Of the funds apportioned to a State for each fiscal year under section 104(b)(1), an amount determined in accordance with subparagraph (B) shall only be available to the State to be obligated for projects on—

"(i) National Highway System routes connecting to intermodal freight terminals identified according to criteria specified in the report to Congress entitled ‘Pulling Together: The National Highway System and Its Connections to Major Intermodal Terminals’ (referred to in paragraph (1), and any modifications to the connections that are consistent with paragraph (4));

"(ii) strategic highway network connectors to strategic military deployment ports; and

"(iii) projects to eliminate railroad crossings or make railroad crossings improvements.

"(B) DETERMINATION OF AMOUNT.—The amount of funds for each State for a fiscal year that shall be set aside under subparagraph (A) shall be equal to the lesser of—

"(i) the product obtained by multiplying—

"(I) the total amount of funds apportioned to the State under section 104(b)(1); by

"(II) the percentage of miles that routes specified in subparagraph (A) constitute of the total miles on the National Highway System in the State; or

"(ii) 2 percent of the annual apportionment to the State of funds under 104(b)(1).

"(C) EXCLUSION FROM SET-ASIDE.—For any fiscal year, a State may obligate the funds otherwise set aside by this paragraph for any project that is eligible under paragraph (6) and is located in the State on a segment of the National Highway System specified in paragraph (2), if the State certifies and the Secretary concurs that—

"(i) the designated National Highway System intermodal connectors described in subparagraph (A) are in good condition and provide an adequate level of service for military vehicle and civilian commercial vehicle use; and

"(ii) significant needs on the designated National Highway System intermodal connectors are being met or do not exist.

(d) FEDERAL SHARE PAYABLE.—Section 120 of title 23, United States Code, is amended by adding at the end the following:

"(om) INCREASED FEDERAL SHARE FOR CONNEXION TO INTERMODAL PORTS.—Section 120 of title 23, United States Code, is amended by adding at the end the following:

"(o) LENGTH LIMITATIONS.—Section 3111(e) of title 49, United States Code, is amended—

"(1) in general.—The; and

"(2) by adding at the end the following:

"(2) LIMITATIONS.—In the interests of operational efficiency, security, and intermodal connectivity, not later than 3 years after the date of enactment of this paragraph, States shall update the list of those qualifying highways to include—

"(A) strategic highway network connectors to strategic military deployment ports; and

"(B) National Highway System intermodal freight connections serving military and commercial truck traffic going to major intermodal terminals as described in section 108(b)(7)(A)."

(f) CONFORMING AMENDMENT.—The analysis of chapter 3 of title 23, United States Code, is amended by adding at the end the following:

"425. Freight transportation gateways.

SEC. 1204. CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL AND MAINTENANCE FACILITIES; COORDINATION OF FERRY CONSTRUCTION AND MAINTENANCE.

(a) In General.—Section 147 of title 23, United States Code, is amended to read as follows:

"(a) CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL AND MAINTENANCE FACILITIES:—

"(1) IN GENERAL.—The Secretary shall carry out a program for construction of ferry boats and ferry terminal facilities in accordance with section 129(c).

"(2) FERRY INTERMODAL CONNECTIVITY.—The Federal share of the cost of construction of ferry boats and ferry terminals and maintenance facilities under this subsection shall be 80 percent.

"(3) ALLOCATION OF FUNDS.—The Secretary shall give priority in the allocation of funds under this subsection to those ferry systems, and public entities responsible for developing ferries, that—

"(A) carry the greatest number of passengers and vehicles;

"(B) carry the greatest number of passengers in passenger-only service; or

"(C) provide critical access to areas that are not well-served by other modes of surface transportation.

"(b) NON-CONTRACT AUTHORITY AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) $50,000,000 for each fiscal year to carry out this section.

"(2) TRANSFER.—Funds made available under paragraph (1) shall be available in advance of an annual appropriation.

"(b) CONFORMING AMENDMENTS.—

"(1) The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by striking the item relating to section 147 and inserting the following:

"147. Construction of ferry boats and ferry terminal and maintenance facilities:—

"(c) FREIGHT INTERMODAL CONNECTIONS TO THE NHS:—

"(A) strategic highway network connectors to strategic military deployment ports; and

"(B) State-transportation projects, the Federal share is provided.

"(D) a national park or monument.

"(2) by striking "shall be—" and all that follows and inserting "shall be 80 percent of the total cost of the project;

"(2) by striking subsection (d) and inserting the following:

"(2) INCREASED FEDERAL SHARE.—

"(1) IN GENERAL.—The Federal share payable under subsection (a) or (b) may be increased for projects and activities in each State in which is located—

"(A) non-taxable Indian land;

"(B) public land (reserved or unreserved);

"(C) a national forest; or

"(D) a national park or monument.

"(2) AMOUNT.—

"(A) IN GENERAL.—The Federal share for Projects described in paragraph (1) shall be increased by a percentage of the remaining cost that—

"(i) is equal to the percentage that—

"(I) the area of all land described in paragraph (1) in a State; and

"(II) the total area of the State; but

"(ii) does not exceed 5 percent of the total cost of the project or activity for which the Federal share is provided.

"(B) ADJUSTMENT.—The Secretary shall adjust the Federal share for States under subparagraph (A) as the Secretary determines necessary, on the basis of data provided by the Federal agencies that are responsible for maintaining the data."
SEC. 1302. TRANSFER OF HIGHWAY AND TRANSIT FUNDS.

Section 104 of title 23, United States Code, is amended by striking subsection (k) and inserting the following:

"(k) TRANSFER OF HIGHWAY AND TRANSIT FUNDS.—

(A) IN GENERAL.—Subject to subparagraph (B), funds made available for transit projects or transportation planning under this title may be transferred to and administered by the Secretary in accordance with chapter 53 of title 49.

(B) NON-FEDERAL SHARE.—The provisions of this section relating to the non-Federal share shall apply to the transferred funds.

(2) TRANSFER OF FUND AMONG STATES OR TRANSIT PROJECTS.—Funds made available for highway projects or transportation planning under chapter 53 of title 49 may be transferred to and administered by the Secretary in accordance with this title.

(3) TRANSFER OF HIGHWAY FUNDS TO OTHER FEDERAL AGENCIES.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) and subparagraph (B), funds made available under this title or any other Act that are derived from Highway Trust Fund (other than the Mass Transit account) may be transferred to another Federal agency if—

(i) the expenditure is specifically authorized in Federal-aid highway legislation or as a line item in an appropriation act; or

(ii) a State transportation department consents to the transfer of funds.

(B) ADMINISTRATION.—

(1) PROCEDURES.—A project carried out with funds transferred to a Federal agency under subparagraph (A) shall be administered by the Federal agency under the procedures of the Federal agency.

(2) APPOINTMENTS.—Funds transferred to a Federal agency under subparagraph (A) shall not be considered an augmentation of the appropriations of the Federal agency.

(C) NON-FEDERAL SHARE.—The provisions of this section relating to the non-Federal share shall apply to a project carried out with the transferred funds, unless the Secretary determines that it is in the best interest of the United States that the non-Federal share be waived.

(D) TRANSFER OF FUNDS AMONG STATES OR TO FEDERAL HIGHWAY ADMINISTRATION.—

(1) IN GENERAL.—Subject to subparagraphs (B) through (D), the Secretary may, at the request of a State or States, transfer funds appropriated to the State to another State, or to the Federal Highway Administration, for the purpose of funding 1 or more specific projects.

(2) DETERMINATION.—The transferred funds shall be used for the same purpose and in the same manner for which the transferred funds were authorized.

(E) PRIORITY.—The transfer shall have no effect on any apportionment formula used to distribute funds to States under this section or section 105 or 144.

(F) USE OF TRANSFERRED FUNDS.—Funds that are apportioned or allocated to a State under subsection (b)(3) and attributed to an urbanized area of a State with a population of 200,000 or more shall be transferred under this paragraph only if the metropolitan planning organization designated for the area concurs, in writing, with the transfer request.

(G) TRANSFER OF OBLIGATION AUTHORITY.—Obligation authority for funds transferred under this subsection shall be transferred in the same manner and amount as the funds for the projects are transferred under this subsection.

SEC. 1303. TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT AMENDMENTS.

(a) DEFINITIONS.—Section 101 of title 23, United States Code, is amended—

(1) in paragraph (3), by striking "category" and "offered into the capital markets";

(2) by striking paragraphs (7) and redesignating paragraphs (8) through (15) as paragraphs (7) through (14) respectively;

(3) in paragraph (8) (as redesignated by paragraph (2))—

(A) in subparagraph (B), by striking the period at the end and inserting a semicolon;

(B) by striking subparagraph (D) and inserting the following:

"(D) a project that—

(i) is a project for—

(ia) a public freight rail facility or a private facility providing public benefit;

(ib) an intermodal freight transport facility;

(ic) a means of access to a facility described in item (aa) or (bb);

(id) a service improvement for a facility described in item (aa) or (bb) (including a capital investment for an intelligent transportation system); or

(ii) comprises a series of projects described in subparagraph (I) with the common objective of improving the flow of goods;

(iii) may involve the combining of private and public sector funds, including investment in an intermodal system; and

(iv) if located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port.; and

(4) in paragraph (10) (as redesignated by paragraph (2))—

(A) by striking "bond" and inserting "credit";

(B) by redesigning paragraphs (4) and (5) as paragraphs (3) and (4), respectively; and

(C) in paragraph (3) (as redesignated by subparagraph (B))—

(i) by striking "during the 10 years"; and

(ii) by striking "loan" and all that follows and inserting "loan.

(b) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—The project shall satisfy the applicable program and programming requirements of sections 194 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under this subchapter.

(c) APPLICATION.—A State, local government, public authority, public-private partnership, or any other legal entity underwritten by the public entity authorized by the Secretary shall submit a project application to the Secretary.

(d) DETERMINATION.—Section 182 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraphs (1) and (2) and inserting the following:

"(1) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—The project shall satisfy the applicable program and programming requirements of sections 194 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under this subchapter.

(2) APPLICATION.—A State, local government, public authority, public-private partnership, or any other legal entity underwritten by the public entity authorized by the Secretary shall submit a project application to the Secretary.; and

(B) in paragraph (5)(A)—

(i) in clause (i), by striking "$100,000,000" and inserting "$50,000,000"; and

(ii) in clause (ii), by striking "50" and inserting "20"; and

(C) in paragraph (4)—

(i) by striking "Project financing" and inserting "The Federal credit instrument"; and

(ii) by inserting before the period at the end the following: "that also secure the project obligations." after "sources.

(e) PROGRAM ADMINISTRATION.—Section 185 of title 23, United States Code, is amended to read as follows:

"185. Program administration

(a) REQUIREMENT.—The Secretary shall establish a uniform system to service the Federal credit instruments made available under this subchapter.

(b) FEES.—The Secretary may establish fees at a level to cover all or a portion of the costs to the Federal government of servicing the Federal credit instruments.

(c) SERVICE.—

(1) IN GENERAL.—The Secretary may appoint financial advisors to assist the Secretary in servicing the Federal credit instruments.
“(2) DUTIES.—The servicer shall act as the agent for the Secretary.

“(3) FEE.—The servicer shall receive a servicing fee, subject to approval by the Secretary.

“(4) ASSISTANCE FROM EXPERT FIRMS.—The Secretary may retain the services of expert firms, including counsel, in the field of public finance, including experience in evaluating the credits of the State and local tax mechanisms, in the development of the assumptions, analyses and conclusions of the Commission; and

“(A) conduct a comprehensive study of the selling price alternative to support the Highway Trust Fund and implementation of the Treasury’s proposal to phase in the fuel tax to support highway program financing; and

“(B) the Secretary of Energy;”

SEC. 1305. NATIONAL COMMISSION ON FUTURE REVENUE SOURCES TO SUPPORT THE HIGHWAY TRUST FUND AND FINANCE THE NEEDS OF THE SURFACE TRANSPORTATION SYSTEM.

“(a) ESTABLISHMENT.—There is established a commission to be known as the “National Commission on Future Revenue Sources to Support the Highway Trust Fund and Finance the Needs of the Surface Transportation System” (referred to in this section as the “Commission”).

“(b) MEMBERSHIP.—

“(1) Composition.—The Commission shall be composed of 11 members, of whom—

“(A) 3 members shall be appointed by the President;

“(B) 2 members shall be appointed by the Speaker of the House of Representatives;

“(C) 2 members shall be appointed by the minority leader of the House of Representatives;

“(D) 2 members shall be appointed by the majority leader of the Senate; and

“(E) 2 members shall be appointed by the minority leader of the Senate.

“(2) QUALIFICATIONS.—Members appointed under paragraph (1) shall have experience in public finance, including experience in developing State and local revenue sources; surface transportation program administration; organizations that use surface transportation facilities; academic research into related issues; or other activities that provide unique perspectives on current and future requirements for revenue sources to support the Highway Trust Fund.

“(3) DATE OF APPOINTMENT.—The appointment of a member of the Commission shall be made not later than 120 days after the date of establishment of the Commission.

“(4) TERMS.—A member shall be appointed for the life of the Commission.

“(5) VACANCIES.—A vacancy on the Commission shall be filled in the same manner as the original appointment was made.

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

“(7) MEETINGS.—The Commission shall meet at the call of the Chairperson.

“(8) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

“(9) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall select a Chairperson and Vice Chairperson from among the members of the Commission.

“(c) DUTIES.—

“(1) IN GENERAL.—The Commission shall—

“(A) conduct a study to ensure that—

“(i) the views of the stakeholders on the fuel tax to support highway program financing; and

“(ii) other relevant prior research; and

“(B) consult with the Secretary and the Treasury in conducting the study to ensure that—

“(i) the views of the stakeholders on alternative revenue sources to support State transportation improvement programs are considered; and

“(ii) any recommended Federal financing strategy takes into account State financial requirements; and

“(C) based on the study, make specific recommendations regarding—

“(i) actions that should be taken to develop alternative revenue sources to support the Highway Trust Fund; and

“(ii) the time frame for taking those actions.

“(2) SPECIFIC MATTERS.—The study shall address, specifically—

“(A) the advantages and disadvantages of alternative revenue sources to meet anticipated Federal surface transportation financial requirements; and

“(B) recommendations concerning the most promising revenue sources to support long-term Federal surface transportation financing requirements.

“(c) STUDY.—The study shall be conducted by a broad transition strategy to move from the current tax base to new funding mechanisms, including the framework for various components of the transition strategy; and

“(d) OTHER AGENCIES.—In developing recommendations under subsection (c), the Commission shall consider—

“(A) the ability to generate sufficient revenue from all modes to meet anticipated long-term surface transportation financing needs;

“(B) the roles of the various levels of government and the private sector in meeting future surface transportation financing needs;

“(C) administrative costs (including enforcement costs) to implement each option; and

“(D) the extent to which revenues should reflect the relative use of the highway system.

“(3) RELATED WORK.—To the maximum extent practicable, the study shall build on related work that has been done by—

“(A) the Secretary of Transportation;

“(B) the Secretary of Energy; and

“(C) the Transportation Research Board; and

“(D) other entities and persons.

“(4) FACTORS.—In developing recommendations under this subsection, the Commission shall consider—

“(A) the views of the stakeholders on the dollar amount needed to meet anticipated long-term surface transportation financing needs;

“(B) the roles of the various levels of government and the private sector in meeting future surface transportation financing needs;

“(C) administrative costs (including enforcement costs) to implement each option; and

“(D) the likely technological advances that could be implemented at the time of implementation of each option; and

“(E) the equity and economic efficiency of each option; and

“(F) the flexibility of different options to allow various pricing alternatives to be implemented; and

“(G) potential compatibility issues with State and local tax mechanisms under each alternative.

“(5) REPORT AND RECOMMENDATIONS.—Not later than September 30, 2007, the Commission shall submit to Congress a final report that contains—

“(A) a detailed statement of the findings and conclusions of the Commission; and

“(B) recommendations for action;”
(B) the recommendations of the Commission for such legislation and administrative actions as the Commission considers appropriate.

(2) POWERS.—

(1) HEARINGS.—The Commission may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this section.

(2) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—The Commission may secure directly from a Federal agency such information as the Commission considers necessary to carry out this section.

(B) PROVISION OF INFORMATION.—On request of the Commission, the head of the agency shall provide the information to the Commission.

(3) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government.

(4) DONATIONS.—The Commission may accept, use, and dispose of donations of services or property.

(e) COMMISSION PERSONNEL MATTERS.—

(1) MEMBERS.—A member of the Commission shall serve without pay but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.

(2) CONTRACTS.—The Commission may enter into contract with an appropriate organization, agency, or entity to conduct the study required under this section, under the strategic guidance of the Commission.

(3) ADMINISTRATIVE SUPPORT.—On the request of the Commission, the Administrator of the Federal Highway Administration shall provide such support as may be necessary to carry out this section.

(4) DETAIL OF DEPARTMENT PERSONNEL.—

(A) IN GENERAL.—The Secretary may detail, on a temporary basis, any of the personnel of the Department to the Commission to assist the Commission in carrying out the duties of the Commission under this section.

(B) CIVIL SERVICE STATUS.—The detail of an employee shall be without interruption or loss of civil service status or privilege.

(5) COOPERATION.—The staff of the Secretary shall cooperate with the Commission in the study required under this section, including providing such nonconfidential data and information as are necessary to conduct the study.

(f) RELATIONSHIP TO OTHER LAWS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), funds made available to carry out the provisions of this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code.

(2) FEDERAL SHARE.—The Federal share of the cost of the study and the Commission under this section shall be 100 percent.

(3) AVAILABILITY.—Funds made available to carry out this section shall remain available until expended.

(g) AUTHORIZATION OF APPROPRIATIONS.—

There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $3,000,000 for fiscal year 2004.
SEC. 1401. HIGHWAY SAFETY IMPROVEMENT PROGRAM.

(a) SAFETY IMPROVEMENT.—

(1) IN GENERAL.—Section 140 of title 23, United States Code, is amended to read as follows:

"§ 140. Highway safety improvement program

"(a) DEFINITIONS.—In this section:

"(1) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term ‘highway safety improvement program’ means the program carried out under this section;

"(2) HIGHWAY SAFETY IMPROVEMENT PROJECT.—A project described in the State strategic highway safety plan that—

"(i) corrects or improves a hazardous roadway location or feature;

"(ii) addresses a highway safety problem;

"(B) INCLUSIONS.—The term ‘highway safety improvement project’ includes a project for—

"(i) an intersection safety improvement;

"(ii) pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition);

"(iii) installation of rumble strips or any warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists and pedestrians;

"(iv) installation of a skid-resistant surface at an intersection or other location with a high frequency of accidents;

"(v) an improvement for pedestrian or bicyclist safety;

"(vi) construction of any project for the elimination of hazards at a railway-highway crossing that is eligible for funding under section 130(f);

"(II) construction of a railway-highway crossing safety feature;

"(II) construction of a railway-highway crossing safety feature;

"(vii) construction of a model traffic enforcement activity at a railway-highway crossing;

"(viii) elimination of a roadside obstacle;

"(ix) improvement of highway signage and pavement markings;

"(x) installation of a priority control system for emergency vehicles at signalized intersections;

"(xi) installation of a traffic control or other warning device at a location with high accident potential;

"(xii) safety-conscious planning;

"(xiii) improvement in the collection and analysis of crash data;

"(xiv) planning, integrated, interoperable emergency communications, equipment, operational activities, or traffic enforcement activities (including police assistance) relating to workzone safety;

"(xv) installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of motorists and workers), and crash attenuators;

"(xvi) the addition or retrofitting of structures or other measures to eliminate or reduce accidents involving vehicles and wildlife; or

"(xvii) installation and maintenance of signs (including fluorescent, yellow-green signs) at pedestrian-bicycle crossings and in school zones.

"(3) SAFETY PROJECT UNDER ANY OTHER SECTION.—

"(A) IN GENERAL.—The term ‘safety project under any other section’ means a project carried out for the purpose of safety under any other section of this title.

"(B) INCLUSION.—The term ‘safety project under any other section’ includes a project for—

"(i) promote the awareness of the public and educate the public concerning highway safety matters; or

"(ii) enforce highway safety laws.

"(4) STATE HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term ‘State highway safety improvement program’ means projects or strategies included in the State strategic highway safety plan carried out as part of the State transportation improvement program under section 135(f).

"(B) INCLUSIONS.—The term ‘State strategic highway safety plan’ means a plan developed by the State transportation department that—

"(A) is developed after consultation with—

"(i) a highway safety representative of the Governor of the State;

"(ii) regional transportation planning organizations and metropolitan planning organizations, if any;

"(iii) representatives of major modes of transportation;

"(iv) State and local traffic enforcement officials;

"(v) persons responsible for administering section 130 at the State level; and

"(vi) representatives conducting Operation Lifesaver;

"(vii) representatives conducting a motor carrier safety program under section 31104 or 31107 or title 49;

"(viii) representatives conducting Operation Lifesaver;

"(vii) representatives conducting a motor carrier safety program under section 31104 or 31107 or title 49;

"(ix) State and local traffic enforcement officials; and

"(x) other major State and local safety stakeholders;

"(B) analyzes and makes effective use of State, regional, or local crash data;

"(C) addresses engineering, management, education, enforcement, and emergency services elements (including integrated, interoperable emergency communications) of highway safety as key factors in evaluating highway projects;

"(D) considers safety needs of, and high-fatality segments of, public roads;

"(E) considers the results of State, regional, or local transportation and highway safety planning processes;

"(F) describes a program of projects or strategies to reduce or eliminate safety hazards;

"(G) is approved by the Governor of the State or a responsible State agency; and

"(H) is consistent with the requirements of section 135(f);

"(b) PROGRAM.—

"(1) IN GENERAL.—The Secretary shall carry out a highway safety improvement program.

"(2) PURPOSE.—The purpose of the highway safety improvement program shall be to achieve a significant reduction in traffic fatalities and serious injuries on public roads.

"(3) ELIGIBILITY.—

"(1) IN GENERAL.—To obligate funds appropriated under section 104(b)(5) to carry out this section, a State shall have in effect a State highway safety improvement program under which the State—

"(A) develops and implements a State strategic highway safety plan that identifies and analyzes highway safety problems and opportunities as provided in paragraph (2);

"(B) produces a program of projects or strategies to reduce identified safety problems;

"(C) evaluates the plan on a regular basis to ensure the accuracy of the data and priority of projects; and

"(D) submits to the Secretary an annual report that—

"(i) describes, in a clearly understandable fashion, not less than 5 percent of locations determined by the State, using criteria established in accordance with paragraph (2), as exhibiting the most severe safety needs; and

"(ii) contains an assessment of—

"(I) potential remedies to hazardous locations identified;

"(II) estimated costs associated with those remedies; and

"(III) impediments to implementation other than cost associated with those remedies.

"(2) IDENTIFICATION AND ANALYSIS OF HIGHWAY SAFETY PROBLEMS AND OPPORTUNITIES.—(A) The State strategic highway safety plan, a State shall—

"(A) have in place a crash data system with the ability to perform safety problem identification and countermeasure analysis;

"(B) based on the analysis required by subparagraph (A)—

"(i) identify hazardous locations, sections, and elements (including roadside obstacles, railway-highway crossing needs, and unmarked or poorly marked roads) that constitute a danger to motorists, bicyclists, pedestrians, or other highway users;

"(ii) classifies the locations as hazardous at the State level; and

"(iii) adopts strategic and performance-based goals that—

"(A) address traffic safety, including behavioral and infrastructure problems and opportunities on all public roads;

"(B) focus resources on areas of greatest need;

"(C) are coordinated with other State highway safety programs;

"(D) develop the capabilities of the State for traffic records data collection, analysis, and integration with other sources of safety data (such as road inventories) in a manner that—

"(i) complements the State highway safety program under chapter 4 and the commercial vehicle safety plan under section 31102 of title 49;

"(ii) includes all public roads;

"(iii) identifies hazardous locations, sections, and elements on public roads that constitute a danger to motorists, bicyclists, pedestrians, and other highway users;

"(iv) includes a means of identifying the relative severity of hazardous locations described in clause (i) in terms of accidents, injuries, fatalities, and traffic volume levels;

"(E) determine priorities for the correction of hazardous road locations, sections, and elements (including railway-highway crossing improvements), as identified through crash data analysis;

"(ii) identify opportunities for preventing the development of such hazardous conditions; and

"(iii) establish and implement a schedule of highway safety improvement projects for hazard correction and crash prevention; and

"(D) ELIGIBLE PROJECTS.—

"(1) IN GENERAL.—A State may obligate funds apportioned to the State under section 104(b)(5) to carry out—

"(A) any highway safety improvement project on any public road or publicly owned bicycle or pedestrian pathway or trail; or
"(B) as provided in subsection (e), for other safety projects."

"(2) USE OF OTHER FUNDING FOR SAFETY.—

"(A) EFFECT OF SECTION.—Nothing in this section shall affect the use of funds made available under other provisions of this title for highway safety improvement projects.

"(B) USE OF OTHER FUNDS.—States are encouraged to avail themselves of the full scope of their safety needs and opportunities by using funds made available under other provisions of this title (except a provision that specifically allocates funds to the State).

"(e) FLEXIBLE FUNDING FOR STATES WITH A STRATEGIC HIGHWAY SAFETY PLAN.—

"(1) IN GENERAL.—To further the implementation of a State strategic highway safety plan, a State may use up to 25 percent of the amount of funds made available under this section for the fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan.

"(2) OTHER TRANSPORTATION AND HIGHWAY SAFETY PLANS.—Nothing in this subsection requires a State to revise any State process, plan, or program in effect on the date of enactment of this Act.

"(f) REPORTS.—

"(1) IN GENERAL.—A State shall submit to the Secretary a report that—

"(i) describes progress being made to implement highway safety improvement projects under this section;

"(ii) assesses the effectiveness of those improvements; and

"(iii) describes the extent to which the improvements funded under this section contribute to the goals of—

"(A) reducing the number of fatalities on roadways;

"(B) reducing the number of roadway-related injuries;

"(C) reducing the occurrences of roadway-related crashes;

"(D) mitigating the consequences of roadway-related crashes; and

"(E) reducing the occurrences of roadway-railroad grade crossing crashes.

"(2) CONTENTS; SCHEDULE.—The Secretary shall establish the content and schedule for a report under paragraph (1).

"(3) TRANSPARENCY.—The Secretary shall make reports under subsection (c)(1)(D) available to the public through—

"(A) the Internet site of the Department; and

"(B) such other means as the Secretary deems to be appropriate.

"(g) FEDERAL SHARE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS.—Except as provided in sections 120 and 130, the Federal share of the cost of a highway safety improvement project funded with funds made available under this section shall be 90 percent.

"(h) FUNDS FOR CYCLE AND PEDESTRIAN SAFETY PROJECTS.—The Secretary shall allocate for bicycle and pedestrian improvements in the State a percentage of the funds remaining after implementation of sections 130(e) and 150, in an amount equal to or greater than the percentage of all fatal crashes in the State involving bicyclists and pedestrians.
apportion funds for 1 additional fiscal year for the highway safety improvement program under section 148 of title 23, United States Code, to the State, and the State may continue to obligate funds apportioned to the State under this section for projects that are eligible for funding under sections 130 and 132 of that title, as in effect on the day before the enactment of this Act.

(c) PENALTIES.—If a State has not adopted a strategic highway safety plan by the date that is 2 years after the date of enactment of this Act, amounts available to the State under section 1101(b) shall be redistributed to other States in accordance with section 104(b)(3) of title 23, United States Code.

SEC. 1401. SAVES.

Section 104(d)(1) of title 23, United States Code, is amended—

(1) by striking "subsection (b)(3)" and inserting "subsection (b)(2)"; and

(2) by striking "$500,000" and inserting "$600,000".

SEC. 1402. LICENSE SUSPENSION.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code, is amended by striking paragraph (3) and inserting the following:

(3) LICENSE SUSPENSION.—The term "licensure suspension" means—

(A) the suspension of all driving privileges of an individual for the duration of the suspension period; or

(B) any combination of suspension of all driving privileges of an individual for the first 90 days of the suspension period, followed by reinstatement of limited driving privileges requiring the individual to operate only motor vehicles equipped with an ignition interlock system or other device approved by the Secretary during the remainder of the suspension period.

SEC. 1404. BUS AXLE WEIGHT EXEMPTION.

Section 1023 of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 121b) is amended by striking subsection (h) and inserting the following:

(h) OVER-THE-ROAD BUS AND PUBLIC TRANSPORT VEHICLE EXEMPTION.—

(1) IN GENERAL.—The second sentence of section 127 of title 23, United States Code (relating to axle weight limitations for vehicles using Federal-aid highways (as defined in this chapter)) is amended by substituting "$50,000" for "$25,000.".

SEC. 1405. SAFE ROUTES TO SCHOOLS PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code, is amended by inserting after section 149 the following:

§ 150. Safe routes to schools program

(a) DEFINITIONS.—In this section:

(1) PRIMARY AND SECONDARY SCHOOL.—The term "primary and secondary school" means a school that provides education to children in any of grades kindergarten through 12.

(2) PROGRAM.—The term "program" means the safe routes to schools program established under subsection (b).

(3) VICINITY OF A SCHOOL.—The term "vicinity of a school" means the area within 2 miles of a primary or secondary school.

(b) ESTABLISHMENT.—The Secretary shall establish and carry out a safe routes to school program for the benefit of children in primary and secondary schools in accordance with this section.

(1) PURPOSES.—The purposes of the program shall be—

(i) to enable and encourage children to walk and bicycle to school;

(ii) to encourage a healthy and active lifestyle by making walking and bicycling to school safer and more appealing transportation alternatives; and

(iii) to facilitate the planning, development, and implementation of projects and activities that will improve the safety of the vicinity of schools.

(2) ELIGIBLE RECIPIENTS.—A State shall use amounts apportioned under this section to provide financial assistance to State, regional, and local agencies that demonstrate an ability to meet the requirements of this section.

(3) ELIGIBLE PROJECTS AND ACTIVITIES.—

(A) IN GENERAL.—Amounts apportioned to a State under this section may be used for the planning, design, and construction of infrastructure-related projects to encourage walking and bicycling to school, including—

(i) sidewalk improvements;

(ii) traffic calming and speed reduction improvements;

(iii) pedestrian and bicycle crossing improvements;

(iv) on-street bicycle facilities;

(v) off-street bicycle and pedestrian facilities;

(vi) secure bicycle parking facilities;

(vii) traffic signal improvements; and

(viii) pedestrian-railroad grade crossing improvements.

(B) LOCATION OF PROJECTS.—Infrastructure-related projects under subparagraph (A) may be carried out on—

(i) any public road in the vicinity of a school;

(ii) any bicycle or pedestrian pathway or trail in the vicinity of a school; or

(iii) any street, sidewalk, or other improvements.

(C) FUNDING.—

(A) IN GENERAL.—In addition to projects described in paragraph (1), amounts apportioned to a State under this section may be used for behavioral activities to encourage walking and bicycling to school, including—

(i) public awareness campaigns and outreach to promote walking and bicycling;

(ii) traffic education and enforcement in the vicinity of schools; and

(iii) student sessions on bicycle and pedestrian safety, health, and environment.

(B) ALLOCATION.—Of the amounts apportioned to a State under this section for a fiscal year, not less than 10 percent shall be used for behavioral activities under this paragraph.

(2) APPORTIONMENT.—Amounts made available to a State under section 118(b)(2), amounts apportioned under this section shall be apportioned to States in accordance with section 104(b)(5).

(3) ADMINISTRATION OF AMOUNTS.—

(A) Amounts apportioned to a State under this section shall be administered by the State transportation department.

(B) The term "transportation department" as defined under sections 120 and 130, the Federal share of the cost of a project or activity funded under this section shall be 90 percent.

(C) The term "project" means a project for which the Secretary determines appropriate.

(D) The term "activity" means a project or activity for which the Secretary determines appropriate.

(4) CONDITIONS AND LIMITATIONS.—

(A) IN GENERAL.—No State or political subdivision of a State may use funds apportioned under this section to—

(i) build, construct, or maintain any roadway, bridge, or sidewalk;

(ii) purchase recreational equipment;

(iii) purchase equipment for use by State employees; or

(iv) purchase equipment for use by any public or private school.
forcing a provision described in subsection (b), the apportionment of the State shall be increased by an amount equal to the amount of the reduction made during the 4-year period, at the end the following:

"(2) SELECTION OF PROJECTS AND STRATEGIES.—After soliciting and considering any relevant public comments, the metropolitan planning organization shall determine which of the factors described in paragraph (1) are most appropriate for the metropolitan area to consider.

(b) STATEWIDE PLANNING.—Section 135(c) of title 23, United States Code, is amended—

(i) by inserting after paragraph (1) the following:

"(ii) comparison of transportation plans to inventories of natural or historic resources, if available;

(ii) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkages within the area.

(iv) consultation under clause (i) shall involve—

(A) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

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

"(4) MITIGATION ACTIVITIES.—

(A) IN GENERAL.—The long-range transportation plan shall be developed, as appropriate, in consultation with State and local agencies responsible for—

(i) land use management;

(ii) natural resources;

(iii) environmental protection;

(iv) historic preservation.

(ii) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkages within the area.

(v) consultation under clause (i) shall involve—

(A) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

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

"(4) MITIGATION ACTIVITIES.—

(A) IN GENERAL.—A long-range transportation plan shall include a discussion of—

(i) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

(ii) consultation.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

(iii) by redesigning paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively; and

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

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(A) IN GENERAL.—A long-range transportation plan shall include a discussion of—

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February 26, 2004

CONGRESSIONAL RECORD — SENATE

S1721

CHAPTER 2—TRANSPORTATION PROJECT DEVELOPMENT PROCESS

SECT. 1511. TRANSPORTATION PROJECT DEVELOPMENT PROCESS.

(a) IN GENERAL.—Chapter 3 of title 23, United States Code (as amended by section 1203(a)), is amended by inserting after section 325 the following:

"(d) Transportation project development process

"(1) Definitions.—In this section:

"(A) Agency.—The term ‘agency’ means any agency, department, or other unit of Federal, State, local, or federally recognized tribal government.

"(B) Environmental impact statement.—The term ‘environmental impact statement’ means a detailed statement of the environmental impacts of a project required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(C) Environmental review process.—The term ‘environmental review process’ means the process for preparing, for a project—

"(i) an environmental impact statement; or

"(ii) any other document or analysis required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

"(D) Inclusions.—The term ‘environmental review process’ includes the process for completion of the environmental permit, approval, review, or study required for a project under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(E) Project.—The term ‘project’ means any highway or transit project that requires the approval of the Secretary.

"(F) Project sponsor.—The term ‘project sponsor’ means an agency or other entity (including any private or public-private entity), that seeks approval of the Secretary for a project.

"(G) State transportation department.—The term ‘State transportation department’ means any statewide agency of a State with responsibility for transportation.

"(H) Process.—

"(i) Lead agency.—

"(A) In general.—The Department of Transportation shall be the lead Federal agency in the environmental review process for a project.

"(B) Joint lead agencies.—Nothing in this section excludes another agency from being a joint lead agency in accordance with regulations under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(C) Concurrence of project sponsor.—The lead agency may carry out the environmental review process in accordance with this section only with the concurrence of the project sponsor.

"(2) Request for process.—

"(A) In general.—A project sponsor may request that the lead agency carry out the environmental review process for a project or group of projects in accordance with this section.

"(B) Grant of request; public notice.—The lead agency shall—

"(i) grant a request under subparagraph (A); and

"(ii) provide public notice of the request.

"(C) Effective date.—The environmental review process described in this section may be applied to a project only after the date on which public notice is provided under subparagraph (B)(ii).

"(D) Role and responsibility of lead agency.—With respect to the environmental review process, the lead agency shall have authority and responsibility to—
“(A) identify and invite cooperating agencies in accordance with subsection (d);

“(B) develop an agency coordination plan with review, schedule, and timelines in accordance with subsection (e);

“(C) determine the purpose and need for the project in accordance with subsection (f);

“(D) determine the range of alternatives to be considered in accordance with subsection (g);

“(E) convene dispute-avoidance and decision resolution meetings and related efforts in accordance with subsection (h);

“(F) take such other actions as are necessary and proper, within the authority of the lead agency, to facilitate the expeditious resolution of the environmental review process for the project;

“(G) prepare or ensure that any required environmental impact statement or other document required to be completed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is completed in accordance with this section and applicable Federal law.

“(d) ROLES AND RESPONSIBILITIES OF COOPERATING AGENCIES.—

“(1) IN GENERAL.—With respect to a project, each Federal agency shall carry out any obligations of the Federal agency in the environmental review process in accordance with this section and applicable Federal law.

“(2) INVITATION.—

“(A) IN GENERAL.—The lead agency shall identify and invite cooperating agencies for a category of projects; and

“(B) DEVELOPMENT OF FLEXIBLE PROCESS AND TIMELINE.—

“(1) COORDINATION PLAN.—

“(A) IN GENERAL.—The lead agency shall establish a coordination plan, which may be incorporated into a memorandum of understanding, to coordinate agency and public participation in and comment on the environmental review process for a project or category of projects.

“(B) WORKPLAN.—

“(1) IN GENERAL.—The lead agency shall develop, as part of the coordination plan, a workplan for completing the collection, analysis, and evaluation of baseline data and future impacts modeling necessary to complete the environmental review process, including any data, analyses, and modeling necessary for related permits, approvals, reviews, or studies required for the project under other laws.

“(2) EXTENSION OF COMMENT PERIODS.—The lead agency may extend a period of comment established under this paragraph for good cause.

“(B) EXTENSION OF COMMENT PERIODS.—

“(1) IN GENERAL.—The lead agency shall establish a period of comment for a project or category of projects and shall consider factors such as—

“(i) the sensitivity of the natural and historic resources that could be affected by the project;

“(ii) the overall size and complexity of a project;

“(iii) the overall schedule and cost of a project; and

“(iv) the inevitability of the natural and historical resources that could be affected by the project;

“(D) CONSISTENCY WITH OTHER TIME PERIODS.—The period established under paragraph (C) shall be consistent with any other relevant time periods established under Federal law.

“(E) MODIFICATION.—The lead agency may—

“(i) lengthen a schedule established under paragraph (C) for good cause; and

“(ii) shorten a schedule only with the concurrence of the affected cooperating agencies.

“(F) DISSEMINATION.—A copy of a schedule under paragraph (E)(i) shall be made available to the public.

“(G) RESPONSES.—The deadline for receipt of any comments submitted in response to a project sponsor, and (and, if the State is not the project sponsor, to the project sponsor);

“(H) D E A D L I N E S FOR DECISIONS UNDER OTHER LAWS.—In any case in which a decision under any Federal law relating to a project (including the issuance or denial of a permit or license) is required to be made by the date specified in the invitation, the lead agency shall act in accordance with sections 1501.7 and 1502.9 of title 40, Code of Federal Regulations.

“(2) OPPORTUNITIES FOR COMMENT.—

“(1) IN GENERAL.—The public shall be entitled to comment and shall be informed of the time periods for such comment and the procedures for making such comment; and

“(2) NOTIFICATION.—The lead agency shall promptly notify the public of the conclusion of the comment period or extension of a comment period, and such notice shall be published in the Federal Register and shall include a reference to the date of the comment period or extension of the comment period.

“(3) OPPORTUNITIES FOR COMMENT.—Nothing in this subsection shall reduce any time provided for public comment in the environmental review process under Federal law (including a regulation).

“(B) EXTENSION OF COMMENT PERIODS.—The lead agency may extend a period of comment established under this paragraph for good cause.

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“(1) IN GENERAL.—The lead agency shall establish a period of comment for a project or category of projects and shall consider factors such as—

“(i) the sensitivity of the natural and historic resources that could be affected by the project;

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“(iii) the overall schedule and cost of a project; and

“(iv) the inevitability of the natural and historical resources that could be affected by the project;

“(D) CONSISTENCY WITH OTHER TIME PERIODS.—The period established under paragraph (C) shall be consistent with any other relevant time periods established under Federal law.

“(E) MODIFICATION.—The lead agency may—

“(i) lengthen a schedule established under paragraph (C) for good cause; and

“(ii) shorten a schedule only with the concurrence of the affected cooperating agencies.

“(F) DISSEMINATION.—A copy of a schedule under paragraph (E)(i) shall be made available to the public.

“(G) RESPONSES.—The deadline for receipt of any comments submitted in response to a project sponsor, and (and, if the State is not the project sponsor, to the project sponsor);

“(H) D E A D L I N E S FOR DECISIONS UNDER OTHER LAWS.—In any case in which a decision under any Federal law relating to a project (including the issuance or denial of a permit or license) is required to be made by the date specified in the invitation, the lead agency shall act in accordance with sections 1501.7 and 1502.9 of title 40, Code of Federal Regulations.

“(3) INVOLVEMENT OF THE PUBLIC.—Nothing in this subsection shall reduce any time provided for public comment in the environmental review process under Federal law (including a regulation).
“(1) IN GENERAL.—With respect to the envi-
ronmental review process for a project, the
purpose and need for the project shall be de-
defined in accordance with this subsection.

“(2) AUTHORITY.—The lead agency shall de-
define the purpose and need for a project, in-
cluding the transportation objectives and any
other objectives intended to be achieved by
the project.

“(3) INVOLVEMENT OF COOPERATING AGEN-
CIES AND THE PUBLIC.—Before determining
the purpose and need for a project, the lead
agency shall solicit comments from the pub-
lic, including comments from Federal, State,
local, or tribal agencies and the public, in con-
sideration of the potential environmental or
socioeconomic impacts of a project.

“(4) EFFECT OF OTHER REVIEWS.—For the
purpose of compliance with the National En-
et seq.), and any other law requiring an agen-
cy that is not the lead agency to determine or
consider a project purpose or project need,
such an agency acting, permitting, or ap-
proving under, or otherwise applying, Fed-
eral law with respect to a project shall adopt
the determination of purpose and need for the
project made by the lead agency.

“(5) SAVINGS.—Nothing in this subsection pre-
empts or interferes with any power, juris-
diction, responsibility, or authority of an agen-
cy under applicable law (including regu-
lations) with respect to a project.

“(6) CONTENTS.—

“(A) IN GENERAL.—The statement of pur-
pose and need shall include a clear state-
mant of the objectives that the proposed pro-
ject is intended to achieve.

“(B) EFFECT ON EXISTING STANDARDS.—

Nothing in this subsection shall alter ex-
isting standards for determining the range of
alternatives.

“(C) FACTORS TO CONSIDER.—The lead agen-
cy may determine that any of the following
factors and documents are appropriate for
consideration in determining the purpose of
and need for a project:

“(i) Transportation plans and related
planning documents developed through the
statewide and metropolitan transportation
planning process under sections 134 and 135.

“(ii) Land use plans adopted by units of
State, local, or tribal government (or, in the
case of Federal land, by the applicable Fed-
eral land management agencies).

“(iii) Economic development plans adopted by
units of State, local, or tribal government;
or

“(iv) established economic development planning
organizations or authorities.

“(D) ENVIRONMENTAL PROTECTION PLANS,
including plans for the protection or treat-
ment of—

“(i) air quality;

“(ii) water quality and runoff;

“(iii) habitat needs of plants and animals;

“(iv) threatened and endangered species;

“(v) invasive species;

“(vi) historic properties; and

“(vii) other environmental resources.

“(E) Any publicly available plans or poli-
cies relating to the national defense, na-
tional security, or foreign policy of the
United States.

“(g) DEVELOPMENT OF PROJECT AL-
TERNATIVES.—

“(1) IN GENERAL.—With respect to the envi-
rionmental review process for a project, the
alternatives shall be determined in accord-
ance with this subsection.

“(2) AUTHORITY.—The lead agency shall de-
define the alternatives to be considered for
a project.

“(3) INVOLVEMENT OF COOPERATING AGEN-
cIES.—

“(A) IN GENERAL.—Before determining the
alternatives for a project, the lead agency
shall solicit for 30 days and consider any rel-
vant comments on the proposed alter-
 natives received from the public and cooper-
ating agencies.

“(B) ALTERNATIVES.—The lead agency shall con-
sider—

“(i) alternatives that meet the purpose and
need of the project; and

“(ii) the potential for action.

“(C) EFFECT ON EXISTING STANDARDS.—

Nothing in this subsection shall alter the ex-
isting standards for determining the range of
alternatives.

“(4) EFFECT ON OTHER REVIEWS.—Any other
agency acting under or applying Federal law
with respect to a project shall consider only
the alternatives determined by the lead
agency.

“(5) SAVINGS.—Nothing in this subsection pre-
empts or interferes with any power, juris-
diction, responsibility, or authority of an agen-
cy under applicable law (including regu-
lations) with respect to a project.

“(6) FACTORS TO CONSIDER.—The lead agen-
cy may determine that any of the following
factors and documents are appropriate for
consideration in determining the alter-
 natives for a project:

“(A) The overall size and complexity of the
proposed action;

“(B) The sensitivity of the potentially af-
ected resources.

“(C) The overall schedule and cost of the
project.

“(D) Transportation plans and related
planning documents developed through the
statewide and metropolitan transportation
planning process under sections 134 and 135
title 23 of the United States Code.

“(E) Land use plans adopted by units of
State, local, or tribal government (or, in the
case of Federal land, by the applicable Fed-
eral land management agencies).

“(F) Economic development plans adopted by
units of State, local, or tribal govern-
ment; or

“(ii) established economic development planning
organizations or authorities.

“(G) ENVIRONMENTAL PROTECTION PLANS,
including plans for the protection or treat-
ment of—

“(i) air quality;

“(ii) water quality and runoff;

“(iii) habitat needs of plants and animals;

“(iv) threatened and endangered species;

“(v) invasive species;

“(vi) historic properties; and

“(vii) other environmental resources.

“(H) Any publicly available plans or poli-
cies relating to the national defense, na-
tional security, or foreign policy of the
United States.

“(i) Prompt Issue Identification and
Resolution Process.—

“(1) IN GENERAL.—The lead agency, the
project sponsor, and the cooperating agen-
cies shall work cooperatively, in accordance
with this process, to identify and resolve issues
that could—

“(A) delay completion of the environ-
mental review process; or

“(B) result in denial of any approvals re-
quired for the project under applicable laws.

“(2) LEAD AGENCY RESPONSIBILITIES.—

“(A) IN GENERAL.—The lead agency
shall make information available to the cooper-
ating agencies, as early as practicable in the
environmental review process, regarding

“(i) the extent of environmental and socioeco-
nomic resources located within the project area;
and

“(ii) the general locations of the alter-
 natives under consideration.

“(B) BASIS FOR INFORMATION.—Information
about resources in the project area may be
based on existing data sources, including geo-
ographic information systems mapping.

“(3) COOPERATING AGENCY RESPONSIBILI-
TIES.—

“(A) IN GENERAL.—Based on information
received from the lead agency, cooperating
agencies shall promptly identify to the lead
agency any major issues of concern regard-
ings the potential environmental or socio-
economic impacts of a project.

“(B) MAJOR ISSUES OF CONCERN.—A major
issue of concern referred to in subparagraph
(A) may include any issue that could sub-
stantially delay or prevent an agency from
granting a permit or other approval that is
needed for a project, as determined by a co-
operating agency.

“(4) ISSUE RESOLUTION.—On identification of a
major issue of concern under paragraph
(3), or at any time upon the request of a
project sponsor or the Governor of a State,
the lead agency shall promptly convene a
meeting with representatives of each of the
relevant cooperating agencies, the project
sponsor, and the Governor to address and re-
solve the issue.

“(5) NOTIFICATION.—If a resolution of a
major issue of concern under paragraph
(4) cannot be achieved within 30 days after
the date on which a meeting under
that paragraph is convened, the lead agency
shall provide notification of the failure to re-
solve the major issue of concern to—

“(A) the heads of all cooperating agencies;

“(B) the project sponsor;

“(C) the Governor involved;

“(D) the Committee on Environment and
Public Works of the Senate; and

“(E) the Committee on Transportation and
Infrastructure of the House of Representa-
tives.

“(6) PERFORMANCE MEASUREMENT.—

“(1) PROGRESS REPORTS.—The Secretary
shall establish a program to measure and re-
port on progress toward improving and expe-
editing the planning and environmental
review process.

“(2) MINIMUM REQUIREMENTS.—The program
shall include, at a minimum—

“(A) the establishment of criteria for
measuring consideration of—

“(i) State and metropolitan planning,
project planning, and design criteria;
and

“(ii) environmental processing times and
costs;

“(B) the collection of data to assess per-
formance based on the established criteria;
and

“(C) the annual reporting of the results of
the performance measurement studies.

“(7) DEVELOPMENT OF THE PUBLIC AND CO-
OPERATING AGENCIES.—

“(A) IN GENERAL.—The Secretary shall bi-
ennially conduct a survey of agencies par-
ticipating in the environmental review proc-
есс under this section to assess the expecta-
tions and experiences of each surveyed agen-
cy with regard to the planning and environ-
mental review process for projects reviewed
under this section.

“(B) PUBLIC PARTICIPATION.—In conducting
the survey, the Secretary shall solicit com-
ments from the public.

“(1) ASSISTANCE TO AFFECTED FEDERAL AND
STATE AGENCIES.—

“(1) IN GENERAL.—The Secretary may ap-
ply for a request by a State or recipient to
provide funds made available under this title
for a highway project, or made available
under chapter 53 of title 49 for a mass transit
project, to agencies participating in the co-
ordinated environmental review process es-
tablished under this section in order to pro-
vide the resources necessary to meet any time
limits established in this section.

“(2) AMOUNTS.—Such requests under para-
graph (1) shall be approved only—
(A) for such additional amounts as the Secretary determines are necessary for the affected Federal and State agencies to meet the time limits for environmental review; and

(B) if those time limits are less than the customary time necessary for that review.

(9) JUDICIAL REVIEW AND SAVINGS CLAUSE.—

(1) JUDICIAL REVIEW.—Nothing in this section shall affect the reviewability of any final action in a United States district court or State court.

(2) SAVINGS CLAUSE.—Nothing in this section shall affect—

(A) the availability of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or any other Federal environmental statute; or

(B) the responsibility of any Federal officer to comply with or enforce such a statute.

(10) CONFORMING AMENDMENTS.—

(a) The analysis for chapter 3 of title 23, United States Code, is amended by inserting after the item relating to section 325 (as added by section 1309(a)) the following:

"§ 326. Transportation project development process.

(Section 1309 of the Transportation Equity Act for the 21st Century (112 Stat. 232) is repealed.)

SEC. 1512. ASSUMPTION OF RESPONSIBILITY FOR CATEGORICAL EXCLUSIONS.

(a) In General.—Chapter 3 of title 23, United States Code (as amended by section 1511(a)), is amended by inserting after section 326 the following:

"§ 327. Assumption of responsibility for categorical exclusions.

"(a) CATEGORICAL EXCLUSION DETERMINATIONS.—

"(1) IN GENERAL.—The Secretary may assign, modify, or terminate any assumption, responsibility, or determination with respect to a categorical exclusion as provided in paragraph (2).

"(2) ASSIGNMENT OF DETERMINATION.—A determination described in paragraph (1) shall be made by the Secretary in accordance with criteria established by the Secretary and by notice to applicable Federal and State agencies.

(3) CRITERIA.—The criteria established under paragraph (2) shall include provisions for public availability of information consistent with section 552 of title 5 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

(b) NOTIFICATION AND PETITION.—

"(1) IN GENERAL.—If a State assumes responsibility under this section only if—

(A) the State has the capability, including financial and personnel, to assume the responsibility; and

(B) the State has notified the Secretary and the appropriate Federal and State officials of its intention to assume responsibility under this section.

(2) SUBMISSION.—The State shall submit to the Secretary a written petition in support of an assumption under this section.

(c) EFFECT ON LIABILITY.—The assumption under this section shall remain the responsibility of the Secretary not explicitly assigned by the State by written agreement.

(d) TERMINATION.—The Secretary may terminate any assumption of responsibility under a memorandum of understanding if the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State.

(e) STATE AGENCY DEEMED TO BE FEDERAL AGENCY.—A State agency that is assigned a responsibility under a memorandum of understanding shall be deemed to be a Federal agency under Federal law.

(f) JUDICIAL REVIEW.—Nothing in this section shall affect the reviewability of any determination and the State may appeal to the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

(2) SOLE RESPONSIBILITY.—A State that assumes responsibility under this section shall—

(A) have the authority to carry out the memorandum of understanding;

(B) have the authority to carry out the memorandum of understanding in accordance with the appropriate Federal and State laws, regulations, and policies.

(3) JUDICIAL REVIEW.—Nothing in this section shall affect the reviewability of any determination and the State may appeal to the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

(4) TERMINATION.—The Secretary may terminate any assumption of responsibility under a memorandum of understanding if the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State.

(5) TERM.—A memorandum of understanding—

(A) shall have term of not more than 3 years; and

(B) shall be renewable.

(6) ACCEPTANCE OF JURISDICTION.—In a memorandum of understanding, the State shall consent to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

(7) MONITORING.—The Secretary shall—

(A) monitor compliance by the State with the memorandum of understanding and the provision of the State of financial resources to carry out the memorandum of understanding; and

(B) take into account the performance by the State when considering renewal of the memorandum of understanding.

(8) TERMINATION.—The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State.

(9) STATE AGENCY DEEMED TO BE FEDERAL AGENCY.—A State agency that is assigned a responsibility under a memorandum of understanding shall be deemed to be a Federal agency under Federal law.

(10) JUDICIAL REVIEW.—Nothing in this section shall affect the reviewability of any determination and the State may appeal to the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

SEC. 1513. SURFACE TRANSPORTATION PROJECT DELIVERY PILOT PROGRAM.

(a) IN GENERAL.—Chapter 3 of title 23, United States Code (as amended by section 1511(a)), is amended by inserting after section 327 the following:

"§ 328. Surface transportation project delivery pilot program.

("(a) ESTABLISHMENT.—

"(1) IN GENERAL.—The Secretary shall carry out a surface transportation project delivery pilot program (referred to in this section as the 'program').

"(2) ASSUMPTION OF RESPONSIBILITY.—

"(A) IN GENERAL.—Subject to the other provisions of this section, the written agreement between the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to 1 or more highway projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(B) ASSUMPTION OF RESPONSIBILITY.—If a State assumes responsibility under subparagraph (A)—

"(i) the Secretary shall assign to the State, and the State may assume, all or part of 1 or more highway projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(ii) after providing public notice and opportunity for comment by the State relating to participation in the State, after providing public notice and opportunity for comment by the State relating to participation in the program, including copies of comments received from that solicitation.

"(3) PUBLIC NOTICE.—

"(A) IN GENERAL.—Each State that submits an application under this subsection shall give notice of the intent of the State to participate in the program not later than 30 days before the date of submission of the application.

"(B) METHOD OF NOTICE AND SOLICITATION.—The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice law of the State.

"(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under this section only if—

(A) the regulatory requirements under paragraph (2) have been met;

(B) the Secretary determines that the State has the capability, including financial and personnel, to assume the responsibility; and

(C) the head of the State agency having primary jurisdiction over highway matters enters into a written agreement with the Secretary specified in subsection (c).

"(5) OTHER FEDERAL AGENCY ACTIONS.—If a State applies to assume a responsibility of the Secretary that would have required the Secretary to consult with another Federal agency, the Secretary shall solicits the views of the Federal agency before approving the application.

"(6) WRITTEN AGREEMENT.—A written agreement under this section shall—

"(i) be executed by the Governor or the top-ranking transportation official in the State who is charged with responsibility for highway construction; and

"(ii) be in such form as the Secretary may prescribe;
enactment of this section.

(2) TERMINATION BY SECRETARY. — The Secretary shall conduct—

(a) DECLARATION OF POLICY. — It is hereby declared that a transportation program or project—

(i) the transportation program or project will have no adverse effect on the historic site; or

(ii) there will be no historic properties affected by the transportation program or project;

(b) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation, if participating in the consultation); and

(c) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

(3) PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES. — With respect to parks, recreation areas, and wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

(i) the transportation program or project will have no adverse effect on the historic site; or

(ii) there will be no historic properties affected by the transportation program or project;

(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation, if participating in the consultation); and

(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

(B) THE FINDING OF THE SECRETARY. — The requirements of this section shall be considered to be satisfied with respect to a project if the Secretary determines is necessary to comply with any applicable State law.

(2) DE MINIMIS IMPACTS.—

(1) REQUIREMENTS.—

(A) IN GENERAL. — The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) or (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

(B) CRITERIA. — In making any determination under this subsection, the Secretary shall consider the following:

(i) the transportation program or project will have no adverse effect on the historic site;

(ii) there will be no historic properties affected by the transportation program or project;

(iii) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation, if participating in the consultation); and

(iv) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

(B) THE FINDING OF THE SECRETARY. — The requirements of this section shall be considered to be satisfied with respect to a project if the Secretary determines is necessary to comply with any applicable State law.

(2) DE MINIMIS IMPACTS.—

(1) REQUIREMENTS.—

(A) IN GENERAL. — The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) or (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

(B) CRITERIA. — In making any determination under this subsection, the Secretary shall consider the following:

(i) the transportation program or project will have no adverse effect on the historic site;

(ii) there will be no historic properties affected by the transportation program or project;

(iii) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation, if participating in the consultation); and

(iv) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

(B) THE FINDING OF THE SECRETARY. — The requirements of this section shall be considered to be satisfied with respect to a project if the Secretary determines is necessary to comply with any applicable State law.

(2) DE MINIMIS IMPACTS.—

(1) REQUIREMENTS.—

(A) IN GENERAL. — The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) or (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

(B) CRITERIA. — In making any determination under this subsection, the Secretary shall consider the following:

(i) the transportation program or project will have no adverse effect on the historic site;

(ii) there will be no historic properties affected by the transportation program or project;

(iii) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation, if participating in the consultation); and

(iv) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

(B) THE FINDING OF THE SECRETARY. — The requirements of this section shall be considered to be satisfied with respect to a project if the Secretary determines is necessary to comply with any applicable State law.

(2) DE MINIMIS IMPACTS.—

(1) REQUIREMENTS.—

(A) IN GENERAL. — The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) or (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

(B) CRITERIA. — In making any determination under this subsection, the Secretary shall consider the following:

(i) the transportation program or project will have no adverse effect on the historic site;

(ii) there will be no historic properties affected by the transportation program or project;

(iii) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation, if participating in the consultation); and

(iv) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

(B) THE FINDING OF THE SECRETARY. — The requirements of this section shall be considered to be satisfied with respect to a project if the Secretary determines is necessary to comply with any applicable State law.
(1) IN GENERAL.—The Secretary and the Transportation Research Board of the National Academy of Sciences shall jointly conduct a study on the implementation of this section and the amendments made by this section.

(2) COMPONENTS.—In conducting the study, the Secretary and the Transportation Research Board shall evaluate—

(A) the processes developed under this section and the amendments made by this section and the efficiencies that may result;

(B) the construction effectiveness of impact mitigation and avoidance commitments adopted as part of projects conducted under this section and the amendments made by this section; and

(C) the quantity of projects with impacts that are considered de minimis under this section and the amendments made by this section, including information on the location, size, and cost of the projects.

(3) REPORT REQUIREMENT.—The Secretary and the Transportation Research Board shall prepare—

(A) not earlier than the date that is 4 years after the date of enactment of this Act, a report on the results of the study conducted under this subsection; and

(B) not later than September 30, 2009, an update on the report required under subparagraph (A).

(4) REPORT RECIPIENTS.—The Secretary and the Transportation Research Board shall—

(A) submit the report and update required under paragraph (3) to the appropriate committees of Congress;

(ii) the Secretary of the Interior; and

(iii) the Advisory Council on Historic Preservation;

(B) make the report and update available to the public.

SEC. 1522. PLANNING CAPACITY BUILDING INITIATIVE.

(a) IN GENERAL.—The Secretary shall carry out a planning capacity building initiative to support transportation planning to—

(A) strengthen the processes and products of metropolitan and statewide transportation planning under this title;

(B) enhance tribal capacity to conduct joint transportation planning under chapter 2;

(C) participate in the metropolitan and statewide transportation planning programs under this title; and

(D) increase the knowledge and skill level of participants in metropolitan and statewide transportation.

(b) FUNDING.—The Secretary shall provide priority to planning practices and processes that support—

(i) the transportation elements of homeland security planning, including—

(A) training and best practices relating to emergency evacuation;

(B) development of data and data analysis technologies to support transportation planning; and

(C) participation in the metropolitan and statewide transportation planning programs under this title; and

(ii) transportation planning practices and processes that support—

(A) the transportation elements of homeland security planning, including—

(B) the development of transportation planning under chapter 2;

(C) the implementation of the goals stated in the transportation elements of homeland security planning, including—

(i) development of strategic safety plans consistent with section 148; and

(ii) training in the development of data systems relating to highway safety.

(c) USE OF FUNDS.—The Secretary shall use amounts made available under paragraph (4) to support—

(i) assisting new and existing nonattainment areas in meeting the requirements of this Act; and

(ii) training and best practices relating to regional concepts of operations.

(d) FREIGHT PLANNING.—The Secretary shall use amounts made available under paragraph (4) to support—

(i) modeling of freight at a regional and state level under this title; and

(ii) techniques for engaging the freight community with the planning process.

(e) AIR QUALITY PLANNING.—The Secretary shall use amounts made available under paragraph (4) to support—

(i) providing training on air quality issues to decisionmakers and the public; and

(ii) integrated environmental and planning.

(f) USE OF FUNDS.—The Secretary shall use amounts made available under paragraph (4) to support—

(i) planning practices that support air quality planning and analysis;

(ii) developing concepts and techniques to minimize or mitigate impacts of any transportation project funded under this title (including retrofitting and

SEC. 1523. CRITICAL REAL PROPERTY ACQUISITION.

Section 106 of title 23, United States Code, is amended by adding at the end the following:

‘‘(d) CRITICAL REAL PROPERTY ACQUISITION.—

‘‘(1) IN GENERAL.—Subject to paragraph (2), funds apportioned to a State under this title may be used to pay the costs of acquiring any real property that is determined to be critical under paragraph (2) for a project proposed for funding under this title.

‘‘(2) REIMBURSEMENT.—The Federal share of the costs referred to in paragraph (1) shall be—

(A) the property is offered for sale on the open market;

(B) in acquiring the property, the State will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.); and

(C) the acquisition of the property is critical because—

(i) the property is a property offered for sale on the open market;

(ii) the property is critical to the Federal and State highway agency’s ability to meet the regional, statewide, or national transportation needs; and

(iii) the property is necessary for the implementation of the goals stated in the proposal for funding under this title.

‘‘(3) APPLICABLE LAW.—An acquisition of real property under this section shall be considered to be an exempt project under section 176 of the Clean Air Act (42 U.S.C. 7506).

‘‘(4) ENVIRONMENTAL REVIEW.—

‘‘(A) IN GENERAL.—A project proposed to be conducted on property acquired under paragraph (1) until all required environmental reviews for the project have been completed.

‘‘(B) EFFECT ON CONSIDERATION OF PROJECT ALTERNATIVES.—The number of critical acquisitions of real property associated with a project shall not affect the consideration of project alternatives during the environmental review process.

‘‘(5) PROCEEDS FROM THE SALE OR LEASE OF REAL PROPERTY ACQUIRED.—The proceeds from the sale or lease of any real property acquired under paragraph (1) shall be treated in the same manner as proceeds from the sale or lease of real property that is determined to be critical under paragraph (2) for a project proposed for funding under this title.

‘‘(6) USE OF FUNDS.—The Secretary shall—

(A) the transportation elements of homeland security planning, including—

(i) data and data analysis technologies to support transportation planning; and

(ii) participation in transportation planning under this title; and

(B) performance-based planning, including—

(i) data and data analysis technologies to support transportation planning; and

(ii) development of data systems relating to highway safety.

‘‘(3) USE OF FUNDS.—The Secretary shall—

(A) the property is offered for sale on the open market;

(B) the property is critical under paragraph (2) for a project proposed for funding under this title; and

(C) the quantity of projects with impacts that are considered de minimis under this section and the amendments made by this section, including information on the location, size, and cost of the projects.

‘‘(4) SET-ASIDE.—

(A) IN GENERAL.—On October 1, 2005, the Secretary shall set aside $1,000,000 to carry out the following:

(B) FEDERAL SHARE.—The Federal share of the costs of an activity carried out using funds made available under subparagraph (A) shall be 100 percent.

(C) AVAILABILITY.—Funds made available under subparagraph (A) shall remain available until expended.

Subtitle F—Environment

SEC. 1601. ENVIRONMENTAL RESTORATION AND POLLUTION ABATEMENT; CONTROL OF INVASIVE PLANT SPECIES AND ESTABLISHMENT OF NATIVE SPECIES.

(a) MODIFICATION TO NHS/STP FOR ENVIRONMENTAL RESTORATION, POLLUTION ABATEMENT, AND INVASIVE SPECIES—

(1) MODIFICATIONS TO NATIONAL HIGHWAY SYSTEM—Section 165 of title 23, United States Code, is amended by adding at the end the following:

‘‘(Q) Environmental restoration and pollution abatement to minimize or mitigate the impacts of any transportation project funded under this title (including retrofitting and

(b) ELIGIBLE ACTIVITIES—Subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

‘‘165. Eligibility for environmental restoration and pollution abatement

‘‘(a) IN GENERAL.—Subject to subsection (b), environmental restoration and pollution abatement projects to minimize or mitigate the impacts of any transportation project funded under this title (including retrofitting and
construction of storm water treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341 et seq.) or any other applicable law. The Federal Government, in the identification or designation of areas for water pollution or environmental degradation caused wholly or partially by a transportation facility, may be required to address water pollution or environmental degradation in a manner consistent with the Department of Transportation’s Federal-aid highway program.

(b) MAXIMUM EXPENDITURE.—In a case in which a transportation facility is undergoing reconstruction, rehabilitation, resurfacing, or restoration, the expenditure of funds under this section for engineering restoration or pollution abatement described in subsection (a) shall not exceed 20 percent of the total cost of the reconstruction, rehabilitation, resurfacing, or restoration of the facility.

SEC. 1602. NATIONAL SCENIC BYWAYS PROGRAM.
(a) In General.—Section 162 of title 23, United States Code, is amended—
(1) in subsection (a)(1), by striking "the roads as" and all that follows and inserting "the roads as—"
(A) National Scenic Byways;
(B) All-American Roads;
(C) America’s Byways;"
and
(2) in subsection (b) —
(A) in paragraph (1)(A), by striking "designated as—"
(i) National Scenic Byways;
(ii) All-American Roads; and
(iii) America’s Byways; and;
(B) in paragraph (2)—
(i) in subparagraph (A), by striking "Byways, All-American Road, or 1 of America’s Byways;" and
(ii) in subparagraph (B), by striking "designated as—"
(i) a National Scenic Byway;
(ii) an All-American Road; or
(iii) 1 of America’s Byways; and;
and
(C) in subsection (c), by striking "passing lane."
(D) by redesignating paragraph (4) as paragraph (5); and
(E) by inserting after paragraph (3) the following:

"(4) USE OF RECREATIONAL TRAILS PROGRAM FUNDS TO MATCH OTHER FEDERAL PROGRAM FUNDS.—Notwithstanding any other provision of law, funds made available under this section are used to pay the non-Federal matching share for other Federal program funds that are—

(a) expended in accordance with the requirements of the Federal program relating to activities funded and populations served; and
(b) expended on a project that is eligible for assistance under this section; and
(F) in paragraph (5) (as redesignated by subparagraph (D)), by striking "80 percent" and inserting "the Federal share as determined in accordance with section 120;" and

in subsection (e)—

(A) by inserting in paragraph (1), by inserting after paragraph (B) the following:

"(C) by redesignating paragraph (4) as paragraph (5); and
(B) by striking paragraph (2) and inserting the following:

"(2) only of highway program requirements.—A project funded under any of subparagraphs (A) through (H) of subsection (d) shall be approved to the extent that the project meets the environmental and engineering requirements described in subsection (d), whichever is less, and the environmental compliance cost incurred for a project under such subparagraph is no more than 18 months before project approval to be credited toward the non-Federal share in accordance with subsection (f); and

and

(B) by striking paragraph (2) and inserting the following:

"(B) only of highway program requirements.—A project funded under this section—

(A) is intended to enhance recreational opportunities; and
(B) is not considered to be a highway project; and

(C) is not subject to—

(i) division 112, 114, 116, 134, 135, 138, 217, or 301 of this title; or

(ii) section 303 of title 49;"

SEC. 1604. EXEMPTION OF INTERSTATE SYSTEM.

Subsection 103(c) of title 23, United States Code, is amended by adding at the end the following:

"(5) EXEMPTION OF INTERSTATE SYSTEM.—

(A) IN GENERAL.—Except as provided in subparagraph (a), the Interstate System shall not be considered to be a historic site under section 303 of title 49 or section 138 of this title, regardless of whether the Interstate System or portions of the Interstate System are listed on, or eligible for listing on, the National Register of Historic Places.

(B) INDIVIDUAL ELEMENTS.—A portion of the Interstate System that possesses an independent feature of historic significance, such as a historic bridge or a highly significant engineering feature, that would qualify independently for listing on the National Register of Historic Places shall be considered to be a historic site under section 303 of title 49 or section 138 of this title, as applicable.

SEC. 1605. STANDARDS.

(a) IN GENERAL.—Section 109(a) of title 23, United States Code, is amended—

(1) in paragraph (1), by striking "and" at the end;

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

(3) by adding at the end the following:

"(3) considers the preservation, historic, scenic, natural environmental, and community values.";

(b) CONTEXT SENSITIVE DESIGN.—Section 108 of title 23, United States Code, is amended by striking subsection (p) and inserting the following:

"(p) CONTEXT SENSITIVE DESIGN.—

"(1) IN GENERAL.—The Secretary shall encourage States to design projects funded under this title that—

(A) allow for the preservation of environmental, scenic, historic, and cultural values; and
(B) ensure the safe use of the facility;

(c) provide for consideration of the context of the locality;

(D) encourage access for other modes of transportation; and
(E) comply with subsection (a).

(2) APPROVAL BY SECRETARY.—Notwithstanding the preceding, the Secretary may approve a project described in paragraph (1) of the National Highway System if the project is designed to achieve the criteria specified in that paragraph.

SEC. 1606. USE OF HIGH OCCUPANCY VEHICLE LANES.

Section 102 of title 23, United States Code, is amended by striking subsection (a) and inserting the following:

"(a) HIGH OCCUPANCY VEHICLE LANE PASSENGER REQUIREMENTS.—

"(1) DEFINITIONS.—In this subsection:

(A) RESPONSIBLE AGENCY.—The term 'responsible agency' means—

(i) a State transportation department; and
(ii) a local agency in a State that is responsible for transportation matters;

(B) SERIOUSLY DEGRADED.—The term 'seriously degraded', with respect to a high occupancy vehicle lane, means, in the case of a high occupancy vehicle lane, the multiyear degradation in the average operating speed, performance threshold, and associated time period of the high occupancy vehicle lane, calculated and determined jointly by all applicable responsible agencies and based on conditions unique to the roadway, are unsatisfactory.

"(2) REQUIREMENTS.—

(A) IN GENERAL.—Subject to subparagraph (B), for each State, 1 or more responsible agencies shall establish the occupancy requirements for high occupancy vehicle lanes.

(B) MINIMUM NUMBER OF OCCUPANTS.—Except as provided in paragraph (3), an occupancy requirement established under this paragraph shall—

(i) require at least 2 occupants per vehicle for a vehicle operating on a high occupancy vehicle lane; and

(ii) in the case of a high occupancy vehicle lane that traverses an adjacent State, be established in consultation with the adjacent State.

"(3) EXCEPTIONS TO HOV OCCUPANCY REQUIREMENTS.—

(A) MOTORCycles.—For the purpose of this subsection, a motor vehicle operating on a high occupancy vehicle lane—

(i) shall not be considered to be a single occupant vehicle; and

(ii) shall be allowed to use a high occupancy vehicle lane unless a responsible agency—

(I) certifies to the Secretary the use of a high occupancy vehicle lane by a motorcycle would create a safety hazard; and

(II) restricts that the use of a high occupancy vehicle lane by motorcycles.

(B) LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—

(1) DEFINITION OF LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—In this subparagraph, the term 'low emission and energy-efficient vehicle' means a vehicle that—

(I) provides designated public transportation as defined in section 221 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12141); and

(II) is owned or operated by a public entity; or

(III) is operated under a contract with a public entity.

(2) USE OF HIGH OCCUPANCY VEHICLE LANES.—A responsible agency may permit vehicles that do not satisfy established occupancy requirements as necessary to ensure that the performance of individual high occupancy vehicle lanes, and the entire high occupancy vehicle lane system, will not be compromised.

"(C) TOLLING OF VEHICLES.—

(I) IN GENERAL.—A responsible agency may permit vehicles, in addition to the vehicle types described in paragraph (B) and (D) that do not satisfy established occupancy requirements, to use a high occupancy vehicle lane only if the responsible agency charges those vehicles a toll.

(II) APPLICABLE AUTHORITY.—In imposing a toll under clause (i), a responsible agency shall—

(I) be subject to section 129;

(II) establish a toll program that addresses ways in which motorists may enroll and participate in the program; and

(III) develop, manage, and maintain a system that will automatically collect the tolls from covered vehicles.

"(IV) continuously monitor, evaluate, and report on performance of the system.

(V) establish such policies and procedures as are necessary to vary the toll charged in order to manage the demand for use of high occupancy vehicle lanes; and

(VI) to enforce violations; and

(VII) establish procedures to impose such restrictions on the use of high occupancy vehicle lanes by vehicles that do not satisfy established occupancy requirements as necessary to ensure that the performance of individual high occupancy vehicle lanes, and the entire high occupancy vehicle lane system, will not become seriously degraded.

"(D) DESIGNATED PUBLIC TRANSPORTATION VEHICLES.—

(I) DEFINITION OF DESIGNATED PUBLIC TRANSPORTATION VEHICLE.—In this subparagraph, the term 'designated public transportation vehicle' means a vehicle that—

(I) provides designated public transportation (as defined in section 221 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12141)); and

(II) is owned or operated by a public entity; or

(III) is operated under a contract with a public entity.

"(II) USE OF HIGH OCCUPANCY VEHICLE LANES.—A responsible agency may permit vehicles described in paragraph (D) that do not satisfy established occupancy requirements to use high occupancy vehicle lanes if the responsible agency—

(I) requires that the vehicles identified by label of each designated public transportation vehicle operating under a contract
with a public entity with the name of the public entity on all sides of the vehicle;

"(II) continuously monitors, evaluates, and reports on performance of those designated public transportation vehicles; and

"(III) imposes such restrictions on the use of high occupancy vehicle lanes by designated public transportation vehicles as are necessary to ensure that the performance of individual high occupancy vehicle lanes, and the entire high occupancy vehicle lane system, will not become seriously degraded.

(2) COST MANAGEMENT, OPERATION, AND MONITORING.—

(i) IN GENERAL.—A responsible agency that permits the exceptions specified in this paragraph shall comply with clauses (ii) and (iii).

(ii) PERFORMANCE MONITORING, EVALUATION, AND REPORTING.—A responsible agency described in clause (i) shall establish, manage, and support a performance monitoring, evaluation, and reporting program under which the responsible agency continuously monitors, assesses, and reports on the effects that any vehicle permitted to use a high occupancy vehicle lane under an exception under this paragraph may have on the operation of—

"(I) individual high occupancy vehicle lanes; and

"(II) the entire high occupancy vehicle lane system.

(iii) OPERATION OF HOV LANE OR SYSTEM.—A responsible agency described in clause (i) shall not use, of, or cease to use, any of the exceptions specified in this paragraph if the presence of any vehicle permitted to use a high occupancy vehicle lane under an exception under this paragraph seriously degrades the operation of—

"(I) individual high occupancy vehicle lane; and

"(II) the entire high occupancy vehicle lane system.

SEC. 1607. BICYCLE TRANSPORTATION AND PEDESTRIAN WALKWAYS.

(a) IN GENERAL.—Section 217 of title 23, United States Code, is amended—

(1) in subsection (a), by inserting "pedestrian and" after "safe"

(2) in subsection (e), by striking "bicycles" each place it appears and inserting "pedestrians or bicyclists"

(3) by striking subsection (f) and inserting the following:

"(f) FEDERAL SHARE.—The Federal share of the construction of bicycle transportation facilities and pedestrian walkways, and for carrying out nonconstruction projects relating to safe pedestrian and bicycle use, shall be determined in accordance with section 13005.

(b) by redesignating subsection (j) as subsection (k);

(c) by inserting after subsection (i) the following:

"(j) BICYCLE AND PEDESTRIAN SAFETY GRANTS.—

"(1) IN GENERAL.—The Secretary shall select and grant funds to a national, nonprofit organization engaged in promoting bicycle and pedestrian safety—

"(A) to operate a national bicycle and pedestrian clearinghouse;

"(B) to develop information and educational programs regarding walking and bicycling;

"(C) to disseminate techniques and strategies for improving bicycle and pedestrian safety;

"(D) FUNDING.—The Secretary may use funds set aside under section 104(m) to carry out this subsection.

(3) APPLICABILITY OF TITLE 23.—Funds authorized to be appropriated under this subsection shall be available for obligation in the same manner as if the funds were appropriated under section 104, except that the funds shall remain available until expended.

"(b) IN GENERAL.—The term ‘shared use path’ means a multiuse trail or other path that—

"(A) physically separated from motorized vehicular traffic by an open space or barrier, either within a highway right-of-way or within an independent right-of-way; and

"(B) usable for purposes (including by pedestrians, bicyclists, skaters, equestrians, and other nonmotorized users).”

(b) RESERVATION OF FUNDS.—Section 104 of title 23, United States Code (as amended by section 1522), is amended by adding at the end the following:

"(B) BICYCLE AND PEDESTRIAN SAFETY GRANTS.—On October 1 of each of fiscal years 2004 through 2009, the Secretary, after making the deductions authorized by subsections (a) and (b), shall provide to States an amount equal to the remaining funds appropriated under subsection (b)(3) for use in carrying out the bicycle and pedestrian safety grant program under section 104.

SEC. 1608. IDLING REDUCTION FACILITIES IN INTERSTATE RIGHTS-OF-WAY.

(a) IN GENERAL.—Section 111 of title 23, United States Code, is amended by adding at the end the following:

"(i) IDLING REDUCTION FACILITIES IN INTERSTATE RIGHTS-OF-WAY.—

"(1) IN GENERAL.—Notwithstanding subsection (a), a State may—

"(A) permit electrification or other idling reduction facilities and equipment, for use by motor vehicles used for commercial purposes, to be placed in rest and recreation areas, and in safety rest areas, constructed or located on rights-of-way of the Interstate System in the State, so long as those idling reduction measures do not—

"(i) reduce the existing number of designated truck parking spaces at any given rest or recreation area; or

"(ii) preclude the use of those spaces by trucks employing alternative idle reduction technologies; and

"(B) charge a fee, or permit the charging of a fee, for the use of those parking spaces actively providing power to a truck to reduce idling.

"(2) PURPOSE.—The exclusive purpose of the facilities described in paragraph (1) (or similar technologies) shall be to enable operators of motor vehicles used for commercial purposes—

"(A) to reduce idling of a truck while parked in the rest or recreation area; and

"(B) to use installed or other equipment specifically designed to reduce idling of a truck, or provide alternative power for supporting driver comfort, while parked.

(b) FAST AND SENSIBLE TOLL (FAST) LANES PROGRAM.—Section 129 of title 23, United States Code (as amended by subsection (a)(2)), is amended by adding at the end the following:

"(C) ENACTION.—

"(1) DEFINITIONS.—In this subsection:

"(A) ELIGIBLE TOLL FACILITY.—The term ‘eligible toll facility’ includes—

"(i) a facility in existence on the date of enactment of this subsection that collects tolls,

"(ii) a facility in existence on the date of enactment of this subsection, including a facility that serves high occupancy vehicles;

"(iii) a facility modified or constructed after the date of enactment of this subsection to create additional tolled capacity (including a facility constructed by a private entity or using private funds); and

"(iv) any tolled roadway added to a previously non-tolled facility, only the new lane.

"(B) NONATTAINMENT AREA.—The term ‘nonattainment area’ is defined in section 171 of the Clean Air Act (42 U.S.C. 7501).

"(2) ESTABLISHMENT.—Notwithstanding sections 129 and 303, the Secretary shall permit a State, public authority, or private entity designated by a State, to collect a toll from motor vehicles at an eligible toll facility for any highway, bridge, or tunnel, including facilities on the Interstate System—

"(A) to manage high levels of congestion;

"(B) to reduce emissions in a nonattainment area or maintenance area; or

"(C) to finance the expansion of a highway, for the purpose of reducing traffic congestion, by constructing 1 or more additional lanes (including bridge, tunnel, support, and other structures necessary for that construction) on the Interstate System.

"(3) LIMITATION ON USE OF REVENUES.—

"(A) USE.—

"(i) IN GENERAL.—Toll revenues received under paragraph (2) shall be used by a State, public authority, or private entity designated by a State, for—

"(I) debt service for debt incurred on 1 or more highways or transit projects carried out under this title or title II; and

"(ii) a reasonable return on investment of any private financing;
“(III) the costs necessary for proper operation and maintenance of any facilities under paragraph (2) (including reconstruction, resurfacing, restoration, and rehabilitation);”

“(IV) if the State, public authority, or private entity annually certifies that the tolled facility is being adequately operated and maintained, any other purpose relating to a highway or transit project carried out under this title or title 49.

“(B) REQUIREMENTS.—

“(i) to provide REQUIREMENT.—A facility that charges tolls under this subsection may establish a toll that varies in price according to time of day or level of traffic, as appropriate to manage congestion or improve air quality.

“(ii) HOV VARIABLE PRICING REQUIREMENT.—The Secretary shall require, for each high occupancy vehicle facility that charges tolls under this subsection, that the tolls vary in price according to time of day or level of traffic, as appropriate to manage congestion or improve air quality.

“(iii) HOV PASSENGER REQUIREMENTS.—In addition to the exceptions to the high occupancy requirements for tolls established under section 102(a)(2), a State may permit motor vehicles with fewer than 2 occupants to operate in high occupancy vehicle lanes of a facility established under a variable toll pricing program established under this subsection.

“(C) AGREEMENT.—

“(i) In general.—Before the Secretary may permit a facility to charge tolls under this subsection, the Secretary and the applicable State, public authority, or private entity designated by a State shall enter into an agreement for each facility incorporating the conditions described in subparagraphs (A) and (B).

“(ii) IN GENERAL.—An agreement under clause (i) shall terminate with respect to a facility upon the decision of the State, public authority, or private entity designated by a State to discontinue the variable tolling program under this subsection for the facility.

“(D) DEBT.—

“(i) In general.—If there is any debt outstanding on a facility at the time at which the decision is made to discontinue the program under this subsection with respect to the facility, the Secretary may continue to charge tolls in accordance with the terms of the agreement until such time as the debt is retired.

“(ii) Notice.—On retirement of the debt of a tolled facility, the applicable State, public authority, or private entity designated by a State shall provide notice to the public of that retirement.

“(E) LIMITATION ON FEDERAL SHARE.—The Federal share of the cost of a project on a facility to toll under this subsection, including costs of a project to install the toll collection facility, shall be a percentage, not to exceed 80 percent, determined by the applicable State.

“(F) ELIGIBILITY.—To be eligible to participate in the program under this subsection, a State shall (1) provide assurance that any project or activity carried out under this chapter complies with requirements under this section and the availability of funds authorized by this paragraph shall be determined in accordance with this subsection; and (2) include in such project or activity a requirement that tolls established under this subsection shall not be taken into account in determining the apportionments and allocations that any State or transportation district within a State shall be entitled to receive under or in accordance with this chapter.

“(G) COMPLIANCE.—The Secretary shall ensure that any project or activity carried out under this section complies with requirements under section 106 of this title and section 104(b)(2) of title 49.

“(H) VOLUNTARY USE.—Nothing in this subsection requires any highway user to use a FAST lane.

“(I) ENVIRONMENTAL REQUIREMENTS.—Nothing in this subsection affects any environmental requirement applicable to the construction or operation of an eligible toll facility under this title or any other provision of law.

“(J) CONFORMING AMENDMENTS.—

“(1) In general.—The Secretary of the Intermodal Surface Transportation Efficiency Act of 2004, the Administrator of the Environmental Protection Agency, and the Surface Transportation Board shall, to the maximum extent practicable—

“(A) develop and publish performance goals for each FAST lane project; and

“(B) establish a program for regular monitoring and reporting on the achievement of performance goals, including—

“(I) effects on travel, traffic, and air quality;

“(II) distribution of benefits and burdens; and

“(III) use of alternative transportation modes; and

“(C) conclusion of revenues to meet transportation impact mitigation needs.

“(2) Reports to Congress.—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—

“(i) not later than 3 years after the date of enactment of this Act, and annually thereafter, a report that describes in detail the uses of funds under this subsection in accordance with paragraph (8)(D); and

“(ii) not later than 5 years after the date of enactment this subsection, and every 3 years thereafter, a report that describes any success of the program under this subsection in reducing congestion, improving air quality, and other performance goals established for FAST lane programs.

“(3) FUNDING.—

“(A) AVAILABLE ALLOCATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out pre-implementation studies and post-implementation evaluations of projects planned or implemented under this subsection $11,000,000 for each of fiscal years 2004 through 2009.

“(B) AVAILABLE ALLOCATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund to each State for each FAST lane program.

“(4) SUBMISSION OF REPORTS.—Each report required under paragraph (3)(D) shall be submitted to the appropriate committees (the Committee on Environment and Public Works of the House of Representatives, the Committee on Environment and Public Works of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives).
(1) in subparagraph (B)—
(A) in the matter preceding clause (i), by striking “ozone or carbon monoxide” and inserting “ozone, carbon monoxide, or fine particulate matter for the 8-hour ozone standard”; and
(B) by striking clause (i) and inserting the following:

“(i) 1.0, if at the time of apportionment, the area is a nonattainment or maintenance area; and
(C) in clause (vi), by striking “or” after the semicolon; and
(D) in clause (vii)—
(i) by striking the area as described in section 149(b) for ozone, and inserting “area for ozone (as described in section 149(b) or for PM-2.5);” and
(ii) by striking the period at the end and inserting a semicolon;
(2) by adding at the end the following:

“(viii) 1.0 if, at the time of apportionment, any county that is not designated as a nonattainment or maintenance area under the 1-hour ozone standard is designated as a nonattainment area under the 8-hour ozone standard; or
“(ix) 1.2 if, at the time of apportionment, the area is not a nonattainment or maintenance area as described in section 149(b) for ozone, carbon monoxide, or fine particulate matter for the 8-hour ozone standard;”;
(3) by adding at the end the following:

“(C) ADDITIONAL ADJUSTMENT FOR PM 2.5 AREAS.—If, in addition to being designated as a nonattainment or maintenance area for ozone as described in section 149(b), any county within the area was also classified under subparagraph 3 part of D of title I of the Clean Air Act (42 U.S.C. 7512 et seq.) as a nonattainment or maintenance area described in section 149(b) for carbon monoxide, the weighted nonattainment or maintenance area population of the county, as determined under clauses (i) through (vi) or clause (viii) of subparagraph (B), shall be further multiplied by a factor of 1.2;”;
(4) by redesigning subparagraph (D) and (E) as subparagraphs (D) and (F) respectively; and
(5) by inserting after subparagraph (C) the following:

“(D) ADDITIONAL ADJUSTMENT FOR PM 2.5 AREAS.—If, in addition to being designated as a nonattainment or maintenance area for ozone as described in section 149(b), any county within the area was also designated under the PM-2.5 standard as a nonattainment or maintenance area; or
“(E) is eligible under the surface transportation program under section 133.”;
(c) RESPONSIBILITY OF STATES.—
(1) IN GENERAL.—Each State shall be responsible for ensuring that subrecipients of Federal funds within the State under section 149 of title 23, United States Code, have emission reduction strategies for fleets that are used in construction projects located in nonattainment and maintenance areas; and
(B) funded under title 23, United States Code.
(2) EMISSION REDUCTION STRATEGIES.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary, shall develop a nonbinding list of emission reduction strategies and supporting technical information for each strategy, including—
(A) contract preferences;
(B) requirements for the use of anti-idling equipment;
(C) diesel retrofits; and
(D) such other matters as the Administrator of the Environmental Protection Agency, in consultation with the Secretary, determine to be appropriate.
(3) USE OF CMAQ FUNDS.—A State may use funds made available under this title and section 149 of title 23, United States Code, for the congestion mitigation and air quality program under section 109 of title 23, United States Code, and shall be used to implement the emission reduction strategies described in paragraph (1).
SEC. 1613. IMPROVED INTERAGENCY CONSULTATION.
Section 149 of title 23, United States Code, is amended by adding at the end the following:

“(g) INTERAGENCY CONSULTATION.—The Secretary shall encourage States and metropolitan planning organizations to consult with State and local air quality agencies in nonattainment areas, on the estimated emission reductions from proposed congestion mitigation and air quality improvement programs and projects.”
SEC. 1614. DETERMINATION OF CONFORMITY TIMELINES, REQUIREMENTS, AND MILESTONES.
(a) METROPOLITAN PLANNING.—
(1) DEVELOPMENT OF LONG-RANGE TRANSPORTATION PLANS.—Sections 134(g) and 135(c) of title 23, United States Code, is amended by striking “periodically, according to a schedule that the Secretary determines to be appropriate,” and inserting “every 4 years (or more frequently, in a case in which the metropolitan planning organization elects to update a transportation plan more frequently) in areas designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)), and in that areas that have been redesignated to attainment in accordance with section 107(d)(3) of that Act (42 U.S.C. 7407(d)(3)), with a maintenance plan under section 175A of that Act (42 U.S.C. 7506(a), or every 5 years (or more frequently, in a case in which the metropolitan planning organization elects to update a transportation plan more frequently) in areas designated as attainment (as defined in section 107(d) of that Act (42 U.S.C. 7407(d))),”;
(2) METROPOLITAN TRANSPORTATION IMPROVEMENT PROGRAM.—Section 134(h) of title 23, United States Code, is amended by—
(A) in paragraph (1)(D), by striking “2 years” and inserting “4 years”; and
(B) in paragraph (2)(A), by striking “3-year” and inserting “4-year”.
(3) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—Section 135(f)(1) of title 23, United States Code, is amended by inserting after “program” the following: “(which program shall cover a period of 4 years and be updated every 4 years)”.
(4) FINAL REGULATIONS.—Not later than 18 months after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, the Secretary shall promulgate regulations that are consistent with the amendments made by this subsection.
(b) SYNCHRONIZED CONFORMITY DETERMINATION.—Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) is amended—
(1) in paragraph (2)—
(A) by striking “Any transportation plan” and inserting the following:

“(2) TRANSPORTATION PLANS AND PROGRAMS.—Any transportation plan or program;
(B) in subparagraph (C)(iii), by striking the period at the end and inserting a semicolon; and
(C) in subparagraph (D) (1) by striking “Any project” and inserting “any transportation project”; and
(ii) by striking the period at the end and inserting “;”; and
(D) by adding at the end the following:

“(E) the appropriate metropolitan planning organization shall redetermine conformity of existing transportation plans and programs not later than 3 years after the date on which the Administrator—
“(i) finds a motor vehicle emissions budget to be adequate in accordance with section 176(c)(4)(C) of title 23, United States Code (as in effect on October 1, 2003);”;
(ii) approves an implementation plan that establishes a motor vehicle emissions budget that has not yet been used in a conformity determination prior to approval; or
“(iii) promulgates an implementation plan that establishes or revises a motor vehicle emissions budget;”;

“(2) in paragraph (4)(B)(ii), by striking ‘‘but in no case shall a determination for transportation plans and programs be less frequent than every 3 years;” and inserting ‘‘but the frequency for making conforming reviews on updated transportation plans and programs shall be every 4 years, except in a case in which—’’;

“(I) the metropolitan planning organization determines that the transportation plan and program described in the implementation plan is adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2003), on the submitted implementation plan is approved, conformity of such a plan, program, or project shall be determined, in accordance with this paragraph, by using the most recent attainment or maintenance area or that has been approved, from an implementation plan that is not a regionally significant project;

“(ii) the transportation project—

“(aa) is consistent with the most recent estimates of mobile source emissions;

“(bb) provides for the expeditious implementation of the control measure to be replaced, as demonstrated with an analysis that is consistent with the current methodology used for evaluating the proposed control measure in the implementation plan;

“(iii) the substitute and additional control measures are developed through a collaborative process that included—

“(I) participation by representatives of all affected jurisdictions (including local air quality control agencies, the State air pollution control agency, and State and local transportation agencies);

“(II) consultation with the Administrator; and

“(III) reasonable public notice and opportunity for comment; and

“(v) the metropolitan planning organization, State air pollution control agency, and the Administrator comply with the equivalency of the substitute for the control measure;”.

“(B) TRANSPORTATION PROJECT.—The term ‘transportation project’ includes only a project that—

“(i) a revision of the implementation plan.

“(ii) a revision of the implementation plan that expressly permits the implementation plan with alternate or additional transportation control measures if—

“(i) the substitute measures achieve equivalent or greater emissions reductions than the control measure to be replaced, as determined with an analysis that is consistent with the current methodology used for evaluating the replaced control measure in the implementation plan;

“(ii) the substitute control measures are implemented—

“(I) in accordance with a schedule that is consistent with the schedule provided for control measures in the implementation plan; or

“(II) if the implementation plan date for implementation of the control measure to be replaced has passed, as soon as practicable after approval of the implementation plan but not later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

“(iii) the substitute and additional control measures are accompanied with evidence of adequate personnel, funding, and authority under State or local law to implement, monitor, and enforce the control measures;

“(iv) the substitute and additional control measures were developed through a collaborative process that included—

“(I) participation by representatives of all affected jurisdictions (including local air quality control agencies, the State air pollution control agency, and State and local transportation agencies);

“(II) consultation with the Administrator; and

“(III) reasonable public notice and opportunity for comment; and

“(v) the metropolitan planning organization, State air pollution control agency, and the Administrator comply with the equivalency of the substitute or additional control measures.”.

“(c)(8) SUBSTITUTION FOR TRANSPORTATION CONTROL MEASURES.—(A) IN GENERAL.—Transportation control measures that are specified in an implementation plan may be replaced or added to the implementation plan in effect on the date of the additional transportation control measures if—

“(i) the substitute measures achieve equivalent or greater emissions reductions than the control measure to be replaced, as demonstrated with an analysis that is consistent with the current methodology used for evaluating the replaced control measure in the implementation plan;

“(ii) the substitute control measures are implemented—

“(I) in accordance with a schedule that is consistent with the schedule provided for control measures in the implementation plan; or

“(II) if the implementation plan date for implementation of the control measure to be replaced has passed, as soon as practicable after approval of the implementation plan but not later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

“(iii) the substitute and additional control measures are accompanied with evidence of adequate personnel, funding, and authority under State or local law to implement, monitor, and enforce the control measures;

“(iv) the substitute and additional control measures were developed through a collaborative process that included—

“(I) participation by representatives of all affected jurisdictions (including local air quality control agencies, the State air pollution control agency, and State and local transportation agencies);

“(II) consultation with the Administrator; and

“(III) reasonable public notice and opportunity for comment; and

“(v) the metropolitan planning organization, State air pollution control agency, and the Administrator comply with the equivalency of the substitute for the control measure;”.

“SEC. 1617. REDUCED BARRIERS TO AIR QUALITY IMPROVEMENTS.

“Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) (as amended by section 1615(b)(4)) is amended—

“(1) by redesigning paragraph (8) as paragraph (9); and

“(2) by inserting after paragraph (7) the following:

“(8) SUBSTITUTION FOR TRANSPORTATION CONTROL MEASURES.—(A) IN GENERAL.—Transportation control measures that are specified in an implementation plan may be replaced or added to the implementation plan in effect on the date of the additional transportation control measures if—

“(i) the substitute measures achieve equivalent or greater emissions reductions than the control measure to be replaced, as demonstrated with an analysis that is consistent with the current methodology used for evaluating the replaced control measure in the implementation plan;

“(ii) the substitute control measures are implemented—

“(I) in accordance with a schedule that is consistent with the schedule provided for control measures in the implementation plan; or

“(II) if the implementation plan date for implementation of the control measure to be replaced has passed, as soon as practicable after approval of the implementation plan but not later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

“(iii) the substitute and additional control measures are accompanied with evidence of adequate personnel, funding, and authority under State or local law to implement, monitor, and enforce the control measures;

“(iv) the substitute and additional control measures were developed through a collaborative process that included—

“(I) participation by representatives of all affected jurisdictions (including local air quality control agencies, the State air pollution control agency, and State and local transportation agencies);

“(II) consultation with the Administrator; and

“(III) reasonable public notice and opportunity for comment; and

“(v) the metropolitan planning organization, State air pollution control agency, and the Administrator comply with the equivalency of the substitute for the control measure.”.

“SEC. 1618. IMPROVEMENTS TO THE FUNDING OF AIR QUALITY IMPROVEMENTS.

“Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) (as amended by section 1615(b)(4)) is amended—

“(1) by redesigning paragraph (8) as paragraph (9); and
SEC. 1618. AIR QUALITY MONITORING DATA INFLUENCED BY EXCEPTIONAL EVENTS.

(a) In General.—Section 319 of the Clean Air Act (42 U.S.C. 7619) is amended—

(1) by striking the section heading and all that follows through “after notice and opportunity for public hearing” and inserting the following:

“SEC. 319. AIR QUALITY MONITORING.

“(a) In General.—After notice and opportunity for public hearing”; and

(2) by adding at the end the following:

“(b) Air Quality Monitoring Data Influenced by Exceptional Events.—

“(1) Definition of Exceptional Event.—In this section—

“(A) In General.—The term ‘exceptional event’ means an event that—

“(i) affects air quality;

“(ii) is not reasonably controllable or preventable;

“(iii) is—

“(I) a natural event; or

“(II) an event caused by human activity that is unlikely to recur at a particular location; and

“(iv) is determined by the Administrator through the process established in the regulations promulgated under paragraph (2) to be an exceptional event.

“(B) Exclusions.—The term ‘exceptional event’ does not include—

“(i) stagnation of air masses or meteorological inversions;

“(ii) a meteorological event involving high temperatures or lack of precipitation; or

“(iii) air pollution relating to source non-compliance.

“(2) Regulations.—Not later than March 1, 2005, after consultation with Federal land managers and State air pollution control agencies, the Administrator shall publish in the Federal Register proposed regulations governing the review and handling of air quality monitoring data influenced by exceptional events.

“(B) Proposed Regulations.—Not later than one year after the date on which the Administrator publishes proposed regulations under subparagraph (A), and after providing an opportunity for interested persons to make oral presentations of views, data, and arguments regarding the proposed regulations, the Administrator shall promulgate final regulations, after the review and handling of air quality monitoring data influenced by an exceptional event that are consistent with paragraph (3).

“(3) Principles and Requirements.—

“(A) Principles.—In promulgating regulations under this section, the Administrator shall follow

“(i) the principle that protection of public health is the highest priority;

“(ii) the principle that timely information should be provided to the public in any case in which that information is healthy;

“(iii) the principle that all ambient air quality data should be included in a timely manner, an appropriate Federal air quality database that is accessible to the public;

“(iv) the principle that each State must take necessary measures to safeguard public health regardless of the source of the air pollution; and

“(v) the principle that air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in the database and analyses.

“(B) Requirements.—Regulations promulgated under this section shall, at a minimum, provide that—

“(i) air quality data associated with an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies;

“(ii) a clear causal relationship must exist between the measured exceedances of a national air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location;

“(iii) there is a public process for determining whether an event is exceptional; and

“(iv) there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the Environmental Protection Agency with respect to exceedances or violations of the national ambient air quality standards.

“(4) Interim Provision.—Until the effective date of a regulation promulgated under paragraph (2), the following guidance issued by the Administrator shall continue to apply:

“(A) Guidance on the identification and use of air quality data affected by exceptional events (July 1986).


“(C) Appendices I, K, and N to part 50 of title 40, Code of Federal Regulations.”.

SEC. 1619. CONFORMING AMENDMENTS.

(a) In General.—Section 4(s) of the Clean Air Act (42 U.S.C. 7506(c)(4)) is amended—

(1) by redesignating subparagraphs (B) through (D) as subparagraphs (D) through (F), respectively;

(2) by striking “(4)(A) No later than one year after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate” and inserting the following:

“(4) Criteria and Procedures for Determining Conformity.—

“(A) In general.—The Administrator shall promulgate, and periodically update,”;

(3) in subparagraph (A) (in the second sentence, by striking “No later than one year after such date of enactment, the Administrator, with the concurrence of the Secretary of Transportation, shall promulgate” and inserting the following:

“(B) Transportation Plans, Programs, and Projects.—The Administrator, with the concurrence of the Secretary of Transportation, shall promulgate, and periodically update,”; and

(4) in the third sentence, by striking “A suit” and inserting the following:

“(C) Civil Action to Compel Promulgation.—A civil action”; and

(5) by striking subparagraph (E) (as redesignated by paragraph (1)) and inserting the following:

“(E) minimizes stream bank erosion;

“(F) promotes infiltration of stormwater into groundwater;

“(G) otherwise mitigates water quality impacts of highway stormwater discharges, improves surface water quality, or enhances groundwater recharge; or

“(H) reduces flooding caused by highway stormwater discharges.

“(3) Federal-Aid Highway and Associated Facility.—The term ‘Federal-aid highway and associated facility’ means—

“(A) a Federal-aid highway;

“(B) a facility or land owned by a State (or a State’s political subdivision), that is directly associated with the Federal-aid highway.

“(4) Highway Stormwater Discharge.—The term ‘highway stormwater discharge’ means stormwater discharge from a Federal-aid highway, or a Federal-aid highway and associated facility, that was constructed before the date of enactment of this section.

“(5) Highway Stormwater Discharge Mitigation.—The term ‘highway stormwater discharge mitigation’ means—

“(A) the reduction of water quality impacts of stormwater discharges from Federal-aid highways and Federal-aid highways and associated facilities; or

“(B) the enhancement of groundwater recharge from stormwater discharges from Federal-aid highways and Federal-aid highways and associated facilities.

“(6) Program.—The term ‘program’ means the highway stormwater discharge mitigation program established under subsection (b).

“(b) Establishment.—The Secretary shall establish a program to provide Federal-aid highway stormwater discharge mitigation program—

“(1) to improve the quality of stormwater discharges from Federal-aid highways or Federal-aid highways and associated facilities; and

“(2) to enhance groundwater recharge.

“(c) Priority of Projects.—For projects funded from the allocation under section 133(d)(6), a State shall give priority to projects sponsored by a State or local government to assist the State or local government in complying with the Federal Water Pollution Control Act (32 U.S.C. 1251 et seq.).

“(d) Guidance.—

“(1) In General.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Administrator, shall issue guidance to assist States in carrying out this section.

“(2) Requirements for Guidance.—The guidance issued under paragraph (1) shall include information concerning innovative practices and nonstructural best management practices to mitigate highway stormwater discharges.”.

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CONGRESSIONAL RECORD—SENATE S1733
SEC. 1621. EXEMPTION FROM CERTAIN HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS.

(a) DEFINITION OF ELIGIBLE PERSON.—In this section, the term ‘eligible person’ means an agricultural producer that has gross agricultural commodity sales that do not exceed $500,000.

(b) EXEMPTION.—Subject to subsection (c), part 172 of title 49, Code of Federal Regulations, shall not apply to an eligible person that transports a fertilizer, pesticide, propane, gasoline, or diesel fuel for agricultural purposes, to the extent determined by the Secretary.

(c) PROCEDURAL.—Subsection (b) applies to security plan requirements under subpart I of part 172 of title 49, Code of Federal Regulations (or a successor regulation).

SEC. 1622. FUNDS FOR REBUILDING FISH TRAVELER CARE.

Section 105 of theMiscellaneous Appropriations and Offsets Act, 2004 (Division H of the Consolidated Appropriations Act, 2004 (Public Law 108-199)) is amended by inserting ‘‘improve transportation systems management, and response, traveler information, and regional congestion relief.’’

‘‘(17) RUSH HOUR CONGESTION RELIEF.—

‘‘(A) IN GENERAL.—Subject to subparagraph (B), a State may spend the funds apportioned under section 104(b)(3) to provide assistance for regional operations collaboration for—

‘‘(i) to purchase or lease communication, technology deployment, emergency management and response, traveler information, and regional congestion relief;

‘‘(18) Regional transportation operations collaboration and coordination activities that improve regional improvements, such as—

‘‘(i) to develop a region-wide coordinated plan to mitigate traffic delays caused by motor vehicle accidents and breakdowns on highways during peak driving times;

‘‘(B) USE OF FUNDS.—A State, metropolitan planning organization, or local government may use the funds under subparagraph (A)—

‘‘(i) to establish a system of basic real-time monitoring for the surface transportation system; and

‘‘(ii) to provide the means to share the data gathered under clause (i) among—

‘‘(I) highway, transit, and public safety agencies;

‘‘(II) jurisdictions (including States, cities, counties, and metropolitan planning organizations);

‘‘(III) private-sector entities; and

‘‘(IV) the general public.

‘‘(2) ACTIVITIES.—Activities to be carried out under paragraph (1) include—

‘‘(A) a regional incident management system hardware;

‘‘(B) system hardware;

‘‘(C) software; and

‘‘(D) software integration services.

‘‘(3) CONSIDERATIONS.—In developing the guidance or regulations under paragraph (1), the Secretary may consider innovative procurement methods that support the timely and streamlined procurement of transportation system management and operations programs and projects.

‘‘(5) FINANCIAL ASSISTANCE.—The Secretary may carry out the program under subsection (a) of this section, or not later than 1 year after the date of enactment of this section, or not later than 2 years after the date of enactment of this section if the Secretary determines that adequate real-time communications capability

SEC. 1701. TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.

(a) SURFACE TRANSPORTATION PROGRAM ELIGIBILITY.—Section 133(b) of title 23, United States Code (as amended by section 1601(b)(2)), is amended by adding at the end the following:

‘‘(17) RUSH HOUR CONGESTION RELIEF.—

‘‘(A) IN GENERAL.—Subject to subparagraph (B), a State may spend the funds apportioned under section 104(b)(3) to—

‘‘(i) to establish a region-wide coordinated plan to mitigate traffic delays caused by motor vehicle accidents and breakdowns on highways during peak driving times;

‘‘(B) USE OF FUNDS.—A State, metropolitan planning organization, or local government may use the funds under subparagraph (A)—

‘‘(i) to develop a region-wide coordinated plan to mitigate traffic delays caused by motor vehicle accidents and breakdowns;

‘‘(ii) to purchase or lease communications equipment for first responders;

‘‘(iii) to purchase or lease towing and recovery services;

‘‘(iv) to pay contractors for towing and recovery services;

‘‘(v) to rent vehicle storage areas adjacent to roadways;

‘‘(vi) to fund service patrols, equipment, and operations;

‘‘(vii) to purchase incident detection equipment;

‘‘(viii) to carry out training.‘’

(b) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM ELIGIBILITY.—Section 149(b)(5) of title 23, United States Code, is amended by inserting “improve transportation systems management and operations.’’ after “Intersections.’’

(c) TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.—

(1) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1620(b)), is amended by adding at the end the following:

‘‘(18) Transportation systems management and operations

‘‘(a) IN GENERAL.—The Secretary shall carry out a transportation systems management and operations program to—

‘‘(i) to ensure effective transportation systems management and operations on Federal-aid highways through collaboration, coordination, and real-time information sharing at a regional and Statewide level—

‘‘(II) jurisdictions (including States, cities, counties, and metropolitan planning organizations);

‘‘(III) private-sector entities; and

‘‘(IV) the general public.

‘‘(2) ACTIVITIES.—Activities to be carried out under paragraph (1) include—

‘‘(A) a regional incident management system hardware;

‘‘(B) system hardware;

‘‘(C) software; and

‘‘(D) software integration services.

‘‘(3) CONSIDERATIONS.—In developing the guidance or regulations under paragraph (1), the Secretary may consider innovative procurement methods that support the timely and streamlined procurement of transportation system management and operations programs and projects.

‘‘(5) FINANCIAL ASSISTANCE.—The Secretary may carry out the program under subsection (a) of this section, or not later than 1 year after the date of enactment of this section, or not later than 2 years after the date of enactment of this section if the Secretary determines that adequate real-time communications capability

SEC. 1702. REAL-TIME TRANSPORTATION SYSTEM MANAGEMENT INFORMATION PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1620(c)), is amended by adding at the end the following:

‘‘(18) Real-time transportation system management information program

‘‘(a) IN GENERAL.—The Secretary shall carry out a real-time transportation systems management information program to—

‘‘(i) to provide a nationwide system of basic real-time information for managing and operating the surface transportation system; and

‘‘(II) jurisdictions (including States, cities, counties, and metropolitan planning organizations);

‘‘(III) private-sector entities; and

‘‘(IV) the general public.

‘‘(2) ACTIVITIES.—Activities to be carried out under paragraph (1) include—

‘‘(A) a regional incident management system hardware;

‘‘(B) system hardware;

‘‘(C) software; and

‘‘(D) software integration services.

‘‘(3) CONSIDERATIONS.—In developing the guidance or regulations under paragraph (1), the Secretary may consider innovative procurement methods that support the timely and streamlined procurement of transportation system management and operations programs and projects.

‘‘(5) FINANCIAL ASSISTANCE.—The Secretary may carry out the program under subsection (a) of this section, or not later than 1 year after the date of enactment of this section, or not later than 2 years after the date of enactment of this section if the Secretary determines that adequate real-time communications capability

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planning process for the Lake Tahoe region under this subparagraph.”.

(b) SPECIAL DESIGNATION.—Section 134(d)(1) of title 23, United States Code, is amended by adding at the end the following:

“(C) SPECIAL DESIGNATION.—

“(1) IN GENERAL.—The urbanized areas of Oklahoma, Arkansas, and Norman, Oklahoma, shall be designated as a single transportation management area.

“(ii) ALLOCATION.—The allocation of funds to the Oklahoma City-Norman Transportation Management Area designated under clause (i) shall be based on the aggregate population of the 2 urbanized areas referred to in that clause, determined by the Bureau of the Census.”.

Subtitle H—Federal-Aid Stewardship

SEC. 1801. FUTURE INTERSTATE SYSTEM ROADS.

Section 103(c)(4)(B) of title 23, United States Code, is amended—

(1) in clause (ii), by striking “12” and inserting “25”;

(2) in clause (iii)—

(A) in subsection (i), by striking “the agreement between the Secretary and the State or States”;

(B) by adding at the end the following:

“(III) EXISTING AGREEMENTS.—An agreement described in clause (ii) that is entered into before the enactment of this paragraph shall be deemed to include the 25-year time limitation described in that clause, regardless of any earlier construction completion date in the agreement.”.

SEC. 1802. STEWARDSHIP AND OVERSIGHT.

(a) IN GENERAL.—Section 106 of title 23, United States Code, is amended—

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

“(e) VALUE ENGINEERING ANALYSIS.—

“(A) IN GENERAL.—In this subsection, the term ‘value engineering analysis’ means a systematic process of review and analysis of a project, during the concept and design phases, by a multidisciplined team of persons not involved in the project, that is conducted to provide recommendations such as those described in subparagraph (B) for—

(i) the needed functions safely, reliably, and at the lowest overall cost; and

(ii) improving the value and quality of the project.

(B) INCLUSIONS.—The recommendations referred to in subparagraph (A) include, with respect to a project—

(i) combining or eliminating otherwise inefficient use of costly parts of the original proposed design for the project; and

(ii) completely redesigning the project using different technologies, materials, or methods so as to accomplish the original purpose of the project.

(2) ANALYSIS.—The State shall provide a value engineering analysis or other cost-reduction analysis for—

(A) any project on the Federal-Aid System with an estimated total cost of $25,000,000 or more; and

(B) a bridge project with an estimated total cost of $20,000,000 or more; and

(C) any other project the Secretary determines to be appropriate.

(3) MAJOR PROJECTS.—The Secretary may require more than 1 analysis described in paragraph (2) for a major project described in subsection (h).

(4) REQUIREMENTS.—Analyses described in paragraph (2) shall—

(A) include bridge substructure requirements based on construction material; and

(B) be evaluated—

(i) on economic and environmental bases, taking into consideration acceptable designs for bridges; and

(ii) using an analysis of life-cycle costs and duration of project construction; and

(2) by striking subsections (g) and (h) and inserting the following:

“(g) PROJECT COSTS.—The Secretary shall—

(d) develop minimum standards for estimating project costs; and

(ii) periodically evaluate practices of the States for—

(i) estimating project costs;

(ii) awarding contracts; and

(iii) reducing project costs.

(C) RESPONSIBILITY OF THE STATES.—

“(i) IN GENERAL.—Each State shall be responsible for ensuring that subrecipients of Federal funds within the State under this section have—

(A) sufficient accounting controls to properly manage the Federal funds; and

(B) adequate project delivery systems for projects approved under this section.

(ii) REVIEW BY SECRETARY.—The Secretary shall periodically review monitoring by the States of those subrecipients.

(iii) PROJECT DELIVERY.—The Secretary shall—

(A) perform annual reviews of the project delivery system of each State, including analysis of 1 or more activities that are involved in the life cycle of a project; and

(B) employ risk assessment procedures to identify areas to be reviewed.

(e) RESPONSIBILITY OF THE STATES.—

“(A) FUNDING.—Section 134(d)(3)(C)(ii) of title 23, United States Code, is amended—

(1) by redesignating subparagraphs (C) through (E) as subparagraphs (D) through (F), respectively; and

(2) by striking subparagraph (G).

(f) OFF-DUTY TIME FOR DRIVERS OF COM- MERCIAL VEHICLES.

Section 3314 of title 49, United States Code, is amended—

(1) in subparagraph (A), by striking “40;” and all that follows through and inserting “40;”

(2) in subsection (c)(2), by striking “3,1136 note;”

(3) in subsection (f), by amending—

(i) adding at the end the following:

“(II) estimating project costs; and

(ii) periodically evaluate practices of the States for—

(i) estimating project costs;

(ii) awarding contracts; and

(iii) reducing project costs.

(C) RESPONSIBILITY OF THE STATES.—

“(i) IN GENERAL.—Each State shall be responsible for ensuring that subrecipients of Federal funds within the State under this section have—

(A) sufficient accounting controls to properly manage the Federal funds; and

(B) adequate project delivery systems for projects approved under this section.

(ii) REVIEW BY SECRETARY.—The Secretary shall periodically review monitoring by the States of those subrecipients.

(iii) PROJECT DELIVERY.—The Secretary shall—

(A) perform annual reviews of the project delivery system of each State, including analysis of 1 or more activities that are involved in the life cycle of a project; and

(B) employ risk assessment procedures to identify areas to be reviewed.

(g) MAJOR PROJECTS.—

“(A) FUNDING.—Section 134(d)(3)(C)(ii) of title 23, United States Code, is amended—

(1) by striking subparagraph (G); and

(2) by striking subsections (g) and (h) and inserting the following:

“(ii) using an analysis of life-cycle costs and duration of project construction.”.

(2) by striking subsections (g) and (h) and inserting the following:

“(2) DATA EXCHANGE FORMATS.—In developing or updating regional intelligent transportation system architectures, States and local governments are encouraged to incorporate the data exchange formats developed by the Secretary under subsection (b) to ensure that data collected by highway and transit monitoring systems can readily be—

(A) exchanged between jurisdictions; and

(B) shared with the traveling public.

(e) ELIGIBLE FUNDING.—Subject to project approval by the Secretary, a State may—

(1) use funds available to the State under section 103 of this title to carry out activities relating to the planning of real-time monitoring elements; and

(2) use funds apportioned to the State under section 104 of this title to carry out activities relating to the planning and deployment of real-time monitoring elements.

(f) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1701(c)(2)), is amended adding at the end the following:

“169. Real-time system management information program.”.

SEC. 1703. CONTRACTING FOR ENGINEERING AND DESIGN SERVICES.

Section 122(a)(2) of title 23, United States Code, is amended—

(1) in subparagraph (A), by striking “40;” and all that follows through and inserting “40;”

(2) by striking subparagraph (B); and

(3) by redesignating subparagraphs (C) through (F) as subparagraphs (D) through (E), respectively.

SEC. 1704. OFF-DUTY TIME FOR DRIVERS OF COMMERICAL VEHICLES.

Section 3314 of title 49, United States Code, is amended—

(1) in subparagraph (A), by striking “40;” and all that follows through and inserting “40;”

(2) by striking subparagraph (B); and

(3) by redesignating subparagraphs (C) through (F) as subparagraphs (D) through (E), respectively.

SEC. 1705. DESIGNATION OF TRANSPORTATION MANAGEMENT AREAS.

(a) FUNDING.—Section 134(d)(3)(C)(ii) of title 23, United States Code, is amended by striking subclause (II) and inserting the following:

“(II) FUNDING.—In addition to funds made available to the metropolitan planning organization for the Lake Tahoe Region under this title, 1 percent of all funds distributed under section 202 shall be used to carry out the transportation
“(A) be based on detailed estimates of the cost to complete the project; and
“(B) provide for the annual submission of updates to the Secretary that are based on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project.

(i) OTHER PROJECTS.—A recipient of Federal assistance for a project under this title that receives $100,000,000 or more in Federal assistance for the project, and that is not covered by subsection (b), shall prepare, make available to the Secretary at the request of the Secretary, an annual financial plan for the project.”

(b) CONFORMING AMENDMENTS.—

(1) Section 114(a) of title 23, United States Code, is amended—

(A) in the first sentence by striking “highways or portions of highways located on a Federal-aid highway or a portion of a Federal-aid highway”; and

(B) by striking the second sentence and inserting—

“the Secretary shall have the right to conduct such inspections and take such corrective action as the Secretary determines to be appropriate.”;

(2) Section 117 of title 23, United States Code, is amended—

(A) by striking subsection (d); and

(B) by redesigning subsections (e) through (h) as subsections (d) through (g), respectively.

(c) CONTRACTOR SUSPENSION AND DEBARMENT POLICY; SHARING FRAUD MONETARY RECOVERIES.—

(1) IN GENERAL.—Section 307 of title 23, United States Code, is amended to read as follows:

“307. Contractor suspension and debarment policy; sharing fraud monetary recoveries.

“(a) MANDATORY ENFORCEMENT POLICY.—

“(1) IN GENERAL.—Notwithstanding any other law or law enforcement provision, the Secretary—

“(A) shall debar any contractor or subcontractor convicted of a criminal or civil offense involving fraud relating to a project receiving Federal-aid highway or transit funds for such period as the Secretary determines to be appropriate; and

“(B) subject to approval by the Attorney General—

“(i) except as provided in paragraph (2), shall suspend any contractor or subcontractor upon indictment for criminal or civil offenses involving fraud; and

“(ii) may exclude nonaffiliated subsidiaries of a debarred business entity.

“(2) NATIONAL SECURITY EXCEPTION.—If the Secretary determines that mandatory debarment or suspension of a contractor or subcontractor under paragraph (1) would be contrary to the national security of the United States, the Secretary—

“(A) may waive the debarment or suspension; and

“(B) in the instance of each waiver, shall provide to the Congress of the waiver with appropriate details.

“(b) SHARING OF MONETARY RECOVERIES.—

“(1) IN GENERAL.—Notwithstanding any other provision of law—

“(A) monetary judgments accruing to the Federal Government from Federal criminal prosecutions and civil judgments pertaining to fraud in highway and transit programs shall be shared with the State or local transit agency involved; and

“(B) the State or local transit agency shall use the funds to support transportation infrastructure and oversight activities relating to programs authorized under title 23 and this title.

“(2) AMOUNT.—The amount of recovered funds to be shared with an affected State or local transit agency shall be—

“(A) determined by the Attorney General, in consultation with the Secretary; and

“(B) considered to be Federal funds to be used in compliance with other relevant Federal transportation laws (including regulations).

“(3) FRAUDULENT ACTIVITY.—Paragraph (1) shall not apply in any case in which a State or local transit agency, in consultation with the Attorney General, to have been involved or negligent with respect to the fraudulent activities.

“(4) QUALIFIED PROJECTS.—A qualified project referred to in subparagraph (A) is a project under this chapter (including intermodal projects) for which the Secretary has approved the use of design-build contracting under criteria specified in regulations promulgated by the Secretary.

“(d) OBLIGATION AND RELEASE OF FUNDS.—

“(1) IN GENERAL.—The Secretary may authorize a State to proceed with a project under this title—

“(A) without the use of Federal funds; and

“(B) in accordance with all procedures and requirements applicable to the project other than those procedures and requirements that limit the State to implementation of a project.

“(2) PLANNING.—The allocation under paragraph (1) may be qualified projects.

“(b) OBLIGATION OF FEDERAL SHARE.—The Secretary shall debar any contractor or sub

contractor convicted of a criminal or civil offense involving fraud relating to a project receiving Federal-aid highway or transit funds for such period as the Secretary determines to be appropriate; and

“(B) subject to approval by the Attorney General—

“(i) except as provided in paragraph (2), shall suspend any contractor or subcontractor upon indictment for criminal or civil offenses involving fraud; and

“(ii) may exclude nonaffiliated subsidiaries of a debarred business entity.

“(2) NATIONAL SECURITY EXCEPTION.—If the Secretary determines that mandatory debarment or suspension of a contractor or subcontractor under paragraph (1) would be contrary to the national security of the United States, the Secretary—

“(A) may waive the debarment or suspension; and

“(B) in the instance of each waiver, shall provide to the Congress of the waiver with appropriate details.

“(b) SHARING OF MONETARY RECOVERIES.—

“(1) IN GENERAL.—Notwithstanding any other provision of law—

“(A) monetary judgments accruing to the Federal Government from Federal criminal prosecutions and civil judgments pertaining to fraud in highway and transit programs shall be shared with the State or local transit agency involved; and

“(B) the State or local transit agency shall use the funds to support transportation infrastructure and oversight activities relating to programs authorized under title 23 and this title.

“(2) AMOUNT.—The amount of recovered funds to be shared with an affected State or local transit agency shall be—

“(A) determined by the Attorney General, in consultation with the Secretary; and

“(B) considered to be Federal funds to be used in compliance with other relevant Federal transportation laws (including regulations).

“(3) FRAUDULENT ACTIVITY.—Paragraph (1) shall not apply in any case in which a State or local transit agency, in consultation with the Attorney General, to have been involved or negligent with respect to the fraudulent activities.

“(4) QUALIFIED PROJECTS.—A qualified project referred to in subparagraph (A) is a project under this chapter (including intermodal projects) for which the Secretary has approved the use of design-build contracting under criteria specified in regulations promulgated by the Secretary.

“(d) OBLIGATION AND RELEASE OF FUNDS.—

“(1) IN GENERAL.—The Secretary may authorize a State to proceed with a project under this title—

“(A) without the use of Federal funds; and

“(B) in accordance with all procedures and requirements applicable to the project other than those procedures and requirements that limit the State to implementation of a project.

“(2) PLANNING.—The allocation under paragraph (1) may be qualified projects.

“(b) OBLIGATION OF FEDERAL SHARE.—The Secretary shall debar any contractor or sub

contractor convicted of a criminal or civil offense involving fraud relating to a project receiving Federal-aid highway or transit funds for such period as the Secretary determines to be appropriate; and

“(B) subject to approval by the Attorney General—

“(i) except as provided in paragraph (2), shall suspend any contractor or subcontractor upon indictment for criminal or civil offenses involving fraud; and

“(ii) may exclude nonaffiliated subsidiaries of a debarred business entity.

“(2) NATIONAL SECURITY EXCEPTION.—If the Secretary determines that mandatory debarment or suspension of a contractor or subcontractor under paragraph (1) would be contrary to the national security of the United States, the Secretary—

“(A) may waive the debarment or suspension; and

“(B) in the instance of each waiver, shall provide to the Congress of the waiver with appropriate details.

“(b) SHARING OF MONETARY RECOVERIES.—

“(1) IN GENERAL.—Notwithstanding any other provision of law—

“(A) monetary judgments accruing to the Federal Government from Federal criminal prosecutions and civil judgments pertaining to fraud in highway and transit programs shall be shared with the State or local transit agency involved; and

“(B) the State or local transit agency shall use the funds to support transportation infrastructure and oversight activities relating to programs authorized under title 23 and this title.

“(2) AMOUNT.—The amount of recovered funds to be shared with an affected State or local transit agency shall be—
“(B) PREFERENCE.—In making the allocation under subparagraph (A), the Secretary shall give preference to those projects that are significantly impacted by Federal land and resource management activities that are proposed by a State that contains at least 3 percent of the total public land in the United States.

(2) FOREST HIGHWAYS.—

(A) IN GENERAL.—On October 1 of each fiscal year, the Secretary shall allocate 66 2⁄3 percent of the total public land in the United States to the National Forest System.

(B) IN AND WITHIN NATIONAL FOREST SYSTEM.—In making the allocation under subparagraph (A), the Secretary shall give equal consideration to projects that provide access to and within the National Forest System, as identified by the Secretary of Agriculture through—

(i) renewable resource and land use planning;

(ii) assessments of the impact that planning on transportation facilities;

(iii) by striking “(c) On” and inserting the following:

“(c) PARK ROADS AND PARKWAYS.—

(1) IN GENERAL.—On.

(2) PRIORITY.—Notwithstanding any other provision of law, with respect to funds authorized for park roads and parkways, the Secretary shall give priority in the allocation of funds to projects that—

(i) are located in, or provide access to, a qualifying National Park; and

(ii) were initially constructed before 1940.

(3) PRIORITY CONFLICTS.—If there is a conflict between projects described in subparagraph (B), the Secretary shall give highest priority to projects that—

(i) are in, or that provide access to, parks that are adjacent to a National Park of a foreign country; or

(ii) were located in more than 1 State.

(4) IN SUBSECTION (D)—

(A) IN PARAGRAPH (1)—

(i) in the paragraph heading, by striking “use” and inserting “use”;

(ii) by striking “1999” and inserting “2005”;

(B) IN PARAGRAPH (2)—

(i) in the paragraph heading, by striking “use” and inserting “use”;

(ii) in subparagraphs (A), (B), and (D), by striking “2000” each place it appears and inserting “2004”;

(iii) in subparagraph (B), by striking “1999” each place it appears and inserting “2004”; and

(iv) by adding at the end the following:

“(B) TRANSFERRED FUNDS.—

(1) IN GENERAL.—Not later than 30 days after the date on which funds are made available to the Secretary of the Interior under this paragraph, the funds shall be distributed to, and available for immediate use by, the eligible Indian tribes, in accordance with the formula applicable for each fiscal year.

(2) PRIORITY.—The Secretary of the Interior shall distribute the funds under clause (1) in accordance with the applicable funding formula for the preceding year.

(3) USE OF FUNDS.—Notwithstanding any other provision of this section, funds available under this paragraph shall be expended on projects identified in a transportation improvement program approved by the Secretary:—

(C) IN PARAGRAPH (B)—

(i) in subparagraph (A), by striking “under this title” and inserting “under this chapter”; and

(ii) by adding at the end the following:

“(C) FEDERAL LANDS HIGHWAY PROGRAM DEMONSTRATION PROJECT.—

(1) IN GENERAL.—The Secretary shall establish a pool under which all funds made available under this chapter for Indian reservation roads and for highway bridges located on Indian reservation roads as provided for in subparagraph (A) shall be made available, on the request of an affected Indian tribal government, to the Indian tribal government for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.), contracts and agreements for the planning, research, engineering, and construction described in that subparagraph.

(ii) EXCLUSIVE PARTICIPATION.—In accordance with subparagraph (B), all funds for Indian reservation roads and for highway bridges located on Indian reservation roads to which clause (i) applies shall be paid without regard to the organizational level at which the Federal lands highway program has previously carried out the program, functions, services, or activities involved.

(iii) SELECTION OF PARTICIPATING TRIBES.—

(I) PARTICIPANTS.—

(aa) IN GENERAL.—An Indian tribe (or consortium) described in item (aa) shall be eligible to participate in a program or activity to which the Secretary has determined that the tribe is eligible to receive a grant under this subclause to carry out projects that are similar to those described in item (aa).

(bb) ELIGIBILITY.—An Indian tribe (or consortium) described in item (aa) shall be eligible to participate in a program or activity to which the Secretary has determined that the tribe is eligible to receive a grant under this subclause to carry out projects that are similar to those described in item (aa).

(cc) FUNDING.—The Indian tribe participating in the pilot program under this subparagraph shall receive in an amount equal to the sum of the funding that the Indian tribe would otherwise receive in accordance with the funding formula established for that tribe under this section, and an additional percentage of that amount equal to the percentage of funds withheld during the applicable fiscal year for the roads program costs of the Bureau of Indian Affairs under subsection (f)(1).

(2) APPLICANT POOL.—The applicant pool described in paragraph (1) shall consist of each Indian tribe (or consortium) that—

(aa) has demonstrated financial stability and financial management capability in accordance with subclause (III) during the 3 fiscal years ending the fiscal year for which participation under this subparagraph is being requested.

(CC) FUNDING.—The Indian tribe participating in the pilot program under this subparagraph has the right to make funds available under this chapter for Indian reservation roads for each fiscal year, and there is authorized to be appropriated by the amount necessary to provide for that purpose.

(2) EXTENSION.—The Secretary may extend this provision to any other Indian tribe or organization that qualifies for the purposes of this section.

(3) REPORT TO CONGRESS.—Not later than September 30, 2006, the Secretary shall submit to the Congress a report that includes a description of the results of the demonstration project and any recommendations for improving the project.

(V) REPORT TO CONGRESS.—Not later than September 30, 2006, the Secretary shall submit to the Congress a report that includes a description of the results of the demonstration project and any recommendations for improving the project.

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(D) maintenance of public roads in na-

tional fish hatcheries under the jurisdiction of the United States Fish and Wildlife Ser-

vice;

(2) the non-Federal share of the cost of any project funded under this title or chap-

ter 53 of title 49 that provides access to or

within a wildlife refuge; and

(P) maintenance and improvement of recre-

ational trails (except that expenditures on

trails under this subparagraph shall not ex-

ceed 5 percent of available funds for each fis-

cal year)."

(e) MAINTENANCE OF INDIAN RESERVA-

TION ROADS.—Section 204(c) of title 23, United States Code, is amended by inserting, after "parkways,"

"(2) AVAILABILITY OF FUNDS.—Section 203 of title 23, United States Code, is amended by striking the sec-

section (e)(3)), is amended by adding at the end the following:

"(i) the Department of Agriculture; or

"(ii) the Department of the Interior; or

"(iii) the Department of Commerce.

(f) RECREATION ROADS.—Section 201 of title 23, United States Code, is amended in the first sentence by inserting "recreation roads," after "public lands highways.,

(g) ALLOCATIONS.—Section 202 of title 23, United States Code (as amended by sub-

section (e)(1)), is amended by adding at the end the following:

"(l) SAFETY ACTIVITIES.—

(1) ALLOCATIONS.—Section 202 of title 23, United States Code, is amended by adding at the end the following:

"(A) the Secretary of the Department of Transportation;

"(B) the Secretary of the Department of Commerce;

"(C) the Secretary of the Department of Agriculture;

"(D) the Secretary of the Department of the Interior;

"(E) the Secretary of the Department of Health and Human Services;

"(F) the Secretary of the Department of Housing and Urban Development;

"(G) the Secretary of the Department of the Treasury;

"(H) highway safety education programs;

(2) AVAILABILITY OF FUNDS.—Section 203 of title 23, United States Code, is amended by adding, after "parkways,"

"(m) RECREATION ROADS.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), on October 1 of each fiscal year, the Secretary, after completing the transfer under subsection (a)(1), shall allocate the sums authorized to be appropriated for the fiscal year for recreation roads as follows:

"(A) 8 percent to the Bureau of Reclama-

"(B) 9 percent to the Corps of Engineers.

"(C) 13 percent to the Bureau of Land Man-

agement.

"(D) 70 percent to the Forest Service.

"(2) ALLOCATION WITHIN AGENCIES.—Recre-

ation road funds allocated to a Federal agen-

cy under paragraph (1) shall be allocated for projects and activities of the Federal agency according to the relative needs of each area served by recreation roads under the juris-
diction of the Federal agency, as indicated in the approved transportation improvement program for each Federal agency.

(3) AVAILABILITY OF FUNDS.—Section 203 of title 23, United States Code, is amended by adding, after "parkways,"

"(3) AVAILABILITY OF FUNDS.—Section 203 of title 23, United States Code, is amended by adding, after "parkways,"

"(i) the Department of Agriculture; or

"(ii) the Department of the Interior; or

"(iii) the Department of Commerce.

(4) USE OF FUNDING.—Section 201 of title 23, United States Code (as amended by sub-

section (e)(3)), is amended by adding at the end the following:

"(m) RECREATION ROADS.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), on October 1 of each fiscal year, the Secretary, after completing the transfer under subsection (a)(1), shall allocate the sums authorized to be appropriated for the fiscal year for recreation roads as follows:

"(A) 8 percent to the Bureau of Reclama-

"(B) 9 percent to the Corps of Engineers.

"(C) 13 percent to the Bureau of Land Man-

agement.

"(D) 70 percent to the Forest Service.

"(2) ALLOCATION WITHIN AGENCIES.—Recre-

ation road funds allocated to a Federal agen-

cy under paragraph (1) shall be allocated for projects and activities of the Federal agency according to the relative needs of each area served by recreation roads under the juris-
diction of the Federal agency, as indicated in the approved transportation improvement program for each Federal agency.

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"(i) the Department of Agriculture; or

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"(A) 8 percent to the Bureau of Reclama-

"(B) 9 percent to the Corps of Engineers.

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diction of the Federal agency, as indicated in the approved transportation improvement program for each Federal agency.

(3) AVAILABILITY OF FUNDS.—Section 203 of title 23, United States Code, is amended by adding, after "parkways,"

"(i) the Department of Agriculture; or

"(ii) the Department of the Interior; or

"(iii) the Department of Commerce.

(4) USE OF FUNDING.—Section 201 of title 23, United States Code (as amended by sub-

section (e)(3)), is amended by adding at the end the following:

"(m) RECREATION ROADS.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), on October 1 of each fiscal year, the Secretary, after completing the transfer under subsection (a)(1), shall allocate the sums authorized to be appropriated for the fiscal year for recreation roads as follows:

"(A) 8 percent to the Bureau of Reclama-

"(B) 9 percent to the Corps of Engineers.

"(C) 13 percent to the Bureau of Land Man-

agement.

"(D) 70 percent to the Forest Service.

"(2) ALLOCATION WITHIN AGENCIES.—Recre-

ation road funds allocated to a Federal agen-

cy under paragraph (1) shall be allocated for projects and activities of the Federal agency according to the relative needs of each area served by recreation roads under the juris-
diction of the Federal agency, as indicated in the approved transportation improvement program for each Federal agency.

(3) AVAILABILITY OF FUNDS.—Section 203 of title 23, United States Code, is amended by adding, after "parkways,"

"(i) the Department of Agriculture; or

"(ii) the Department of the Interior; or

"(iii) the Department of Commerce.

(4) USE OF FUNDING.—Section 201 of title 23, United States Code (as amended by sub-

section (e)(3)), is amended by adding at the end the following:

"(m) RECREATION ROADS.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), on October 1 of each fiscal year, the Secretary, after completing the transfer under subsection (a)(1), shall allocate the sums authorized to be appropriated for the fiscal year for recreation roads as follows:

"(A) 8 percent to the Bureau of Reclama-

"(B) 9 percent to the Corps of Engineers.

"(C) 13 percent to the Bureau of Land Man-

management only to pay the cost of-

"(A) maintenance or improvements of ex-

isting recreation roads;

"(B) maintenance and improvements of eli-

gible projects described in paragraph (1), (2),

(3), (5), or (6) of subsection (b) that are lo-

cated in or adjacent to Federal land under

the jurisdiction of—

"(i) the Department of Agriculture; or

"(ii) the Department of the Interior; or

"(iii) the Department of Commerce.

(5) USE OF FUNDING.—Section 201 of title 23, United States Code (as amended by sub-

section (e)(3)), is amended by adding at the end the following:

"(m) RECREATION ROADS.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), on October 1 of each fiscal year, the Secretary, after completing the transfer under subsection (a)(1), shall allocate the sums authorized to be appropriated for the fiscal year for recreation roads as follows:

"(A) 8 percent to the Bureau of Reclama-

"(B) 9 percent to the Corps of Engineers.

"(C) 13 percent to the Bureau of Land Man-

agement.
“(c) an Indian tribe.

“(3) New roads.—No funds made available under this section shall be used to pay the cost of the design or construction of new recreation roads.

“(4) Compliance with other environmental laws.—A maintenance or improvement project that is funded under this subsection shall not be consistent with or have an adverse effect on any ecosystems that have been identified in a land use plan for an area under the jurisdiction of a Federal agency, shall not require any additional environmental reviews or assessments under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), if—

“(A) the Federal agency that promulgated the land use plan has identified the specific proposal for the maintenance or improvement project under that Act; and

“(B) as of the date on which the funds are to be expended, there are—

“(i) no significant changes to the proposal bearing environmental concerns; and

“(ii) no significant new information.

“(5) Exception.—The cost sharing requirements under the Federal Water Project Recreation Act (16 U.S.C. 460l–12 et seq.) shall not apply to funds made available to the Bureau of Reclamation under this subsection.

“(6) Conforming amendments.—

“(a) Sections 120(e) and 125(e) of title 23, United States Code, are amended by striking “public lands highways,” each place it appears and inserting “public lands highways, recreation roads.”

“(b) Sections 125(e), 129, 201, 202(a), and 203 of title 23, United States Code, are amended—

“(1) by striking “forest development roads” each place it appears and inserting “National Forest System roads”.

“(2) by redesignating subsections (q) through (r) as subsections (g) through (p), respectively; and

“(3) by adding at the end the following:

“§ 205. National Forest System roads and trails.

“(a) In general.—Section 205 of title 23, United States Code, is amended by striking the item relating to section 205 and inserting the following:


“(b) In subsections (a) and (d), by striking “forest development roads” each place it appears and inserting “National Forest System roads”.

“(c) In section 217(c) of title 23, United States Code, is amended—

“(1) by striking the item relating to section 265 and inserting the following:


“(7) In section 217(c) of title 23, United States Code, is amended—

“(A) by striking the section heading and inserting the following:

“§ 265. National Forest System roads and trails.

“(B) by redesignating subsections (b) through (d) as subsections (g) through (p), respectively; and

“(C) by adding at the end the following:

“§ 144. Highway bridge program

“(a) Congress finds and declares that it is in the vital interest of the United States that a highway bridge program be established to enable

States to improve the condition of their bridges through replacement, rehabilitation, and systematic preventative maintenance on highway bridges over waterways, other topographic features, or other highways, or railroads at any time at which the States and the Secretary determine that a bridge is unsafe because of structural deficiencies, physical deterioration, or functional obsolescence;”;

“(b) by striking subsection (d) and inserting the following:

“(d) Participation in program.—

“(1) In general.—On application by a State to the Secretary for assistance in replacing or rehabilitating a highway bridge that has been determined to be eligible for replacement or rehabilitation under subsection (b) or (c), the Secretary may approve Federal participation in—

“(A) replacing the bridge with a comparable bridge; or

“(B) rehabilitating the bridge.

“(2) Specific kinds of rehabilitation.—On application by a State to the Secretary for assistance in maintaining, rehabilitating, or installation of scour countermeasures or calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions to the structure of a highway bridge, the Secretary may approve Federal participation in the maintenance, rehabilitating, or installation of scour countermeasures or application of calcium magnesium acetate, sodium acetate/formate, or such anti-icing or de-icing composition to, the structure.

“(3) Eligibility.—

“(A) In general.—Except as provided in paragraph (5), the Secretary shall determine the eligibility of a highway bridge for replacement or rehabilitation for each State based on the number of unsafe highway bridges in the State.

“(B) Preventative maintenance.—A State may carry out a project for preventative maintenance on a bridge, seismic retrofit of a bridge, or installation of scour countermeasures to a bridge under this section with regard to whether the bridge is eligible for replacement or rehabilitation under this section.

“(4) In subsection (e)—

“(A) in the first sentence, by striking “square footage” and inserting “area”; and

“(B) by striking “1997” and inserting “2003”;

“(5) In the seventh sentence, by striking the “Federal-aid primary system” and inserting “Federal-aid primary system”;

“(6) by adding at the end the following:

“§ 144. Highway bridge program.

“(a) In general.—Of the amounts authorized to be appropriated to carry out the bridge program under this section for each of fiscal years 2004 through 2009, all but $150,000,000 shall be apportioned as provided in subsection (b).

“(b) Availability.—The $150,000,000 referred to in subparagraph (A) shall be available at the discretion of the Secretary, except that not more than $25,000,000 of that amount shall be available only for projects for the seismic retrofit of bridges.

“(c) Set aside.—For fiscal year 2004, the Secretary shall—

“(1) $50,000,000 to the State of Nevada for construction of a replacement of the federal-
ally-owned bridge over the Hoover Dam in the Lake Mead National Recreation Area; and

“(ii) $50,000,000 to the State of Missouri for construction of a structure over the Mississippi River to connect the city of St. Louis, Missouri, to the State of Illinois.

“(2) Off-system bridges.—Not less than 15 percent of the amount apportioned to each State in each of fiscal years 2004 through 2009 shall be expended for projects to replace, rehabilitate, or maintain or rehabilitate Federal-aid highway bridges over waterways, other topographic features, or other highways. For Federal-aid highway bridges located on public roads, other than those on a Federal-aid highway, or to complete the Warwick Intermodal Station (including the construction of a people mover between the Station and the T.F. Green Airport).

“(3) Reduction of expenditures.—The Secretary, after consultation with State and local officials, may, with respect to the State, reduce the requirement for expendi-
tures for bridges not on a Federal-aid high-
way if the Secretary determines that the State has inadequate needs to justify the expendi-
tures.

“(4) In subsection (i)—

“(A) in paragraph (3), by striking “and”;

“(B) in paragraph (4), by striking the period at the end and inserting “; and”;

“(C) by striking “Such reports”, and all that follows through “Congress.”; and

“(D) by adding at the end the following:

“(i) biennially submit such reports as are required under this subsection to the appro-
riate committees of Congress simulta-
neously with the report required by section 502(g).”;

“(5) in the first sentence of subsection (m), by striking “all standards and inserting “all general engineering standards”;

“(6) in subsection (o)—

“(A) in paragraph (3)—

“(i) by striking “title (including this section)” and inserting “section”; and

“(ii) by inserting “200 percent of” after “shall not exceed”;

“(B) in paragraph (4)(B)—

“(i) in the second sentence, by inserting “200 percent of” after “not to exceed”; and

“(ii) in the last sentence, by striking “title” and inserting “section”;

“(7) by redesignating subsections (b) through (d) as subsections (g) through (p), respectively; and

“(8) by adding at the end the following:

“(c) Continuation of annual materials report on new bridge construction and bridge rehabilitation.—Not later than 1 year after the date of enactment of this subsection, and annually thereafter, the Secretary shall publish in the Federal Register a report describing construction materials used in new Federal-aid bridge construction and bridge rehabilitation projects.

“(d) Federal share.—The Federal share of the cost of a project payable from funds made available to carry out this section shall be the share applicable under section 120 as adjusted under subsection (d) of that section.”.

“SEC. 1808. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM.

“(a) In general.—Subchapter I of chapter 1 of title 23, United States Code (as amended

February 26, 2004

CONGRESSIONAL RECORD — SENATE

S1739
§ 170. Appalachian development highway system

(a) APPORTIONMENT.—

(1) IN GENERAL.—The Secretary shall apportion funds made available under section 1101(7) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 (as amended by section 1809(a)) to the States through 2009 among States based on the latest available estimate of the cost to construct highways and access roads under the Appalachian development highway system program prepared by the Appalachian Regional Commission under section 14501 of title 40.

(2) APPLICABILITY.—Funds described in paragraph (1) shall be available to construct highways and access roads under chapter 145 of title 40.

(b) APPLICABILITY OF TITLE.—Funds made available under section 1101(7) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 for the Appalachian development highway system shall be available for obligation in the same manner as if the funds were apportioned under this section or sections 134 and 135.

(c) ELIGIBLE ACTIVITIES.—The Secretary shall make allocations under this program based on—

(1) the Federal share of the cost of any project under this section shall be determined in accordance with subtitle IV of title 40; and

(2) the funds shall remain available until expended.

(d) CONFORMING AMENDMENT.—(1) USE OF TOLL CREDITS.—Section 120(j)(1) of title 23, United States Code is amended by inserting "and the Appalachian development highway system program under subtitle IV of title 40" after "(other than the emergency relief program authorized by section 125)".

(2) ANALYSIS.—The analysis of chapter 1 of title 23, United States Code (as amended by section 1702(a)) is amended by adding at the end the following:

"170. Appalachian development highway system ".

SEC. 1809. MULTISTATE CORRIDOR PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1809(a)), is amended by adding at the end the following:

§ 171. Multistate corridor program

(a) ESTABLISHMENT AND PURPOSE.—The Secretary shall carry out a program to—

(1) encourage and promote coordinated multimodal planning and development; and

(2) facilitate transportation decision-making and coordinate project delivery involving multistate corridors.

(b) ELIGIBLE RECIPIENTS.—A State transportation department and a metropolitan planning organization may receive and administer funds provided under this section.

(c) ELIGIBLE ACTIVITIES.—The Secretary shall make allocations under this program for multistate highway and multimodal planning studies and construction.

(d) OTHER PROVISIONS REGARDING ELIGIBILITY.

(1) STUDIES.—All studies funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required by sections 134 and 135.

(2) CONSTRUCTION.—All construction funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required by section 135(b)(1).

(e) SELECTION CRITERIA.—The Secretary shall select studies and projects to be carried out under this program with emphasis on programs involving the Appalachian development highway system.

(1) the existence and significance of signed and binding multijurisdictional agreements; and

(2) endorsement of the study or project by applicable elected State and local representatives;

(3) prospects for early completion of the study or project; or

(4) whether the projects to be studied or constructed are located on corridors identified by the Appalachian Regional Commission as the Appalachian development highway system.

(f) PROGRAM PRIORITIES.—In administering the program, the Secretary shall—

(1) encourage and enable States and other jurisdictions to work together to develop plans for multimodal and multijurisdictional transportation corridors; and

(2) give priority to studies or projects that emphasize multimodal planning, including planning for operational improvements that—

(A) increase—

(i) mobility; and

(ii) freight productivity; or

(iii) access to coastal or inland ports; or

(iv) safety and security; and

(v) reliability; and

(B) enhance the environment.

(g) FEDERAL SHARE.—Except as provided in section 120, the Federal share of the cost of a study or project carried out under the program shall—

(1) be 80 percent; and

(2) be apportioned among the States.

(h) APPLICABILITY.—(1) The Secretary shall apportion funds under this program to the States in an amount not to exceed 25 percent of the total amount apportioned to all States under this section.

(2) CONFORMING AMENDMENT.—The analysis of chapter 1 of title 23, United States Code (as amended by section 1809(b)) is amended by adding at the end the following:

"§ 171. Multistate corridor program ."

SEC. 1810. BORDER PLANNING, OPERATIONS, TECHNOLOGY, AND CAPACITY PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1809(a)), is amended by adding at the end the following:

"§ 172. Border planning, operations, technology, and capacity program ."

(a) DEFINITIONS.—In this section:


(2) PROGRAM.—The term ‘program’ means the border planning, operations, technology, and capacity program established under subsection (b).

(b) ESTABLISHMENT AND PURPOSE.—The Secretary shall establish and carry out a border planning, operations, technology, and capacity improvement program to support coordinated bi-national transportation planning, operations, efficiency, information exchange, safety, and security programs for the States that border the United States with Canada and Mexico.

(c) ELIGIBLE ACTIVITIES.—(1) IN GENERAL.—The Secretary shall make allocations under the program for projects to carry out eligible activities described in paragraph (2) at or near international land borders in border States.

(2) ELIGIBLE ACTIVITIES.—A border State may obligate funds apportioned to the border State under this section for—

(A) highway and multimodal planning or environmental studies under the program; or

(B) cross-border port of entry and safety inspection improvements, including operational enhancements and technology applications;

(C) technology and information exchange activities; and

(D) right-of-way acquisition, design, and construction, as needed—

(i) to implement the enhancements or applications described in subparagraphs (B) and (C); or

(ii) to increase highway capacity at or near international borders.

(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—

(1) IN GENERAL.—Each project funded under the program shall be carried out in accordance with the continuing, cooperative, and comprehensive planning processes required by sections 134 and 135.

(2) REGIONALLY SIGNIFICANT PROJECTS.—To be funded under the program, a regionally significant project shall be included on the applicable transportation plan and program required by sections 134 and 135.

(3) PROGRAM PRIORITIES.—Border States shall give priority to projects that emphasize—

(A) multimodal planning; or

(B) improvements in border infrastructure; and

(C) operational improvements that—

(i) increase safety, security, freight capacity, or highway access to rail, marine, and air services; and

(2) enhance the environment.

(e) MANDATORY PROGRAM.—

(1) IN GENERAL.—For each fiscal year, the Secretary shall allocate among border States, in accordance with the formula described in paragraph (2), funds to be used in accordance with subsection (d).

(2) FORMULA.—Subject to paragraph (3), the amount allocated to a border State under this paragraph shall be determined by the Secretary, as follows:

(A) 25 percent in the ratio that—

(i) 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

(ii) the average annual weight of all cargo entering all border States by commercial vehicle across the international borders with Canada and Mexico, as the case may be; bears to

(iii) the average annual weight of all cargo entering all border States by commercial vehicle across the international borders with Canada and Mexico, as the case may be; bears to

(iv) the average trade value of all cargo imported into all border States and all cargo exported from all border States by commercial vehicle across the international borders with Canada and Mexico, as the case may be; bears to

(v) the average trade value of all cargo imported into all border States and all cargo exported from all border States by commercial vehicle across the international borders with Canada and Mexico, as the case may be; bears to

(vi) the number of all commercial vehicles annually entering border States across the international borders with Canada and Mexico; and

(D) 25 percent in the ratio that—

(i) the number of passenger vehicles annually entering the border State across the international border with Canada or Mexico, as the case may be; bears to

(ii) the number of all passenger vehicles annually entering all border States across the international borders with Canada and Mexico.

(f) DATA SOURCE.—(A) IN GENERAL.—The data used by the Secretary in making allocations under this subsection shall be based on the Bureau
which data are available.

values for the most recent 5-year period for calculations shall be made using the average
administration, for each project covered by the makes a request under paragraph (1) shall
shall be available for obligation in the same manner as if the funds were apportioned under this chapter.

''(1) INFORMATION EXCHANGE.—No individual project the scope of work of which is limited to information exchange shall receive the obligation under the program in an amount that exceeds $500,000 for any fiscal year.

''(2) PROJECTS IN CANADA OR MEXICO.—A project in Canada or Mexico, proposed by a border State to directly and predominantly facilitate cross-border vehicle and commercial traffic at an international gateway or port of entry into the border region of the State, may be constructed using funds made available under the program if, before obligation of those funds, Canada or Mexico, or the political subdivision of Canada or Mexico that is responsible for the operation of the facility to be constructed, provides to the Secretary that any facility constructed under this subsection will be—

''(1) constructed in accordance with standards equivalent to applicable standards in the United States; and

''(2) properly maintained and used over the useful life of the facility for the purpose for which the Secretary allocated funds to the project.

(k) TRANSFER OF FUNDS TO THE GENERAL SERVICES ADMINISTRATION.—

''(1) STATE FUNDS.—At the request of a border State, funds made available under the program may be transferred to the General Services Administration for the purpose of funding 1 or more specific projects if—

''(A) the Secretary determines, after consultation with the State transportation department of the border State, that the General Services Administration should carry out the project; and

''(B) the General Services Administration agrees to be the transferor of, and to administer, those funds.

''(2) NON-FEDERAL SHARE.—

''(A) IN GENERAL.—A border State that makes a request pursuant to paragraph (1) shall provide directly to the General Services Administration, for each project covered by the request, the non-Federal share of the cost of each project described in subsection (f).

''(B) NO AUGMENTATION OF APPROPRIATIONS.—Funds provided by a border State under subparagraph (A)—

''(1) shall not be considered to be an augmentation of the appropriations made available to the General Services Administration; and

''(2) shall be—

''(i) administered in accordance with the procedures of the General Services Administration; but

''(ii) available for obligation in the same manner as if the funds were apportioned under this chapter.

(J) OBLIGATION AUTHORITY.—Obligation authority shall be transferred to the General Services Administration in the same manner and amount as the funds transferred under subparagraph (A).

(k) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1819(b)), is amended by adding at the end the following:

"173. Puerto Rico highway program.".

SEC. 1811. PUERTO RICO HIGHWAY PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1810(a)), is amended by adding at the end the following:

"§ 181. Puerto Rico highway program.

"(a) IN GENERAL.—The Secretary shall allocate funds authorized by section 1101(15) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for each fiscal year beginning after March 2009 to the Commonwealth of Puerto Rico to carry out a highway program in the Commonwealth.

"(b) AUTHORITY.—

"(1) IN GENERAL.—Amounts made available by section 1101(15) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for each fiscal year beginning after March 2009 to the Commonwealth of Puerto Rico for each such program for fiscal year 1997 bears to

"(ii) the total amount of funds apportioned to Puerto Rico for all such programs for fiscal year 1997.

"(2) PENALTY.—The amounts treated as being apportioned to Puerto Rico under section 1101(15) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for each fiscal year beginning after March 2009 to the Commonwealth of Puerto Rico for each such program for fiscal year 1997 are treated as if the Secretary had never included in the total amount of funds apportioned to Puerto Rico under section 1101(15) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for each fiscal year beginning after March 2009 to the Commonwealth of Puerto Rico for each such program for fiscal year 1997.

"(3) EFFECT ON ALLOCATIONS AND APPORTIONMENTS.—Subject to paragraph (2), nothing in this section affects any allocation or any apportionment under section 1101(15) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 for fiscal year 1997.

"(4) DURING THE TITLE—There is authorized to be appropriated to carry out this section
United States Code (as amended by section 1813(a)), is amended by adding at the end the following:

"175. Transportation and community and system preservation program.

"(a) In general.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1812(a)), is amended by adding at the end the following:

"SEC. 1813. TRANSPORTATION AND COMMUNITY AND SYSTEM PRESERVATION PROGRAM.

"(a) In general.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1812(a)), is amended by adding at the end the following:

"(1) ESTABLISHMENT.—The Secretary shall establish a comprehensive program to facilitate the planning, development, and implementation of strategies by States, metropolitan planning organizations, federally recognized Indian tribes, and local governments to integrate transportation, community, and system preservation plans and practices that address the goals described in subsection (b).

"(b) Goals.—The goals of the program are to—

"(1) improve the efficiency of the transportation system in the United States;

"(2) reduce the adverse impacts of transportation on the environment;

"(3) reduce the need for costly future investments in public infrastructure;

"(4) provide effective access to jobs, services, and centers of trade; and

"(5) examine development patterns, and to identify strategies, to encourage private sector investments that address the purposes described in paragraphs (1) through (4).

"(c) Allocation of funds.—The Secretary shall allocate funds available to carry out this subsection shall be used by the recipient to implement the projects proposed in the application submitted by the recipient.

"(1) TYPES OF PROJECTS.—The allocation of funds shall be available for obligation for—

"(A) any project eligible for funding under this title or chapter 53 of title 49, United States Code; or

"(B) any other activity relating to transportation and community and system preservation that the Secretary determines to be appropriate, including corridor preservation activities that are necessary to implement—

"(i) transit-oriented development plans;

"(ii) traffic calming measures; or

"(iii) other coordinated transportation and community and system preservation practices.

"(2) FUNDING.—

"(i) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection $50,000,000 for each of fiscal years 2004 through 2009.

"(ii) CONTRACT AUTHORITY.—Funds authorized under this subsection shall be available for obligation in the same manner as if the funds were appropriated under this chapter.

"(d) CRITERIA FOR IMPLEMENTATION.

"(1) ESTABLISHMENT.—In cooperation with appropriate State, regional, and local governments, the Secretary shall establish a pilot program to address the shortage of long-term parking for drivers of commercial motor vehicles on the National Highway System.

"(2) ALLOCATION OF FUNDS.—

"(A) IN GENERAL.—The Secretary shall allocate funds made available under this subsection to States, metropolitan planning organizations, and local governments.

"(B) CRITERIA.—In allocating funds under this subsection, the Secretary shall give priority to applicants that—

"(i) meet the requirements of this title and chapter 53 of title 49, United States Code; and

"(ii) demonstrate the need for long-term parking facilities that are adjacent to commercial motor vehicle parking and that are essential to commerce and the national economy.

"(3) USE OF ALLOCATED FUNDS.—

"(A) IN GENERAL.—A recipient of funds allocated under this subsection may use the funds to carry out the project proposed in the application submitted by the recipient to the Secretary.

"(B) TYPES OF PROJECTS.—Funds under this subsection shall be available for obligation for projects that serve the National Highway System, including—

"(i) construction of safety rest areas that include parking for commercial motor vehicles;

"(ii) construction of commercial motor vehicle parking facilities that are adjacent to commercial truck stops and travel plazas;

"(iii) costs associated with the opening of facilities (including inspection and weigh stations and park-and-ride facilities) to provide commercial motor vehicle parking;

"(iv) projects that promote awareness of the availability of public or private commercial motor vehicle parking on the National Highway System, including parking in connection with intelligent transportation systems and other systems; and

"(v) construction of turnouts along the National Highway System for commercial motor vehicles;

"(vi) capital improvements to public commercial motor vehicle parking facilities closed on a seasonal basis in order to allow the facilities to remain open year-round; and

"(vii) improvements to the geometric design at interchanges on the National Highway System to improve access to commercial motor vehicle parking facilities.

"(C) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1812(b)), is amended by adding at the end the following:

"175. Transportation and community and system preservation pilot program.

"SEC. 1814. PARKING PILOT PROGRAMS.

"(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1813(a)), is amended by adding at the end the following:

"176. Parking pilot programs.

"(a) COMMERCIAL TRUCK PARKING PILOT PROGRAM.—

"(1) ESTABLISHMENT.—In cooperation with appropriate State, regional, and local governments, the Secretary shall establish a pilot program to address the shortage of long-term parking for drivers of commercial motor vehicles on the National Highway System.

"(2) ALLOCATION OF FUNDS.—

"(A) IN GENERAL.—The Secretary shall allocate funds made available under this subsection to States, metropolitan planning organizations, and local governments.

"(B) CRITERIA.—In allocating funds under this subsection, the Secretary shall give priority to applicants that—

"(i) demonstrates a severe shortage of commercial vehicle parking capacity on the corridor to be addressed;

"(ii) consults with affected State and local governments, community groups, private providers of commercial vehicle parking, and motorist and trucking organizations; and

"(iii) demonstrates that the project proposed by the applicant is likely to have a positive effect on safety and traffic congestion, air quality, or other public purpose.

"(3) USE OF ALLOCATED FUNDS.—

"(A) IN GENERAL.—A recipient of funds allocated under this subsection may use the funds to carry out the project proposed in the application submitted by the recipient to the Secretary.

"(B) TYPES OF PROJECTS.—Funds under this subsection shall be available for obligation for projects that serve the National Highway System, including—

"(i) construction of safety rest areas that include parking for commercial motor vehicles;

"(ii) construction of commercial motor vehicle parking facilities that are adjacent to commercial truck stops and travel plazas;

"(iii) costs associated with the opening of facilities (including inspection and weigh stations and park-and-ride facilities) to provide commercial motor vehicle parking;

"(iv) projects that promote awareness of the availability of public or private commercial motor vehicle parking on the National Highway System, including parking in connection with intelligent transportation systems and other systems; and

"(v) construction of turnouts along the National Highway System for commercial motor vehicles;

"(vi) capital improvements to public commercial motor vehicle parking facilities closed on a seasonal basis in order to allow the facilities to remain open year-round; and

"(vii) improvements to the geometric design at interchanges on the National Highway System to improve access to commercial motor vehicle parking facilities.

"(C) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code (as amended by section 1812(b)), is amended by adding at the end the following:

"75. Transportation and community and system preservation pilot program.
subsection shall be consistent with section 120.

“(6) FUNDING.—

(A) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection $10,000,000 for each of fiscal years 2005 through 2009.

(B) CONTRACT AUTHORITY.—Funds authorized under this subsection shall be available for obligation in the same manner as if the funds were apportioned under this chapter.

(C) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter I of title 23, United States Code (as amended by section 1813(c)), is amended by adding at the end the following:

“176. Parking pilot programs.”.

SEC. 1815. INTERSTATE OASIS PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 1814(b)), is amended by adding at the end the following:

“(5) FEDERAL SHARE.—The Federal share of the costs of projects that serve the Federal-aid system to provide parking capacity to support employee parking, van pooling, ride sharing, commuting, and high occupancy vehicle travel.

“(6) FUNDING.—

(A) IN GENERAL.—In cooperation with appropriate State, regional, and local governments, the Secretary shall carry out a pilot program to provide corridor and fringe parking facilities.

(B) PRIMARY FUNCTION.—The primary function of a corridor and fringe parking facility funded under this subsection shall be to provide parking capacity to support car pooling, van pooling, ride sharing, commuting, and high occupancy vehicle travel.

(C) OVERTIME PARKING.—A State may permit a facility described in subparagraph (B) to be used for the overnight parking of commercial vehicles if the use does not foreclose the primary function of the facility described in subparagraph (B).

(2) ALLOCATION OF FUNDS.—

(A) IN GENERAL.—The Secretary shall allocate the funds available to carry out this subsection to States.

(B) CRITERIA.—In allocating funds under this subsection, the Secretary shall give priority to a State that—

(i) demonstrates demand for corridor and fringe parking on the corridor to be addressed;

(ii) consults with affected metropolitan planning organizations, local governments, community groups, and providers of corridor and fringe parking; and

(iii) demonstrates that the project proposed by the State is likely to have a positive effect on ride sharing, traffic congestion, or air quality.

(3) USE OF ALLOCATED FUNDS.—

(A) IN GENERAL.—A recipient of funds allocated under this subsection shall use the funds to implement the project proposed in the application submitted by the recipient to the Secretary.

(B) TYPES OF PROJECTS.—Funds under this subsection shall be available for obligation for projects that serve the Federal-aid system, including—

(i) construction of corridor and fringe parking facilities;

(ii) costs associated with the opening of facilities;

(iii) projects that promote awareness of the availability of corridor and fringe parking through the use of signage and other means;

(iv) capital improvements to corridor and fringe parking facilities closed on a seasonal basis in order to allow the facilities to remain open year-around; and

(v) improvements to the geometric design on adjoining roadways to facilitate access to, and egress from, corridor and fringe parking facilities.

(4) REPORT.—Not later than 5 years after the date on which the Secretary carries out a pilot program under this subsection, the Secretary shall submit to Congress a report on the results of the pilot program carried out under this subsection.

(5) FEDERAL SHARE.—The Federal share of the cost of a project carried out under this subsection shall be consistent with section 120.

(6) FUNDING.—

(A) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection $10,000,000 for each of fiscal years 2005 through 2009.

(B) CONTRACT AUTHORITY.—Funds authorized under this subsection shall be available for obligation in the same manner as if the funds were apportioned under this chapter.

(C) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter I of title 23, United States Code (as amended by section 1813(c)), is amended by adding at the end the following:

“177. Interstate oasis program.”

SEC. 1816. TRIBAL-STATE ROAD MAINTENANCE AGREEMENTS.

Section 204 of title 23, United States Code (as amended by section 1806(h)(4)), is amended by adding at the end the following:

“(B) Tribal-State road maintenance agreements.—

(1) IN GENERAL.—Notwithstanding any other provision of law, regulation, policy, or guideline, an Indian tribe and a State may enter into a road maintenance agreement under which an Indian tribe assumes the responsibilities of the State for—

(A) Indian reservation roads; and

(B) roads providing access to Indian reservation roads.

(2) Tribal-State agreements.—Agreements entered into under paragraph (1)—

(A) shall be negotiated between the State and the Indian tribe; and

(B) shall not require the approval of the Secretary.

(3) ANNUAL REPORT.—Effective beginning with fiscal year 2006, the Secretary shall prepare and submit to Congress an annual report that identifies—

(A) the Indian tribes and States that have entered into agreements under paragraph (1); and

(B) the number of miles of roads for which Indian tribes have assumed maintenance responsibilities; and

(4) any amounts of funding transferred to Indian tribes for the fiscal year under agreements entered into under paragraph (1).”.

SEC. 1817. NATIONAL FOREST SYSTEM ROADS.

Section 205 of title 23, United States Code, is amended by adding at the end the following:

“(d) The Secretary shall report that identifies—

(1) the amounts of funding made available for National Forest System roads, $15,000,000 for each fiscal year shall be used by the Secretary to carry out the program to pay the costs of forestry services to sustain aquatic species beneath roads in the National Forest System, including the costs of constructing, maintaining, replacing, or removing culverts and barriers, as appropriate.

SEC. 1818. TERRITORIAL HIGHWAY PROGRAM.

(a) IN GENERAL.—Chapter 2 of title 23, United States Code, is amended by striking section 215 and inserting the following:

“215. Territorial highway program

(a) DEFINITIONS.—In this section:

(1) PROGRAM.—The term ‘program’ means the territorial highway program established under subsection (b).

(2) TERRITORY.—The term ‘territory’ means the any of the following territories of the United States:

(A) American Samoa.

(B) The Commonwealth of the Northern Mariana Islands.

(C) Guam.

(D) The United States Virgin Islands.

(b) PROGRAM.—

(1) IN GENERAL.—Recognizing the mutual benefits that will accrue to the territories and the United States from the improvement of highways in the territories, the Secretary may carry out a program to assist territorial government in the construction and improvement of a system of arterial and collector highways, and necessary inter-island connectors, that is—

(A) designed, constructed, and maintained by the States, and the extent of the applicable provisions.

(2) APPLICABLE PROVISIONS.—The specific provisions of this section are applicable.

(3) FUNDING.—The amounts of funds made available for the program shall be available for obligation or expenditure with respect to any of the following:

(1) Indian reservations.

(2) The program of the Department of the Interior with respect to the territories.

(3) The program of the Secretary of Agriculture with respect to the territories.

(4) Any amounts of funding transferred to Indian tribes for the fiscal year under agreements entered into under paragraph (1).”.

(4) TECHNICAL ASSISTANCE.—

(a) IN GENERAL.—To continue a long-range highway development program, the Secretary may provide technical assistance to the governments of the territories to enable the territories to, on a continuing basis—

(A) engage in highway planning;

(B) conduct environmental evaluations;

(C) administer right-of-way acquisition and location assistance programs; and

(D) design, construct, and maintain a system of arterial and collector highways, including necessary inter-island connectors.

(5) FORM AND TERMS OF AGREEMENT.—Technical assistance provided under paragraph (1), and the terms for the sharing of information among territories receiving the technical assistance, shall be included in the agreement required by subsection (e).

(6) NONAPPLICABILITY OF CERTAIN PROVISIONS.—

(a) IN GENERAL.—Except to the extent that provisions of chapter 1 are determined by the Secretary to be inconsistent with the needs of the territories and the intent of the program, chapter 1 (other than provisions of chapter 1 relating to the apportionment and allocation of funds) shall apply to funds authorized to be appropriated for the program.

(7) APPLICABLE PROVISIONS.—The specific sections of chapter 1 that are applicable to each territory, and the extent of the applicability of such sections, shall be determined by the Secretary.

(8) AGREEMENT.—

(a) IN GENERAL.—

(1) PROJEST.—The term ‘project’ means the territorial highway program established under subsection (b).

(2) TERRITORY.—The term ‘territory’ means the any of the following territories of the United States:

(A) American Samoa.

(B) The Commonwealth of the Northern Mariana Islands.

(C) Guam.

(D) The United States Virgin Islands.

(b) PROGRAM.—

(1) IN GENERAL.—Recognizing the mutual benefits that will accrue to the territories and the United States from the improvement of highways in the territories, the Secretary may carry out a program to assist territorial government in the construction and improvement of a system of arterial and collector highways, and necessary inter-island connectors, that is—

(A) designed, constructed, and maintained by the States, and the extent of the applicable provisions.

(2) APPLICABLE PROVISIONS.—The specific provisions of this section are applicable.

(3) FUNDING.—The amounts of funds made available for the program shall be available for obligation or expenditure with respect to any of the following:

(1) Indian reservations.

(2) The program of the Department of the Interior with respect to the territories.

(3) The program of the Secretary of Agriculture with respect to the territories.

(4) Any amounts of funding transferred to Indian tribes for the fiscal year under agreements entered into under paragraph (1).”.

(4) TECHNICAL ASSISTANCE.—

(a) IN GENERAL.—To continue a long-range highway development program, the Secretary may provide technical assistance to the governments of the territories to enable the territories to, on a continuing basis—

(A) engage in highway planning;

(B) conduct environmental evaluations;

(C) administer right-of-way acquisition and location assistance programs; and

(D) design, construct, and maintain a system of arterial and collector highways, including necessary inter-island connectors.

(5) FORM AND TERMS OF AGREEMENT.—Technical assistance provided under paragraph (1), and the terms for the sharing of information among territories receiving the technical assistance, shall be included in the agreement required by subsection (e).

(6) NONAPPLICABILITY OF CERTAIN PROVISIONS.—

(a) IN GENERAL.—Except to the extent that provisions of chapter 1 are determined by the Secretary to be inconsistent with the needs of the territories and the intent of the program, chapter 1 (other than provisions of chapter 1 relating to the apportionment and allocation of funds) shall apply to funds authorized to be appropriated for the program.

(7) APPLICABLE PROVISIONS.—The specific sections of chapter 1 that are applicable to each territory, and the extent of the applicability of such sections, shall be determined by the Secretary.
any territory until the Governor or chief executive officer of the territory enters into a new agreement with the Secretary (which new agreement shall be entered into not later than 1 year after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004), providing that the government of the territory will—

(a) implement the program in accordance with applicable provisions of chapter 1 and subsection (d);

(b) build and construct a system of arterial and collector highways, including necessary inter-island connectors, in accordance with standards that are—

(i) appropriate for each territory; and

(ii) approved by the Secretary;

(c) provide for the maintenance of facilities constructed or operated under this section in a condition to adequately serve the needs of present and future traffic; and

(d) implement standards for traffic operations and uniform traffic control devices that are approved by the Secretary.

(2) TECHNICAL ASSISTANCE.—The new agreement required by paragraph (1) shall—

(A) specify the kind of technical assistance to be rendered under the program;

(B) include appropriate provisions regarding information sharing among the territories; and

(C) allocate the oversight role and responsibilities of the territories and the Secretary.

(3) REVIEW AND REVISION OF AGREEMENT.—The new agreement entered into under paragraph (1) shall be reevaluated and, as necessary, revised, at least every 2 years.

(4) EXISTING AGREEMENTS.—With respect to an agreement entered into between the Secretary and the Governor or chief executive officer of a territory that is in effect as of the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004—

(A) the agreement shall continue in force until replaced by a new agreement in accordance with paragraph (1); and

(B) amounts made available for the program under the agreement shall be available for obligation or expenditure so long as the agreement, or new agreement under paragraph (1), is in effect.

(f) PERMISSIBLE USES OF FUNDS.—

(1) IN GENERAL.—Funds made available for the purposes of this section are used only for the following projects and activities carried out in a territory:

(A) Eligible surface transportation program projects described in section 133(b);

(B) Cost-effective, preventive maintenance consistent with section 116;

(C) Ferry boats, terminal facilities, and approaches, in accordance with subsections (b) and (c) of section 129;

(D) Engineering and economic surveys and investigations for the planning, and the financing, of future highway programs.

(E) Studies of the economy, safety, and convenience of highway use.

(F) The regulation and equitable taxation of highway use.

(G) Such research and development as are necessary in connection with the planning, design, and maintenance of the highway system.

(2) PROHIBITION ON USE OF FUNDS FOR ROUTINE MAINTENANCE.—None of the funds made available under the agreement shall be obligated or expended for routine maintenance.

(g) LOCATION OF PROJECTS.—Territorial highway projects (other than those described in paragraphs (1), (3), and (4) of section 133(b)) that are eligible MAGLEV projects:

(h) EXISTING AGREEMENTS.—With respect to an agreement entered into between the Secretary and the Governor or chief executive officer of a territory that is in effect as of the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004—

(1) the agreement shall continue in force until replaced by a new agreement in accordance with paragraph (1); and

(2) in subsection (h)—

(A) by striking “Not later than” and inserting the following:—

(1) Initial solicitation.—Not later than

(B) by adding at the end the following:

(2) ADDITIONAL SOLICITATION.—Not later than 1 year after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, the Secretary shall solicit additional applications from States, or authorities designated by 1 or more States, for financial assistance authorized by subsection (d) for planning, design, and construction of eligible MAGLEV projects.

(3) in subsection (e), by striking “Prior to soliciting applications, the Secretary” and inserting “Secretary”;

(4) in subsection (h),—

(A) in subparagraph (A), by striking clause (i) and inserting the following:

(1) In General.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $15,000,000 for each of fiscal years 2004 through 2009.

(B) in subparagraph (B), by striking clause (i) and inserting the following:

(1) In General.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section—

(II) $400,000,000 for fiscal year 2005;

(III) $400,000,000 for fiscal year 2006;

(IV) $425,000,000 for fiscal year 2007;

(V) $455,000,000 for fiscal year 2008; and

(VI) $455,000,000 for fiscal year 2009.

(2) by striking subsection (i).

SEC. 1820. DONATIONS AND CREDITS.

Section 323 of title 23, United States Code, is amended by—

(a) in the first sentence of subsection (c), by inserting “, or a local government from offering to donate funds, materials, or services personnel from government employe—

(b) by striking subsection (e).

SEC. 1821. DISADVANTAGED BUSINESS ENTERPRISES.—

(a) GENERAL RULE.—Except to the extent that the Secretary determines otherwise, not less than 10 percent of the amounts made available under any program under titles I, II, and III of this Act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) DEFINITIONS.—In this section:

(1) SMALL BUSINESS CONCERN.—

(A) IN GENERAL.—The term “small business concern” has the meaning given the term under section 3 of the Small Business Act (15 U.S.C. 632).

(B) EXCLUSION.—The term “small business concern” does not include any concern or group of concerns controlled by the same socially and economically disadvantaged individuals.

(c) ANNUAL LISTING OF DISADVANTAGED BUSINESS ENTERPRISES.—Each State shall annually survey and compile a list of the small business concerns referred to in subsection (a) and the location of such concerns in the State and notify the Secretary, in writing, of the percentage of such concerns which are controlled by women, by socially and economically disadvantaged individuals (other than women), and by individuals who are veterans and are socially and economically disadvantaged individuals.

(d) UNIFORM CERTIFICATION.—The Secretary shall establish minimum uniform criteria for State governments to use in certifying whether a concern qualifies for purposes of this section. Such minimum uniform criteria shall include on-site visits, personal interviews, financial analyses, inspection of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, resume of principal owners, financial capacity, and proof of work performed.

(e) COMPLIANCE WITH COURT ORDERS.—Nothing in this section limits the eligibility of an entity or person to receive funds made available under titles I, II, and III of this Act, if the entity or person is prevented, in whole or in part, from complying with subsection (a) because a Federal court issues a final order in which the court finds that the requirement of subsection (a), or the program established under subsection (a), is unconstitutional.

SEC. 1822. EMERGENCY RELIEF.

Section 125(d)(1) of title 23, United States Code, is amended by striking $100,000,000” and inserting “$300,000,000”.

SEC. 1823. PRIORITY FOR PEDESTRIAN AND BICYCLE FACILITY ENHANCEMENT PROJECTS.

Section 133(e)(5) of title 23, United States Code, is amended by adding at the end the following:

(II) encourage States to give priority to pe—

(a) in General.—Subchapter I of chapter 1 of title 23, United States Code (as amended by section 181(a)), is amended by adding at the end the following:

(b) by providing for transportation project development—

(1) support and encourage multistate transportation planning and corridor development.

(2) support transportation decision-making; and

(3) provide for transportation project development.

(b) by providing for transportation project development—

(1) by providing for transportation project development.
“(b) ELIGIBLE RECIPIENTS.—A State transportation department or metropolitan planning organization may receive and administer funds provided under the program.”

“(c) ELIGIBLE RECIPIENTS.—The Secretary shall make allocations under the program for multistate highway and transit planning, development, and construction projects.”

“(d) OTHER PROVISIONS REGARDING ELIGIBILITY.—All activities funded under this program shall be consistent with the continuing, cooperative, and comprehensive planning processes required by sections 134 and 135.”

“(e) SELECTION CRITERIA.—The Secretary shall select projects to be carried out under this program based on—

“(1) whether the project is located—

“(A) in an area that is part of the Delta Regional Authority; and

“(2) the Federal-aid system; and

“(3) evidence of the ability to complete the project.”

“(f) PROGRAM PRIORITIES.—In administering the program, the Secretary shall—

“(1) encourage and enable States and other jurisdictions to work together to develop plans for multimodal and multijurisdictional transportation decisionmaking; and

“(2) give priority to projects that emphasize multimodal planning, including planning for operational improvements that—

“(A) increase the mobility of people and goods;

“(B) improve the safety of the transportation system with respect to catastrophic

“(i) natural disasters; or

“(ii) disasters caused by human activity; and

“(C) contribute to the economic vitality of the area in which the project is being carried out.

“(g) FEDERAL SHARE.—Amounts provided by the Delta Regional Authority to carry out a project under this section shall be applied in the same manner as if the funds were appropriated under chapter 1 of title 23, United States Code.”

“§ 1902. CLARIFICATION OF DATE.

“Section 122(d) of the Transportation Equity Act for the 21st Century (23 U.S.C. 202 note; 112 Stat. 206) is amended—

“(1) in paragraph (1), by inserting “(except "Arizona") after "each State"; and

“(2) in paragraph (5)(A), by striking "$1,500,000 for each of fiscal years 1998 through 2003" and inserting "$1,800,000 for each of fiscal years 2004 through 2009”.

Subtitle I—Technical Corrections

SECTION 1901. REPEAL OR UPDATE OF OBSOLETE TEXT.

“(a) LETTING OF CONTRACTS.—Section 112 of title 23, United States Code, is amended—

“(1) by striking subsection (f); and

“(2) by redesignating subsection (g) as subsection (f).”

“§ 1902. CLARIFICATION OF DATE.

“Section 109(g) of title 23, United States Code, is amended, in the first sentence by striking “The Secretary shall issue” and inserting “He”; and in the second sentence, by striking “he” and inserting “the Secretary”.”

“§ 1903. INCLUSION OF REQUIREMENTS FOR SIGNS IDENTIFYING FUNDING SOURCES IN TITLE 23.

“(a) IN GENERAL.—Section 154 of the Federal-Aid Highway Act of 1967 (23 U.S.C. 101 note; 101 Stat. 209) is amended by adding at the end the following—

“(187a) Delta Regional Transportation Development Program...”

“SEC. 1905. TECHNICAL AMENDMENTS TO NON-DISCRIMINATION SECTION.

“Section 140 of title 23, United States Code, is amended—

“(1) in subsection (a)—

“(A) in the first sentence, by striking “subsection (a) of section 105 of this title” and inserting “subsection 105 of this title”;

“(B) in the second sentence, by striking “He” and inserting “The Secretary”;

“(C) in the third sentence, by striking “where he considers it necessary to assure” and inserting “if necessary to ensure”; and

“(D) in the last sentence—

“(i) by striking “him” and inserting “the Secretary”;

“(ii) by striking “he” and inserting “the Secretary”;

“(E) in subsection (b)—

“(A) in the first sentence, by striking “highway construction” and inserting “surface transportation”; and

“(B) in the first sentence—

“(i) by striking “as he may deem necessary” and inserting “as necessary”; and

“(ii) by striking “not to exceed $2,500,000 for the transition quarter ending September 30, 1976” and inserting “$2,500,000”;

“(C) in the second sentence of subsection (c)—

“(A) by striking “subsection 104(b)(3) of this title” and inserting “subsection 104(b)(3)”; and

“(B) by striking “he may deem” and inserting “and contracting”.”

“TITLE II—TRANSPORTATION RESEARCH

Subtitle A—Funding

SECTION 2001. AUTHORIZATION OF APPROPRIATIONS.

“(a) IN GENERAL.—The following sums are authorized to be appropriated out of the Highway Trust Fund (and other than the Mass Transit Account):—

“(1) SURFACE TRANSPORTATION RESEARCH.—

“(A) IN GENERAL.—For carrying out sections 505, 506, 507, and 511 of title 23, United States Code—

“(i) $211,000,000 for each of fiscal years 2004 and 2005;

“(ii) $215,000,000 for fiscal year 2006;

“(iii) $218,000,000 for fiscal year 2007;

“(iv) $220,000,000 for fiscal year 2008; and

“(v) $223,000,000 for fiscal year 2009.

“(B) SURFACE TRANSPORTATION-ENVIRONMENTAL COOPERATIVE RESEARCH PROGRAM.—For each of fiscal years 2004 through 2009, the Secretary shall set aside $5,000,000 of the funds authorized under levels (iv) and (v), to carry out the surface transportation-environmental cooperative research program...
under section 507 of title 23, United States Code.

(2) TRAINING AND EDUCATION.—For carrying out section 504 of title 23, United States Code—

(A) $27,000,000 for fiscal year 2004;
(B) $28,000,000 for fiscal year 2005;
(C) $29,000,000 for fiscal year 2006;
(D) $30,000,000 for fiscal year 2007;
(E) $31,000,000 for fiscal year 2008; and
(F) $32,000,000 for fiscal year 2009.

(3) BUREAU OF TRANSPORTATION STATISTICS.—For the Bureau of Transportation Statistics to carry out section 111 of title 49, United States Code, $28,000,000 for each of fiscal years 2004 through 2009.

(4) TECHNICAL RESEARCH, OPERATIONAL TESTING, AND DEVELOPMENT.—For carrying out sections 524, 525, 526, 527, 528, and 529 of title 23, United States Code—

(A) $120,000,000 for fiscal year 2004;
(B) $125,000,000 for fiscal year 2005;
(C) $126,000,000 for fiscal year 2006;
(D) $129,000,000 for fiscal year 2007;
(E) $132,000,000 for fiscal year 2008; and
(F) $135,000,000 for fiscal year 2009.

(5) UNIVERSITY TRANSPORTATION CENTERS.—For carrying out section 510 of title 23, United States Code—

(A) $90,000,000 for each of fiscal years 2004 through 2005;
(B) $45,000,000 for each of fiscal years 2005 through 2009.

(b) ALLOCABILITY OF TITLE 23, UNITED STATES CODE.—Funds authorized to be appropriated by subsection (a)—

(1) shall be available for obligation in the same manner as if the funds were appropriated under chapter 1 of title 23, United States Code, except that the Federal share of the cost of a project or activity carried out using those funds shall be the share applicable under section 202(b) of title 23, United States Code, as adjusted under subsection (d) of that section unless otherwise specified or otherwise directed by the Secretary; and
(2) shall remain available until expended.

(c) ALLOCATIONS.—

(1) SURFACE TRANSPORTATION RESEARCH.—Of the amounts made available under subsection (a)(1)—

(A) $27,000,000 for each of fiscal years 2004 through 2009 shall be available to carry out high-risk, long-term research under section 502(d) of title 23, United States Code;
(B) $18,000,000 for fiscal years 2004 and 2005, $17,000,000 for fiscal year 2006, $16,000,000 for fiscal year 2007, $12,000,000 for fiscal year 2008, and $10,000,000 for fiscal year 2009 shall be available to carry out the long-term pavement performance program under section 502(e) of that title;
(C) $6,000,000 for each of fiscal years 2004 through 2009 shall be available to carry out the high-performance concrete bridge research and technology transfer program under section 502(l) of that title;
(D) $6,000,000 for each of fiscal years 2004 through 2009 shall be made available to carry out research on asphalt used in highway pavements;
(E) $6,000,000 for each of fiscal years 2004 through 2009 shall be made available to carry out research on concrete pavements;
(F) $3,000,000 for each of fiscal years 2004 through 2009 shall be made available to carry out research on aggregates used in highway pavements;
(G) $4,750,000 for each of fiscal years 2004 through 2009 shall be made available for further research and deployment of techniques to prevent and mitigate alkali silica reactivity;
(H) $2,000,000 for fiscal year 2005 shall be maintained until expended for asphalt and asphalt-related reclamation research at the South Dakota School of Mines; and

(1) $3,000,000 for each of fiscal years 2004 through 2009 shall be made available to carry out section 502(f)(3) of title 23, United States Code;

(2) TECHNOLOGY APPLICATION PROGRAM.—Of the amounts made available under subsection (a)(1), $60,000,000 for each of fiscal years 2004 through 2009 shall be available to carry out section 505 of title 23, United States Code.

(3) TRAINING AND EDUCATION.—Of the amounts made available under subsection (a)(2)—

(A) $12,000,000 for fiscal year 2004, $12,500,000 for fiscal year 2005, $13,500,000 for fiscal year 2006, $13,500,000 for fiscal year 2007, $14,000,000 for fiscal year 2008, and $13,000,000 for fiscal year 2009 shall be available to carry out section 504(a) of title 23, United States Code (relating to the National Highway Institute);
(B) $15,000,000 for each of fiscal years 2004 through 2009 shall be available to carry out section 504(b) of that title (relating to local technical assistance); and
(C) $3,000,000 for each of fiscal years 2004 through 2009 shall be available to carry out section 504(c)(2) of that title (relating to the Eisenhower Transportation Fellowship Program).

(4) INTERNATIONAL HIGHWAY TRANSPORTATION OUTREACH PROGRAM.—Of the amounts made available under subsection (a)(1), $20,000,000 for each of fiscal years 2004 through 2009 shall be available to carry out section 506 of title 23, United States Code.

(5) NEW STRATEGIC HIGHWAY RESEARCH PROGRAM.—For carrying out fiscal years 2004 through 2009, to carry out section 509 of title 23, United States Code, the Secretary shall set aside—

(A) $15,000,000 of the amounts made available to carry out the interstate maintenance program under section 119 of title 23, United States Code, for the fiscal year;
(B) $15,000,000 of the amounts made available for the National Highway System under section 101 of title 23, United States Code, for the fiscal year;
(C) $15,000,000 of the amounts made available to carry out the bridge program under section 144 of title 23, United States Code, for the fiscal year;

(6) COMMERCIAL VEHICLE INTELLIGENT TRANSPORTATION SYSTEM INFRASTRUCTURE PROGRAM.—Of the amounts made available under subsection (a)(4), not less than $30,000,000 for each of fiscal years 2004 through 2009 shall be available to carry out section 527 of title 23, United States Code.

(d) TRANSFERS OF FUNDS.—The Secretary may transfer—

(1) to an amount made available under paragraphs (1) and (4) of section (c), not to exceed 10 percent of the amount allocated for a fiscal year under any other of those subparagraphs; and
(2) to an amount made available under subparagraphs (A), (B), or (C) of subsection (c), not to exceed 10 percent of the amount allocated for a fiscal year under any other of those subparagraphs.

SEC. 2002. OBLIGATION CEILING.

Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Highway Trust Fund (other than the Mass Transit Account) by section 2001(a) shall not exceed—

(1) $425,200,000 for fiscal year 2004;
(2) $435,200,000 for fiscal year 2005;
(3) $443,200,000 for fiscal year 2006;
(4) $450,200,000 for fiscal year 2007;
(5) $456,200,000 for fiscal year 2008; and
(6) $463,200,000 for fiscal year 2009.

SEC. 2003. NOTICE.

(a) NOTICE OF REPROGRAMMING.—If any funds authorized for carrying out this title or the amendments made by this title are subject to a reprogramming action that requires notice to be provided to the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate, notice of that action shall be concurrently provided to the Committee on Transportation and Infrastructure and the Committee on Science of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(b) NOTICE OF REORGANIZATION.—On or before the 15th day preceding the date of any major reorganization of a program, project, or activity of the Department of Transportation for which funds authorized by this title or the amendments made by this title, the Secretary shall provide notice of the reorganization to the Committee on Transportation and Infrastructure and the Committee on Science of the House of Representatives and the Committee on Environment and Public Works of the Senate.

Subtitle B—Research and Technology

SEC. 2101. RESEARCH AND TECHNOLOGY PROGRAM.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is amended as follows:

"CHAPTER 5—RESEARCH AND TECHNOLOGY" "SUBCHAPTER I—SURFACE TRANSPORTATION"

"Sec. 503. Definitions.
504. Training and education.
505. Technology application program.
506. International highway transportation outreach program.
507. Surface transportation-environmental assessment program.
508. Surface transportation research technology deployment and strategic planning.
509. New strategic highway research program.
510. University transportation centers.
511. Multistate corridor operations and management.
512. Transportation analysis simulation system.
"SUBCHAPTER II—INTELLIGENT TRANSPORTATION SYSTEM RESEARCH AND TECHNICAL ASSISTANCE PROGRAM"

"Sec. 521. Finding.
522. Goals and purposes.
523. Definitions.
524. General authorities and requirements.
527. Commercial vehicle intelligent transportation system infrastructure program.
528. Research and development.
529. Use of funds.
"SUBCHAPTER I—SURFACE TRANSPORTATION" "501. Definitions."

"In this subchapter:"
"(1) FEDERAL LABORATORY.—The term 'Fed-
eral laboratory' includes—
(A) a Government-owned, Government-oper-
ated laboratory; and
(B) an independently operated, contractor-oper-
ated laboratory.
"(2) SAFETY.—The term 'safety' includes
highway and traffic safety systems, research, and
development to—
(A) vehicle, highway, driver, passenger,
bicyclist, and pedestrian characteristics;
(B) accident investigations;
(C) intergovernmental, interoperable emergency
communications;
(D) emergency medical care; and
(E) transportation of the injured.
§502. Surface transportation research
(a) IN GENERAL.—
(1) RESEARCH, DEVELOPMENT, AND TECH-
NOLOGY TRANSFER ACTIVITIES.—The Secretary
may carry out research, development, and technol-
yogy transfer activities with respect to—
(A) all phases of transportation planning and
development (including new technolo-
gies, construction, transportation sys-
tems management and operations develop-
ment, design, maintenance, safety, security,
financing, data collection and analysis, de-
mand, Government-owned, Government-oper-
ated, contractor-operated, and trade associa-
tions); and
(B) the effect of State laws on the activi-
ties described in subparagraph (A).
"(2) TESTS AND DEVELOPMENT.—The Sec-
retary may test, develop, or assist in testing and
developing, any material, invention, pat-
eted, or process, or contracts, cooperative agree-
ments, or other transactions with—
(A) the National Academy of Sciences;
(B) the American Association of State
Highway and Transportation Officials;
(C) Federal agencies or organiza-
tions;
(D) a Federal laboratory;
(E) any State agency; and
(F) any other Federal agency or instru-
mentality; or
(ii) in cooperation with—
(I) any Federal laboratory or
(ii) by making grants to, or entering into
contracts, cooperative agreements, and other trans-
actions with—
(I) the National Academy of Sciences;
(II) the American Association of State
Highway and Transportation Officials;
(III) plans, or organizations;
(IV) a Federal laboratory;
(V) a State agency;
(VI) an authority, association, institu-
tion, organization, or corporation; or
(VII) any other person.
"(b) COLLABORATIVE RESEARCH AND DEVEL-
OPMENT.—
(1) FEDERAL LABORATORY.—The term 'Fed-
eral laboratory' includes as priority areas of
effort within the surface transportation research
program—
(A) the development of new technologies
and methods, materials, pavements, struc-
tures, design, and construction, with the ob-
jectives of—
(i) reducing the life-cycle costs, includ-
ing—
(I) construction costs;
(II) maintenance costs; and
(III) operations costs; and
(IV) user costs.
(B) the development, and testing for effec-
tiveness, of nondestructive evaluation tech-
nologies for civil infrastructure using exist-
ning and new technologies;
(C) the investigation of—
(A) the development of current natural
hazard mitigation techniques to manmade
hazardous; and
(B) the continuation of hazard mitigation
research combining manmade and natural
hazard;
(D) the improvement of safety—
(A) at intersections;
(B) during work zone incidents involving
vehicles run off the road; and
(C) on rural roads; and
(E) the improvement of work zone
safety and performance.
"(2) SAFETY.—The term 'safety' includes
highway and traffic safety systems, research, and
development to—
(A) vehicle, highway, driver, passenger,
bicyclist, and pedestrian characteristics;
(B) accident investigations;
(C) intergovernmental, interoperable emergency
communications;
(D) emergency medical care; and
(E) transportation of the injured.
"(3) C OOPERATION, GRANTS, AND CON-
TRACTS.—
(A) SPECIAL ACCOUNT.—In addition to
other funds made available to carry out this
section, the Secretary may use such funds as
may be deposited by any cooperating or-
ganization or person in a special account of
the Treasury established for this purpose.
(B) FEDERAL LABORATORY.—The Secretary
shall use funds made available to carry out this
section to develop, administer, commu-
nicate, and promote the use of products of
research, development, and technology
transfer programs under this section.
(C) COLLABORATIVE RESEARCH AND DEVEL-
OPMENT.—
(1) IN GENERAL.—To encourage innovative
solutions to surface transportation problems and
stimulate the deployment of new technol-
gy, the Secretary may carry out, on a
cost-shared basis, collaborative research and
development with—
(A) non-Federal entities (including State
and local governments, foreign governments,
colleges and universities, corporations, institu-
tions, partnerships, sole proprietorships,
and trade associations) that are incorporated
or established under the laws of any State); and
(B) Federal laboratories.
(2) USE OF TECHNOLOGY.—In carrying out this
subsection, the Secretary may enter into co-
operative research and development agree-
ments (as defined in section 12 of the Steven-
son-Wydler Technology Innovation Act of
1980 (15 U.S.C. 3710a)).
(3) FEDERAL SHARE.—
(A) IN GENERAL.—The Federal share of the
operation of any activity carried out under a co-
operative research and development agreement
entered into under this subsection shall not be less
than 15 percent.
(B) NON-FEDERAL SHARE.—All costs di-
rectly incurred by Federal partners, including
personnel, travel, and hardware develop-
ment costs, shall be credited toward the non-Federal
share of the cost of the activities described in subparagraph (A).
(4) USE OF TECHNOLOGY.—The research,
development, or use of a technology under a
cooperative research and development agree-
ment entered into under this subsection, in-
cluding the terms under which the tech-
nology may be licensed and the resulting
royalties may be distributed, shall be subject to
the Stevenson-Wydler Technology Innovation
(5) WAIVER OF ADVERTISING REQUIRE-
MENTS.—Section 309 of the Revised Statutes
(41 U.S.C. 5) shall not apply to a contract or
agreement entered into under this chapter.
(6) CONTENTS OF RESEARCH PROGRAM.—
The Secretary shall include as priority areas of
effort within the surface transportation research
program—
(1) the development of new technologies
and methods, materials, pavements, struc-
tures, design, and construction, with the ob-
jectives of—
(i) reducing the life-cycle costs, includ-
ing—
(II) construction costs;
(II) maintenance costs; and
(III) operations costs; and
(iv) user costs.
(2) the development, and testing for effec-
tiveness, of nondestructive evaluation tech-
nologies for civil infrastructure using exist-
ning and new technologies;
(3) the investigation of—
(A) the development of current natural
hazard mitigation techniques to manmade
hazardous; and
(B) the continuation of hazard mitigation
research combining manmade and natural
hazard;
(C) the improvement of safety—
(A) at intersections;
(B) during work zone incidents involving
vehicles run off the road; and
(C) on rural roads; and
(D) Federal laboratories.
“(15) the improvement of surface transportation planning;

“(16) environmental research;

“(17) transportation system management and operations research;

“(18) any other surface transportation research topics that the Secretary determines, in accordance with the strategic planning process prescribed by section 508, to be critical.

“(d) ADVANCED, HIGH-RISK RESEARCH.—

“(1) IN GENERAL.—The Secretary shall es-
tablish and carry out, in accordance with the surface transportation research and tech-nology development strategic plan developed under section 508(c) and research priority areas as described in subsection (c) of an advanced research program that addresses longer-term, higher-risk research with po-tentially dramatic breakthroughs for improving the durability, efficiency, environ-mental impact, productivity, and safety (in-cluding bicycle and pedestrian safety) as-pects of highway and intermodal transporta-
tion systems.

“(2) PARTNERSHIPS.—In carrying out the program, the Secretary shall seek to develop partnerships with the public and private sectors.

“(3) REPORT.—The Secretary shall include in the strategic plan required under section 508(c) a description of each of the projects, and the amount of funds expended for each project, carried out under this subsection during the fiscal year.

“§ 503. Technology application program

“(a) TECHNOLOGY APPLICATION INITIATIVES AND CONTRACTS.—Under the program, the Secretary shall make grants and enter into cooperative agreements and contracts to—

“(A) develop, demonstrate, deploy and maintain advanced, flexible and ef-ficient solutions for transportation infra-
tructure management; and

“(B) develop, demonstrate, deploy and maintain advanced solutions for surface transpor-tation security, including State transportation departments and other interested stakeholders, shall develop a 5-year strategic plan for research and technology transfer and deploy-
ments pertaining to the security as-
psects of highway infrastructure and oper-
atons.

“(2) COMPONENTS OF PLAN.—The plan shall include—

“(A) an identification of which agencies are responsible for the conduct of various re-
search and technology transfer activities;

“(B) a description in which those activities will be coordinated; and

“(C) a description of the process to be used to ensure that the advances derived from rel-
evant activities supported by the Federal Highway Administration are consistent with the operational guidelines, policies, rec-
ommendations, and regulations of the De-
partment of Homeland Security; and

“(D) a systematic evaluation of the re-
search that should be conducted to address, at a minimum—

“(1) vulnerabilities of, and measures that may be taken to improve, emergency re-
sponse capabilities and evacuations;

“(2) recommended upgrades of traffic man-
gement systems; and

“(3) integrated, interoperable emergency communications among the public, the mil-
tary, law enforcement, fire and emer-gency medical services, and transportation agen-
cies;

“(iv) protection of critical, security-re-
lated infrastructure.

“(v) structural reinforcement of key facili-
ties.

“(3) SUBMISSION.—On completion of the plan under this subsection, the Secretary shall submit to the Committee on Environ-
ment and Public Works of the Senate and the Committee on Transportation and Infra-
structure of the House of Representatives—

“(A) a copy of the plan developed under paragraph (1); and

“(B) a copy of a memorandum of under-
standing specifying commitments and assignment of responsibilities covered by the plan that is signed by the Secretary and the Secretary of Homeland Security.

“(i) HIGH-PERFORMANCE CONCRETE RESEARCH AND TECHNOLOGY TRANSFER PROGRAM.—In accordance with the objectives de-
scribed in subsection (c)(1) and the require-
ments under sections 508(b)(4) and 508(b), the Secretary shall carry out a program to dem-
onstrate the application of high-performance concrete in the construction and rehabilita-
tion of bridges.

“(j) ROIBASED TRANSPORTATION RE-
SEARCH.—There shall be available from the Highway Trust Fund (other than the Mass-
Transit Account) $18,000,000 for each of fiscal years 2004 through 2009 equally divided and available to carry out biennial reports on the importance of Bio-
diesel Board and at research centers identi-
fied in section 9011 of Public Law 107-171.

“(k) 503. Technology application program

“(a) TECHNOLOGY APPLICATION INITIATIVES AND CONTRACTS.—Under the program, the Secretary shall make grants and enter into cooperative agreements and contracts to—

“(A) develop, demonstrate, deploy and maintain advanced, flexible and ef-ficient solutions for transportation infra-
tructure management; and

“(B) develop, demonstrate, deploy and maintain advanced solutions for surface transpor-tation security, including State transportation departments and other interested stakeholders, shall develop a 5-year strategic plan for research and technology transfer and deploy-
ments pertaining to the security as-
ppects of highway infrastructure and oper-
atons.

“(2) COMPONENTS OF PLAN.—The plan shall include—

“(A) an identification of which agencies are responsible for the conduct of various re-
search and technology transfer activities;

“(B) a description in which those activities will be coordinated; and

“(C) a description of the process to be used to ensure that the advances derived from rel-
evant activities supported by the Federal Highway Administration are consistent with the operational guidelines, policies, rec-
ommendations, and regulations of the De-
partment of Homeland Security; and

“(D) a systematic evaluation of the re-
search that should be conducted to address, at a minimum—

“(1) vulnerabilities of, and measures that may be taken to improve, emergency re-
sponse capabilities and evacuations;

“(2) recommended upgrades of traffic man-
gement systems; and

“(3) integrated, interoperable emergency communications among the public, the mil-
tary, law enforcement, fire and emer-gency medical services, and transportation agen-
cies;

“(iv) protection of critical, security-re-
lated infrastructure.

“(v) structural reinforcement of key facili-
ties.

“(3) SUBMISSION.—On completion of the plan under this subsection, the Secretary shall submit to the Committee on Environ-
ment and Public Works of the Senate and the Committee on Transportation and Infra-
structure of the House of Representatives—

“(A) a copy of the plan developed under paragraph (1); and

“(B) a copy of a memorandum of under-
standing specifying commitments and assignment of responsibilities covered by the plan that is signed by the Secretary and the Secretary of Homeland Security.

“(i) HIGH-PERFORMANCE CONCRETE RESEARCH AND TECHNOLOGY TRANSFER PROGRAM.—In accordance with the objectives de-
scribed in subsection (c)(1) and the require-
ments under sections 508(b)(4) and 508(b), the Secretary shall carry out a program to dem-
onstrate the application of high-performance concrete in the construction and rehabilita-
tion of bridges.

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(B) facilitate technology transfer.
(5) Leveraging of Federal resources.—In selecting projects to be carried out under this subsection, the Secretary shall give preference to projects that leverage Federal funds with other significant public or private resources.
(6) Grants, cooperative agreements, and contracts.—The Secretary may make grants and enter into cooperative agreements and contracts to foster alliances and support efforts to stimulate advancement of innovative infrastructure technology.
(7) Reports.—The results and progress of activities carried out under this section shall be published as part of the annual transportation research report prepared by the Secretary under section 508(a)(3).

§ 504. Training and education
(a) National Highway Institute.—
(1) In general.—The Secretary shall—
(A) operate a Federal Highway Administration, a National Highway Institute (referred to in this subsection as the ‘Institute’); and
(B) administer, through the Institute, the authority vested in the Secretary by this title or by any other law for the development and conduct of education and training programs relating to highways.
(2) Duties of the Institute.—In cooperation with State transportation departments, industries in the United States, and national or international organizations, the Institute shall—
(A) develop and administer education and training programs for project selection; and
(B) develop and administer education and training programs of instruction for—
(i) Federal Highway Administration, State, and local transportation agency employees;
(ii) regional, State, and metropolitan planning organizations;
(iii) State and local police, public safety, and motor vehicle employees; and
(iv) United States citizens and foreign nationals engaged or to be engaged in surface transportation work of interest to the United States.
(3) Courses.—
(A) In general.—The Institute shall—
(i) devise or update existing courses in asset management, including courses that include such components as—
(I) the determination of life-cycle costs;
(II) the valuation of assets;
(III) benefit-to-cost ratio calculations; and
(IV) objective decisionmaking processes for project selection; and
(ii) continually develop courses relating to the application of emerging technologies for—
(I) transportation infrastructure applications and asset management;
(II) intelligent transportation systems;
(III) operations (including security operations);
(IV) the collection and archiving of data;
(V) expediting the planning and development of transportation projects; and
(VI) the intermodal movement of individuals and freight.
(B) Additional courses.—In addition to the courses described under subparagraph (A), the Institute, in consultation with State transportation departments, metropolitan planning organizations, and the American Association of State Highway and Transportation Officials, may develop courses relating to technology, methods, techniques, engineering, construction, safety, maintenance, environmental mitigation and compliance, regulations, management, inspection, and finance.
(4) Revision of courses offered.—The Institute shall—
(i) review the course inventory of the Institute; and
(ii) revise or cease to offer courses based on courses proposed, evaluated, and approved under section 504(b)(3).
(5) Eligibility; Federal share.—The funds apportioned to a State under section 104(b)(3) for the surface transportation program shall be available for expenditure by the State transportation department for the payment of not to exceed 80 percent of the full cost of any education and related expenses (excluding salaries) in connection with the education and training of employees of State and local transportation agencies in accordance with this section.
(6) Federal responsibility.—
(A) In general.—Except as provided in subparagraph (B), education and training of Federal, State, and local transportation (including highway) agencies authorized under this subsection may be provided—
(i) by the Secretary, at no cost to the States and local governments, if the Secretary determines that provision at no cost is of critical importance to the public interest; or
(ii) by the State, through grants, cooperative agreements, and contracts with public and private agencies, institutions, individuals, and the Institute.

(B) Payment of full cost by private persons.—Private agencies, international or foreign entities, and individuals shall pay the full cost of any education and training (including the cost of course development) received by the agencies, entities, and individuals, unless the Secretary determines that payment of a lesser amount of the cost is of critical importance to the public interest.

(7) Training fellowships; cooperation.—The Institute may—
(A) engage in training activities authorized under this subsection, including the granting of training fellowships; and
(B) exercise the authority of the Institute independently or in cooperation with any—
(i) other Federal or State agency;
(ii) association, authority, institution, or organization;
(iii) for-profit or nonprofit corporation;
(iv) national or international entity;
(v) foreign country; or
(vi) person.

(8) Collection of fees.—
(A) In general.—In accordance with this subsection, the Institute may assess and collect fees to defray the costs of the Institute in developing or administering education and training programs under this subsection.
(B) Payment of full cost or partial cost by Federal, State, and local governments, if the Secretary determines that provision at no cost to the State transportation department for the payment of not to exceed 80 percent of the full cost of any education and related expenses (excluding salaries) in connection with the education and training of employees of State and local transportation agencies in accordance with this section.

(B) Use.—All fees collected under this subsection shall be used, without further appropriation, to defray costs associated with the development or administration of education and training programs authorized under this subsection.

(B) Relation to fees.—The fees made available to carry out this subsection may be combined with or held separate from the fees collected under—
(A) paragraph (7);
(B) memoranda of understanding;
(C) regional compacts; and
(D) other similar agreements.

(D) Local Technical Assistance Program
(1) Authority.—The Secretary shall carry out a local technical assistance program
that will provide access to surface transportation technology to—

(A) highway and transportation agencies in urbanized areas;

(B) highway and transportation agencies in rural areas;

(C) contractors that perform work for the agencies; and

(D) education; and

(2) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—The Secretary may make grants and enter into cooperative agreements, and contracts to provide education and training, technical assistance, and related support services to—

(A) assist rural, local, and tribal governments, and the consultants and construction personnel working for the agencies and governments, to—

(i) develop and expand expertise in road and transportation areas (including pavement, bridge, concrete structures, intermodal connections, safety management systems, incident response, operations, and traffic safety countermeasures);

(ii) improve roads and bridges;

(iii) develop programs to provide technical assistance to tribes;

(iv) intergovernmental transportation planning and project selection; and

(B) develop technical assistance for tourism and recreational travel;

(C) identify, package, and deliver transportation technology and traffic safety information to local jurisdictions to assist urban transportation agencies in developing and expanding their ability to deal effectively with transportation-related problems (particularly the promotion of regional cooperation);

(D) operate, in cooperation with State transportation departments and universities—

(i) local technical assistance program centers designated to provide transportation technical training and services to rural areas and to urbanized areas; and

(ii) local technical assistance program centers designated to provide transportation technical assistance to tribal governments; and

(E) allow local transportation agencies and tribal governments, in cooperation with the public sector, to enhance new technology implementation.

(3) RESEARCH FELLOWSHIPS.—

(A) General Authority.—The Secretary, acting independently or in cooperation with other Federal agencies and instrumentalities, may make grants for research fellowships for any purpose for which research is authorized by this chapter.

(B) Dwight David Eisenhower Transportation Fellowship Program.—The Secretary shall establish and implement a transportation research fellowship program, to be known as the ‘Dwight David Eisenhower Transportation Fellowship Program’, for the purpose of conducting qualified students to the field of transportation.

§ 505. State planning and research

(A) In General.—Two percent of the sums apportioned to a State for fiscal year 2004 and each fiscal year thereafter under sections 124, 129, and 135 shall be available for expenditure by the State, in consultation with the Secretary, for—

(1) the conduct of engineering and economic surveys and investigations;

(2) the planning of—

(A) future highway programs and local public transportation systems; and

(B) the financing of those programs and systems.

(3) the development and implementation of management programs under sections 134 and 135;

(4) the conduct of activities relating to the planning of real-time monitoring elements.

(B) MINIMUM EXPENDITURES ON RESEARCH, DEVELOPMENT, AND TECHNOLOGY TRANSFER ACTIVITIES.—

(1) IN GENERAL.—Subject to paragraph (2), not less than one percent of the funds apportioned to States under section 120 shall be expended by the State for research, development, and technology transfer activities that—

(A) are described in subsection (a); and

(B) relate to highway, public transportation, and intermodal transportation systems;

(2) WAIVERS.—The Secretary may waive the application of paragraph (1) with respect to a State for a fiscal year if—

(A) the State certifies to the Secretary for the fiscal year that total expenditures by the State for transportation planning under sections 134 and 135 will exceed 75 percent of the funds described in paragraph (1); and

(B) the Secretary accepts the certification of the State.

(3) NONAPPLICABILITY OF ASSESSMENT.—Funds expended under paragraph (1) shall not be considered to be part of the extra-mural budget of the agency for the purpose of section 9 of the Small Business Act (15 U.S.C. 368).

(C) Federal Share.—The Federal share of the cost of a project carried out using funds subject to subsection (a) shall be the share applicable under section 139(b), as adjusted under subsection (d) of that section.

(D) ADMINISTRATION OF SUMS.—Funds subject to subsection (a) shall—

(1) be combined and administered by the Secretary as a single fund; and

(2) be available for obligation for the period described in section 139(b).

(E) ELIGIBLE USES OF FUND.—The funds made available under paragraph (1) shall be used to support the activities described in subsection (b) that could significantly improve highway transportation in the United States;

(F) CONSTRUCTION OF RESEARCH.—The funds described in paragraph (1) shall be used to—

(1) to inform the United States highway transportation research community of technological innovations in foreign countries that could significantly improve highway transportation in the United States;

(2) to rehabilitate United States highway transportation expertise, goods, and services in foreign countries; and

(3) to increase transfers of United States highway transportation technology to foreign countries.

(b) ACTIVITIES.—Activities carried out under this program shall include—

(1) the development, monitoring, assessment, and dissemination in the United States of information about highway transportation, innovations, and other similar activities in foreign countries,

(2) research, development, demonstration, training, and other forms of technology transfer and exchange,

(3) the provision to foreign countries, through participation in trade shows, seminars, and other similar activities, of information relating to the technical quality of United States highway transportation goods and services;

(4) the offering of technical services of the Federal Highway Administration that cannot be readily obtained from private sector firms in the United States for incorporation into the proposals of those firms under taking highway transportation projects outside the United States, if the costs of the technical services will be recovered under the terms of the project;

(5) the conduct of studies to assess the need for, or feasibility of, highway transportation improvements in foreign countries; and

(6) the gathering and dissemination of information on foreign transportation markets and industries.

(c) COOPERATION.—The Secretary may carry out this section in cooperation with—

(1) Federal, State, or local agencies;

(2) authority, association, institution, or organization;

(3) for-profit or nonprofit corporation;

(4) national or international entity;

(5) foreign country; or

(6) person.

(d) FUNDS.—Contributions.—Funds available to carry out this section shall include funds deposited by any cooperating organization or person into a special account of the Treasury established for this purpose.

(2) ELIGIBLE USES OF FUNDS.—The funds deposited into the account, and other funds available to carry out this section, shall be available to cover the cost of any activity eligible under this section, including the cost of—

(A) promotional materials;

(B) travel;

(C) reception and representation expenses; and

(D) salaries and benefits.

(3) REIMBURSEMENTS FOR SALARIES AND BENEFITS.—Reimbursements for salaries and benefits of Department of Transportation employees providing services under this section shall be credited to the account.

(e) REPORT.—For each fiscal year, 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 that describes the destinations and individual trip costs of international travel conducted in carrying out activities described in this section.

§ 506. International highway transportation outreach program

(a) ESTABLISHMENT.—The Secretary may establish an international highway transportation outreach program.

(b) PURPOSE.—The purpose of the program is to—

(1) to increase transfers of United States highway transportation technology to foreign countries.
and transportation system designs that are appropriate for use by State and local governments (including metropolitan planning organizations) in designing implementation plans to meet Federal, State, and local environmental requirements;

"(2) to improve understanding of the factors that contribute to the demand for transportation services;

"(3) to develop additional priorities as determined by the Secretary in the strategic planning section 508. and reporting requirements;

"(4) to meet additional priorities as determined by the Secretary in the strategic planning section and reporting requirements;

"(5) to refine, through the conduct of workshops, symposia, and panels, and in consultation with stakeholders (including the Department of Energy, the Environmental Protection Agency, and other appropriate Federal and State agencies and associations) the scope and research emphases of the program;

"(c) PROGRAM ADMINISTRATION.—The Secretary shall—

"(1) administer the program established under this section; and

"(2) ensure, to the maximum extent practicable, that—

"(A) the best projects and researchers are selected to conduct research in the priority areas described in subsection (b)—

(i) on the basis of merit of each submitted proposal; and

(ii) through the use of open solicitations and selection by a panel of appropriate experts;

(B) a qualified, permanent core staff with the ability and expertise to manage a large multiyear budget is used;

(C) the stakeholders are involved in the governance of the program, at the executive, overall program, and technical levels, through the use of expert panels and committees; and

(D) there is no duplication of research effort between the program established under this section and the new strategic highway research program established under section 508;

"(d) NATIONAL ACADEMY OF SCIENCES.—The Secretary may make grants to, and enter into contracts with, the National Academy of Sciences to carry out such activities relating to the research, technology, and technology transfer activities described in subsections (b) and (c) as the Secretary determines to be appropriate.

§ 508. Surface transportation research technology deployment and strategic planning

"(a) PLANNING.—

"(1) ESTABLISHMENT.—The Secretary shall—

(A) establish, in accordance with section 306 of title 5, a strategic planning process that—

(i) enhances effective implementation of this section through the establishment in accordance with paragraph (2) of the Surface Transportation Research Technology Advisory Committee; and

(ii) focuses on surface transportation research funded through paragraphs (1), (2), (4), and (5) of section 2001(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, taking into consideration the recommendations of the National Academy of Sciences to carry out such activities relating to the research, technology, and technology transfer activities described in paragraphs (b) and (c) of this section;

(B) coordinate Federal surface transportation research, technology development, and deployment activities; and

(C) at such intervals as are appropriate and practicable, measure the results of those activities and the ways in which the activities advance the performance of the national transportation systems of the United States; and

"(D) ensure, to the maximum extent practicable, that planning and reporting activities carried out under this section are coordinated with all other surface transportation planning and deployment activities.

"(2) SURFACE TRANSPORTATION RESEARCH TECHNOLOGY ADVISORY COMMITTEE.—

(A) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, the Secretary shall establish a committee to be known as the Surface Transportation Research Technology Advisory Committee (referred to in this section as the ‘Committee’).

(B) MEMBERSHIP.—The Committee shall be composed of 12 members appointed by the Secretary—

(i) each of which shall have expertise in a particular area relating to Federal surface transportation programs, including—

(A) safety;

(B) operations;

(C) infrastructure (including pavements and structures);

(D) planning and environment;

(E) policy; and

(F) asset management.

(ii) to offer recommendations relevant to research priorities, project selection, and deployment strategies; and

(iii) to offer recommendations relevant to research priorities, project selection, and deployment strategies.

(C) DUTIES.—The Committee shall—

(I) to ensure that sufficient stakeholder input is being solicited and considered throughout the preparation process; and

(II) to offer recommendations relevant to research priorities, project selection, and deployment strategies; and

(D) CONSISTENCY WITH GOVERNMENT PERFORMANCE AND RESULTS ACT OF 1993.—The plans and reports developed under this section shall be consistent with, and incorporated as part of, those plans developed under sections 306 of title 5 and sections 1115 and 1116 of title 31.

"(3) SURFACE TRANSPORTATION RESEARCH AND TECHNOLOGY DEPLOYMENT STRATEGIC PLAN.—

(A) IN GENERAL.—After receiving, and based on, extensive consultation and input from stakeholders representing the transportation community and the Surface Transportation Research Advisory Committee, the Secretary shall, not later than 1 year after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, complete, and shall periodically update thereafter, a strategic plan for each of the core surface transportation research areas, including—

(A) safety;

(B) operations;

(C) infrastructure (including pavements and structures);

(D) planning and environment;

(E) policy; and

(F) asset management.

(B) COMPONENTS.—The strategic plan shall specify—

(1) surface transportation research objectives and priorities;

(2) specific surface transportation research projects to be conducted;

(3) recommended technology transfer activities to promote timely deployment of advances resulting from the surface transportation research conducted; and

(4) short- and long-term technology development and deployment activities.

(C) REVIEW AND SUBMISSION OF FINDINGS.—The Secretary shall enter into a contract with the Transportation Research Board of the National Academy of Sciences, on behalf of the Secretary and Technology Coordinating Committee of the National Research Council, under which—

(A) the Transportation Research Board shall—

(i) review the research and technology planning and implementation process used by Federal Highway Administration; and

(ii) evaluate each of the strategic plans prepared under this section—

(I) to ensure that sufficient stakeholder input is being solicited and considered throughout the preparation process; and

(II) to offer recommendations relevant to research priorities, project selection, and deployment strategies; and

(B) the Secretary shall ensure that the Research and Technology Coordinating Committee, in a timely manner, informs the Congress on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of the findings of the review and evaluation under subparagraph (A).

(B) RECOMMENDATIONS.—After receiving, and based on, extensive consultation and input from stakeholders representing the transportation community and the Surface Transportation Research Advisory Committee, the Secretary shall, not later than 1 year after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, complete, and shall periodically update thereafter, a strategic plan for each of the core surface transportation research areas, including—

(A) safety;

(B) operations;

(C) infrastructure (including pavements and structures);

(D) planning and environment;

(E) policy; and

(F) asset management.

(C) COMPONENTS.—The strategic plan shall specify—

(1) surface transportation research objectives and priorities;

(2) specific surface transportation research projects to be conducted;

(3) recommended technology transfer activities to promote timely deployment of advances resulting from the surface transportation research conducted; and

(4) short- and long-term technology development and deployment activities.

(D) CONSISTENCY WITH GOVERNMENT PERFORMANCE AND RESULTS ACT OF 1993.—The plans and reports developed under this section shall be consistent with, and incorporated as part of, those plans developed under sections 306 of title 5 and sections 1115 and 1116 of title 31.

"(4) RESPONSES OF SECRETARY.—Not later than 60 days after the date of completion of the strategic plan under this subsection, 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 written responses to each of the recommendations of the Research and Technology Coordinating Committee of the National Research Council, under each of the following:

(A) (i) review the research and technology planning and implementation process used by Federal Highway Administration; and

(ii) evaluate each of the strategic plans prepared under this section—

(I) to ensure that sufficient stakeholder input is being solicited and considered throughout the preparation process; and

(II) to offer recommendations relevant to research priorities, project selection, and deployment strategies; and

(B) the Secretary shall ensure that the Research and Technology Coordinating Committee, in a timely manner, informs the Congress on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of the findings of the review and evaluation under subparagraph (A).

(E) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this paragraph $200,000 for each fiscal year.

(2) IMPLEMENTATION.—The Secretary shall—

(I) provide for the integrated planning, coordination, and consultation among the operating administrations of the Department of Transportation and all other Federal agencies with responsibility for surface transportation research and technology development, State and local governments, institutions of higher education, industry, and other private and public sector organizations engaged in surface transportation-related research and development activities; and

(II) ensure that final research and technology development programs of the Department do not duplicate other Federal, State, or private sector research and development programs.

(f) SURFACE TRANSPORTATION RESEARCH AND TECHNOLOGY DEPLOYMENT STRATEGIC PLAN.—

(A) IN GENERAL.—The National Research Council shall establish and carry out,
through fiscal year 2009, a new strategic highway research program.

(b) Basis; Priorities.—With respect to the program established under subsection (a), the Secretary shall:

(1) the program shall be based on—

(A) National Research Council Special Report No. 269, entitled ‘Strategic Highway Research’; and

(B) the results of the detailed planning work subsequently carried out to scope the research areas through National Cooperative Research Program Project 20-58;

(2) the scope and research priorities of the program shall—

(A) be defined through stakeholder input in the form of workshops, symposia, and panels; and

(B) include an examination of—

(i) the roles of highway infrastructure, drivers, and vehicles in fatalities on public roads;

(ii) high-risk areas and activities associated with the greatest numbers of highway fatalities;

(iii) the roles of various levels of government agencies and non-governmental organizations in highway safety fatalities (including recommendations for methods of strengthening highway safety partnerships);

(iv) measures that may save the greatest numbers of lives in the short- and long-term;

(v) renewal of aging infrastructure with minimum impact on users of facilities;

(vi) driving behavior and likely crash causal factors to support improved countermeasures;

(vii) reduction in congestion due to nonrecurring congestion;

(viii) planning and designing of new road capacity to meet mobility, economic, environmental, and community needs;

(3) the program shall consider, at a minimum, the following in relation to the implementation of the Strategic Highway Safety Plan prepared by the American Association of State Highway and Transportation Officials:

(4) the research results of the program, expressed in terms of technologies, methodologies, and other appropriate categorizations, shall be disseminated to practicing engineers as soon as practicable for their use.

(c) Program Administration.—In carrying out this section the National Research Council shall ensure, to the maximum extent practicable, that—

(1) the best projects and researchers are selected for national research for the program and priorities described in subsection (b)—

(A) on the basis of the merit of each submitted proposal; and

(B) through the use of open solicitations and selection by a panel of appropriate experts;

(2) the National Research Council acquires a qualified, permanent core staff with the ability and expertise to manage a large research program and multiyear budget;

(3) the stakeholders are involved in the governance of the program, at the executive, overall program, and technical levels, through the use of expert panels and committees; and

(4) there is no duplication of research effort between the program established under this section and the surface transportation environment cooperative research program established under section 307 of any other research effort of the Department.

(d) National Academy of Sciences.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities relating to research, technology and technology transfer described in subsections (b) and (c) as the Secretary determines to be appropriate.

(e) Report on Implementation of Results.—

(1) in General.—Not later than October 1, 2007, the Secretary shall enter into a contract with the Transportation Research Board of the National Academy of Sciences under which the Transportation Research Board shall complete a report on the strategies and administrative structure to be used for implementation of the results of new strategic highway research program.

(2) Components.—The report under paragraph (1) shall include, with respect to the new strategic highway research program—

(A) an identification of the most promising results of research under the program (including the persons most likely to use the results);

(B) a discussion of potential incentives for, impediments to, and methods of, implementing those results;

(C) an estimate of costs that would be incurred in expediting implementation of those results; and

(D) recommendations for the way in which implementation of the results of the program under this section should be conducted, coordinated, and supported in future years, including the use of the administrative structure and organization best suited to carry out those responsibilities.

(3) Consultation.—In developing the report, the Transportation Research Board shall consult with a wide variety of stakeholders, including—

(A) the American Association of State Highway Officials;

(B) the Federal Highway Administration; and

(C) the Surface Transportation Research Technology Advisory Committee.

(4) Submission.—Not later than February 1, 2009, 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 the report under this subsection.

*510. University transportation centers

(a) Centers.—

(1) In General.—During fiscal year 2004, the Secretary shall provide grants to 40 nonprofit institutions of higher learning (or consortia of institutions of higher learning) to establish centers to address transportation design, management, research, development, and technology matters, especially the education and training of greater numbers of individuals to enter into the professional field of transportation.

(2) Distribution of Centers.—Not more than 1 university transportation center (or lead university in a consortium of institutions of higher learning), other than a center or university selected through a competitive process, may be located in any State.

(3) Identification of Centers.—The university transportation centers established under this section shall—

(A) comply with applicable requirements under subsection (c); and

(B) be located at the institutions of higher learning specified in paragraph (4).

(4) Identification of Groups.—For the purpose of making grants under this subsection, the following grants are identified:

(A) Group A shall consist of the 10 regional centers selected under subsection (b).

(B) Group B.—Group B shall consist of the following:

(i) the Research and Special Programs Administration;

(ii) the Federal Highway Administration; and
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"(iii) the Federal Transit Administration.

(c) CENTER REQUIREMENTS.—

(1) IN GENERAL.—With respect to a university transportation center established under subsection (a) or (b), the institution or consortium that receives a grant to establish the center—

(A) shall annually contribute at least $250,000 to the operation and maintenance of the center, except that payment by the institution or consortium of the salary required for transportation-related faculty and staff for a period greater than 90 days may not be counted against that contribution;

(B) shall have established, as of the date of receipt of the grant, undergraduate or graduate programs in—

(i) civil engineering;

(ii) transportation engineering;

(iii) transportation systems management and operations; or

(iv) any other field significantly related to surface transportation systems, as determined by the Secretary in 2007;

(C) not later than 120 days after the date on which the institution or consortium receives notice of selection as a site for the establishment of a university transportation center under this section, shall submit to the Secretary a 6-year program plan for the university transportation center that includes, with respect to the center—

(i) a description of the purposes of programs to be conducted by the center;

(ii) a description of the undergraduate and graduate transportation education efforts to be carried out by the center;

(iii) a description of the nature and scope of research to be conducted by the center;

(iv) a list of personnel, including the roles and responsibilities of those personnel within the center; and

(v) a detailed budget, including the amount of contributions by the institution or consortium to the center; and

(D) shall establish an advisory committee that—

(i) is composed of a representative from each of the State transportation department of the States in which the institution or consortium is located, the Department of Transportation, and the institution or consortium, as appointed by those respective entities;

(ii) will, in accordance with subparagraph (2), shall review and approve or disapprove the plan of the institution or consortium under subparagraph (C); and

(iii) shall, at a minimum, for the fiscal year covered by the grant, maintain in the center—

(a) a description of the purposes of programs to be conducted by the center;

(b) a detailed summary of the budget for those educational activities; and

(c) a description of the research described in the report with respect to the strategic plan under, and the goals of, this section;

(ii) the research reviewed by the report, and that recommend modifications to individual project plans;

(iii) the results of the research before publication of those results; and

(iv) the results of the research.

(C) INTERNET AVAILABILITY.—Each report under this section that is received by the Secretary shall be published—

(i) on the Internet on the Department of Transportation; and

(ii) by the University Transportation Center.

(S) APPROVAL OF PLANS.—A plan of an institution or consortium described in paragraphs (1) through (5) of title 23, an annual report on the projects and activities of the university transportation center for which funds are made available under section 2001 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 that contains, at a minimum, for the fiscal year covered by the report, a description of—

(A) the goals of the center; the overall outcomes of the research.

(E) technology transfer and implementation efforts of the center.

(F) PROGRAM COORDINATION.—The Secretary shall—

(1) coordinate the research, education, training, and technology transfer activities carried out by recipients of grants under this section; and

(2) establish and operate a clearinghouse for, and disseminate, the results of those activities.

(G) FUNDING.—

(1) NUMBER AND AMOUNT OF GRANTS.—The Secretary shall make the following grants under this subsection:

(A) GROUP A.—For each of fiscal years 2004 through 2009, the Secretary shall make a grant in the amount of $20,000,000 to each of the institutions in group A (as described in subsection (a)(4)(A)).

(B) GROUP B.—The Secretary shall make a grant to each of the institutions in group B (as described in subsection (a)(4)(B)) in the amount of—

(i) $1,000,000 for each of fiscal years 2004 and 2005, and

(ii) $5,000,000 for each of fiscal years 2006 and 2007.

(C) GROUP C.—For each of fiscal years 2004 through 2007, the Secretary shall make a grant in the amount of $10,000,000 to each of the institutions in group C (as described in subsection (a)(4)(C)).

(D) GROUP D.—For each of fiscal years 2004 through 2009, the Secretary shall make a grant in the amount of $25,000,000 to each of the institutions in group D (as described in subsection (a)(4)(D)).

(E) LIMITED GRANTS FOR GROUPS B AND C.—For each of fiscal years 2008 and 2009, of the institutions classified in groups B and C (as described in subsection (a)(4)(B) and (C)), the Secretary shall select and make a grant in the amount of $10,000,000 to each of not more than 15 institutions.

(F) USE OF FUND.—

(A) IN GENERAL.—Of the funds made available for a fiscal year to a university transportation center established under subsection (a) or (b)—

(i) not less than $250,000 shall be used to establish and maintain new faculty positions for the teaching of undergraduate, transportation-related courses;

(ii) not more than $1,000,000 in the aggregate, may be used to construct or improve transportation-related laboratory facilities; and

(iii) not more than $300,000 for the fiscal year may be used for student internships of not more than 180 days in duration to enable students to gain experience by working on transportation projects as interns with design or construction firms.

(B) FACILITIES AND ADMINISTRATION FEE.—Not more than 10 percent of any grant made available to a university transportation center (or any institution or consortium that establishes such a center) for a fiscal year may be used to pay to the appropriate non-profit institution of higher learning any administration and facilities fee (or any similar overhead fee) for the fiscal year.

(C) LIMITATION ON AVAILABILITY OF FUNDS.—Funds made available under this subsection shall remain available for obligation for a period of 2 years after September 30 of the fiscal year for which the funds are authorized.

511. Multistate corridor operations and management

(A) IN GENERAL.—The Secretary shall encourage multistate corridor-agreements, coalitions, or other arrangements to promote regional cooperation, planning, and
§ 512. Transportation analysis simulation system

(a) Continuation of TRANSIMS Development.

(1) In General.—The Secretary shall continue the deployment of the advanced transportation model known as the ‘Transportation Analysis Simulation System’ (referred to as ‘TRANSIMS’) developed by the Los Alamos National Laboratory.

(2) Requirements and Considerations.—In carrying out paragraph (1), the Secretary shall—

(A) further improve TRANSIMS to reduce the cost and complexity of using the TRANSIMS model;

(B) continue development of TRANSIMS for applications to facilitate transportation planning, regulatory compliance, and response to natural disasters and other transportation disruptions; and

(C) assist State transportation departments and metropolitan planning organizations, in the implementation of TRANSIMS by providing training and technical assistance.

(b) Eligible Activities.—The Secretary shall use funds made available to carry out this section—

(1) to further develop TRANSIMS for additional applications, including—

(A) congestion analyses;

(B) major investment studies;

(C) economic impact analyses;

(D) alternative analyses;

(E) freight movement studies;

(F) emergency evacuation studies;

(G) port studies; and

(H) airport access studies;

(2) provide training and technical assistance with respect to the implementation and application of TRANSIMS to States, local governments, and metropolitan planning organizations with responsibility for travel modeling;

(3) develop methods to simulate the national transportation infrastructure as a single, integrated system for the movement of individuals and goods;

(4) provide funding to State transportation departments and metropolitan planning organizations for implementation of TRANSIMS;

(c) Allocation of Funds.—Of the funds made available to carry out this section for each fiscal year, not less than 15 percent shall be allocated for activities described in subsection (d); and

(d) Funding.—Of the amounts made available under section 2001(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 for each of fiscal years 2004 through 2009, the Secretary shall use $1,000,000 to carry out this section.

(e) Availability of Funds.—Funds made available under this section shall be available to the Secretary through the Transportation Planning, Research, and Development Account of the Office of the Secretary.

(b) Other University Funding.—No university (other than university transportation centers specified in section 23, United States Code (as added by subsection (a)) shall receive funds made available under section 2001 to carry out research unless the university is selected to receive the funds—

(1) through a competitive process that incorporates merit-based peer review; and

(ii) based on a proposal submitted to the Secretary by the university in response to a request for proposals issued by the Secretary.

(2) Conforming Amendment.—Section 5005 of title 49, United States Code, is repealed.

SEC. 2102. STUDY OF DATA COLLECTION AND STATISTICAL ANALYSIS EFFORTS.

(a) Definitions.—In this section:

(1) Administration.—The term ‘Administration’ means the Federal Highway Administration.

(2) Board.—The term ‘Board’ means the Transportation Research Board of the National Academy of Sciences.

(3) Bureau.—The term ‘Bureau’ means the Bureau of Transportation Statistics.

(4) Department.—The term ‘Department’ means the Department of Transportation.

(b) Priority Areas of Effort.—

(1) Statistical Standards.—The Secretary shall—

(A) direct the Bureau to assume the role of the lead agency in working with other agencies of the Department to establish, by not later than the date that is 1 year after the effective date of this Act, statistical standards for the Department;

(B) conduct a Federal government-wide study of transportation statistics are and may be used for the purpose of national security; and

(C) submit to the Transportation Security Administration recommendations for means by which the use of transportation statistics for the purpose of national security may be improved.

(2) Data Collection Efforts.—The Secretary shall develop new protocols for adapting data collection and delivery efforts in existence as of the date of enactment of this Act to deliver information in a more timely and frequent fashion.

(c) Study.—

(1) In General.—Not later than 90 days after the date of enactment of this Act, the Secretary shall provide a grant to, or enter into a cooperative agreement or contract with, the Board for the conduct of a study of the data collection and statistical analysis efforts of the Department with respect to the modes of surface transportation for which funds are made available under this Act.

(2) Purpose.—The purpose of the study shall be to provide to the Department information for use by agencies of the Department in providing to surface transportation agencies and individuals engaged in the surface transportation field higher quality, and more relevant and timely, data, statistical analyses, and products.

(d) Content.—The study shall include—

(A) an examination and analysis of the efforts, analyses, and products (with respect to the modes of surface transportation specified in subsection (c) of section 111 of title 49, United States Code; and

(B) an examination and analysis of data collected by, methods of data collection of, and analyses performed by, agencies within the Department; and

(c) Recommendations relating to—

(i) the future efforts of the Department in the area of surface transportation with respect to—

(A) types of data collected;

(B) methods of data collection;

(C) types of analyses performed; and

(d) Products made available by the Secretary to the transportation community and Congress;

(ii) the means by which the Department may cooperate with States, Federal transportation departments to provide technical assistance in the use of data collected by traffic operations centers; and

(iii) duplication of efforts within the Department, including in ways in which—

(A) the duplication may be reduced or eliminated; and

(B) each agency of the Department may cooperate with, and complement the efforts of, the others.

(4) Consultation.—In conducting the study, the Board shall consult with such stakeholders, agencies, and other entities as the Board considers to be appropriate.

(5) Report.—Not later than 1 year after the date on which a grant is provided, or a cooperative agreement or contract is entered into, for a study under paragraph (1)—

(A) the Board shall submit to the Secretary, the Committee on Environment and Public Works of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a final report on the results of the study; and

(B) the results of the study shall be published—

(i) by the Secretary, on the Internet website of the Department; and

(ii) by the Board, on the Internet website of the Board.

(6) Implementation of Results.—The Bureau shall, to the maximum extent practicable, implement any recommendations made with respect to the results of the study under this subsection.

(7) Compliance.—

(a) In General.—The Comptroller General of the United States shall conduct a review of the study under this subsection.

(b) Noncompliance.—If the Comptroller General of the United States determines that the Bureau failed to conduct the study under this subsection, the Bureau shall be ineligible to receive funds from the Highway Trust Fund until such time as the Bureau conducts the study under this subsection.

(8) Conforming Amendments.

(a) Fiscal Year 2007.—The fiscal year 2007 Appropriations Act (Public Law 109-340) makes special reference to the amendments made by this section.

(b) Fiscal Year 2008.—The fiscal year 2008 Appropriations Act (Public Law 110-161) makes special reference to the amendments made by this section.

(c) Fiscal Year 2009.—The fiscal year 2009 Appropriations Act (Public Law 110-161) makes special reference to the amendments made by this section.

(d) Section (m).—The fiscal year 2009 Appropriations Act (Public Law 110-161) amends section (m) of title 49, United States Code, and section (m) of title 49, United States Code, is amended by—

(A) redesignating subsection (k) as subsection (m); and

(B) by inserting after subsection (j) the following:

(K) Annual Report.—

(I) In General.—For fiscal year 2009 and each fiscal year thereafter, the Secretary shall prepare and submit to the Secretary an annual report that
“(A) describes progress made in responding to study recommendations for the fiscal year; and

“(B) summarizes the activities and expenditure of funds by the Bureau for the fiscal year.

“(2) AVAILABILITY.—The Bureau shall—

“(A) make the report described in paragraph (1) available to the public; and

“(B) publish the report on the Internet website of the Bureau.

“(3) COMBINATION OF REPORTS.—The report required under paragraph (1) may be included in or combined with the Transportation Statistics Annual Report required by subsection (j).

“(1) EXPENDITURE OF FUNDS.—Funds from the Highway Trust Fund (other than the Mass Transit Account) that are authorized to be appropriated, and made available, in accordance with section 2001(a)(3) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 shall be used only for the collection and statistical analysis of information relating to surface transportation systems;” and

“(C) in subsection (m) (as redesignated by subparagraph (A)), by inserting “surface transportation” after “sale of”.

“(2) The analysis for chapter 55 of title 49, United States Code, is amended by striking the item relating to section 5505 and inserting the following:

“5505. University transportation centers.”.

SEC. 2103. CENTER FOR SURFACE TRANSPORTATION EXCELLENCE.

(a) ESTABLISHMENT.—The Secretary shall establish the centers for surface transportation excellence described in subsection (b) to promote high-quality outcomes in support of strategic national programs and activities, including—

(1) the environment;

(2) operations;

(3) surface transportation safety;

(4) project finance; and

(5) asset management.

(b) CENTERS.—The centers for surface transportation excellence referred to in subsection (a) are—

(1) a Center for Environmental Excellence to provide technical assistance, information sharing of best practices, and training in the use of tools and decision-making processes to assist States in planning and delivering environmentally-sound surface transportation projects;

(2) a Center for Operations Excellence to provide support for an integrated and coordinated national program for implementing operations in planning and management (including tools and decision-making processes) for the transportation system in the United States;

(3) a Center for Excellence in Surface Transportation Safety to implement a program of support for State transportation departments, including—

(A) the maintenance of an Internet site to provide critical information on safety programs and projects;

(B) the provision of technical assistance to support a lead State transportation department for each of the safety emphasis areas (as identified by the Federal Highway Administration) for the transportation system in the United States; and

(C) the provision of training and education to enhance knowledge of personnel of State transportation departments in support of safety programs and projects;

(4) a Center for Excellence in Project Finance to—

(A) provide support to State transportation departments for the development of finance plans and project oversight tools; and

(B) to develop and offer training in state-of-the-art financing methods to advance project finance; and

(C) a Center for Excellence in Asset Management to develop and conduct research, provide training and education, and disseminate information on the benefits and tools for asset management.

(c) PROGRAM ADMINISTRATION.—

(1) IN GENERAL.—Before funds authorized under this section for fiscal years 2005 through 2009 are obligated, the Secretary shall review and approve a multiyear strategic plan to be submitted by each of the centers.

(2) TIMING.—The plan shall be submitted before the beginning of fiscal year 2005 and, subsequently, shall be annually updated.

(3) CONTENT.—The plan shall include—

(A) a list of research and technical assistance projects funded;

(B) a description of any other technology transfer activities, including a summary of training efforts;

(C) cooperation and competition.—

(A) IN GENERAL.—The Secretary shall carry out this section by making grants to, or entering into contracts, cooperative agreements, and other transactions with—

(i) the National Academy of Sciences;

(ii) the American Association of State Highway and Transportation Officials;

(iii) planning organizations;

(iv) a Federal laboratory;

(v) a State agency;

(vi) an association, institution, or organization; or

(vii) a for-profit or nonprofit corporation.

(B) COMPETITION; REVIEW.—All parties entering into cooperative agreements, or other transactions with the Secretary, or receiving grants, to perform research or provide technical assistance under this section shall be selected, to the maximum extent practicable—

(i) on a competitive basis; and

(ii) on the basis of the results of peer review of proposals submitted to the Secretary.

(4) NONDUPLICATION.—The Secretary shall ensure that activities conducted by each of the centers do not duplicate, and to the maximum extent practicable, are integrated and coordinated with similar activities conducted by the Federal Highway Administration, the local technical assistance program, university transportation centers, and other research efforts supported with funds authorized by this title.

(d) ALLOCATIONS.—

(1) IN GENERAL.—For each of fiscal years 2004 through 2009, of the funds made available under section 2001(a)(1)(A), the Secretary shall set aside $140,000,000 to carry out this section.

(2) ALLOCATION OF FUNDS.—Of the funds made available under paragraph (1)—

(A) 20 percent shall be allocated to the Center for Environmental Excellence established under subsection (b)(1);

(B) the remainder of the amount allocated to the Center for Operations Excellence established under subsection (b)(2); and

(C) 20 percent shall be allocated to the Center for Excellence in Surface Transportation Safety established under subsection (b)(3).

(D) 10 percent shall be allocated to the Center for Excellence in Project Finance established under subsection (b)(4); and

(E) 20 percent shall be allocated to the Center for Excellence in Asset Management established under subsection (b)(5).

(3) APPLICABILITY OF TITLE 21.—Funds made available under this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share shall be 100 percent.

SEC. 2104. MOTORCYCLE CRASH CAUSATION STUDY GRANTS.

(a) GRANTS.—The Secretary shall provide grants for the purpose of conducting a comprehensive, in-depth motorcycle crash causation study that employs the common international methodology for in-depth motorcycle accident investigation of the Organization for Economic Cooperation and Development.

(b) FUNDING.—Of the amounts made available under section 2001(a)(3), $1,500,000 for each of fiscal years 2005 through 2009 shall be available to carry out this section.

SEC. 2105. TRANSPORTATION TECHNOLOGY INNOVATION AND DEMONSTRATION PROGRAM.

(a) IN GENERAL.—Section 5117(b)(3) of the Transportation Equity Act for the 21st Century (112 Stat. 449; 112 Stat. 861; 115 Stat. 2380) is amended—

(1) in subparagraph (B)—

(A) in clause (i)—

(I) in the first sentence—

(I) by striking “Build an” and inserting “Build or integrate an”; and

(II) by striking “$2,000,000” and inserting “$2,500,000”; and

(ii) in the second sentence—

(I) by striking “300,000 and that” and inserting “300,000, and”;

(II) by inserting before the period at the end the following: “, and includes major transportation corridors serving that metropolitan area’s”; and

(B) in clause (ii), by striking all that follows “follows” and inserting “reinvested in the intelligent transportation infrastructure system.”;

(C) by striking clause (iii) and (iv) and redesignating clauses (iv) and (v) as clauses (iii) and (iv), respectively;

(d) in subparagraph (C)(ii), by striking “July 1, 2002” and inserting “the date that is 180 days after the date of enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005”;

(c) in subparagraph (E), by striking clause (ii) and inserting the following:

“(ii) and inserting before the end the following: “, and includes major transportation corridors serving that metropolitan area’s”; and

“(ii) SAFETEA.—There are authorized to be appropriated from the Highway Trust Fund other than the Mass Transit Account $5,000,000 for each fiscal year to carry out this paragraph.

“(ii) AVAILABLE; NO REDUCTION OR SETASIDE.—Amounts made available by this sub-paragraph—

“(A) shall remain available until expended; and

“(B) shall not be subject to any reduction or setaside;”.

(c) by striking “and setting aside” and inserting “and designating the following:

“(II) $5,000,000 for each fiscal year to carry out the following:

“(i) This Act.—Of the amounts”;

and

“(B) by adding at the end the following:

“(ii) USE OF RIGHTS-OF-WAY.—

(A) IN GENERAL.—An intelligent transportation system project described in paragraph (3) or (6) that involves privately owned intelligent transportation system components shall be required to carry out using funds made available from the Highway Trust Fund shall not be subject to any law (including a regulation of)
SEC. 2201. INTELLIGENT TRANSPORTATION SYS- TEM RESEARCH AND TECHNICAL AS- SISTANCE PROGRAM.

(a) In General.—Chapter 5 of title 23, United States Code (as amended by section 2201), is amended by adding at the end the following:

“SUBCHAPTER II—INTELLIGENT TRANSPORTATION SYSTEM RESEARCH AND TECHNICAL ASSISTANCE PROGRAM

§ 521. Finding

“Congress finds that continued investment in arresting and standards development, research, technical assistance for State and local governments, and systems integration is needed to achieve the rate at which intelligent transportation systems—

“(1) are incorporated into the national surface transportation network; and

“(2) as a component of transportation, improve transportation safety and efficiency and reduce costs and negative impacts on communities and the environment.

§ 522. Goals and purposes

“(a) Goals.—The goals of the intelligent transportation system research and technical assistance program include—

“(1) enhancement of surface transportation efficiency and facilitation of internationalism and international trade—

“(A) to meet a significant portion of future transportation needs, including public access to employment, goods, and services; and

“(B) to reduce regulatory, financial, and other transaction costs to public agencies and system users;

“(2) reduction, acceleration of the use of intelligent transportation systems to assist in the achievement of national transportation safety goals, including the enhancement of safety for all users of surface transportation who use motorized vehicles, with particular emphasis on decreasing the number and severity of collisions;

“(3) protection and enhancement of the natural environment and communities affected by surface transportation, with particular emphasis on assisting State and local governments in achieving national environmental goals;

“(4) accommodation of the needs of all users of surface transportation systems, including—

“(A) operators of commercial vehicles, passenger vehicles, and motorcycles;

“(B) users of public transportation systems (with respect to intelligent transportation system user services); and

“(C) individuals with disabilities; and

“(6) improvement of the ability of the United States to respond to emergencies and natural disasters; and

“(B) enhancement of national security and defense needs.

“(b) Purposes.—The Secretary shall carry out activities under this subchapter to—

“(1) assist in the development of intelligent transportation system technologies;

“(2) ensure that Federal, State, and local transportation officials have adequate knowledge of intelligent transportation systems for full consideration in the transportation planning process;

“(3) improve regional cooperation, interoperability, and operations for effective intelligent transportation system performance;

“(4) promote the innovative use of private resources;

“(5) assist State transportation department in developing a workforce capable of developing, operating, and maintaining intelligent transportation systems;

“(6) maintain an updated national ITS architecture that ensures an effective Federal presence in the formulation of domestic and international ITS standards;

“(7) advance commercial vehicle operations components of intelligent transportation systems—

“(A) to improve the safety and productivity of commercial vehicles and drivers; and

“(B) to reduce costs associated with commercial vehicle operations and Federal and State commercial vehicle regulatory requirements;

“(8) evaluate costs and benefits of intelligent transportation systems projects;

“(9) improve, as part of the Archived Data Service and in cooperation with the Bureau of Transportation Statistics, the collection of surface transportation system condition and performance data through the use of intelligent transportation system technologies; and

“(B) to reduce costs associated with commercial vehicle operations and Federal and State commercial vehicle regulatory requirements;

“(8) evaluate costs and benefits of intelligent transportation systems projects;

“(9) improve, as part of the Archived Data Service and in cooperation with the Bureau of Transportation Statistics, the collection of surface transportation system condition and performance data through the use of intelligent transportation system technologies; and

“(10) ensure access to transportation information and services by travelers of all ages.

§ 523. Definitions

“In this subchapter:

“(1) COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS.—The term ‘commercial vehicle information systems and networks’ means the information systems and communications networks that support commercial vehicle operations.

“(2) COMMERCIAL VEHICLE OPERATIONS.—

“(A) IN GENERAL.—The term ‘commercial vehicle operations’ means motor carrier operations and other regulatory activities associated with the commercial movement of goods (including hazardous materials) and passengers;

“(B) INCLUSION.—The term ‘commercial vehicle operations’, with respect to the public sector, includes—

“(i) the issuance of operating credentials; and

“(ii) the administration of motor vehicle fuel taxes; and

“(11) road safety and border crossing inspection and regulatory compliance operations.

“(3) INTELLIGENT TRANSPORTATION INFRA- STRUCTURE.—The term ‘intelligent transportation infrastructure’ means integrated transportation systems, including highway, public transportation, rail, aviation and water transportation systems, systems components, as defined by the Secretary.

“(4) INTELLIGENT TRANSPORTATION SYS- TEM.—The term ‘intelligent transportation system’ means electronic, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

“(5) NATIONAL ITS ARCHITECTURE.—The term ‘national ITS architecture’ means the common framework for interoperability adopted by the Secretary that defines—

“(A) the functions associated with intelligent transportation system user services;

“(B) the physical entities or subsystems within which the services are provided; and

“(5) the widespread use and adoption of intelligent transportation systems as a component of the surface transportation systems of the United States; and

“(6) interoperability among intelligent transportation system technologies implemented throughout the States.

§ 524. General authorities and requirements

“(a) Scope.—Subject to this subchapter, the Secretary shall carry out an ongoing intelligent transportation system research program—

“(1) to research, develop, and operationally test intelligent transportation systems; and

“(2) to provide technical assistance in the nationwide application of those systems as a component of the surface transportation systems of the United States.

“(b) Policy.—Intelligent transportation system operational tests and projects funded under this subchapter shall encourage, but not displace, public-private partnerships or private sector investment in those tests and projects.

“(c) Cooperation with Governmental, Private, and Educational Entities.—The Secretary shall carry out the intelligent transportation system research and technical assistance program in cooperation with—

“(1) State and local governments and other public entities;

“(2) the private sector;

“(3) Federal laboratories (as defined in section 501); and

“(4) colleges and universities, including historically black colleges and universities and other minority institutions of higher education.

“(d) Consultation with Federal Offi- cials.—In carrying out the intelligent transportation system research and technical assistance program, the Secretary, as appropriate, shall consult with—

“(1) the Secretary of Commerce;

“(2) the Secretary of the Treasury;

“(3) the Administrator of the Environ- mental Protection Agency;

“(4) the Director of the National Science Foundation; and

“(5) the Secretary of Homeland Security.

“(e) Technical Assistance, Training, and Information.—The Secretary may provide technical assistance, training, and information to State and local governments seeking to implement, operate, maintain, or evaluate intelligent transportation system technologies and services.

“(f) Transportation Planning.—The Secretary may fund providing to support ade- quate consideration of transportation system management and operations (including intelligent transportation systems) within metropolitan and statewide transportation planning processes.

“(g) Information Clearinghouse.—The Secretary shall—

“(1) maintain a repository for technical and safety data collected as a result of federally sponsored projects carried out under this subchapter; and

“(2) on request, make that information (except for proprietary information and data)
The U.S. Senate has passed legislation that includes a National ITS Program Plan, which is designed to coordinate the development and deployment of intelligent transportation systems in the United States, with the Federal advisory committee described in paragraph (1) shall—

(i) determine the goals, objectives, and milestones referred to in subparagraph (A), including consideration of a 5-year timeframe for the goals and objectives;

(ii) identify activities that provide for the dynamic development, testing, and necessary revisions and protocols to promote and ensure interoperability in the implementation of intelligent transportation systems technologies, including actions taken to establish standards;

(iii) determine the manner in which specific programs and projects will achieve the goals, objectives, and milestones referred to in subparagraph (A) shall be subject to the evaluation of operational tests and other means carried out under this subchapter.

(b) The National ITS Program Plan shall be—

(i) determined by the Secretary after consultation with the National Transportation Equity Act for the 21st Century (112 Stat. 454).

(c) The National ITS Program Plan shall be—

(i) the basis for an on-going research, planning, standards development, deployment, and marketing of ITS systems, projects, and services, and coordinate the development and deployment of intelligent transportation systems in the United States, as the Federal advisory committee described in paragraph (1) shall—

(v) determine the goals, objectives, and milestones referred to in subparagraph (A), including consideration of a 5-year timeframe for the goals and objectives; and

(vi) identify activities that provide for the dynamic development, testing, and necessary revisions and protocols to promote and ensure interoperability in the implementation of intelligent transportation systems technologies, including actions taken to establish standards.

§526. National ITS architecture and standards

(a) In General. The Secretary shall develop and provide appropriate technical guidance and standards for transportation systems and services in existence on the date of enactment of this subchapter. The Secretary shall develop and provide appropriate technical guidance and standards for transportation systems and services in existence on the date of enactment of this subchapter.

(b) Notice. The Secretary shall publish in the Federal Register a notice that describes—

(i) each standard for which the waiver has been withdrawn; and

(ii) the reasons for withdrawing the waiver.

§527. Commercial vehicle information systems and networks deployment

(a) Definitions. In this section:

(1) Commercial vehicle information systems and networks. The term ‘commercial vehicle information systems and networks’ means the information systems and communications networks that provide the capability to—

(A) improve the safety of commercial vehicles;

(B) increase the efficiency of regulatory inspection processes to reduce administrative burdens by advancing technology to facilitate inspections and increase the effectiveness of enforcement efforts;

(C) advance electronic processing of registration information, driver licensing information, fuel tax information, inspection and crash data, and other safety information;

(D) enhance the safe passage of commercial vehicles across the United States and across international borders; and

(E) promote the communication of information among the States and encourage enhanced cooperation and corridor development.

(2) Commercial vehicle operations. —
''(A) IN GENERAL.—The term 'commercial vehicle operations' means motor carrier operations and motor vehicle regulatory activities associated with the commercial movement of goods (including hazardous materials) and passengers.

''(B) INCLUSIONS.—The term 'commercial vehicle operations', with respect to the public sector, includes—

(i) the issuance of operating credentials;

(ii) the administration of motor vehicle and fuel taxes; and

(iii) the administration of roadside safety and border crossing inspection and regulatory compliance operations.

''(C) CORE DEPLOYMENT.—The term 'core deployment' means the deployment of systems and networks in a State necessary to provide the State with—

(A) safety information exchange;

(B) internship carrier and commercial vehicle data;

(C) summaries of past safety performance; and

(D) exchange carrier and commercial vehicle data and credentials information within the State and connect to Safety and Fitness Electronic Records system for access to interstate carrier and commercial vehicle data;

(E) interstate credentials administration to—

(i) perform end-to-end (including carrier application) jurisdiction application processing, and credential issuance, of at least the International Registration Plan and International Fuel Tax Agreement credentials;

(ii) extend the processing to other credentials, including intrastate, title, oversize or overweight requirements, carrier registration, and hazardous materials;

(iii) connect to the International Registration Plan and International Fuel Tax Agreement clearinghouses; and

(iv) address at least 10 percent of the transaction volume handled electronically; and

(v) have the capability to add more carriers and to extend to branch offices where applicable; and

(vi) road-side electronic screening to electronically screen transponder-equipped commercial vehicle carriers and networks at a minimum of 1 fixed or mobile inspection site and to replicate the screening at other sites.

''(D) EXPANDED DEPLOYMENT.—The term 'expanded deployment' means the deployment of systems in a State that—

(A) exceed the requirements of a core deployment of commercial vehicle information systems and networks;

(B) improve safety and the productivity of commercial vehicle operations; and

(C) enhance transportation security.

''(E) PROGRAM.—The Secretary shall carry out a commercial vehicle information systems and networks program to—

(1) improve the safety and productivity of commercial vehicles and drivers; and

(2) reduce costs associated with commercial vehicle operations and Federal and State commercial vehicle regulatory requirements.

''(F) PURPOSE.—It is the purpose of the program to advance the technological capability and promote the deployment of intelligent transportation system applications for commercial vehicle operations, including commercial vehicle, commercial driver, and carrier-specific information systems and networks.

''(G) CORE DEPLOYMENT GRANTS.—

(1) IN GENERAL.—The Secretary shall make grants to States for the core deployment of commercial vehicle information systems and networks.

(2) ELIGIBILITY.—To be eligible for a core deployment grant under this subsection, a State shall—

(A) have a commercial vehicle information systems and networks program plan and a top level system design approved by the Secretary;

(B) certify to the Secretary that the commercial vehicle information systems and networks in the State (including hardware procurement, software and system development, and infrastructure modifications)—

(i) are consistent with the national intelligent transportation systems and commercial vehicle information systems and networks architectures and available standards; and

(ii) promote interoperability and efficiency, to the maximum extent practicable; and

(C) agree to execute interoperability tests developed by the Federal Motor Carrier Safety Administration to verify that the systems of the State conform with the national intelligent transportation systems and networks architecture; and

(D) may not exceed $1,000,000 for each State.

''(H) AMOUNT OF GRANTS.—The maximum aggregate amount a State may receive under this subsection for the core deployment of commercial vehicle information systems and networks does not exceed $2,500,000, including funds received under section 2001(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 for the core deployment of commercial vehicle information systems and networks.

''(I) USE OF FUNDS.—

(A) IN GENERAL.—The Secretary shall—

(i) electronically collect and transmit commercial vehicle and driver inspection data at a majority of inspection sites;

(ii) connect to the Safety and Fitness Electronic Records system for access to commercial vehicle information systems and networks; and

(iii) perform end-to-end (including carrier application) jurisdiction application processing, and credential issuance, of at least the International Registration Plan and International Fuel Tax Agreement credentials.

(B) REMAINING FUNDS.—An eligible State may use the remaining funds received under section 2001(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 (including funds on hand on September 30, 2010) for the core deployment of systems and networks.

''(J) EXPANDED DEPLOYMENT GRANTS.—

(1) IN GENERAL.—For each fiscal year, the Secretary may make grants for expanded deployment of commercial vehicle information systems and networks.

(2) ELIGIBILITY.—Each State that has completed the core deployment of commercial vehicle information systems and networks, or completed the deployment before the end of the grant period, may receive grants.

(3) AMOUNT OF GRANTS.—Each State that has completed the core deployment of commercial vehicle information systems and networks shall be eligible for an expanded deployment grant.

(4) USE OF FUNDS.—A State may use funds for—

(A) expanded deployment of commercial vehicle information systems and networks; and

(B) research and development.

''(K) FUNDING.—Funds authorized to be appropriated to carry out this section shall be used for obligation in the same manner and to the same extent as if the funds were appropriated under chapter 1, except that the funds shall remain available until expended.

''(L) PRIORITY AREAS.—Under the program, the Secretary shall give priority to funding projects that—

(A) assist in the development of an interconnected national intelligent transportation system network that—

(i) improves the reliability of the surface transportation system;

(ii) supports national security;

(iii) reduces, by at least 20 percent, the cost of manufacturing, deploying, and operating intelligent transportation systems networks; components;

(iv) could assist in deployment of the Armed Forces in response to a crisis; and

(v) improves response to, and evacuation of, a major natural or terrorist emergency situation;

(B) address traffic management, incident management, transit management, toll collection, traveler information, or highway operations systems with goals of—

(A) reducing metropolitan congestion by 5 percent by 2010;

(B) ensuring that a national, interoperable, system along with a national traffic information system that includes a user-friendly, comprehensive website, is fully implemented for use by travelers throughout the United States by September 30, 2010; and

(C) improving incident management response, particularly in rural areas, so that rural emergency response times are reduced by an average of 10 minutes; and

(2) subject to subsection (d), improving communication between emergency care providers and trauma centers;

(3) address traffic management, incident management, transit management, toll collection, traveler information, or highway operations systems;

(4) conduct operational tests of the integration of at least 3 crash-avoidance technologies in passenger vehicles;

(5) incorporate human factors research, including the science of the driving process;

(6) facilitate the integration of intelligent transportation, vehicle, and control technologies;

(7) incorporate research on the impact of environmental, weather, and natural conditions on intelligent transportation systems, including the effects of cold climates;

(8) as determined by the Secretary, will improve the overall safety performance of vehicles and roadways, including the use of real-time setting of speed limits through the use of speed management technology; and

(9) examine—

(A) the application to intelligent transportation systems of appropriately modified existing technologies from other industries; and

(C) the development of new, more robust intelligent transportation systems technologies and methodologies; and

(D) develop and test communication technologies that—

(A) are based on an assessment of the needs of officers participating in motor carrier safety program funded under section 31104 of title 49;
“(B) take into account the effectiveness and adequacy of available technology;

“(C) address systems integration, connectivity, and interoperability challenges;

“(D) provide the means for officers participating in a motor carrier safety program funded under section 3104 of title 49 to directly access an intermediate, consistent, and accurate safety and regulatory information on motor carriers, commercial motor vehicles and drivers at roadside or mobile field facilities as;

“(11) enhance intermodal use of intelligent transportation systems for diverse groups, including for emergency and health-related services;

“(12) improve sensing and wireless communications that provide real-time information regarding congestion and incidents;

“(13) develop and test high-accuracy, lane-level, real-time accessible digital map architectures that can be used by intelligent vehicles and intelligent infrastructure elements to facilitate safety and crash avoidance (including establishment of national standards for an open-architecture digital map of all public roads that is compatible with electronic tolling and I-3 systems);

“(14) encourage the dual-use of intelligent transportation system technologies (such as wireless communications) for——

(A) emergency services;

(B) road pricing; and

(C) local economic development; and

“(15) advance the use of intelligent transportation systems to facilitate high-performance transportation systems, such as through——

(A) congestion-pricing;

(B) real-time facility management;

(C) rapid-emergency response; and

(D) just-in-time transit.

(b) OPERATIONAL TESTS.—Operational tests conducted under this section shall be designed for——

(1) the collection of data to permit objective evaluation of the results of the tests;

(2) the derivation of cost-benefit information that is useful to others contemplating deployment of similar systems; and

(3) the development and implementation of standards.

(d) FEDERAL SHARE.—The Federal share of the costs of operational tests under subsection (a) shall not exceed 80 percent.

§ 529. Use of funds

“(a) IN GENERAL.—For each fiscal year, not more than $5,000,000 of the funds made available to carry out this subchapter shall be used to support intelligent transportation system outreach, public relations, displays, tours, and brochures.

(b) APPLICABILITY.—Subsection (a) shall not apply to intelligent transportation system training, scholarships, or the publication or distribution of research findings, technical guidance, or similar documents.

(b) TITLES III—PUBLIC TRANSPORTATION SEC. 3001. SHORT TITLE. This title may be cited as the “Federal Public Transportation Act of 2009.”

SEC. 3002. AMENDMENTS TO TITLE 49, UNITED STATES CODE; UPDATED TERMINOLOGY.

(a) AMENDMENTS TO TITLE 49.—Except as otherwise provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of law, the reference is considered to be to a section or other provision of title 49, United States Code.

(b) UPDATED TERMINOLOGY.—Except for sections 5301(t), 5302(a)(7), and 5315, chapter 55, including the chapter analysis, is amended by striking “mass transportation” each place it appears and inserting “public transportation.”

SEC. 3003. POLICIES, FINDINGS, AND PURPOSES.

(a) DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.—Section 5301(a) is amended to read as follows——

“(a) DEVELOPMENT AND REVITALIZATION OF PUBLIC TRANSPORTATION SYSTEMS.—It is in the economic interest of the United States to foster the development and revitalization of public transportation systems, which are coordinated with other modes of transportation, that are transport efficient, secure, and safe mobility of individuals and minimize environmental impacts.”.

(b) GENERAL FINDINGS.—Section 5301(b)(1) is amended——

(1) by striking “70 percent” and inserting “two-thirds”; and

(2) by striking “urban areas” and inserting “urbanized areas.”

(c) PRESERVING THE ENVIRONMENT.—Section 5301(e) is amended——

(1) by striking “an urban” and inserting “an urbanized”; and

(2) by striking “under sections 5309 and 5310 of this title.”

(d) GENERAL PURPOSES.—Section 5301(f) is amended——

(1) in paragraph (1)——

(A) by striking “improved mass” and inserting “improved public”; and

(B) by striking “public and private mass transportation companies” and inserting “public transportation companies and private companies engaged in public transportation”;

(2) in paragraph (2)——

(A) by striking “urban mass” and inserting “public”; and

(B) by striking “public and private mass transportation companies” and inserting “public transportation companies and private companies engaged in public transportation”;

(3) in paragraph (3)——

(A) by striking “urban mass” and inserting “public”; and

(B) by striking “public or private mass transportation companies” and inserting “public transportation companies or private companies engaged in public transportation”; and

(4) in paragraph (5), by striking “urban mass” and inserting “public.”

SEC. 3004. DEFINITIONS.

Section 5302 is amended——

(1) in paragraph (1)——

(A) in subparagraph (G)(i), by inserting “intercity bus and intercity rail portions of such facility or mall,” after “transportation mall,”; and

(B) in subparagraph (G)(ii), by inserting “except for the intercity bus portion of intermodal facilities for commercial revenue-producing facility;”;

(C) in subparagraph (H)—

(i) by striking “and” after “innovative” and inserting “or”; and

(ii) by striking “or” after the semicolon at the end;

(D) in subparagraph (I), by striking “or” after the semicolon at the end;

(E) by adding at the end the following:

“(8) MOBILITY MANAGEMENT.—The term ‘mobility management’ means a short-range planning or management activity or project that does not include operating public transportation services and——

(A) improves coordination among public transportation providers, including private companies engaged in public transportation; and

(B) addresses customer needs by tailoring public transportation services to specific market niches; or

(C) manages public transportation demand.”.

(2) by amending paragraph (11), as redesignated, to read as follows——

“(11) PUBLIC TRANSPORTATION.—The term ‘public transportation’ means transportation by a conveyance that provides local regular and continuing general or special transportation to the public, but does not include school bus, charter bus, intercity bus or passenger rail, or sightseeing transportation.”.

(3) by amending paragraph (16), as redesignated, to add——

“(F) M ASS TRANSPORTATION.—The term ‘mass transportation’ means transportation by a conveyance that provides local regular and continuing general or special transportation to the public, but does not include school bus, charter bus, intercity bus or passenger rail, or sightseeing transportation.”.

(4) by amending paragraph (17), as redesignated, to read as follows——

“(17) UR BANIZED AREA.—The term ‘urbanized area’ means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an ‘urbanized area’ by the Secretary of Commerce.”.

SEC. 3005. METROPOLITAN TRANSPORTATION PLANNING.

Section 5303 is amended to read as follows——

“§ 5303. Metropolitan transportation planning

“(a) DEFINITIONS.—As used in this section and in section 5304, the following definitions shall apply——

“(I) CONSULTATION.—A ‘consultation’ occurs when I party confers with another identified party in accordance with an established process;

“(II) prior to taking action, considers the views of the other identified party; and

“(III) periodically informs that party about action taken.

“(2) METROPOLITAN PLANNING AREA.—The term ‘metropolitan planning area’ means the geographic area designated under subsection (d), the metropolitan planning organization designated under subsection (c), or the metropolitan planning organization designated under subsection (d).”.

SEC. 3006. NONMETROPOLITAN PLANNING ORGANIZATION.—The term ‘nonmetropolitan planning organization’ means the Policy Board of the organization designated under subsection (c).

SEC. 3007. NONMETROPOLITAN AREA.—The term ‘nonmetropolitan area’ means any geographic area outside all designated metropolitan planning areas.

SEC. 3008. NONMETROPOLITAN LOCAL OFFICIAL.—The term ‘nonmetropolitan local official’ means any elected or appointed official of general purpose local government located in a nonmetropolitan area who is responsible for transportation services for such local government.
(b) General Requirements.—

(1) Development of Plans and Programs.—To accomplish the objectives described in section 301(a), each metropolitan planning organization, in cooperation with the State and public transportation operators, shall develop transportation plans and programs for metropolitan planning areas of the State located.

(2) Contents.—The plans and programs developed under paragraph (1) for each metropolitan planning area shall provide for the development of integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

(3) Process of Development.—The process for developing the plans and programs shall give consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(4) Planning and Project Development.—The metropolitan planning organization, the State Department of Transportation, and any public transportation provider shall agree upon the approaches that will be used to evaluate alternatives and identify transportation improvements, solutions to the most complex problems and pressing transportation needs in the metropolitan area.

(c) Designation of Metropolitan Planning Organizations.—

(1) In General.—To carry out the transportation planning process under this section, a metropolitan planning organization shall be designated for each urban area—

(A) by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the affected population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area); or

(B) in accordance with procedures established by applicable State or local law.

(2) Metropolitan planning organizations designated under paragraph (1) that serve an area identified as a nonattainment area shall consist of—

(A) local elected officials;

(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and

(C) appropriate State officials.

(3) Limitation on Statutory Construction.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

(A) to develop plans and programs for adoption by a metropolitan planning organization; and

(B) to develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

(4) Continuing Designation.—The designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (5).

(5) Redesignation Procedures.—A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that combined represent not less than 75 percent of the existing planning area population (including the incorporated city or cities named by the Bureau of the Census in designating the urbanized area) as appropriate to carry out this section.

(d) Metropolitan Planning Area Boundaries.—

(1) In General.—For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

(2) Included Area.—Each metropolitan planning area—

(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Office of Management and Budget, provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation and shall be continuing.

(3) Identification of New Urbanized Areas Within Existing Planning Area Boundaries.—The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.

(4) Designation of More Than 1 Metropolitan Planning Area in Nonattainment.—Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the boundaries of the metropolitan planning area in existence as of the date of enactment of the Federal Public Transportation Act of 2004 shall be retained, except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in accordance with paragraph (5).

(5) New Metropolitan Planning Areas in Nonattainment.—If an urbanized area is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the boundaries of the metropolitan planning area—

(A) shall be established in accordance with subsection (c)(1); and

(B) shall encompass the areas described in paragraph (2)(A).

(6) Metropolitan Planning Organizations.—

(1) In General.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organization to provide coordinated transportation planning for the entire metropolitan area.

(2) Interstate Compacts.—States are authorized—

(A) to enter into agreements or compacts with other States, which agreements or compacts are not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities that facilitate the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

(ii) may, in accordance with chapter 2 of title 23, be funded using funds allocated under section 202 of title 23.

(f) Coordination of Metropolitan Planning Organizations.—

(1) Nonattainment Areas.—If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans required by this section.

(2) Transportation Improvements Located in Multiple Metropolitan Planning Organizations.—The expenditure of any funds from the Highway Trust Fund is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organization shall coordinate plans regarding the transportation improvement.
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“(3) INTERREGIONAL AND INTERSTATE PROJECT IMPACTS.—Planning for National Highway System, commuter rail projects, or other projects with substantial impacts outside a single planning area or State shall be coordinated directly with the affected, contiguous, metropolitan planning organizations and States.

“(4) COORDINATION WITH OTHER PLANNING PROCESSES.—

“(A) IN GENERAL.—The Secretary shall encourage each metropolitan planning organization to integrate its planning process, to the maximum extent practicable, with those officials responsible for other types of planning and development affected by transportation, including State and local land use planning, economic development, environmental protection, airport operations, housing, and safety.

“(B) OTHER CONSIDERATIONS.—The metropolitan planning process shall develop transportation plans with due consideration of, and in coordination with, other related planning activities within the metropolitan area. This should include the design and delivery of transportation services within the metropolitan area by public and private operators; and

“(i) recipients of assistance under this chapter;

“(ii) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

“(iii) recipients of assistance under section 294 of title 23.

“(g) SCOPE OF PLANNING PROCESS.—

“(1) IN GENERAL.—The goals and objectives developed through the metropolitan planning process for a metropolitan planning area under this section shall address, in relation to the performance of the metropolitan area transportation system—

“(A) supporting the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency, including through services provided by public and private operators;

“(B) increasing the safety of the transportation system for motorized and nonmotorized users;

“(C) increasing the security of the transportation system for motorized and nonmotorized users;

“(D) increasing the accessibility and mobility for freight, including through services provided by public and private operators;

“(E) protecting and enhancing the environment and the protection of habitat, water quality, and agricultural and forest land, while minimizing invasive species, promoting energy conservation, and promoting the linkage between transportation improvements and State and local land use planning and economic development plans (including minimizing adverse health effects from air pollution); and

“(F) enhancing the integration and connectivity of the transportation system, across and between modes, for people and freight, including through services provided by public and private operators;

“(G) promoting efficient system management and operation; and

“(H) emphasizing the preservation and efficient use of the existing transportation system, including services provided by public and private operators.

“(2) SELECTION OF FACTORS.—After solicitation of comments, the metropolitan planning organization shall determine which of the factors described in paragraph (1) are most appropriate to consider.

“(B) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) or (2) shall not be reviewable by any court under title 23, this title, chapter II of title 23, or chapter 5 of title 25.

“(9) DEVELOPMENT OF TRANSPORTATION PLAN.—

“(1) IN GENERAL.—

“(A) REQUIREMENT.—Each metropolitan planning organization shall develop a transportation plan for its metropolitan planning area in accordance with this subsection, and update such plan

“(i) not less frequently than once every 4 years in areas designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)), and in areas that were nonattainment that have been redesignated as attainment, in accordance with paragraph (3) of such section, with a maintenance plan under section 175A of the Clean Air Act (42 U.S.C. 7505a); or

“(B) COORDINATION FACTORS.—In developing the transportation plan under this section, each metropolitan planning organization shall consider the factors described in subsection (f) over a 20-year forecast period.

“(B) FINANCIAL ESTIMATES.—For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

“(2) METRIC.—

“(A) IN GENERAL.—A transportation plan under this subsection shall include a discussion of—

“(i) types of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetland, and other environmental functions; and

“(ii) potential areas to carry out these activities, including a discussion of areas that may have the potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

“(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal, State, and local agencies.

“(3) CONTENTS.—A transportation plan under this subsection shall include a discussion of—

“(A) an identification of transportation facilities, including major roads, transit, multimodal and intermodal facilities, intermodal and other relevant facilities identified by the metropolitan planning organization, which should function as an integrated metropolitan transportation system, emphasizing those facilities that serve important national and regional transportation functions;

“(B) a financial plan that—

“(i) demonstrates how the adopted transportation plan can be implemented;

“(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan;

“(iii) recommends any additional financing strategies for needed projects and programs; and

“(iv) may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if approved by the Secretary and reasonable additional resources beyond those identified in the financial plan were available;

“(C) operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods;

“(D) capital investment and other strategies to preserve the existing metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs.

“(E) proposed transportation and transit enhancement activities.

“(10) CONSULTATION.—

“(A) IN GENERAL.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies and organizations responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

“(B) ISSUES.—The consultation shall involve—

“(i) comparison of transportation plans with nonattainment conservation plans or with maps, if available;

“(ii) comparison of transportation plans to inventories of natural or historic resources, if available; or

“(ii) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkages.

“(5) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the metropolitan planning organization shall coordinate the development of a metropolitan transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

“(6) APPROVAL OF THE TRANSPORTATION PLAN.—Each transportation plan prepared by a metropolitan planning organization shall be—

“(A) approved by the metropolitan planning organization; and

“(B) submitted to the Governor for information purposes at such time and in such manner as the Secretary may reasonably require.

“(11) PARTICIPATION BY INTERESTED PARTIES.—

“(1) DEVELOPMENT OF PARTICIPATION PLAN.—Not less frequently than once every 4 years, each metropolitan planning organization shall develop and adopt a plan for participation in the process for developing the metropolitan transportation plan and programs by—

“(A) citizens;

“(B) affected public agencies;

“(C) representatives of public transportation employees;

“(D) representatives of freight shippers;

“(E) providers of freight transportation services;

“(F) private providers of transportation;

“(G) representatives of users of public transit;

“(H) representatives of users of pedestrian walkways and bicycle transportation facilities; and

“(i) other interested parties.

“(2) CONTENTS OF PARTICIPATION PLAN.—The participation plan—

“(A) shall be developed in a manner the Secretary determines to be appropriate;

“(B) shall be developed in consultation with all interested parties; and

“(C) shall provide that interested parties have reasonable opportunities to comment on—
“(i) the process for developing the transportation plan; and
“(ii) the contents of the transportation plan.

(2) METHODS.—The participation plan shall provide that the metropolitan planning organization shall, to the maximum extent practicable:
“(A) hold any public meetings at convenient and accessible locations and times;
“(B) employ visualization techniques to describe plans; and
“(C) make public information available in electronically accessible format and means, such as the World Wide Web.

(4) IMPLEMENTATION.—Before the metropolitan planning organizations approve a transportation plan or program, each metropolitan planning organization shall certify that it has complied with the requirements of the participation plan it has adopted.

(i) Transportation Improvement Program

(1) Development and Update.—
“(A) In General.—In cooperation with the State and affected operators of public transportation, a metropolitan planning organization shall adopt and implement a metropolitan area that are proposed for funding under title 23 and this chapter through the requirements of this section not later than 1 year after the identification of transportation management areas under paragraph (1).
“(B) Selection of Projects.—
“(A) In General.—All federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under title 23 and this chapter shall be selected for implementation from the approved transportation improvement program by the metropolitan planning organization designated for the area in consultation with the State and any affected public transit operator.
“(B) National Highway System Projects.—Projects on the National Highway System carried out within the boundaries of a metropolitan planning area serving a transportation management area under title 23 and this chapter shall be selected for implementation from the approved transportation improvement program by the metropolitan planning organization designated for the area.

(2) Certification.—
“(A) In General.—The Secretary shall—
“(i) ensure that the metropolitan planning process involving Federal participation in the metropolitan area under title 23 and this chapter shall be selected for implementation from the approved transportation improvement program by the metropolitan planning organization designated for the area in consultation with the State and any affected public transit operator.

(3) Selection of Projects.—
“(A) In General.—Projects listed.

(4) Publication Requirements.—
“(A) Publication of Transportation Improvement Program.—A transportation improvement program involving Federal participation shall be made otherwise available for public review by the cooperative effort of the State, transit operator, and the metropolitan planning organization in cooperation with the funding categories identified in the transportation improvement program.

(5) Congestion Management System.—
“(A) In General.—The transportation planning process shall be coordinated with the requirements of this section and all other applicable Federal law; and
“(B) Subject to subparagraph (B), certify, not less frequently than once every 4 years in nonattainment and maintenance areas (as defined under the Clean Air Act) and not less frequently than once every 5 years in attainment areas (as defined under such Act), that the requirements of this paragraph are met with respect to the metropolitan planning process.

(i) Requirements for Certification.—The Secretary may make the certification under subparagraph (A) if—
“(i) the transportation planning process complies with the requirements of this section; and
“(ii) the transportation plan and a transportation improvement program for the metropolitan planning area have been approved by the metropolitan planning organization and the Governor.

(2) Penalty for Failing to Certify.—Withholding Project Funds.—If the metropolitan planning process of a metropolitan planning organization serving a transportation management area under title 23 and this chapter is not certified, the Secretary may withhold any funds otherwise available to the metropolitan planning area for projects funded under title 23 and this chapter.

(3) Restoration of Withheld Funds.—Any funds withheld under clause (i) shall be restored to the metropolitan planning area when the metropolitan planning process is certified by the Secretary.

(4) Review of Certification.—In making a certification under this paragraph, the Secretary shall consider a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 and this chapter through the requirements of this section.
"(1) ABBREVIATED PLANS FOR CERTAIN AREAS.—

"(1) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated to participate in a metropolitan area under this section, the Secretary may provide for the development of an abbreviated transportation plan and transportation improvement program for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, after considering the complexity of transportation problems in the area.

"(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans for a metropolitan area in nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) for any highway project that will result in an increase in carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

"(2) P REFERENCES.—This subsection applies to any nonattainment area within the metropolitan planning area boundaries determined under subsection (d).

"(d) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project that is not eligible under title 23 or this chapter.

"(e)州 TERTIAL GOVERNMENTS.—Funds set aside under section 104(f) of title 23 or section 5308 of this title shall be available to carry out this section.

"(f) CONTINUATION OF CURRENT REVIEW PRACTICE.—Any decision by the Secretary concerning a plan or program described in this section shall not be considered to be a determination for all areas of the State that provides for the development and implementation of the intermodal transportation system of the State.

"SEC. 3006. STATEWIDE TRANSPORTATION PLANNING.

Section 5304 is amended to read as follows:

"§ 5304. Statewide transportation planning

"(a) GENERAL REQUIREMENTS.—

"(1) DEVELOPMENT OF PLANS AND PROGRAMS.—The policies described in section 5301(a), each State shall develop a statewide transportation plan (referred to in this section as a Plan) and a statewide transportation improvement program (referred to in this section as a Program) for all areas of the State subject to section 5303.

"(2) CONTENTS.—The Plan and the Program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system of the United States.

"(3) PROCESS OF DEVELOPMENT.—The process for developing the Plan and the Program shall—

"(A) provide for the consideration of all modes of transportation and the policies described in section 5301(a); and

"(B) be continuing, cooperative, and comprehensive and be based on the complexity of the transportation problems to be addressed.

"(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—Each State shall—

"(1) coordinate planning under this section with—

"(A) the transportation planning activities under section 5303 for metropolitan areas of the State; and

"(B) other related statewide planning activities, including trade and economic development and related multistate planning efforts; and

"(2) develop the transportation portion of the State implementation plan, as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

"(c) CONSULTATION WITH METROPOLITAN PLANNING AREAS.—States may enter into agreements or compacts with other States for cooperative efforts and mutual assistance in support of activities authorized under this section related to inter- state areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

"(d) SCOPE OF PLANNING PROCESS.—

"(1) IN GENERAL.—Each State shall carry out a statewide transportation planning process that provides for the consideration of projects, strategies, and implementing projects and services that will—

"(A) support the economic vitality of the United States, the States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

"(B) increase the safety of the transportation system for motorized and nonmotorized users;

"(C) increase the security of the transportation system for motorized and nonmotorized users;

"(D) increase the accessibility and mobility of people and freight;

"(E) protect and enhance the environment (including the protection of habitat, water quality, and forested land), while minimizing invasive species, promote energy conservation, promote consistency between transportation improvements and State and local land use planning and economic development patterns, and improve the quality of life (including minimizing adverse health effects from mobile source air pollution and promoting the linkage of the transportation and development goals of the State);

"(F) enhance the integration and connectivity of the transportation system across and between modes through the State, for people and freight;

"(G) promote efficient system management and operation; and

"(H) emphasize the preservation and efficient use of the existing transportation system.

"(2) SELECTION OF PROJECTS AND STRATEGIES.—After soliciting and considering any relevant public comments, the State shall determine which of the projects and strategies described in paragraph (1) are most appropriate.

"(3) MITIGATION ACTIVITIES.—

"(A) IN GENERAL.—A transportation plan under this subsection shall include a discussion of—

"(i) types of potential habitat, hydrological, and environmental mitigation activities and measures for loss of habitat, wetland, and other environmental functions; and

"(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by transportation activities.

"(B) CONSULTATION.—The discussion described in subparagraph (A) shall be developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

"(4) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor described in paragraph (1) shall not be reviewable by any court under title 23, this title, chapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a Plan, a Program, a project or strategy, or the certification of a planning process.

"(e) ADDITIONAL REQUIREMENTS.—In carrying out planning under this section, each State shall consider—

"(1) with respect to nonmetropolitan areas, the concerns of affected local officials with responsibility for transportation;

"(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

"(3) coordination of Plans, Programs, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

"(f) STATEWIDE TRANSPORTATION PLAN.—

"(1) DEVELOPMENT.—Each State shall develop a Plan, with a minimum 20-year forecast for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

"(2) CONSULTATION WITH GOVERNMENTS.—

"(A) METROPOLITAN PLANNING AREAS.—The Plan shall be developed for each metropolitan planning area in the State in cooperation with the metropolitan planning organization designated for the metropolitan planning area under section 5303.

"(B) NONMETROPOLITAN AREAS.—With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in consultation with affected nonmetropolitan officials with responsibility for transportation. The consultation process shall not require the review or approval of the Secretary.

"(3) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

"(4) CONSULTATION, COMPARISON, AND CONSIDERATION.—

"(i) IN GENERAL.—The Plan shall be developed, as appropriate, in consultation with State and local agencies responsible for—

"(I) land use management;

"(II) natural resources;

"(III) environmental protection;

"(IV) conservation; and

"(V) historic preservation.

"(ii) COMPARISON AND CONSIDERATION.—Consultation under clause (i) shall involve—

"(I) comparison of transportation plans to State conservation plans or maps, if available;

"(II) comparison of transportation plans to inventories of natural or historic resources, if available; or

"(III) consideration of areas where wildlife crossing structures may be needed to ensure connectivity between wildlife habitat linkages as appropriate.

"(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the Plan, the State shall—

"(A) provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of nonpublic transportation representa-
freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed Plan; and

(ii) to the maximum extent practicable—

(1) hold any public meetings at convenient and accessible locations and times;

(2) employ visualization techniques to describe the project area in a graphic format; and

(3) make public information available in electronically accessible format and means, such as the World Wide Web.

(b) Mitigation activities.—

(A) In general.—A Plan shall include a discussion of—

(i) the impacts of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetlands, and other environmental functions; and

(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

(B) Consultation.—The discussion described in paragraph (A) shall be—

(1) developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

(2) TRANSPORTATION STRATEGIES.—A Plan shall identify transportation strategies necessary to efficiently serve the mobility needs of people in the State.

(3) Financial plan.—The Plan may include a financial plan that—

(A) demonstrates how the adopted Plan can be implemented;

(B) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Plan;

(C) identifies any additional financing strategies for needed projects and programs; and

(D) may include, for illustrative purposes, additional projects that would be included in the adopted Plan if reasonable additional resources beyond those identified in the financial plan were available.

(4) Selection of projects from illustrative list.—Any decision by the Secretary to select any project from the illustrative list of additional projects described in subparagraph (F)(iv) of section 5303, or section 5304, or any other decision by the Secretary to modify the illustrative list of projects described in subparagraph (F)(iv) of section 5303, shall be—

(A) determined in consultation with affected nonmetropolitan local officials with responsibility for transportation, providers of freight transportation, users of public transit, representatives of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan, and representatives of interested parties with a reasonable opportunity to comment on the proposed Program.

(B) Listed projects.—The Plan shall include feder ally supported surface transportation expenditures within the boundaries of the State.

(5) Listing of projects.—

(A) In general.—The Program shall cover a minimum of 4 years, identify projects by year, be updated not less than once every 4 years.

(B) Publication.—An annual listing of projects for which funds have been obligated in the current year and that are included in the approved Program for surface transportation shall be published or otherwise made available by the cooperative effort of the States, the metropolitan planning organizations, the Federal Highway Administration, and the Federal Transit Administration.

(C) Participation by interested parties.—The listing shall be consistent with the funding categories identified in each metropolitan transportation improvement program.

(D) Individual identification.—

(i) Regionally significant projects.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually by the metropolitan planning organization responsible for the project, in accordance with instructions provided by the Secretary.

(ii) Other projects.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually.

(E) Consistency with statewide transportation plan.—Each project included in the list described in subparagraph (B) shall be—

(i) consistent with the Plan developed under this section for the State;

(ii) identified in the 5-year phase of the project as described in each year of the approved metropolitan transportation improvement program; and

(iii) in compliance with the applicable State air quality implementation plan developed under the Clean Air Act (42 U.S.C. 7401 et seq.). If the project is carried out in an area designated as nonattainment for ozone or carbon monoxide under that Act.

(F) Requirement of anticipated full funding.—The Program shall not include a project as part of the Program, unless full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

(G) Financial plan.—The Program may include a financial plan that—

(i) demonstrates how the approved Program can be implemented;

(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Program, including—

(A) Federal funds set aside pursuant to section 104(i)(1) of title 23 and 5308 of this title shall be available to carry out this section.

(B) Funds set aside pursuant to section 104(i)(1) of title 23 and 5308 of this title shall be available to carry out this section.

(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Program shall be developed in consultation with the tribal government and the Secretary of the Interior.

(D) PARTICIPATION BY INTERESTED PARTIES.—In developing the Program, the State shall provide interested parties a list of activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

(E) Mitigation activities.—

(A) In general.—A Plan shall include a discussion of—

(i) the impacts of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetlands, and other environmental functions; and

(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

(B) Consultation.—The discussion described in paragraph (A) shall be—

(1) developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

(2) TRANSPORTATION STRATEGIES.—A Plan shall identify transportation strategies necessary to efficiently serve the mobility needs of people in the State.

(3) Financial plan.—The Plan may include a financial plan that—

(A) demonstrates how the adopted Plan can be implemented;

(B) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Plan;

(C) identifies any additional financing strategies for needed projects and programs; and

(D) may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

(4) Selection of projects from illustrative list.—Any decision by the Secretary to select any project from the illustrative list of additional projects described in subparagraph (F)(iv) of section 5303, or section 5304, or any other decision by the Secretary to modify the illustrative list of projects described in subparagraph (F)(iv) of section 5303, shall be—

(A) determined in consultation with affected nonmetropolitan local officials with responsibility for transportation, providers of freight transportation, users of public transit, representatives of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan, and representatives of interested parties with a reasonable opportunity to comment on the proposed Program.

(B) Listed projects.—The Plan shall include feder ally supported surface transportation expenditures within the boundaries of the State.

(5) Listing of projects.—

(A) In general.—The Program shall cover a minimum of 4 years, identify projects by year, be updated not less than once every 4 years.

(B) Publication.—An annual listing of projects for which funds have been obligated in the current year and that are included in the approved Program for surface transportation shall be published or otherwise made available by the cooperative effort of the States, the metropolitan planning organizations, the Federal Highway Administration, and the Federal Transit Administration.

(C) Participation by interested parties.—The listing shall be consistent with the funding categories identified in each metropolitan transportation improvement program.

(D) Individual identification.—

(i) Regionally significant projects.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually by the metropolitan planning organization responsible for the project, in accordance with instructions provided by the Secretary.

(ii) Other projects.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually.

(E) Consistency with statewide transportation plan.—Each project included in the list described in subparagraph (B) shall be—

(i) consistent with the Plan developed under this section for the State;

(ii) identified in the 5-year phase of the project as described in each year of the approved metropolitan transportation improvement program; and

(iii) in compliance with the applicable State air quality implementation plan developed under the Clean Air Act (42 U.S.C. 7401 et seq.). If the project is carried out in an area designated as nonattainment for ozone or carbon monoxide under that Act.

(F) Requirement of anticipated full funding.—The Program shall not include a project as part of the Program, unless full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

(G) Financial plan.—The Program may include a financial plan that—

(i) demonstrates how the approved Program can be implemented;

(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Program, including—

(A) Federal funds set aside pursuant to section 104(i)(1) of title 23 and 5308 of this title shall be available to carry out this section.

(B) Funds set aside pursuant to section 104(i)(1) of title 23 and 5308 of this title shall be available to carry out this section.

(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the Program shall be developed in consultation with the tribal government and the Secretary of the Interior.

(D) PARTICIPATION BY INTERESTED PARTIES.—In developing the Program, the State shall provide interested parties a list of activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

(E) Mitigation activities.—

(A) In general.—A Plan shall include a discussion of—

(i) the impacts of potential habitat, hydrological, and environmental mitigation activities that may assist in compensating for loss of habitat, wetlands, and other environmental functions; and

(ii) potential areas to carry out these activities, including a discussion of areas that may have the greatest potential to restore and maintain the habitat types and hydrological or environmental functions affected by the plan.

(B) Consultation.—The discussion described in paragraph (A) shall be—

(1) developed in consultation with Federal and State tribal wildlife, land management, and regulatory agencies.

(2) TRANSPORTATION STRATEGIES.—A Plan shall identify transportation strategies necessary to efficiently serve the mobility needs of people in the State.

(3) Financial plan.—The Plan may include a financial plan that—

(A) demonstrates how the adopted Plan can be implemented;

(B) indicates resources from public and private sources that are reasonably expected to be made available to carry out the Plan;

(C) identifies any additional financing strategies for needed projects and programs; and

(D) may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.
SEC. 3008. PRIVATE ENTERPRISE PARTICIPATION.

Section 5306 is amended—

(1) by striking subsection (b) and—

(A) by striking "5305 of this title" and inserting "5308"; and

(B) by inserting "", as determined by local public transportation authorities, and decision making, after "feasible";

(2) in subsection (b) by striking "5303-5305 of this title" and inserting "5303, 5304, and 5308"; and

(3) by adding at the end the following:

"(c) REGULATIONS.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall issue regulations describing how the requirements under this chapter relating to subpart 3 shall be enforced.".

SEC. 3009. URBANIZED AREA FORMULA GRANTS.

(a) TECHNICAL AMENDMENTS.—Section 5307 is amended—

(1) by striking subsections (h), (j) and (k); and

(2) by redesignating subsections (l), (i), (m), and (n) as subsections (h), (i), (j), and (k), respectively.

(b) DEFINITIONS.—Section 5307(a) is amended—

(1) by amending paragraph (2)(A) to read as follows:

"(A) an entity designated, in accordance with the planning process under sections 5303, 5304, and 5306, by the chief executive officer of a State or a local government, public transportation authorities, and publicly owned operators of public transportation, to receive and apportion amounts under sections 5336 and 5337 that are attributable to transportation management areas designated under section 5303; or";

and

(2) by adding at the end the following:

"(3) SUBRECIPIENT.—The term 'subrecipient' means—

(A) an entity designated, in accordance with the planning process under sections 5303, 5304, and 5306, by the chief executive officer of a State or a local government, public transportation authorities, and publicly owned operators of public transportation, to receive and apportion amounts under sections 5336 and 5337 that are attributable to transportation management areas designated under section 5303; or;

and

(B) planning, including mobility management; and

(c) TRANSIT ENHANCEMENTS.—Section 5307 is amended—

(1) by adding at the end the following:

"(3) TRANSIT ENHANCEMENTS.—The term 'transit enhancement' means—

(A) capital projects, including associated planning, maintenance, and operating costs, and

(B) cost-effective improvements to public transportation systems (or any other public transit systems) that are eligible to receive funds under section 5307(f) and that are provided via a State or local government, public transportation authorities, and publicly owned operators of public transportation, or

(2) by amending subsection (d) to read as follows:

"(d) PUBLIC PARTICIPATION REQUIREMENTS.—

(A) IN GENERAL.—Except as provided under this chapter, no other provision of this chapter applies to this section or to a grant made under this section.

(B) TITLES.—The provision of assistance under this chapter shall not be construed as bringing within the application of title 5, any nonsupervisory employee of a public transportation system (or any other entity performing related functions) to which such chapter is otherwise inapplicable.".

SEC. 3010. PLANNING PROGRAMS.

(a) IN GENERAL.—Section 5308 is amended to read as follows:

"5308. Planning programs

"(a) GRANTS AUTHORIZED.—Under criteria established by the Secretary, the Secretary..."
may award grants to States, authorities of the States, metropolitan planning organizations, and local governmental authorities, make agreements with other departments, agencies, or instrumentalities of the Government, or enter into contracts with private nonprofit or for-profit entities to—

"(1) develop transportation plans and programs;

"(2) plan, engineer, design, and evaluate a public transportation project; or

"(3) conduct technical studies relating to public transportation, including—

(A) studies related to management, planning, operations, capital requirements, and economic development; and

(B) evaluations of previously financed projects;

"(C) peer reviews and exchanges of technical data, information, assistance, and related activities in support of planning and environmental analyses among metropolitan planning organizations and other transportation planners; and

"(D) other similar and related activities preliminary to, and in preparation for, constructing, acquiring, or improving the operation of transportation equipment.

"(b) PURPOSE.—To the extent practicable, the Secretary shall ensure that amounts appropriated pursuant to section 5338 to carry out this section and sections 5303, 5304, and 5306 are used to support balanced and comprehensive transportation planning that considers changes in travel demand and all transportation modes, without regard to the programmatic source of the planning amounts.

"(c) METROPOLITAN PLANNING PROGRAM.—

"(1) ALLOCATIONS TO STATES.—

"(A) IN GENERAL.—The Secretary shall allocate 80 percent of the amount made available under subsection (g)(1) to States to carry out sections 5303 and 5306 in a ratio equal to the population in urbanized areas in each State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census of population.

"(B) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the total amount allocated under this paragraph.

"(2) AVAILABILITY OF FUNDS.—A State receiving an allocation under paragraph (1) shall use such funds only to support metropolitan planning organizations in the State under a formula—

(A) developed by the State in cooperation with the metropolitan planning organizations;

(B) approved by the Secretary of Transportation;

(C) that considers population in urbanized areas; and

(D) that provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section.

"(3) SUPPLEMENTAL ALLOCATIONS.—

"(A) IN GENERAL.—The Secretary shall allocate 20 percent of the amount made available under section (g)(1) to States to supplement allocations made under paragraph (1) for metropolitan planning organizations.

"(B) ALLOCATION FORMULA.—Amounts under this paragraph shall be allocated under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities in complex metropolitan planning areas under sections 5303, 5304, and 5306.

"(c) STATE PLANNING AND RESEARCH PROGRAM.—

"(1) IN GENERAL.—The Secretary shall allocate amounts made available pursuant to subsection (a) to States for grants for comprehensive program contracts to carry out sections 5304, 5306, 5315, and 5322 so that each State receives an amount equal to the ratio of the population in urbanized areas in that State, divided by the total population in urbanized areas in all States, as shown by the latest available decennial census of population.

"(2) MINIMUM ALLOCATION.—Each State shall receive not less than 0.5 percent of the amount allocated under this subsection.

"(d) REÄ®SSURCES.—The Secretary may authorize part of the amount made available under this subsection to be used to supplement amounts available under section (c).

"(3) PLANNING CAPACITY BUILDING PROGRAM.—

"(A) ESTABLISHMENT.—The Secretary shall establish a Planning Capacity Building Program (referred to in this subsection as the Program) to support and fund innovative practices and enhancements in transportation planning.

"(B) PURPOSE.—The purpose of the Program shall be to promote activities that support and strengthen the planning processes required under this section and sections 5303 and 5304.

"(4) ADMINISTRATION.—The Program shall be administered by the Federal Transit Administration in cooperation with the Federal Highway Administration.

"(4) USE OF FUNDS.—

"(A) IN GENERAL.—Appropriations authorized under subsection (g)(1) to carry out this subsection may be used—

(i) to provide incentive grants to States, metropolitan planning organizations, and public transportation operators; and

(ii) to conduct research, disseminate information, and provide technical assistance.

"(B) GRANTS, CONTRACTS, COOPERATIVE AGREEMENTS.—In carrying out the activities described in subparagraph (A), the Secretary may—

(i) expend appropriated funds directly; or

(ii) award grants to, or enter into contracts, cooperative agreements, and other transactions with, a Federal agency, State agency, local governmental authority, association, nonprofit or for-profit entity, or institution of higher education.

"(5) GOVERNMENT'S SHARE OF COSTS.—

Amounts made available to carry out subsections (c), (d), and (e) and may not exceed 80 percent of the costs of the activity unless the Secretary of Transportation determines that it is not feasible or not in the public interest to require State or local matching funds.

"(g) ALLOCATION OF FUNDS.—Of the amount made available under section 5303(b)(2)(B) for fiscal year 2005 and each fiscal year thereafter to carry out this section—

"(1) $5,000,000 shall be allocated for the Planning Capacity Building Program established under subsection (e);

"(2) $20,000,000 shall be allocated for grants under subsection (a)(2) for alternatives analyses required by section 5309(e)(2)(A); and

"(3) the remaining amount—

(A) 82.72 percent shall be allocated for the metropolitan planning program described in subsection (d); and

(B) 17.28 percent shall be allocated to carry out subsection (b).

"(h) REALLOCATIONS.—Any amount allocated under this section that has not been used 3 years after the end of the fiscal year in which the amount was allocated shall be reallocated among the States.

"(i) CONFORMING AMENDMENT.—The item relating to section 5306 in the table of sections for chapter 53 in the Code is amended to read as follows: ‘‘5306. Planning programs.’’

SEC. 3011. CAPITAL INVESTMENT PROGRAM.

(a) SECTION HEADING.—The section heading of section 5309 of chapter 53 is amended as follows: ‘‘5309. Capital investment grants’’.

(b) GENERAL AUTHORITY.—Section 5309(a) is amended—

"(1) in paragraph (1)—

(A) by striking ‘‘(1) The Secretary of Transportation may make grants and loans’’ and inserting the following: ‘‘(1) Grants authorized.—The Secretary may award grants’’;

(B) in subparagraph (A), by striking ‘‘alternatives analysis related to the development of transportation plans or projects’’ and inserting ‘‘alternative analyses related to the development of transportation plans or projects’’;

(C) by striking subparagraphs (B), (C), and (D), and;

(D) by redesigning subparagraphs (B), (C), and (D), respectively;

(E) in subparagraph (C), as redesignated, by striking the semicolon at the end and inserting ‘‘(E), respectively’’;

(F) in subparagraph (D), as redesignated—

(i) by striking ‘‘to support fixed guideway systems’’; and

(ii) by striking ‘‘dedicated bus and high occupancy vehicle’’;

(b) by amending paragraph (2) to read as follows:

"(2) GRANT REQUIREMENTS.—

(A) GRANTEE IN URBANIZED AREA.—The Secretary shall require that any grants awarded under this section to a recipient or subrecipient located in an urbanized area shall be subject to the same terms, conditions, requirements, and provisions that the Secretary determines to be necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in the value of real property resulting from the project assisted under this section.

(B) GRANT NOT IN URBANIZED AREA.—The Secretary shall require that any grants awarded under this section to a recipient or subrecipient not located in an urbanized area shall be subject to the same terms, conditions, requirements, and provisions as a recipient or subrecipient of assistance under section 5311.

(C) SUBRECIPIENT.—The Secretary shall require that any private, nonprofit organization that is a subrecipient of a grant awarded under this section may award grants to States, metropolitan planning organizations, public transportation operators, or private nonprofit organizations; and

(D) STATEWIDE TRANSIT PROVIDER GRANTS.—A statewide transit provider that receives a grant under this section shall be subject to the same terms, conditions, requirements, and provisions as a subrecipient of assistance under section 5311, consistent with the scope and purpose of the grant and the location of the project.

(b) by adding at the end the following:

"(3) CERTIFICATION.—An applicant that has submitted the certifications required under subparagraphs (A), (B), (C), and (D) of section 5307(d)(1) shall be deemed to have provided sufficient information upon which the Secretary may make the findings required under this subsection.

(c) DEFINED TERM.—Section 5309(b) is amended to read as follows:

"(b) DEFINED TERM.—As used in this section, the term ‘alternative analyses’ means ‘‘any analysis conducted as part of the transportation planning process required under sections 5303 and 5304, which includes—

(i) an assessment of a wide range of public transportation alternatives designed to address a transportation problem in a corridor or subarea;

(ii) sufficient information to enable the Secretary to make project justification and local financial commitment required under this section;
(3) the selection of a locally preferred alternative; and

(4) the adoption of the locally preferred alternative as part of the long-range transportation plan, as required under section 5333.

(d) GRANT REQUIREMENTS.—Section 5309(d) is amended to read as follows:

"(d) GRANTS.—The Secretary may not approve a grant for a project under this section unless the Secretary determines that—

(1) the project is part of an approved transportation plan and program of projects required under sections 5303, 5304, and 5306; and

(2) the applicant has, or will have—

(A) the legal, financial, and technical capacity to carry out the project, including safety and security aspects of the project;

(B) satisfactory continuing control over the use of the equipment or facilities; and

(C) the capability and willingness to maintain the equipment or facilities.

(e) MAJOR CAPITAL INVESTMENT PROJECTS OF $75,000,000 OR MORE.—Section 5309(e) is amended to read as follows:

"(e) MAJOR CAPITAL INVESTMENT PROJECTS OF $75,000,000 OR MORE.—

(1) FULL FUNDING GRANT AGREEMENT.—The Secretary shall enter into a full funding grant agreement based on the evaluations and ratings required under this subsection, with each grantee receiving not less than $75,000,000 under this subsection for a new fixed guideway capital project that—

(A) is authorized for final design and construction; and

(B) has been rated as medium, medium-high, or high, in accordance with paragraph (5)(B).

(2) DETERMINATIONS.—The Secretary may not award a grant under this subsection for a new fixed guideway capital project unless the Secretary determines that the proposed project is—

(A) based on the results of an alternatives analysis and preliminary engineering;

(B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost-effectiveness, operating efficiencies, economic development effects, and public transportation supportive land use patterns and policies; and

(C) includes an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct the project, and maintain and operate the entire public transportation system, while ensuring that the extent and quality of existing public transportation services are not degraded.

(3) EVALUATION OF PROJECT JUSTIFICATION.—In making the determinations under paragraph (2)(B) for a major capital investment grant, the Secretary shall analyze, evaluate, and prioritize the—

(A) the results of the alternatives analysis and preliminary engineering for the proposed project;

(B) the reliability of the forecasts of costs and utilization made by the recipient and the contractors to the recipient;

(C) the direct and indirect costs of relevant alternative projects;

(D) factors such as—

(i) congestion relief;

(ii) improved mobility; or

(iii) pollution;

(iv) noise pollution; and

(vi) all associated ancillary and mitigation costs necessary to carry out each alternative analyzed;

(E) reductions in local infrastructure costs achieved through compact land use development; and

(F) the cost of suburban sprawl;

(G) the degree to which the project increases the mobility of the public transportation dependent population or promotes economic development;

(H) population density and current transit ridership in the transportation corridor;

(i) the technical capability of the grant recipient to construct the project;

(j) any adjustment to the project justification necessary to reflect differences in local land, construction, and operating costs; and

(K) other factors that the Secretary determines to be appropriate to carry out this chapter.

(4) EVALUATION OF LOCAL FINANCIAL COMMITMENT.—

(A) IN GENERAL.—In evaluating a project under paragraph (2)(C), the Secretary shall require that—

(i) the proposed project plan provides for the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases;

(ii) each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable; and

(iii) local resources are available to recapitalize and operate the overall proposed public transportation system, including essential feeder bus and other services necessary to achieve the projected ridership levels, while ensuring that the extent and quality of existing public transportation services are not degraded.

(B) EVALUATION CRITERIA.—In assessing the stability, reliability, and availability of proposed sources of local financing under paragraph (2)(C), the Secretary shall consider—

(i) the reliability of the forecasts of costs and utilization made by the recipient and the contractors to the recipient;

(ii) existing grant commitments;

(iii) the degree to which financing sources are dedicated to the proposed purposes;

(iv) any debt obligation that exists, or is proposed by the recipient, for the proposed project or other public transportation purpose; and

(v) the extent to which the project has a local financial commitment that exceeds the required non-Federal share of the cost of the project, provided that if the Secretary gives priority to financing projects that include Federal share, the Secretary may reduce the required non-Federal share.

(5) PROJECT ADVANCEMENT AND RATINGS.—

(A) PROJECT ADVANCEMENT.—A proposed project under this subsection shall not advance to preliminary engineering or from preliminary engineering to final design and construction unless the Secretary determines that the project meets the requirements of this section. In rating the projects, the Secretary shall—

(i) invite public comment to the policy guidance necessary to reflect differences in the project review and evaluation process and make any adjustment to the project justification necessary to reflect differences in local land, construction, and operating costs; and

(ii) support analysis, project justification, and local financial commitment, in accordance with this subsection.

(B) POLICY GUIDANCE.—

(A) PUBLICATION.—The Secretary shall publish policy guidance regarding the new starts project review and evaluation process.

(i) not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2004; and

(ii) each time significant changes are made by the Secretary to the new starts project review and evaluation process and criteria, but not less frequently than once every 2 years.

(B) PUBLIC COMMENT AND RESPONSE.—The Secretary shall—

(i) invite public comment to the policy guidance published under subparagraph (A); and

(ii) publish a response to the comments received under clause (i).

(f) MAJOR CAPITAL INVESTMENT PROJECTS OF LESS THAN $75,000,000.—Section 5309(f) is amended to read as follows:

"(f) MAJOR CAPITAL INVESTMENT PROJECTS OF LESS THAN $75,000,000.—

(1) PROJECT CONSTRUCTION GRANT AGREEMENT.—In general.—The Secretary shall enter into a project construction grant agreement, based on evaluations and ratings required under this subsection, with each grantee receiving less than $75,000,000 under this subsection for a new fixed guideway or corridor improvement capital project that—

(i) is authorized by law; and

(ii) has been rated as medium, medium-high, or high, in accordance with paragraph (3)(B).

(B) CONTENTS.—An agreement under this paragraph shall specify—

(i) the scope of the project to be constructed;

(ii) the estimated net cost of the project; and

(iii) the schedule under which the project shall be constructed;

(iv) the maximum amount of funding to be obtained under this subsection; and

(V) the proposed schedule for obligation of future Federal grants; and

(VI) the sources of non-Federal funding.

(C) ADDITIONAL FUNDING.—The agreement may include a commitment on the part of the Secretary to provide funding for the project in future fiscal years.

(D) FULL FUNDING AGREEMENT.—An agreement under this paragraph shall be considered a full funding grant agreement for the purposes of subsection (g).

(G) SELECTION CRITERIA.—The Secretary may not award a grant under this subsection for a proposed project unless the Secretary determines that the proposed project is—

(i) based on the results of planning and alternatives analysis;

(ii) justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development; and

(iii) supported by an acceptable degree of local financial commitment.

(B) PLANNING AND ALTERNATIVES.—In evaluating a project under subparagraph
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(A)(i), the Secretary shall analyze and consider the results of planning and alternatives analysis for the project.

(C) PROJECT JUSTIFICATION.—In making the determination under subparagraph (A)(ii), the Secretary shall—

(i) determine the degree to which local land use policies are supportive of the public transportation project and the degree to which the project is likely to achieve local development goals;

(ii) determine the cost effectiveness of the project at the time of the initiation of revenue service;

(iii) determine the degree to which the project will have a positive effect on local economic development;

(iv) consider the reliability of the forecasts of costs and ridership associated with the project; and

(v) consider other factors that the Secretary determines to be appropriate to carry out this subsection.

(D) LOCAL FINANCIAL COMMITMENT.—For purposes of subparagraph (A)(ii), the Secretary shall issue regulations establishing an eligible activity.

(E) EVALUATION.—In making the findings under subparagraph (A), the Secretary shall evaluate and rate the project as high, medium-high, medium, medium-low, or low, based on the results of the analysis of the project justification criteria and the Secretary shall adopt the locally preferred alternative for the project into the long-range transportation plan.

(F) COLLECTION OF DATA.—Not later than 240 days after the date of enactment of the Federal Transit Act of 2004, the Federal Transit Administration shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(G) PLANNED EXTENSION TO FIXED GUIDeway SYSTEM.—In addition to amounts allowed under paragraph (f), Federal funds provided under a full funding grant agreement to a fixed guideway system may include the cost of rolling stock previously purchased if the Secretary determines that only Federal funds were used and that the purchase was made for use on the extension.

(4) IMPACT REPORT.—Not later than 240 days after the date of enactment of the Federal Transit Act of 2004 under section 5338(a)(3)—

(A) $1,315,983,615 shall be allocated for capital projects for buses and bus-related equipment or facilities.

(B) $603,617,520 shall be allocated for capital projects for new fixed guideway systems and extensions of such systems under subsection (e) and projects for new fixed guideway systems and extensions of such systems under subsection (f); and

(C) $603,617,520 shall be allocated for capital projects for new fixed guideway systems and extensions of such systems under subsection (e) and projects for new fixed guideway systems and extensions of such systems under subsection (f).

(H) FEDERAL SHARE OF ADJUSTED NET PROJECT COST.—

(I) Identifying the net project cost based on engineering studies, studies of economic feasibility, and financial needs and the expected use of equipment or facilities.

(2) Adjustment for Completion under Budget.—The Secretary shall adjust the final net project cost of a major capital investment project evaluated under subsections (e) and (f) to include the cost of eligible activities not included in the originally defined project if the Secretary determines that the originally defined project has been completed at a cost that is significantly below the original estimate.

(3) Maximum Federal Share.—

(A) In General.—A grant for the project shall be for 80 percent of the net project cost, or the net project cost as adjusted under paragraph (2), unless the grant recipient requests a lower grant percentage.

(B) Exception.—The Secretary may provide for a higher grant percentage than requested by the grant recipient if—

(i) the Secretary determines that the grant percentage is not more than 90 percent of the net project cost as estimated at the time the project was approved for advancement into preliminary engineering; and

(ii) the Secretary determines that the net project cost of the project is not more than 110 percent of the last cost estimated for a full funding grant agreement as an eligible activity.

(C) CONTENTS OF PLAN.—The plan submitted under clause (1) shall provide for—

(aa) a collection of data on the current transit system regarding transit service levels and ridership patterns and information on the as-built and expected use of funds for matching requirements and facilities.

(bb) documentation of the predicted scope, service levels, capital costs, operating costs, and ridership of the project;

(cc) collection of data on the current transit system years after the opening of the new start project, including analogous information on transit service levels and ridership patterns and information on the as-built and expected use of funds for matching requirements and facilities.

(dd) analysis of the consistency of predicted project characteristics with the after data.

(D) COLLECTION OF DATA ON CURRENT SYSTEM.—The Secretary shall analyze and construct a study that—

(i) IN GENERAL.—Each full funding grant agreement shall include a report submitted data.

(ii) CONTENTS OF PLAN.—The plan submitted under clauses (1) shall provide for—

(aa) analysis of information to identify the impacts of the new start project and the accuracy of the forecasts prepared during the development of the project.

(b) INFORMATION COLLECTION AND ANALYSIS plan.

(2) SUBMISSION OF PLAN.—Applicants seeking a full funding grant agreement shall submit a complete plan for the collection and analysis of project development and construction un—

(a) evaluate the land use and economic development impacts.

(b) ways projects with respect to land use and economic development impacts.

(c) qualitative and quantitative differences between fixed guideway and non-fixed guideway projects under subsection (f); and

(d) identify the degree to which the project is likely to achieve local development goals.

(E) Metrorail Projects.—Subsection (f) shall not apply to amounts allowed under paragraph (f) for revenue systems and extensions for fixed guideway systems under section 5338(c).

(F) Full Funding Grant Agreement.—

(G) FEDERAL SHARE OF ADJUSTED NET PROJECT COST.—

(H) Federal Share of Net Project Cost.—Section 5309(h) is amended to read as follows—

(I) LOAN PROVISIONS AND FISCAL CAPACITY CONSIDERATIONS.—Section 5309 is amended—

(1) by striking subsections (j), (k), and (l); and

(2) by redesignating subsections (m) and (n) as subsections (k) and (l), respectively.

(J) ALLOCATING AMOUNTS.—Section 5309(i), as redesignated, is amended to read as follows—

(1) ALLOCATING AMOUNTS.—Of the amounts made available or appropriated for fiscal year 2004 under section 5338(a)(3)—

(A) $1,315,983,615 shall be allocated for capital projects for—

(B) $1,199,387,615 shall be allocated for capital projects for fixed guideway systems and extensions of such systems under section (c) and projects for new fixed guideway systems and extensions of such systems under section (d).

(C) $603,617,520 shall be allocated for capital projects for new fixed guideway systems and extensions of such systems under section (d).

(D) Federal funds that are eligible to be expended for transportation.
“(ii) projects for new fixed guideway or corridor improvement capital projects, in accordance with subsection (f); and

“(B) the amounts made available under section 5336 shall be allotted for capital projects for buses and bus-related equipment and facilities.

“(3) FIXED GUIDEWAY MODERNIZATION.—The amount made available for fixed guideway modernization under section 5333(b)(2)(K) for fiscal year 2005 and each fiscal year thereafter shall be allocated in accordance with section 5333(d).

“(4) PRELIMINARY ENGINEERING.—Not more than 8 percent of the allocation described in paragraph (1)(A) and (2)(A) may be expended on preliminary engineering.

“(5) FUNDING FOR FERRY BOATS.—Of the amounts described in paragraphs (1)(A) and (2)(A), not less than $10,400,000 shall be available in each of the fiscal years 2004 through 2009 for capital projects in Alaska and Hawaii for new fixed guideway systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals.

“(6) BUS AND BUS FACILITY GRANTS.—

“(A) CONSIDERATIONS.—In making grants under paragraphs (1)(A) and (2)(A), the Secretary shall consider the age and condition of buses, bus fleets, related equipment, and bus-related facilities.

“(B) PROJECTS SITUCATED IN URBANIZED AREAS.—

1. Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than 5.5 percent shall be available in each fiscal year for projects located in urbanized areas.

“(C) INTERMODAL TERMINALS.—Of the amounts made available under paragraphs (1)(C) and (2)(B), not less than $75,000,000 shall be available in each fiscal year for intermodal terminal projects, including the intercity bus portion of such projects.

“(D) SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE OF THE HOUSE OF REPRESENTATIVES.—

1. Of the amounts made available under paragraph (1)(C) and (3)(B), not less than $50,000,000 shall be available in each fiscal year for intermodal terminal projects, including the intercity bus portion of such projects.

“(k) REPORTS.—

“(1) ANNUAL REPORT ON FUNDING RECOMMENDATIONS.—

“(A) IN GENERAL.—Not later than the first Monday of February of each year, the Secretary shall submit a report on funding recommendations to—

1. the Committee on Transportation and Infrastructure of the House of Representatives;

2. the Committee on Banking, Housing, and Urban Affairs of the Senate;

3. the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

4. the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

“(B) CONTENTS.—Each report submitted under subparagraph (A) shall contain—

1. a summary of the ratings of all capital investment projects for which funding was requested under this section;

2. detailed ratings and evaluations on the projects on which funding was requested under this section;

3. all relevant information supporting the evaluation and rating of each updated project, including a summary of the financial plan of each updated project.

“(b) BEFORE AND AFTER STUDY REPORTS.—Not later than the first Monday of August of each year, the Secretary shall submit a report containing a summary of the results of the studies conducted under subsection (g)(2) to—

1. the Committee on Transportation and Infrastructure of the House of Representatives;

2. the Committee on Banking, Housing, and Urban Affairs of the Senate;

3. the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives; and

4. the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

“(c) CONTRACTOR PERFORMANCE ASSESSMENT REPORT.—

“(A) IN GENERAL.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2004, and each year thereafter, the Secretary shall submit a report analyzing the consistency and accuracy of cost and ridership estimates made by each contractor to public transportation agencies developing major investment projects to the committees and subcommittees listed under paragraph (3).

“(B) REPORT.—Not later than 90 days after the enactment of the Federal Public Transportation Act of 2004, and each year thereafter, the Secretary shall submit a report comparing the construction costs of projects to the committees and subcommittees listed under paragraph (3).

“(D) the Subcommittee on Transportation of the Committee on Appropriations of the House of Representatives;

“(E) the Subcommittee on Transportation of the Committee on Appropriations of the Senate.

“(f) ANNUAL GENERAL ACCOUNTING OFFICE REVIEW.—

“(A) REVIEW.—The Comptroller General of the United States shall conduct an annual review of the processes and procedures for evaluating and rating projects and recommending projects and the Secretary’s implementation of the procedures.

“(B) REPORT.—Not later than 90 days after the submission of each report required under paragraph (1), the Comptroller General shall submit a report to the committees and subcommittees that summarizes the results of the review conducted under subparagraph (A).

“(g) CONTRACTOR PERFORMANCE INCENTIVE REWARDS.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2004, the Secretary shall submit a report to the committees and subcommittees that summarizes the results of the review conducted under subparagraph (A).

“(h) ANNUAL GENERAL ACCOUNTING OFFICE REVIEW.—

“(A) REVIEW.—The Comptroller General of the United States shall conduct an annual review of the processes and procedures for evaluating and rating projects and recommending projects and the Secretary’s implementation of the procedures.

“(B) REPORT.—Not later than 90 days after the submission of each report required under paragraph (1), the Comptroller General shall submit a report to the committees and subcommittees that summarizes the results of the review conducted under subparagraph (A).

“(i) REPORTS.—For purposes of paragraph (2), the prohibition on the use of funds for matching requirements under section

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SEC. 3012. NEW FREEDOM FOR ELDERLY PERSONS AND PERSONS WITH DISABILITIES.

“(a) IN GENERAL.—Section 5310 is amended to read as follows:

“§ 5310. New freedom for elderly persons and persons with disabilities.

“(a) GENERAL AUTHORITY.—

“(1) AUTHORIZATION.—The Secretary may award grants to a State for capital public transportation projects that are planned, designed, and carried out to meet the needs of elderly individuals and individuals with disabilities, with priority given to the needs of these individuals to access necessary health care.

“(b) ACQUISITION OF PUBLIC TRANSPORTATION SERVICES.—A capital public transportation project under this section may include acquiring public transportation services as an eligible capital expense.

“(c) ADMINISTRATIVE COSTS.—A State may use not more than 15 percent of the amounts received under this section to administer, plan, and provide technical assistance for a project funded under this section.

“(d) ALLOCMENTS AMONG STATES.—

“(1) IN GENERAL.—From amounts made available or appropriated in each fiscal year under sections (a) and (b), the Secretary shall allocate amounts to each State based on the number of elderly individuals and individuals with disabilities in each State.

“(2) TRANSFER OF FUNDS.—Any funds allotted to a State under paragraph (1) may be transferred by the State to the apportionments made under sections 5311(c) and 5336 if such funds are only used for eligible projects selected under this section.

“(e) REALLOCATION OF FUNDS.—A State receiving a grant under this section may reallocate such grant funds to—

1. a private nonprofit organization;

2. a public transportation agency or authority; or

3. a governmental authority that—

1. has been approved by the State to coordinate services for elderly individuals and individuals with disabilities;

2. certifies that nonprofit organizations are not readily available in the area that can provide the services described under this sub-section; or

3. will provide services to persons with disabilities that exceed those services required by the Americans with Disabilities Act.

“(f) FEDERAL SHARE.—

“(1) MAXIMUM.—

“(A) IN GENERAL.—A grant for a capital project under this section may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

“(B) EXCEPTION.—A State described in section 129(d) of title 23 shall receive an increased Federal share in accordance with the formula under that section.

“(2) REMAINING COSTS.—The costs of a capital project under this section that are not funded through a grant under this section and may be funded only by the State from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or government social service organization, or new capital and

“(B) may be derived from amounts appropriated to or made available to any Federal agency, or by the State using revenues from sources other than the Federal Transportation Assistance Act of 2004, except for Federal Lands Highway funds that are eligible to be expended for transportation.
SEC. 3013. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.

(a) Definitions.—Section 3311(a) is amended to read as follows:

"(a) Definitions.—As used in this section, the following definitions shall apply:

"(1) Recipient.—The term ‘recipient’ means a State or Indian tribe that receives a Federal transit program grant directly from the Federal Government.

"(2) Subrecipient.—The term ‘subrecipient’ means a State or local government in a State, an agency of a State government, an intergovernmental entity, or a private operator of public transportation or intercity bus service that receives Federal transit program grant funds indirectly through a recipient.

(b) General Authority.—Section 5338 is amended—

(1) by striking ‘‘(3) The Secretary of Transportation and’’ and inserting the following:

‘‘(3) In the case of a public transportation project to be carried out in a nonurbanized area, the Secretary may direct that a recipient shall be required to carry out the project for which the funds are requested in the nonurbanized area in cooperation with a public transportation service or project designed to meet the needs of the elderly and individuals with disabilities located in areas other than urbanized areas in that State, as determined by the Secretary.’’

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

‘‘(4) In the case of a public transportation project to be carried out in a nonurbanized area, the Secretary may direct that a recipient shall be required to carry out the project for which the funds are requested in the nonurbanized area in cooperation with a public transportation service or project designed to meet the needs of the elderly and individuals with disabilities located in areas other than urbanized areas in that State, as determined by the Secretary.’’

(3) by adding after paragraph (4) the following:

‘‘(5) To the extent that funds are available under this section, the Secretary may direct that a recipient shall be required to carry out the project for which the funds are requested in the nonurbanized area in cooperation with a public transportation service or project designed to meet the needs of the elderly and individuals with disabilities located in areas other than urbanized areas in that State, as determined by the Secretary.’’

(4) in paragraph (5), as redesignated—

(A) by striking ‘‘except as provided under clause (ii) of section 5307(f)’’ and inserting ‘‘including the provision of amounts under section 5307(f) that are not apportioned under paragraph (1)’’;

(B) by adding after paragraph (5) the following:

‘‘(6) a State that receives an amount under this section that is less than 5 percent of the amount apportioned to the States in accordance with paragraph (3) and (B) 80 percent shall be apportioned to the States in accordance with paragraph (4).’’

(5) To the extent that funds are available under this section, the Secretary may direct that a recipient shall be required to carry out the project for which the funds are requested in the nonurbanized area in cooperation with a public transportation service or project designed to meet the needs of the elderly and individuals with disabilities located in areas other than urbanized areas in that State, as determined by the Secretary.’’

(6) To the extent that funds are available under this section, the Secretary may direct that a recipient shall be required to carry out the project for which the funds are requested in the nonurbanized area in cooperation with a public transportation service or project designed to meet the needs of the elderly and individuals with disabilities located in areas other than urbanized areas in that State, as determined by the Secretary.’’

(7) in subsection (c)(1), as redesignated—

(A) by striking ‘‘subject to the requirements of subsection (b)(2)’’ and inserting ‘‘subject to the requirements of section 5311(b)’’;

(B) by inserting ‘‘and the requirements of section 5311(b)’’ after ‘‘Section 5311(b)’’;

(C) by striking ‘‘(C) the acquisition of public transportation services’’ and inserting the following:

‘‘(C) the acquisition of public transportation services by the recipient and the Secretary’’;

(8) by adding ‘‘and the Secretary’’ after ‘‘the recipient’’;

(b) Application.—Section 5338 is amended—

(1) by striking ‘‘(3) The Secretary of Transportation’’ and inserting ‘‘(3) the Secretary’’;

(2) by striking ‘‘(4) for—’’ and inserting ‘‘(4) for—’’;

(3) by striking ‘‘(5)’’ and inserting ‘‘(5)’’;

(4) by striking ‘‘AND TECHNICAL ASSISTANCE.—Section 5311(e) is amended—’’ and inserting ‘‘AND TECHNICAL ASSISTANCE.—(1) The Secretary of Transportation’’;

(5) by striking ‘‘(B) any amounts not used under subparagraph (A) shall be apportioned to the States in accordance with paragraph (3) and’’ and inserting ‘‘(B) 80 percent shall be apportioned to the States in accordance with paragraph (4).’’;

(b) Application.—Section 5338 is amended—

(1) by striking ‘‘(3) The Secretary of Transportation’’ and inserting ‘‘(3) the Secretary’’;

(2) by striking ‘‘(4) for—’’ and inserting ‘‘(4) for—’’;

(3) by striking ‘‘(5)’’ and inserting ‘‘(5)’’;

(4) by striking ‘‘AND TECHNICAL ASSISTANCE.—Section 5311(e) is amended—’’ and inserting ‘‘AND TECHNICAL ASSISTANCE.—(1) The Secretary of Transportation’’;

(5) by striking ‘‘(B) any amounts not used under subparagraph (A) shall be apportioned to the States in accordance with paragraph (3) and’’ and inserting ‘‘(B) 80 percent shall be apportioned to the States in accordance with paragraph (4).’’;

(b) Application.—Section 5338 is amended—

(1) by striking ‘‘(3) The Secretary of Transportation’’ and inserting ‘‘(3) the Secretary’’;

(2) by striking ‘‘(4) for—’’ and inserting ‘‘(4) for—’’;

(3) by striking ‘‘(5)’’ and inserting ‘‘(5)’’;

(4) by striking ‘‘AND TECHNICAL ASSISTANCE.—Section 5311(e) is amended—’’ and inserting ‘‘AND TECHNICAL ASSISTANCE.—(1) The Secretary of Transportation’’;

(5) by striking ‘‘(B) any amounts not used under subparagraph (A) shall be apportioned to the States in accordance with paragraph (3) and’’ and inserting ‘‘(B) 80 percent shall be apportioned to the States in accordance with paragraph (4).’’;
Transportation funds that are eligible to be expended for transportation, except for Federal Land Highway programs. This provision does not limit the level or extent of use of the Federal grant for the payment of operating expenses.

"(4) EXCEPTION.—For purposes of paragraph (2)(B), the prohibitions on the use of funds for new capital or depreciation cash fund or reserve shall apply to or made available to a Federal agency (other than the Department of Transportation), except for Federal Land Highway programs, that are eligible to be expended for transportation.

"(5) IN GENERAL.—A State carrying out a program of operating assistance under this section may not limit the authority of the Secretary to make funds available under any other law.

"(6) MEDICAL TRANSPORTATION DEMONSTRATION PROJECTS.—

SEC. 3016. NATIONAL RESEARCH PROGRAMS.

(a) IN GENERAL.—Section 5314 is amended—

(1) if the organization—

(b) ELIGIBILITY.—An organization shall be eligible for a demonstration grant if the entity—

(1) meets the conditions described in section 501(c)(3) of the Internal Revenue Code of 1986; or

(2) U.S.C. 603(a)(5)(c)(vii) shall not apply to Federal or State funds to be used for transportation purposes.

GAVER CONDITION.—Section 5311(j)(1) is amended by striking “the Secretary of Labor utilizes a Special Warranty that provides for a fair and equitable arrangement to protect the interest of employees” and inserting “the Secretary may waive the application of section 5313(j)(1)”.

"(a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS.—

"(1) IN GENERAL.—The Secretary may make grants, contracts, cooperative agreements, or other transactions (including agreements with States, agencies, and instrumentalities of the United States Government) for research, development, demonstration or deployment projects, or evaluation of technologies and applications, that focus on the significance to public transportation that the Secretary determines will improve public transportation service or help public transportation service meet the total transportation needs at a minimum cost.

"(2) INFORMATION.—The Secretary may request and receive appropriate information from any source.

"(3) SAVINGS PROVISION.—This subsection does not limit the authority of the Secretary under other laws: (i) by striking subparagraph (B); and (ii) by adding at the end the following:

"(D) APPLICATION.—(1) if the organization—

"(A) RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.—

"(1) IN GENERAL.—Section 5312 is amended—

(2) ELIGIBILITY.—An organization shall be eligible for a demonstration grant if the entity—

(1) MEETS THE CONDITIONS DESCRIBED IN SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE OF 1986; OR

(2) IS AN ENTITY HELD OR OPERATED BY THE GOVERNMENT OF A STATE OR LOCAL GOVERNMENT;

(3) IS AN ENTITY HELD OR OPERATED BY THE GOVERNMENT OF A STATE OR LOCAL GOVERNMENT;

(4) HAS THE CAPACITY TO CONVENE LOCAL GROUPS TO CONDUCT RESEARCH ON AND DEVELOP POLICIES RELATED TO THE NEEDS OF THE ELDERLY;

(5) HAS A WEBSITE TO PUBLICIZE AND CIRCULATE INFORMATION ON SENIOR TRANSPORTATION PROGRAMS;

"(1) IN GENERAL.—Each eligible entity describing a grant under this paragraph shall submit an application to the Secretary at such time, at such place, and containing such information as the Secretary may reasonably require.

"(2) SELECTION OF GRANTEES.—In awarding grants under this paragraph, the Secretary shall give preference to eligible entities from communities with—

(1) IN GENERAL.—The Secretary shall submit a report on the results of the demonstration projects funded under this paragraph to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(2) BY SUBSECTION (b) to read as follows:

"(b) FEDERAL SHARED.—If there would be a clear and direct financial benefit to an entity under a grant or contract financed under this section, the Secretary shall establish a Federal share consistent with such benefit.

(b) CONFORMING AMENDMENTS.—

"(b) FEDERAL SHARED.—If there would be a clear and direct financial benefit to an entity under a grant or contract financed under this section, the Secretary shall establish a Federal share consistent with such benefit.

(2) ELIGIBILITY.—An organization shall be eligible for the grant under paragraph (1) if the organization—

(1) HAS A WEBSITE TO PUBLICIZE AND CIRCULATE INFORMATION ON SENIOR TRANSPORTATION PROGRAMS;

(2) IS HELD OR OPERATED BY THE GOVERNMENT OF A STATE OR LOCAL GOVERNMENT;

(3) HAS THE CAPACITY TO CONVENE LOCAL GROUPS TO CONDUCT RESEARCH ON AND DEVELOP POLICIES RELATED TO THE NEEDS OF THE ELDERLY;

(4) HAS A WEBSITE TO PUBLICIZE AND CIRCULATE INFORMATION ON SENIOR TRANSPORTATION PROGRAMS;

(5) HAS A WEBSITE TO PUBLICIZE AND CIRCULATE INFORMATION ON SENIOR TRANSPORTATION PROGRAMS;
“(E) establish a clearinghouse for print, video, and audio resources on senior mobility; and

“(F) administer the demonstration grant programs established under paragraph (4).

“(4) GRANTS AUTHORIZED.—

“(A) IN GENERAL.—The National Technical Assistance Center established under this section, in consultation with the Federal Transit Administration, shall award senior transportation demonstration grants to—

(i) local transportation organizations;

(ii) State agencies;

(iii) units of local government; and

(iv) nonprofit organizations.

“(B) Grant funds received under this paragraph may be used to—

(i) evaluate the state of transportation services for senior citizens;

(ii) identify barriers to mobility that senior citizens encounter in their communities;

(iii) establish partnerships and promote collaboration among community stakeholders, including public, not-for-profit, and for-profit providers of transportation services for senior citizens;

(iv) identify the transportation needs of senior citizens within local communities; and

(v) establish strategies to meet the unique needs of healthy and frail senior citizens.

“(C) SELECTION OF GRANTEES.—The Secretary shall select grantees under this subsection on the basis of written representation from various geographical locations throughout the United States.

“(5) ALLOCATIONS.—From the funds made available for each fiscal year under subsection (a)(5)(C)(iv) and (b)(2)(G)(iv) of section 5308, $3,000,000 shall be allocated to carry out this subsection.

“(d) ALTERNATIVE FUELS STUDY.—

“(1) STUDY.—The Secretary shall conduct a study of the actions necessary to facilitate the purchase of increased volumes of alternative fuels (as defined in section 309 of the Energy Policy Act of 1992 (42 U.S.C. 13211)) for use in public transit vehicles.

“(2) SCOPE OF STUDY.—The study conducted under this subsection shall focus on the incentives necessary to increase the use of alternative fuels in public transit vehicles, including buses, fixed guideway vehicles, and ferries.

“(3) CONTENTS.—The study shall consider—

“(A) the environmental benefits of increased use of alternative fuels in transit vehicles;

“(B) existing opportunities available to transit system operators that encourage the purchase of alternative fuels for transit vehicle operation;

“(C) existing barriers to transit system operators to purchase additional amounts of alternative fuels for transit vehicle operation, including situations where alternative fuels that do not require capital improvements to transit vehicles are disadvantaged over fuels that do require such improvements; and

“(D) the necessary levels and type of support necessary to encourage additional use of alternative fuels for transit vehicle operation.

“(4) RECOMMENDATIONS.—The study shall recommend regulatory and legislative alternatives that will result in the increased use of alternative fuels in transit vehicles.

“(5) REPORT.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall submit the study completed under this subsection to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

“(c) CONFORMING AMENDMENTS.—

“(1) SECTION HEADER.—The heading for section 5314 is amended to read as follows:

“§ 5314. National research programs.

“(2) TABLE OF SECTIONS.—The item relating to section 5314 in the table of sections for chapter 53 is amended to read as follows:

“§ 5314. National research programs .

“SEC. 2017. NATIONAL TRANSIT INSTITUTE.

“(a) Section 5315 is amended—

(1) by striking subsections (a) and (b) and inserting the following:

“(a) ESTABLISHMENT.—The Secretary shall award a grant to Rutgers University to conduct a national transit institute.

“(b) DUTIES.—

(1) IN GENERAL.—In cooperation with the Federal Transit Administration, State transportation departments, public transportation authorities, and national and international entities, the institute established pursuant to subsection (a) shall develop and conduct training programs for Federal, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Government-aid public transportation work.

“(2) PROGRAMS.—The training programs developed under paragraph (1) may include courses in recent developments, techniques, and procedures related to—

(A) intermodal and public transportation planning;

(B) management;

(C) environmental factors;

(D) acquisition and joint use rights of way;

(E) engineering and architectural design;

(F) procurement strategies for public transportation projects;

(G) turnkey approaches to delivering public transportation systems;

(H) new technologies;

(I) emissions technologies;

(J) ways to make public transportation accessible to individuals with disabilities;

(K) construction, construction management, insurance, and risk management;

(L) maintenance;

(M) contract administration;

(N) inspection;

(O) innovative finance;

(P) workplace safety; and

(Q) public transportation security.; and

(2) in subsection (d), by striking “mass” each place it appears.

SEC. 2018. BUS TESTING FACILITY.

Section 5318 is amended—

(a) in subsection (a)—

(1) by striking “establish” and inserting “the Secretary of Transportation shall establish one facility” and inserting “IN GENERAL.—The Secretary shall maintain I facility”; and

(2) by striking “by renovating” and inserting “maintained at”; and

(b) in subsection (b), by striking—

(1) “section 5309(m)(1)(C) of this title” and inserting “paragraphs (1)(C) and (2)(B) of section 5309(b)”; and

SEC. 2019. BICYCLE FACILITIES.

Section 5319 is amended by striking “3017(k)” and inserting “3017(d)(1)(K)”.

SEC. 2020. SUSPENDED LIGHT RAIL TECHNOLOGY PILOT PROJECT.

Section 5320 is repealed.

SEC. 2021. CRIME PREVENTION AND SECURITY.

Section 5321 is amended—

(a) by amending paragraph (1) to read as follows:

“(1) IN GENERAL.—Financial assistance provided under subparagraph (A) to a State or local governmental authority may be used to acquire an interest in, or buy property of, a private company engaged in public transportation, for a capital project for property acquired from a private company engaged in public transportation after July 9, 1964, or to buy property of a public transportation facility or equipment in competition with, or in addition to, transportation service provided by an existing public transportation company, only if the recipient—

(A) the Secretary determines that such financial assistance is essential to a program of projects required under sections 5303, 5304, and 5306; and

(B) the Secretary determines that the program provides for the participation of private companies engaged in public transportation to the maximum extent feasible; and

(C) just compensation under State or local law will be paid to the company for its franchise or property.; and

(b) in paragraph (2), by striking “(2)” and inserting the following:

“(2) LIMITATION.—

(2) by amending subsection (b) to read as follows:

“(b) NOTICE AND PUBLIC HEARING.—

“(1) IN GENERAL.—An application for a grant under this chapter for a capital project that will substantially affect a community, or the public transportation service of a community, shall include, in the environmental record for the project, evidence that the applicant has—

(A) provided an adequate opportunity for public review and comment on the project;

(B) held a public hearing on the project if the project affects significant economic, social, or environmental interests;

(C) considered the economic, social, and environmental effects of the project; and

found that the project is consistent with official plans for developing the urban area.

“(2) CONTENTS OF NOTICE.—Notice of a hearing under this subsection—

(A) shall include a concise description of the proposed project; and

(B) shall be published in a newspaper of general circulation in the geographic area the project will serve.;”;

(3) by amending subsection (c) to read as follows:

“(c) NEW TECHNOLOGY.—A grant for financial assistance under this chapter for new technology, including innovative or improved products, techniques, or methods, shall be subject to the requirements of section 5309 to the extent the Secretary determines to be appropriate.;”;

(4) by amending subsection (d) to read as follows:

“(d) CONDITIONS ON BUS TRANSPORTATION SERVICE.—Financial assistance under this chapter may be used to buy or operate a bus only if the recipient agrees to comply with the following conditions on bus transportation service:

“(1) CHARTER BUS SERVICE.—

(1) IN GENERAL.—Except as provided under subparagraph (B), a recipient may provide incidental charter bus service only within its lawful service area if

(II) the recipient annually publishes, by electronic and other appropriate means, a notice—

(II) indicating its intent to offer incidental charter bus service within its lawful service area; and

(II) soliciting notices from private bus operators that wish to appear on a list of carriers offering charter bus service in that service area;

(II) the recipient provides private bus operators with an annual opportunity to notify the recipient that they are interested in offering charter bus service in such service area;
VerDate Mar 15 2010 22:26 Jan 29, 2014 Jkt 081600 PO 00000 Frm 00163 Fmt 4624 Sfmt 0634 E:\2004SENATE\S26FE4.REC S26FE4mmaher on DSKCGSP4G1 with SOCIALSEC

scribed in clause (i) shall consider the com-

service by a recipient.

Public Transportation Act of 2004, the Sec-

ration under terms of the agreement.

mines that a violation of an agreement relat-

to the provision of charter service has

Secretary of Transportation, and other per-

panel comprised of the Federal Transit Ad-

gment shall be submitted to the Regional Ad-

the violation of a charter bus service agree-

provide the service within a 72-hour period

questor and the nature of the charter service

violation of an agreement required under para-

the Secretary shall bar the applicant, author-

or operator from receiving Federal transit

in an amount the Secretary deter-

by inserting after subsection (e) the fol-

meant to be an exception to section 301 or

specific references to any State law that are

Relocation Assistance and Real Property Ac-

all payments and provided all assistance and

funds received under this chapter may not be

federal assistance unless the applicant has made

preaward and postdelivery reviews of rolling

requirements to perform

Secretary determines that a recipient of

amounts, available under this chapter, if the

reimbursement directly, or by offsetting

submission, or statement provided under this

Secretary does not receive a response

Secretary determines that a recipient

shall notify to the Secretary, and such

shall immediately revert to the control of

which the land was originally transferred.

in subsection (j)(5), by striking ‘‘Inter-

modal Surface Transportation Efficiency Act

‘‘Federal Public Transpor-

‘‘Sec.

3023. Special provisions for capital

projects.

(a) In General.—Section 5324 is amended

to read as follows:

5324. Special provisions for capital projects

(a) Real Property and Relocation

services.—Whenever real property is ac-

quired or furnished as a required contribu-

tion incident to a project, the Secretary

shall not approve the application for finan-

cial assistance unless the applicant has made

all payments and provided all assistance and

assurances that are required of a State agen-

cy under sections 210 and 305 of the Uniform

Relocation Assistance and Real Property Ac-

rions Act of 1991 (42 U.S.C. 4620 and

4655). The Secretary must be advised of

specific references to any State law that are

believed to be an exception to section 301 or

305 of such Act (42 U.S.C. 4651 and

(b) Advance Real Property Acquisi-

tions.—

(1) In General.—The Secretary may par-

ticipate in the acquisition of real property

for any project that may use the property if

the Secretary determines that external mar-

ket forces are jeopardizing the potential use

off the property. The Secretary shall be

required to certify that the property is not

likely to be developed and to be needed for a

project that is likely to be needed for a project

within the next two years.

(B) the property, because it is located

near an existing transportation facility, is

likely to be developed and to be needed for a

future transportation improvement; or

(C) recent appraisals reflect a rapid in-

crease in the fair market value of the prop-

erty.

(D) the property, because it is located

}
undue hardship on the owner in comparison to other affected property owners and requests the acquisition to alleviate that hardship.

"(2) ENVIRONMENTAL REVIEWS.—Property acquired in accordance with this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

"(3) LIMITATION.—The Secretary shall limit the size and number of properties acquired under this subsection as necessary to avoid any prejudice to the Secretary's objective evaluation of project alternatives.

"(4) EXEMPTION.—An acquisition under this section is considered an exempt project under section 176 of the Clean Air Act (42 U.S.C. 7506).

"(c) RAILROAD CORRIDOR PRESERVATION.—

"(1) The Secretary may assist an applicant to acquire railroad right-of-way before the completion of the environmental reviews for any project that may use the right-of-way if the acquisition is otherwise permitted under Federal law. The Secretary may establish restrictions on such an acquisition as the Secretary determines to be necessary and appropriate.

"(2) ENVIRONMENTAL REVIEWS.—Railroad right-of-way acquired under this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

"(d) CONSIDERATION OF ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.

"(1) In general.—After a recipient has determined that a State has adopted or adopts by law, such cost and rate data shall not be accessible or provided to the group of agencies sharing cost data under this subparagraph, except by written request or use. Such data shall be confidential and shall not be accessible or provided by the group of agencies sharing cost data under this subparagraph, except by written request or use.

"(2) Cooperation and consultation.—In carrying out section 530(e), the Secretary shall cooperate and consult with the Secretary of the Interior and the Administrator of the Environmental Protection Agency on each project that may have a substantial impact on the environment.

"(b) CONFORMING AMENDMENT.—The item relating to section 5324 in the table of sections for chapter 53 of subtitle D is amended by inserting the following:

"§ 5324. Special provisions for capital projects.

SEC. 3024. CONTRACT REQUIREMENTS.

(a) In General.—Section 5325 is amended to read as follows:

"§ 5325. Contract requirements.

"(a) Competition.—Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary.

"(b) Architectural, Engineering, and Design Contracts.—

"(1) In general.—A contract or requirement for program management, architectural, engineering, design, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which Federal assistance is provided under this chapter shall be awarded in the same manner as a contract for architectural and engineering services negotiated under subsection (a) of title 49, or an equivalent qualifications-based requirement of a State. This subsection does not apply to the extent a State has adopted or may adopt by law a formal procedure for procuring those services.

"(2) Additional requirements.—When awarding a contract described in paragraph (1), requirements under this chapter shall comply with the following requirements:

"(A) Any contract or subcontract awarded under this chapter shall be performed and audited in compliance with cost principles contained in part 31 of title 48, Code of Federal Regulations (commonly known as the Federal Acquisition Regulation).

"(B) A recipient of funds under a contract or subcontract awarded under this chapter may use any formula established in accordance with the Federal Acquisition Regulation for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently in dispute.

"(C) After a firm's indirect cost rates are accepted under subparagraph (B), the recipient of funds may apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment, and shall not be limited by administrative or de facto costs.

"(D) A recipient requesting or using the cost and rate data described in subparagraph (C) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided by the group of agencies sharing cost data under this subparagraph, except by written request or use.

"(2) Design-Build Projects.—

"(A) DEFINED TERM.—As used in this section, the term ‘design-build project’ means a project for which a grant is made under this chapter to a recipient or to an interstate, intercity, or interregional transportation authority, a jurisdiction, or a political subdivision or agency, including a public authority, that meets specific performance criteria.

"(B) Include in an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment.

"(C) Financial assistance for capital costs.—Federal financial assistance under this chapter may be provided for the capital costs of a design-build project after the recipient complies with Government requirements.

"(D) Congress shall establish the criteria, including improved long-term operating efficiency and lower long-term costs.

"(E) DESIGN-BUILD CONTRACTS.—

"(1) DEFINED TERM.—As used in this section, the term ‘design-build project’ means a project for which a grant is made under this chapter to a recipient or to an interstate, intercity, or interregional transportation authority, a jurisdiction, or a political subdivision or agency, including a public authority, that meets specific performance criteria.

"(2) Include in an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment.

"(3) Federal financial assistance under this chapter may be provided for the capital costs of a design-build project after the recipient complies with Government requirements.

"(F) ROLLING STOCK.—

"(1) ACQUISITION.—A recipient of federal financial assistance under this chapter may enter into a contract to acquire a Rolling stock.

"(A) with a party selected through a competitive procurement process; or

"(B) based on—

"(i) initial capital costs; or

"(ii) performance, standardization, life cycle costs, and other factors.

"(2) Multiyear Contracts.—A recipient procuring Rolling stock with Federal financial assistance under this chapter may make a multiyear contract, including options, to buy not more than 5 years of requirements for Rolling stock and replacement parts.

"(b) Conforming Amendment.—The Congress shall allow a recipient to act on a multiyear contract, including options, to buy not more than 5 years of requirements for Rolling stock with Federal financial assistance under this chapter.

"(c) Examination of Records.—Upon request, the Secretary and the Comptroller General, or any of their representatives, shall have access to and the right to examine and inspect all records, documents, and papers, including contracts, related to a project for which a grant is made under this chapter.

"(d) GRANT PROHIBITION.—A grant awarded under this chapter may not be used to support a procurement that uses an exclusionary or discriminatory specification.

"(e) Responsibility.—The 'Bus Dealers Regulations' and 'State law requiring buses to be purchased through in-State dealers shall apply to vehicles purchased with a grant under this chapter.

"(f) Awards to Responsible Contractors.—

"(1) In general.—Federal financial assistance under this chapter may be provided for the purposes only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement.

"(2) Criteria.—Before making an award to a recipient under paragraph (1), a recipient shall consider:

"(A) the integrity of the contractor;

"(B) the contractor's compliance with public policy;

"(C) the contractor's performance, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(m)(4); and

"(D) the contractor's financial and technical sources.

"(g) Conforming Amendments.—Chapter 53 is amended by striking section 5326.

SEC. 3025. PROJECT MANAGEMENT OVERSIGHT AND REVIEW.

(a) Project Management Plan Requirements.—Section 5327(a) is amended—

"(1) in paragraph (11) by striking ‘‘and’’ at the end;

"(2) in paragraph (12) by striking the period at the end and inserting ‘‘; and’’; and

"(3) by adding at the end the following:

"(h) Safety and security management.''

"(b) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—Section 5327(c) is amended—

"(1) by amending paragraph (1) to read as follows:

"(1) any amount available for a fiscal year to carry out any of sections 5307 through 5311, 5316, or 5317, or a project under the National Capital Transportation Act of 1969 (Public Law 91–143) to make a contract to oversee the construction or operation of projects under sections 5307 through 5311, 5316, or 5317 or under that Act.''

"(2) in paragraph (2) by striking ‘‘(2)’’ and inserting the following:

"(2) other allowable uses.’’; and

"(b) by inserting ‘‘and security’’ after ‘‘safe- ty’’;

"(c) by striking ‘‘(3)’’ and inserting the following:

"(3) FEDERAL SHARE.—Federal funds shall be used to.’’

SEC. 3026. PROJECT REVIEW.

Section 5328 is amended—

"(1) in subsection (a) by striking ‘‘(5)’’ and inserting the following:

"(1) the Secretary of Transportation allows a

"(b) by striking ‘‘(2)’’ and inserting the following:

"(2) the Secretary shall cooperate with the applicant’’ and inserting the following:

"(2) ALTERNATIVES ANALYSIS.—The Sec-

"(C) The Secretary shall cooperate with the applicant under this section, the term ‘design-build project’—

"(D) the Secretary allows a

"(b) by striking ‘‘(5)’’ and inserting the following:

"(5) the Secretary allows a

"(C) Any contract or subcontract awarded under this chapter shall be performed and audited in compliance with cost principles contained in part 31 of title 48, Code of Federal Regulations (commonly known as the Federal Acquisition Regulation).

"(D) A recipient of funds under a contract or subcontract awarded under this chapter may use any formula established in accordance with the Federal Acquisition Regulation for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently in dispute.

"(E) After a firm's indirect cost rates are accepted under subparagraph (D), the recipient of funds may apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment, and shall not be limited by administrative or de facto costs.

"(F) A recipient requesting or using the cost and rate data described in subparagraph (E) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided by the group of agencies sharing cost data under this subparagraph, except by written request or use.

"(G) The Congress shall allow a recipient to act on a multiyear contract, including options, to buy not more than 5 years of requirements for Rolling stock with Federal financial assistance under this chapter.
SEC. 3027. INVESTIGATIONS OF SAFETY AND SECURITY RISK.

(a) In General.—Section 5329 is amended to read as follows:—

"§ 5329. Investigation of safety hazards and security risks

"(a) In General.—The Secretary may conduct investigations into safety hazards and security risks associated with a condition in equipment, a facility, or an operation financed under this chapter to establish the nature and extent of the condition and how to eliminate, mitigate, or correct it.

"(b) Submission of Corrective Plan.—If the Secretary determines that the project meets the requirements of subsection (e) or (f) of section 5309; and

"(2) by striking subsection (c).

SEC. 3028. SECURITY UNDER THIS CHAPTER.

Section 4019(b) is amended—

(1) in paragraph (1)(C), by inserting "transportation facilities or infrastructure, or transportation employees" before the period at the end; and

(2) by adding at the end the following:

"(8) A State or local government may not enact, enforce, or continue in effect any law, regulation, standard, or order to the extent it is inconsistent with this section or regulations prescribed under this section.

SEC. 3029. TERRORIST ATTACKS AND OTHER ACTS OF VIOLENCE AGAINST PUBLIC TRANSPORTATION SYSTEMS.

(a) In General.—Section 1993 of title 18, United States Code, is amended—

(1) by striking "mass" each place it appears and inserting "employees";

(2) in subsection (a)(5), by inserting "controlling," after "operating"; and

(3) in subsection (c)(5), by striking "902(a)(7) of the United States Code, and inserting "902(a) of title 49.

(b) CONFORMING AMENDMENT.—The item relating to section 5330 in the table of sections for chapter 97 of title 18, United States Code is amended to read as follows:—

1993. Terrorist attacks and other acts of violence against public transportation systems.

SEC. 3030. CONTROLLED SUBSTANCES AND ALCOHOL MISUSE TESTING.

Section 5331 is amended—

(1) in subsection (a)(3), by inserting before the period at the end the following: "or sections 2393a, 7101(i), or 7390 of title 46. The Secretary may also decide that a form of public transportation is considered adequately, for employee alcohol and controlled substances testing, under the alkaloidal and controlled substance statutes or regulations of an agency within the Department of Transportation or other Federal agency; and

(2) in subsection (f), by striking paragraph (3).

SEC. 3031. EMPLOYEE PROTECTIVE ARRANGEMENTS AND CHARGES.

Section 5333(b) is amended—

(1) by striking paragraph (1) and inserting:—

"Provided, That—

"(A) the protective period shall not exceed 4 years; and

"(B) the separation allowance shall not exceed 12 months.; and

(2) by adding at the end the following:

"(4) An arrangement under this subsection shall not guarantee continuation of employment as a result of a change in private contractors through competitive bidding unless such continuation is otherwise required under subparagraph (A), (B), or (D) of paragraph (3).

"(5) Fair and equitable arrangements to protect the interests of employees utilized by the Secretary of Labor for assistance pursuant to paragraph (1) shall not be subjected to regulation by the Federal Railroad Administration.

"(6) Nothing in this subsection shall affect the level of protection provided to freight railroad employees.

SEC. 3032. ADMINISTRATIVE PROCEDURES.

Section 5334 is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking "5309–5311 of this title" and all that follows and inserting "5309 through 5311;" and

(B) in paragraph (9), by striking "and" at the end;

and

(2) by redesignating subsections (b), (c), (d), (f), (g), (h), and (j) as subsections (c), (d), (e), (f), (g), (h), (i), and (j), respectively.

(3) by adding after subsection (a) the following:

"(b) PROHIBITONS AGAINST REGULATING OPERATIONS AND CHARGES.—Except as directed by the President for purposes of national defense or in the event of a national or regional emergency, the Secretary may not regulate—

"(A) the operation, routes, or schedules of a public transportation system for which a grant is made under this chapter; or

"(B) rates, fares, rentals, or other charges prescribed by any public or private transportation provider.

"(c) COMPLIANCE WITH AGREEMENT.—Nothing in this subsection shall prevent the Secretary from requiring a recipient of funding under this chapter to comply with the terms and conditions of its Federal assistance agreement: and

(4) in subsection (j)(1), as redesignated, by striking "carry out section 5312(a) and (b)(1) of this title" and inserting "advise and assist the Secretary in carrying out section 5312(a)

SEC. 3033. REPORTS AND AUDITS.

Section 5335 is amended—

(1) by striking subsection (b); and

(2) in subsection (a)—

(A) by amending the heading to read as follows:

"Provided, That—

"(A) the amount made available for each fiscal year under sections (b) and (c) of this section; or

"(B) the rates, fares, rentals, or other charges prescribed by any public or private transportation provider.

"(3) by striking paragraph (9), as redesignated, by striking "and" at the end; and

"(4) in subsection (j)(1), as redesignated, by striking "5309 through 5311;" and inserting "and amendments to existing assistance and applicable or appropriated under section 5338(a) of this title; and

"(5) by adding before subsection (b), as redesignated, the following:

"(a) APPORTIONMENTS.—Of the amounts made available for each fiscal year under subsections (a),(c),(d),(e),(f),(g),(h), and (j) of section 5307 or 5311 for certain urbanized areas with populations of less than 200,000 in accordance with section 5307 or 5311; and

SEC. 3034. APPORTIONMENTS OF APPROPRIATIONS FOR FORMULA GRANTS.

Section 5336 is amended—

(1) by striking subsection (d); and

(2) by striking subsection (h); and

(3) by striking paragraph (4), by redesignating subsections (a) through (c) as subsections (b) through (d), respectively.

(5) by adding before subsection (b), as redesignated, the following:

"(a) APPORTIONMENTS.—Of the amounts made available for each fiscal year under subsections (a),(c),(d),(e),(f),(g),(h), and (j) of section 5307 or 5311 for certain urbanized areas with populations of less than 200,000 in accordance with section 5307 or 5311; and

"(2) by striking "5309 through 5311;" and inserting "5309 through 5311;" and

"(3) by adding at the end the following:

"(4) in subsection (j)(1), as redesignated, by striking "5309 through 5311;" and inserting "and amendments to existing assistance and applicable or appropriated under section 5338(a) of this title; and

"(5) by adding before subsection (b), as redesignated, the following:

"(a) APPORTIONMENTS.—Of the amounts made available for each fiscal year under subsections (a),(c),(d),(e),(f),(g),(h), and (j) of section 5307 or 5311 for certain urbanized areas with populations of less than 200,000 in accordance with section 5307 or 5311; and

"(2) by striking "5309 through 5311;" and inserting "5309 through 5311;" and

"(3) by adding at the end the following:
(7) in subsection (e)(2), as redesignated, by striking ‘‘subsection (a)(2) of this section’’ and inserting ‘‘subsection (b)(2)’’;
(8) in subsection (d), as redesignated by paragraph (2) of this section and inserting ‘‘subsection (b)(2)’’;
(9) in subsection (e)(1), by striking ‘‘subsections (a) and (b) of section 5338’’;
(10) in subsection (g), by striking ‘‘subsection (a)(1) of this section’’ each place it appears and inserting ‘‘subsection (b)(1)’’; and
(11) by adding at the end the following:

‘‘(k) SMALL TRANSIT INTENSIVE CITIES FACTORS.—The amount apportioned under subsection (a)(1) shall be apportioned to urbanized areas as follows:

(1) The Secretary shall calculate a factor equal to the sum of revenue vehicle hours operated within urbanized areas with a population of between 200,000 and 1,000,000 divided by the sum of the population of all such urbanized areas.

(2) The Secretary shall designate as eligible for support under this subsection all urbanized areas with a population of under 200,000 for which the number of revenue vehicle hours operated within the urbanized area divided by the population of the urbanized area exceeds the factor calculated under paragraph (1).

(3) For each urbanized area qualifying for an apportionment under paragraph (2), the Secretary shall calculate an amount equal to the product of the population of that urbanized area and the factor calculated under paragraph (1).

(4) For each urbanized area qualifying for an apportionment under paragraph (2), the Secretary shall calculate an amount equal to the product of the number of revenue vehicle hours within that urbanized area less the amount calculated in paragraph (5).

(5) Each urbanized area qualifying for an apportionment under paragraph (2) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for that urbanized area under paragraph (4) divided by the sum of the amounts calculated under paragraph (4) for all urbanized areas qualifying for an apportionment under paragraph (2).

(1) STUDY ON INCENTIVES IN FORMULA PROGRAMS.—

(1) STUDY.—The Secretary shall conduct a study to assess the feasibility and appropriateness of developing and implementing an incentive funding system under sections 5307 and 5311 for operators of public transportation.

(2) REPORT.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2004, the Secretary shall report on the results of the study conducted under paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(B) CONTENTS.—The report submitted under subparagraph (A) shall include—

(1) an analysis of the availability of appropriate measures to be used as a basis for the distribution of incentive payments;

(2) a description of any incentive measures available under paragraph (1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), or (7)(A) of section 5308(c); and

(3) the likely effects of the incentive funding system.

SEC. 3038. APPORTIONMENTS FOR FIXED GUIDEWAY MODERNIZATION.

Section 5337 is amended—

(1) in subsection (a), striking ‘‘for each of fiscal years 1998 through 2003’’; and

(2) by striking ‘‘section 5336(b)(2)(A)’’ each place it appears and inserting ‘‘section 5336(c)(2)(A)’’.

SEC. 3037. AUTHORIZATIONS.

Section 5338 is amended to read as follows:

§ 5338. Authorizations

(a) Fiscal Year 2004.—

(1) Formula Grants.—

(A) Trust Fund.—For fiscal year 2004, $3,053,079,920 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5007, 5009, 5101, and 5311 of this chapter and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

(B) General Fund.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $763,269,880 for fiscal year 2004 to carry out sections 5007, 5009, 5101, and 5311 of this chapter and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

(C) Allocation of Funds.—Of the amounts made available or appropriated under this paragraph—

(1) $4,821,335 shall be available to the Alaskan Rural Area Planning Organizations

(2) $412,410,622 shall be available to the Alaskan Tribal Planning Organizations

(3) $14,315,040 for fiscal year 2004 to carry out section 5308.

(4) $3,425,608,562 shall be available to provide financial assistance for other than urbanized areas under section 5311;

(5) $4,821,335 shall be available to the Alaskan Rural Area Planning Organizations;

(6) $6,908,995 shall be available to provide over-the-road bus accessibility grants under section 5308;

(7) $6,908,995 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310;

(8) $239,188,038 shall be available to provide financial assistance for urbanized areas under section 5307;

(9) $3,425,608,562 shall be available to provide financial assistance for buses and bus facilities under section 5309.

(2) Job Access and Reverse Commute.—


(B) General Fund.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $1,988,200 to carry out section 5007.

(C) Allocation of Funds.—Of the amounts made available or appropriated under this paragraph—

(1) $1,988,200 shall be available for grants under section 5007(c)(3)(E) to the institution identified in section 5005(d)(3)(E), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2004;

(2) $1,988,200 shall be available for grants under section 5005(d) to the institution identified in section 5005(d)(3)(E), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2004;

(3) not less than $3,976,400 shall be available to carry out sections 5005 and 5006.

(3) Allocation of Funds.—Of the amounts made available or appropriated under this paragraph—

(1) $1,988,200 shall be available for grants under section 5007(c)(3)(E) to the institution identified in section 5005(d)(3)(E), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2004;

(2) $1,988,200 shall be available for grants under section 5005(d) to the institution identified in section 5005(d), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2004;

(3) $4,821,335 shall be available to the Alaskan Rural Area Planning Organizations;

(4) $6,908,995 shall be available to provide over-the-road bus accessibility grants under section 5308;

(5) $4,821,335 shall be available to the Alaskan Rural Area Planning Organizations;

(6) $6,908,995 shall be available to provide over-the-road bus accessibility grants under section 5308.

(4) Planning.—

(A) Trust Fund.—For fiscal year 2004, $82,589,420 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5008.

(B) General Fund.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $3,053,079,920 to carry out section 5008.

(C) Allocation of Funds.—Of the amounts made available or appropriated under this paragraph—

(1) not less than $3,976,400 shall be available to carry out programs of the National Transit Institute under section 5115;

(2) not less than $5,219,025 shall be available to carry out section 5311(b)(2);

(3) not less than $6,201,325 shall be available to carry out section 5313; and

(4) the remainder shall be available to carry out national research and technology programs under sections 5312, 5314, and 5322.

(5) University Transportation Research.—

(A) Trust Fund.—For fiscal year 2004, $15,010,910 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5005 and 5006.

(B) General Fund.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $1,988,200 to carry out section 5005 and 5006.

(6) Special Rule.—Nothing in this paragraph shall be construed to limit the transportation research conducted by the centers receiving financial assistance under this section.

(7) Administration.—

(A) Trust Fund.—For fiscal year 2004, $60,043,640 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334.

(B) General Fund.—In addition to the amounts made available under subparagraph (A), there are authorized to be appropriated $15,010,910 for fiscal year 2004 to carry out section 5334.

(8) Grants as Contractual Obligations.—

(A) Grants Financed from Highway Trust Fund.—A grant or contract that is approved by the Secretary and financed with amounts made available under subparagraph (1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), or (7)(A) of section 5308(c) is a contractual obligation of the United States Government to pay the Federal share of the costs.

(B) Grants Financed from General Fund.—A grant or contract that is approved by the Secretary and financed with amounts made available under subparagraph (1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), or (7)(B) of section 5308(d) is a contractual obligation of the United States Government to pay the Federal share of the costs.
United States Government to pay the Federal share of the cost of the project only to the extent that amounts are appropriated for such purpose by an Act of Congress.

(b) Formula Grants and Research.

(1) There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5307, 5308, 5309, 5310 through 5316, 5322, 5333, 5340, and 5355 of the Federal Transit Act of 1998 (112 Stat. 387 et seq.).

(2) $6,577,628,000 for fiscal year 2005;

(3) $6,950,400,000 for fiscal year 2007;

(4) $7,594,760,000 for fiscal year 2008; and

(5) $8,275,320,000 for fiscal year 2009.

(c) Allocation of Funds.

The amount made available under paragraph (1) for each fiscal year—

(A) 0.925 percent shall be available for grants to the Alaska Railroad under section 5307 for improvements to its passenger operations;

(B) 1.75 percent shall be available to carry out section 5308;

(C) 2.05 percent shall be available to provide financial assistance for job access and reverse commute projects under section 5307 of the Federal Transit Act of 1998 (49 U.S.C. 5309 note);

(D) 3.00 percent shall be available to provide financial assistance for services for elderly persons and persons with disabilities under section 5310;

(E) 0.125 percent shall be available to carry out section 3508 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note);

(F) 0.125 percent shall be available to carry out section 3508 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

(G) 0.89 percent shall be available to carry out transit cooperative research programs under section 5311, the National Transit Institute under section 5315, university research centers under section 5350, and national research programs under sections 5312, 5313, and 5314, of which—

(i) 17.0 percent shall be allocated to carry out transit cooperative research programs under section 5313;

(ii) 0.5 percent shall be allocated to carry out programs under the National Transit Institute under section 5315, including not more than $1,000,000 to carry out section 5315(a); and

(iii) 11.0 percent shall be allocated to carry out the university centers program under section 5350; and

(iv) a portion made available under this subparagraph that are not allocated under clauses (i) through (iii) shall be allocated to carry out national research programs under section 5314, of which—

(H) $25,000,000 shall be available for each of the fiscal years 2005 through 2009 to carry out section 5316;

(I) there shall be available to provide financial assistance under section 5337 to other than urbanized areas under section 5307 and other than urbanized areas under section 5311; and

(K) there shall be allocated in accordance with section 5337 to provide financial assistance under section 5309(1)(c); and

(L) any amounts not made available under subparagraphs (A) through (K) shall be allocated in accordance with section 5336 to provide financial assistance for urbanized areas under section 5307.

(3) University Centers Program.

(4) Allocation.—Of the amounts allocated under paragraph (2)(G)(iii), $1,000,000 shall be allocated in accordance with section 5336 to provide financial assistance for urbanized areas under section 5307.

(5) Funding for Public Transportation Research Centers.-The Secretary shall provide an amount equal to the amount apportioned under subparagraph (A) and the amount apportioned under subparagraph (B) to carry out section 5338(b)(2)(J), for public transportation research centers, for each fiscal year through fiscal year 2009.

(c) Report.

(1) In General.—In addition to the report required under section 510(e)(3) of title 23, the university specified under subparagraph (A) shall annually submit a report to the Secretary that describes the university’s contribution to public transportation.

(2) Bus Grants.—In addition to the amounts made available under paragraph (1), there shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5308:

(A) $839,828,000 for fiscal year 2005;

(B) $882,075,000 for fiscal year 2006;

(C) $832,061,000 for fiscal year 2007;

(D) $871,998,000 for fiscal year 2008; and

(E) $1,109,739,000 for fiscal year 2009.

(3) Major Capital Investment Grants.—There are authorized to be appropriated to carry out section 5309—

(A) $1,461,072,000 for fiscal year 2005;

(B) $1,534,568,000 for fiscal year 2006;

(C) $1,623,536,000 for fiscal year 2007;

(D) $1,711,866,000 for fiscal year 2008; and

(E) $1,930,641,000 for fiscal year 2009.

(f) Grants as Contractual Obligations.

(1) Mass Transit Account Funds.—A grant or contract approved by the Secretary that is financed with amounts made available under subsection (b)(1) or (d) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project.

(2) Appropriated Funds.—A contract or contract approved by the Secretary that is financed with amounts made available under subsection (b)(1) or (d) is a contractual obligation of the United States Government to pay the Federal share of the cost of the project only to the extent that amounts are appropriated in advance for such purpose by an Act of Congress.

(3) Availability of Amounts.—Amounts made available by or appropriated under subsections (b) and (c) shall remain available until expended.

SEC. 3038. APPORTIONMENTS BASED ON GROWING STATES FORMULA FACTORS

(a) In General.—Each State is apportioned an amount equal to the sum of—

(1) 5340. Apportoinments based on growing States and high density State formula factors.

(a) Allocation.—Of the amounts made available for each fiscal year section 5338(b)(2)(J), the Secretary shall apportion—

(1) 50 percent to States and urbanized areas under section 5309(b)(1); and

(2) 50 percent to States and urbanized areas in accordance with subsection (c).

(b) Growing State Apportoinments.—

(1) Appropriation Among States.—The amounts apportioned under paragraph (a)(1) shall provide each State with an amount equal to the product of the total amount multiplied by a ratio equal to the population of that State forecast for the year that is 15 years after the most recent decennial census, divided by the total population forecast for the year that is 15 years after the most recent decennial census. Such forecast shall be based on the population trend for each State between the two most recent decennial censuses and the most recent estimate of population made by the Census Bureau.

(2) Apportoinments Between Urbanized Areas and Other Than Urbanized Areas in Each State.—

(A) In General.—The Secretary shall apportion amounts to each State under paragraph (1) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the forecast population of all urbanized areas in that State divided by the total forecast population of all States qualifying for an apportionment under this subparagraph, the Secretary shall utilize any available forecasts made by the State. If no forecasts are available, then the Secretary shall use the forecast population of all urbanized areas and total population from the most recent decennial census.

(B) Remaining Amounts.—Amounts remaining after each State has apportioned amounts to urbanized areas under paragraph (a) shall be apportioned to that State and added to the amount made available for grants under section 5311.

(3) Apportoinments Among Urbanized Areas in Each State.—The Secretary shall apportion amounts made available to urbanized areas in each State under paragraph (b)(2)(A) so that each urbanized area receives an amount equal to the amount apportioned under subsection (b)(2)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336 and made available for grants under section 5307.

(b) High Density State Apportoinments.—Amounts to be apportioned under subsection (a)(2) shall be apportioned as follows:

(b) Eligible States.—The Secretary shall designate as eligible for an apportionment under this subsection all States with a population density in excess of 370 persons per square mile.

(2) State Urbanized Land Factor.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the product of the urban land area of urbanized areas in the State times 370 persons per square mile.

(3) State Apportoinment Factor.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the sum of the amount calculated under paragraph (2) divided by the population of all States multiplied by the amount calculated in paragraph (2).

(c) State Apportoinment.—Each State qualifying for an apportionment under paragraph (1) shall receive an amount equal to the amount to be apportioned in this subsection multiplied by the amount calculated for the State under paragraph (3) divided by the sum of the amounts calculated under paragraph (2) for an apportionment under paragraph (1).

(5) Apportoinments Between Urbanized Areas and Other Than Urbanized Areas in Each State.—

(A) In General.—The Secretary shall apportion amounts apportioned to each State
under paragraph (4) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the population of all urbanized areas in that State divided by the total population of that State.

"(B) REMAINING AMOUNTS.—Amounts remaining for each State after apportionment under paragraph (1) shall be apportioned to that State and added to the amount made available for grants under section 5311.

(6) APPOINTMENTS AMONG URBANIZED AREAS.—The Secretary shall apportion amounts made available to urbanized areas in each State under subsection (c)(5)(A) so that each urbanized area receives an amount equal to the amount apportioned under subsection (c)(5)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5397.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 53 is amended by adding at the end the following:

"5340. Apportionments based on growing States and high density States formula factors."

SEC. 3039. JOB ACCESS AND REVERSE COMMUTE AREAS IN EACH STATE.—The Secretary shall certify that:

"(1) IN GENERAL.—A grant awarded under section 5333(b) of title 49, United States Code, shall apply to grants under this section if the Secretary of Labor utilizes a Special Warranty that provides a framework or agreement to protect the interests of employees.

"(2) SPECIAL WARRANTY.—"(A) In section 5333(b) of title 49, United States Code, shall be added to that State and added to the amount made available for grants under section 5311.

"(B) 25 percent shall be available, and shall remain available until expended, for operation of over-the-road buses, used substantially or exclusively in intercity, fixed-route service, for the increments of capital and training costs of the Department of Transportation’s final rule regarding accessibility of over-the-road buses; and

"(C) GRANT REQUIREMENTS.—(A) A Federal land management agency or other Governmental or nongovernmental participant.

"(B) WAIVER.—The Secretary may waive the applicability of the Special Warranty under subparagraph (A) for private non-profit recipients on a case-by-case basis as the Secretary considers appropriate.

"(D) USE OF FUNDS.—A grant, cooperative agreement, interagency agreement, intragency agreement, or other transaction for a qualified project under this section shall be available to finance the leasing of equipment and facilities for use in public transportation, subject to any regulation that the Secretary may prescribe limiting the use of funds for an eligible area.

"(E) LANDPROJECTIONS.—A grant, cooperative agreement, interagency agreement, intragency agreement, or other transaction for a qualified project under this section shall be available to finance the leasing of equipment and facilities for use in public transportation, subject to any regulation that the Secretary may prescribe limiting the use of funds for an eligible area.

"(F) NONPROFIT ORGANIZATIONS.—A grantee or other party to a Federal grantee agreement shall certify to the Secretary that the grantee or other party to the Federal grantee agreement is a nonprofit organization.

"(G) CONFORMING AMENDMENT.—The term ‘eligible area’ means any federally owned or managed park, refuge, or recreational area that is open to the general public, including:

"(1) a unit of the National Park System; and

"(2) a unit of the National Wildlife Refuge System.

"(H) A recreational area managed by the Bureau of Land Management; and

"(I) a recreation area managed by the Bureau of Reclamation.

"(J) FEDERAL LAND MANAGEMENT AGENCY.—The term ‘Federal land management agency’ means a Federal agency that manages an eligible area.

"(K) ALTERNATIVE TRANSPORTATION.—The term ‘alternative transportation’ means transportation by bus, rail, or any other publicly or privately owned conveyance that extends to the public general or special service on a regular basis, including sight-seeing service.

"(L) QUALIFIED PARTICIPANT.—The term ‘qualifying participant’ means:

"(A) a Federal land management agency;

"(B) a State, tribal, or local governmental authority with jurisdiction over land in the vicinity of an eligible area acting with the consent of the Federal land management agency, alone or in partnership with a Federal land management agency or other Governmental or nongovernmental participant.

"(M) QUALIFIED PROJECT.—The term ‘qualified project’ means a planning or capital project, or part thereof, in the vicinity of an eligible area that—

"(A) is an activity described in section 5302, 5303, 5304, 5306, or 5309(a)(1)(A); and

"(B) involves—

"(i) the purchase of rolling stock that incorporates clean fuel technology or the replacement of buses of a type in use on the day of enactment of this section with clean fuel vehicles; or

"(ii) the deployment of alternative transportation vehicles that introduce innovative technologies or methodologies;

"(C) a program or project that supports or improves water access within or in the vicinity of an eligible area, as appropriate to and consistent with this section; or

"(D) provides a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and non-motorized watercraft);

"(E) improves Federal land management agency resource management;
“(iv) improves visitor mobility and accessibility and the visitor experience;

“(v) reduces congestion and pollution (including noise pollution and visual pollution); or

“(vi) conserves a natural, historical, or cultural resource (excluding rehabilitation or restoration of a non-transportation facility).

“(c) FEDERAL AGENCY COOPERATIVE ARRANGEMENTS.—The Secretary shall develop cooperative arrangements with the Secretary of the Interior that provide for—

“(1) technical assistance in alternative transportation;

“(2) interagency and intergovernmental arrangements among Federal land management agency alternative transportation policy, procedures, and coordination; and

“(3) the development of procedures and criteria relating to the planning, selection, and funding of qualified projects and the implementation and oversight of the program of projects in accordance with this section.

“(d) LIMITATION ON USE OF AVAILABLE AMOUNTS.—

“(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, may award the 10 percent of the amount made available for a fiscal year under section 5383(a)(2)(A) to carry out planning, research, and technical assistance under this section, including the development of technology appropriate for use in a qualified project.

“(2) ADDITIONAL AMOUNTS.—Amounts made available under this subsection are in addition to amounts otherwise available to the Secretary to carry out planning, research, and technical assistance under this title or any other provision of law.

“(3) MAXIMUM AMOUNT.—No qualified project shall receive more than 12 percent of the total amount made available to carry out this section under section 5383(a)(2)(A) for any fiscal year.

“(e) PLANNING PROCESS.—In undertaking a qualified project under this section,

“(1) if the qualified participant is a Federal land management agency—

“(A) the Secretary, in cooperation with the Secretary of the Interior, shall develop transportation planning procedures that are consistent with—

“(i) the metropolitan planning provisions under section 5303 of this title;

“(ii) the planning provisions under section 5304 of this title; and

“(iii) the public participation requirements under section 5307(e); and

“(B) if the qualified participant is a State or local governmental authority, or more than one State or local governmental authority in a manner satisfactory to the Secretary, shall provide for—

“(1) comply with the metropolitan planning provisions under section 5303 of this title;

“(2) comply with the statewide planning provisions under section 5304 of this title; and

“(3) comply with the public participation requirements under section 5307(e) of this title; and

“(D) reduce pollution (including noise pollution, air pollution, and visual pollution);

“(ii) reduce congestion; and

“(iii) reduce energy and water consumption.

“(2) In establishing the agency share of net project cost to be provided under this section, the Secretary shall consider—

“(A) visitation levels and the revenue derived from the area in which the qualified project is carried out;

“(B) the extent to which the qualified participant coordinates with a public transportation entity, including a private entity engaged in public transportation;

“(C) private investment in the qualified project, including the provision of contracts for financial assistance activities, and the use of innovative financing mechanisms;

“(D) the clear and direct benefit to the qualified participant;

“(E) any other matters that the Secretary considers appropriate to carry out this section.

“(3) Notwithstanding any other provision of law, Federal funds appropriated to any Federal land management agency may be counted toward the non-agency share of the net project cost of a qualified project.

“(g) SELECTION OF QUALIFIED PROJECTS.—

“(1) The Secretary of the Interior, after consultation with and in cooperation with the Secretary of the Treasury, shall determine the final selection and funding of an annual program of qualified projects in accordance with this section.

“(2) In determining whether to include a project in the annual program of qualified projects, the Secretary of the Interior shall consider—

“(A) the justification for the qualified project, including the extent to which the qualified project would conserve resources, prevent or mitigate adverse impact, and enhance the environment;

“(B) the location of the qualified project, to ensure that the selected qualified projects—

“(i) are geographically diverse nationwide; and

“(ii) include qualified projects in eligible areas located in both urban areas and rural areas;

“(C) the size of the qualified project, to ensure that there is a balanced distribution;

“(D) the historical and cultural significance of a qualified project;

“(E) safety; and

“(F) the extent to which the qualified project would—

“(i) enhance livable communities;

“(ii) reduce pollution (including noise pollution, air pollution, and visual pollution);

“(iii) reduce energy and water consumption;

“(iv) improve the mobility of people in the most efficient manner; and

“(G) any other matters that the Secretary considers appropriate to carry out this section, including—

“(i) visitation levels;

“(ii) the use of innovative financing or joint development strategies; and

“(iii) coordination with gateway communities.

“(b) QUALIFIED PROJECTS CARRIED OUT IN ADVANCE.—

“(1) When a qualified participant carries out any part of a qualified project without assistance under this section in accordance with all applicable procedures and requirements, the Secretary, in consultation with the Secretary of the Interior, may pay the share of that net capital project cost of a qualified project if—

“(A) the qualified participant applies for the payment;

“(B) the Secretary approves the payment; and

“(C) before carrying out that part of the qualified project, the Secretary approves the plans and specifications in the same manner as plans and specifications are approved for other projects assisted under this section.

“(k) INNOVATIVE FINANCING.—A qualified project receiving financial assistance under this section shall be eligible for funding through a state infrastructure bank or other innovative financing mechanism available to finance an eligible project under this chapter.

“(l) REPORTS.—

“(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior,
shall annually submit a report on the allocation of amounts made available to assist qualified projects under this section to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate and—

(B) the Committee on Transportation and Infrastructure of the House of Representatives.

(2) ANNUAL AND SUPPLEMENTAL REPORTS.—The report required under paragraph (1) shall be included in the report submitted under section 5309(m).

(b) CONFORMING AMENDMENTS.—The table of sections for chapter 53 is amended by inserting after the item relating to section 5315 the following:

"5316. Alternative transportation in parks and public lands."

SEC. 3042. OBLIGATION CEILING.

Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Mass Transit Account of the Highway Trust Fund by, and amounts appropriated under, subsections (a) through (c) of section 5338 of title 49, United States Code, shall not exceed—

(1) $7,265,876,900 for fiscal year 2004;
(2) $8,650,000,000 for fiscal year 2005;
(3) $9,090,000,000 for fiscal year 2006;
(4) $9,600,000,000 for fiscal year 2007;
(5) $10,400,000,000 for fiscal year 2008; and
(6) $11,400,000,000 for fiscal year 2009.

SEC. 3043. AUTHORITY FOR SURFACE TRANSPORTATION EXTENSION ACT OF 2003.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall reduce the total apportionments and allocations made for fiscal year 2004 to each grant recipient under section 5308 of title 49, United States Code, by the amount apportioned to that recipient pursuant to section 8 of the Surface Transportation Extension Act of 2003.

(b) FIXED GUIDEWAY MODERNIZATION ADJUSTMENT.—In making the apportionments described in subsection (a), the Secretary shall adjust the amount apportioned for fiscal year 2004 to each urbanized area for fixed guideway modernization to reflect the apportionment method set forth in section 5307(a)(1) of title 49, United States Code.

SEC. 3044. DISADVANTAGED BUSINESS ENTERPRISE.

Section 1301(b) of the Transportation Equity Act for the 21st Century shall apply to all funds authorized or otherwise made available under this title.

SEC. 3045. INTERMODAL PASSENGER FACILITIES.

(a) IN GENERAL.—Chapter 55 of title 49, United States Code, is amended by adding at the end the following:

"SUBCHAPTER III—INTERMODAL PASSENGER FACILITIES

§ 5571. Policy and purposes

(a) DEVELOPMENT AND ENHANCEMENT OF INTERMODAL PASSENGER FACILITIES.—It is in the economic interest of the United States to improve the efficiency of public surface transportation modes by ensuring their connection with and access to intermodal passenger terminals, thereby streamlining the travel experience among modern, enhancing travel options, and increasing passenger transportation operating efficiencies.

(b) GENERAL PURPOSES.—The purposes of this subchapter are to accelerate intermodal integration among North America’s passenger transportation modes through—

(1) ensuring intercity public transportation access to intermodal passenger facilities;

(2) encouraging the development of an integrated system of public transportation information and service;

(3) providing intercity bus intermodal passenger facility grants.

§ 5572. Definitions

In this subchapter—

(1) ‘capital project’ means a project for—

(A) acquiring, constructing, improving, or renovating an intermodal facility that is related physically and functionally to intercity bus service and establishes or enhances coordination between intercity bus service and transportation by commuter rail, intercity rail, public transportation, seaports, and the National Highway System, such as physical infrastructure associated with operations at existing and new intermodal facilities, including special lanes, curb cuts, ticket kiosks and counters, baggage and package express storage, employees’ parking, office space, security, and signage; and

(B) establishing or enhancing coordination between intercity bus service and transportation, including aviation, commuter rail, intercity rail, public transportation, and the National Highway System through an integrated system of public transportation information;

(2) ‘commuter service’ means service designed primarily to provide daily work trips within the local commuting area;

(3) ‘intermodal bus facility’ means regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas that are not in the same proximity, which has the capacity for transporting baggage carried by passengers, and which makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available and may include package express service, if incidental to passenger transportation, but does not include air, commuter, water or rail service;

(4) ‘intermodal passenger facility’ means passenger terminal that does, or can be modified to, accommodate several modes of transportation and related facilities, including some or all of the following: intercity rail, intercity bus, commuter rail, intercity rail transit and bus transportation, airport limousine service and airline ticket offices, rent-a-car facilities, taxis, private parking, and other transportation services;

(5) ‘local governmental authority’ includes—

(A) a political subdivision of a State;

(B) an authority of at least one State or political subdivision of a State;

(C) an Indian tribe; and

(D) a public corporation, board, or commission established under the laws of the State;

(6) ‘owner or operator of a public transportation facility’ means owner or operator of intercity-rail, intercity-bus, commuter-rail, commuter-bus, rail-transit, bus-transit, or ferry services;

(7) ‘recipient’ means a State or local governmental authority or a nonprofit organization that receives a grant to carry out this section directly from the Federal government.

(8) ‘Secretary’ means the Secretary of Transportation.

(9) ‘State’ means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(10) ‘urban area’ means an area that includes a municipality or other built-up place that the Secretary, after considering local patterns and trends in growth, decides is appropriate for a local public transportation system to serve individuals in the locality.

§ 5573. Assurance of access to intermodal passenger facilities

Intercity buses and other modes of transportation shall, to the maximum extent practicable, have access to publicly funded intermodal passenger facilities, including those passenger facilities seeking funding under section 5574.

§ 5574. Intercity bus intermodal passenger facility grants

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants under this section to recipients in financing a capital project only if the Secretary finds that the proposed project is justified and has adequate financial commitment.

(b) COMPETITIVE GRANT SELECTION.—The Secretary shall conduct a national solicitation for applications for grants under this section. Grantees shall be selected on a competitive basis.

(c) SHARE OF NET PROJECT COSTS.—A grant shall not exceed 50 percent of the net project cost, as determined by the Secretary.

(d) REGULATIONS.—The Secretary may promulgate such regulations as are necessary to carry out this section.

§ 5575. Funding

(1) [REPEATED]

[222x762]CONGRESSIONAL RECORD — SENATE
February 26, 2004

[406x299]TITLE IV—SURFACE TRANSPORTATION SAFETY

SEC. 4001. SHORT TITLE.

This title may be cited as the "Surface Transportation Safety Reauthorization Act of 2001".

Subtitle A—Highway Safety

PART I—HIGHWAY SAFETY GRANT PROGRAM

SEC. 401. SHORT TITLE; AMENDMENT OF TITLE 23, UNITED STATES CODE.

(a) SHORT TITLE.—This subpart may be cited as the “Highway Safety Grant Program Reauthorization Act of 2004”.

(b) AMENDMENT OF TITLE 23, UNITED STATES CODE.—Except as otherwise expressly provided, whenever in this subpart an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 23, United States Code.

SEC. 402. AUTHORIZATION OF APPROPRIATIONS.

AMOUNTS FOR FISCAL YEARS 2004 THROUGH 2009.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to the National Highway Traffic Safety Administration the following:
SEC. 4103. HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.

(A) AUTHORITY OF THE SECRETARY.—The Secretary is authorized to use funds appropriated to carry out this section to—

(1) conduct research on all phases of highway safety and traffic conditions, including accident causation, highway or driver characteristics, communications, and emergency care; 

(2) conduct ongoing research into driver behavior and its effect on traffic safety; 

(3) conduct research on, and launch initiatives to counter, fatigued driving by drivers of motor vehicles and distracted driving in such vehicles, including the effect that the use of electronic devices and other factors deemed relevant by the Secretary have on driving; 

(4) conduct training or education programs in cooperation with other Federal departments and agencies, State, private sector persons, highway safety personnel, and law enforcement personnel; 

(5) conduct research on, and evaluate the effectiveness of, safety countermeasures, including seat belts and impaired driving initiatives; and 

(6) conduct demonstration projects. 

(B) REQUIRED PROGRAMS.—The Secretary shall conduct research on the following:

(1) EFFECTS OF USE OF CONTROLLED SUBSTANCES.—A study on the effects of the use of controlled substances on driver behavior to determine—

(A) current technologies for measuring driver impairment resulting from use of the most common controlled substances (including the use of such substances in combination with alcohol); and 

(B) effective and efficient methods for training law enforcement personnel to detect or measure the level of impairment of a driver under the influence of a controlled substance or the use of technology or otherwise. 

(2) ONGOING STUDIES.—The studies conducted in subparagraphs (A) and (B) of paragraph (1) may be conducted in concert with other Federal departments and agencies with relevant expertise. The Secretary shall submit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the progress of each study conducted under paragraphs (1)(C)(ii), (ii), (iii), (iv), and (v) of subparagraph (A) of this paragraph.

SEC. 4104. HIGHWAY SAFETY RESEARCH AND OUTREACH PROGRAMS.

(A) REVISED AUTHORITY AND REQUIREMENTS.—Section 403 is amended to read as follows:

"§ 403. Highway safety research and development.

(A) AUTHORITY OF THE SECRETARY.—The Secretary is authorized to use funds appropriated to carry out this section to—

(1) conduct research on all phases of highway safety and traffic conditions, including accident causation, highway or driver characteristics, communications, and emergency care.

(2) conduct ongoing research into driver behavior and its effect on traffic safety.

(3) conduct research on, and launch initiatives to counter, fatigued driving by drivers of motor vehicles and distracted driving in such vehicles, including the effect that the use of electronic devices and other factors deemed relevant by the Secretary have on driving.

(4) conduct training or education programs in cooperation with other Federal departments and agencies, State, private sector persons, highway safety personnel, and law enforcement personnel.

(5) conduct research on, and evaluate the effectiveness of, safety countermeasures, including seat belts and impaired driving initiatives; and

(6) conduct demonstration projects.

(B) REQUIRED PROGRAMS.—The Secretary shall conduct research on the following:

(1) EFFECTS OF USE OF CONTROLLED SUBSTANCES.—A study on the effects of the use of controlled substances on driver behavior to determine—

(A) current technologies for measuring driver impairment resulting from use of the most common controlled substances (including the use of such substances in combination with alcohol); and

(B) effective and efficient methods for training law enforcement personnel to detect or measure the level of impairment of a driver under the influence of a controlled substance or the use of technology or otherwise.

(2) ONGOING STUDIES.—The studies conducted in subparagraphs (A) and (B) of paragraph (1) may be conducted in concert with other Federal departments and agencies with relevant expertise. The Secretary shall submit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the progress of each study conducted under paragraphs (1)(C)(ii), (ii), (iii), (iv), and (v) of subparagraph (A) of this paragraph.

(3) ONGOING STUDIES.—The Secretary shall submit a report to Congress referred to in paragraph (3) to the Committees of Congress referred to in subparagraph (A) not..."
later than December 31, 2005, and shall submit additional reports on such studies to such committees every 2 years. Such additional reports shall contain the findings, program challenges, recommended objectives, and other relevant data relating to the ongoing studies.

(5) Research on Distracted, Inattentive, Drowsy, and Impaired Drivers.—In carrying out research under subsection (a)(3), the Secretary shall carry out not less than 5 demonstration projects to evaluate new and innovative means of combating traffic system problems caused by distracted, inattentive, and fatigued drivers. The demonstration projects shall be in addition to any other research carried out for this subsection.

(6) Nationwide Traffic Safety Campaigns.—

(A) Requirement for Campaigns.—The Administrator of the National Highway Traffic Safety Administration shall establish and administer a program under which 3 high-visibility traffic safety law enforcement campaigns will be carried out for the purposes specified in paragraph (2) in each of years 2004 through 2009.

(B) Purpose.—The purpose of each law enforcement campaign described in this subparagraph shall be to achieve either or both of the following objectives:

(1) Reduce alcohol-impaired or drug-impaired operation of motor vehicles.

(2) Increase use of seat belts by occupants of motor vehicles.

(C) Advertising.—The Administrator may use, or authorize the use of, funds available under this section to pay for the development, production, and use of broadcast and print media advertising in carrying out traffic safety law enforcement campaigns under this subsection. Such advertising shall be given to advertising directed at non-English speaking populations, including those who read, or watch nontraditional media.

(7) United States.—The Administrator shall coordinate with the States in carrying out the traffic safety law enforcement campaigns under this subsection, including advertising funded under paragraph (3), with a view to—

(A) relying on States to provide the law enforcement resources for the campaigns out of funds under this section; (B) providing out of National Highway Traffic Safety Administration resources necessary for national advertising and education efforts consistent with the law enforcement campaigns.

(8) Annual Evaluation.—The Secretary shall make an annual evaluation of the effectiveness of such initiatives.

(9) Funding.—The Secretary shall use $24,000,000 in each of fiscal years 2004 through 2009 for advertising and educational initiatives to be carried out nationwide in support of the campaigns under this section.

(10) Improving Older Driver Safety.—

(A) Requirement for Program.—The Secretary shall carry out a study under this section of the frequency with which persons arrested for the offense of operating a motor vehicle under the influence of alcohol and persons arrested for the offense of operating a motor vehicle while intoxicated refuse to take a test to determine blood alcohol concentration levels and the effect such refusals have on the ability of the Secretary to prosecute such persons for those offenses.

(B) Consultation.—In carrying out the study under this section, the Secretary shall consult with the Governors of the States, the States’ Attorneys General, and the United States Sentencing Commission.

(11) Report.—

(A) Requirement for Report.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report on the results of the study to the Committees on Transportation and Infrastructure of the Senate and the Committee on Transportation of the House of Representatives.

(B) Content.—The report shall include any recommendation for legislation, including any recommended model State legislation, and any other recommendations that the Secretary considers appropriate for implementing a program designed to decrease the occurrence refusals by arrested persons to submit to a test to determine blood alcohol concentration levels.

SEC. 4106. NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE TECHNICAL CORRECTION.

Section 405 is amended—

(1) by striking the second sentence of subsection (a)(1); and

(2) by striking “Transportation Equity Act for the 21st Century” in subsection (a)(2) and inserting “Highway Safety Grant Program Reauthorization Act of 2004.”

SEC. 4107. SECTION 4105 AMENDMENT.

Section 4105 is amended—

(1) by striking the second sentence of subsection (a)(1); and

(2) by striking “Transportation Equity Act for the 21st Century” in subsection (a)(2) and inserting “Highway Safety Grant Program Reauthorization Act of 2004.”

SEC. 4108. AMENDMENT TO SECTION 4106.

Section 4106 is amended—

(1) by striking the second sentence of subsection (a)(1); and

(2) by striking “Transportation Equity Act for the 21st Century” in subsection (a)(2) and inserting “Highway Safety Grant Program Reauthorization Act of 2004.”

SEC. 4109. AMENDMENT TO SECTION 4110.

Section 4110 is amended—

(1) by striking the second sentence of subsection (a)(1); and

(2) by striking “Transportation Equity Act for the 21st Century” in subsection (a)(2) and inserting “Highway Safety Grant Program Reauthorization Act of 2004.”

SEC. 4110. AMENDMENT TO SECTION 4111.

Section 4111 is amended—

(1) by striking the second sentence of subsection (a)(1); and

(2) by striking “Transportation Equity Act for the 21st Century” in subsection (a)(2) and inserting “Highway Safety Grant Program Reauthorization Act of 2004.”

SEC. 4111. AMENDMENT TO SECTION 4112.

Section 4112 is amended—

(1) by striking the second sentence of subsection (a)(1); and

(2) by striking “Transportation Equity Act for the 21st Century” in subsection (a)(2) and inserting “Highway Safety Grant Program Reauthorization Act of 2004.”

SEC. 4112. AMENDMENT TO SECTION 4113.

Section 4113 is amended—

(1) by striking the second sentence of subsection (a)(1); and

(2) by striking “Transportation Equity Act for the 21st Century” in subsection (a)(2) and inserting “Highway Safety Grant Program Reauthorization Act of 2004.”

SEC. 4113. AMENDMENT TO SECTION 4114.

Section 4114 is amended—

(1) by striking the second sentence of subsection (a)(1); and

(2) by striking “Transportation Equity Act for the 21st Century” in subsection (a)(2) and inserting “Highway Safety Grant Program Reauthorization Act of 2004.”
and Human Services, as having a significant
Emergency Preparedness and Response, in
Federal Communications Commission.
ness and Response Directorate, Department
Services Administration, Department of
Traffic Safety Administration.
ness and Response.—

Under section 407 the following:
under this subparagraph shall be 100 percent.
be available for safety belt use rate grants
2008, and $30,000,000 for fiscal year 2009 shall
under this subsection, $20,000,000 for fiscal
year.
states that qualify for a grant for such fiscal
year.
(iii) Of the funds allocated for grants under
section 407, $30,000,000 for fiscal year 2004, $22,000,000 for fiscal year 2005, $24,000,000 for fiscal year 2006, $26,000,000 for fiscal year 2007, $28,000,000 for fiscal year 2008, and $30,000,000 for fiscal year 2009 shall be available for safety belt use rate grants under this subparagraph.
(iv) The Federal share payable for grants
under this subparagraph shall be 100 percent.

(c) Use of Grants.—A State allocated
an amount for a grant under subparagraph (A)
or (B) shall—

(1) establish a program that is designed to strengthen
community and regional emergency medical services
and resources deployed through a State office of emergency medical services that has adequate powers and is suitably equipped and organized to carry out such program and coordinates such program with the highway safety office of the State; and

(2) authorize political subdivisions of the State to participate in and receive funds under such program, consistent with a goal of achieving statewide coordination of emergency medical services and 9-1-1 activities.

(4) Funding.—

(A) Use of Funds.—Funds authorized to be appropriated to carry out this section shall be available to fund the States in conducting coordinated emergency medical services and 9-1-1 programs as described in paragraph (2).

(B) Appropriation.—

(1) Appportionment.—The funds shall be apportioned as follows: 75 percent in the ratio that the population of each State bears to the total population of all States, as shown by the latest available Federal census, and 25 percent in the ratio that the public road mileage in each State bears to the total public road mileage in all States. For the purpose of this subparagraph, a ‘public road’ means any road under the jurisdiction of and maintained by a public authority and open to public travel. Public road mileage as used in this subsection shall be determined as of the end of the calendar year prior to the year in which the funds are apportioned and shall be certified by the Governor of the State and subject to approval by the Secretary.

(2) Minimum Appportionment.—The annual
appportionment to each State shall not be less than 51 percent of the total apportionment, except that the apportionment to the terms ‘State’ and ‘Governor of the State’ include the Secretary of the Interior on behalf of Indian tribes shall not be less than $1 percent of the total apportionment, and the apportionments to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not be less than 1 percent of the total apportionment.

(5) Application of Chapter 1.—Section 409(d) of this title shall apply in the administration of this subsection.

(6) Federal Share.—The Federal share of the cost of a project funded under this subsection shall be 80 percent.

(7) Indian Country.—

(A) Use of Terms.—For the purpose of applying this subsection to Indian country, the terms ‘State’ and ‘Governor of the State’ include the Secretary of the Interior and the term ‘political subdivisions of the State’ includes an Indian tribe.

(B) Indian Country Defined.—In this subsection, the term ‘Indian country’ means

(i) all land within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent and including rights-of-way running through the reservation;

(ii) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof and whether within or without the limits of any State;

(iii) all Indian allotments, the Indian title to which have not been extinguished, including rights-of-way running through such allotments.

(C) State Defined.—In this section, the term ‘State’ means each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Secretary of the Interior on behalf of Indian tribes.

(D) Construction With Respect to District of Columbia.—In the administration

(3) UNITED STATES DEPARTMENT OF HUMAN SERVICES.—

(A) Provides that the Governor of the State is responsible for its administration through a State office of emergency medical services that has adequate powers and is suitably equipped and organized to carry out such program and coordinates such program with the highway safety office of the State; and

(B) authorizes political subdivisions of the State to participate in and receive funds under such program, consistent with a goal of achieving statewide coordination of emergency medical services and 9-1-1 activities.
of this section with respect to the District of Columbia, a reference in this section to the Governor of a State shall refer to the Mayor of the District of Columbia.’’. 

(b) CHERNOBYL AMENDMENT.—The chapter analysis for chapter 4 is amended by inserting after the item relating to section 407 the following:

“407A. Federal coordination and enhanced support of emergency medical services.”.

SEC. 4109. REPEAL OF AUTHORITY FOR ALCOHOL AND DRUG USE PROGRAMS.

(a) REPEAL.—Section 410(a)(2) is amended by striking “the Transportation Equity Act for the 21st Century’’.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 4 is amended by striking the item relating to section 4110 and inserting the following:

“(a) MAINTENANCE OF EFFORT.—Section 410 is amended—

(1) by striking paragraph (3) of subsection (a) and redesignating paragraph (4) as paragraph (3); and

(2) by striking subsections (b) through (f) and inserting the following:

“(b) PROGRAM-RELATED ELIGIBILITY REQUIREMENTS.—To be eligible for a grant under this section, a State shall—

(i) carry out the programs and activities required under subsection (c);

(ii) comply with the additional requirements set forth in subsection (d) with respect to such programs and activities; and

(iii) comply with any additional requirements of the Secretaries.

“(c) REPEAL.—Section 410(A) is repealed.

“(d) CLERICAL AMENDMENT.—The chapter analysis for chapter 4 is amended by striking the item relating to section 4110 and inserting the following:

“(1) CHECK-POINT, SATURATION PATROL PROGRAM.—

“(A) A program to conduct a series of high-visibility, statewide law enforcement campaigns in which law enforcement personnel monitor for impaired driving, either through use of check-points or saturation patrols designed to authorize the programs in cooperation with related national campaigns organized by the National Highway Traffic Safety Administration, but this subparagraph does not preclude a State from initiating high-visibility, statewide law enforcement campaigns independently of the cooperative efforts.

“(B) A program to meet the requirements of this subparagraph only if, for each fiscal year, a State demonstrates to the Secretary that the State and the political subdivisions of the State that receive funds under this section, in the aggregate, the total number of impaired driving law enforcement activities, as described in subparagraph (A) or any other similar activity approved by the Secretary, initiated in such State during the preceding fiscal year by a factor that the Secretary determines meaningful for the State over the number of such activity initiations in such State during the preceding fiscal year, which shall not be less than 5 percent.

“(2) PROSECUTION AND ADJUDICATION PROGRAM.—For each fiscal year, a State demonstrates to the Secretary that it has made substantial and meaningful progress in improving the State’s impaired operator information system, and makes public a report on the progress of the information system.

“(C) A program meets the requirements of this subparagraph only if, in each of fiscal years 2005, 2006, and 2007, a State—

(i) assesses the system used by the State for tracking drivers who are arrested or convicted of violations of laws prohibiting impaired operation of motor vehicles; and

(ii) identifies the information necessary to achieve the identified improvements and to enhance the capability for coordination with the systems of other States.

“(D) PLAN.—In the second year of operation, the States shall establish a statewide impaired driving task force to assess the State’s impaired driving system, identify the opportunities for improvements in the system, and develop a strategic plan that outlines the steps and resources necessary to improve the system and enhance coordination among State and local agencies responsible for reducing impaired driving.

“(E) In each subsequent fiscal year, the State shall—

(i) develop a strategic plan for the State impaired driving system, and

(ii) implement the strategies described in the strategic plan.

“(F) Technical assistance.—The Secretary may provide technical assistance to the States to develop and implement plans under this section.

“(G) IMPAIRED OPERATOR INFORMATION SYSTEM.—

“(i) A State impaired operator information system that—

(1) judges and prosecutors are actively encouraged to prosecute and adjudicate cases of defendants who repeatedly commit impaired driving offenses by reducing the use of plea agreements or other legal means that have the effect of avoiding or expunging a permanent record of impaired driving in such cases;

(2) the courts in a majority of the judicial jurisdictions of the State are monitored on the courts’ adjudication of cases of impaired driving offenses;

(3) annual outreach program is provided for judges and prosecutors on innovative approaches to the prosecution and adjudication of impaired driving offenses.

“(ii) In each fiscal year, a State demonstrates to the Secretary that—

(I) accessibility to the information for law enforcement personnel Statewide and for United States law enforcement personnel; and

(ii) linkage for the sharing of the information and of the information in State traffic record systems among jurisdictions and appropriate agencies, court systems and offices of the States.

“(iii) shares information with the National Highway Traffic Safety Administration for compilation and use for the tracking of impaired operators of motor vehicles who move from State to State; and

(iv) meets the requirements of subparagraphs (B), (C), and (D) of this paragraph, as applicable.

“(B) A program meets the requirements of this paragraph only if, during fiscal years 2004 and 2005, a State—

(i) assesses the system used by the State for tracking drivers who are arrested or convicted of violations of laws prohibiting impaired operation of motor vehicles; and

(ii) identifies ways to improve the system, as well as to enhance the capability of the system to provide information in coordination with impaired operator information systems of other States; and

(iii) develops a strategic plan that sets forth the actions to be taken and the resources necessary to achieve the identified improvements and to enhance the capability for coordination with the systems of other States.

“(C) A program meets the requirements of this subparagraph only if, in each of fiscal years 2006 and 2007, a State—

(i) assesses the system used by the State for tracking drivers who are arrested or convicted of violations of laws prohibiting impaired operation of motor vehicles; and

(ii) identifies ways to improve the system, as well as to enhance the capability of the system to provide information in coordination with impaired operator information systems of other States; and

(iii) develops a strategic plan that sets forth the actions to be taken and the resources necessary to achieve the identified improvements and to enhance the capability for coordination with the systems of other States.

“(iii) IMPAIRED DRIVING PERFORMANCE.—The percentage of fatally-injured drivers with a BAC of 0.08 percent or higher who were alcoholically impaired when the crash occurred in such State has decreased in each of the 2 most recent calendar years.

“(D) PLAN.—In the second year of operation, the State shall develop a strategic


\(\text{(1) IMPAIRED OPERATOR.---The term ‘impaired operator’ means a person who, while operating a motor vehicle,}\\
\text{(A) has a blood alcohol content of 0.08 percent or higher; or}\\
\text{(B) is under the influence of a controlled substance.}\\
\)

\(\text{(2) IMPAIRED DRIVING-RELATED FATILITY RATE.---The term ‘impaired driving-related fatality rate’ means the rate of the fatal accidents that involve impaired drivers while operating motor vehicles, as calculated in accordance with the fatality reduction rate formula prescribed by the Administrator of the National Highway Traffic Safety Administration.}\\
\text{The Administrator of the National Highway Traffic Safety Administration shall prescribe.}\\
\)

\(\text{(c) NHTSA TO ISSUE REGULATIONS.—Not later than 12 months after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2004, the National Highway Traffic Safety Administration shall issue guidelines to the States specifying the types and formats of data that States should collect relating to drivers who are arrested or convicted for violation of laws prohibiting the impaired operation of motor vehicles.}\\
\)

\(\text{SEC. 4111. STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.}\\
\text{(a) GRANT PROGRAM AUTHORITY.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following:}\\
\text{§ 412. State traffic safety information system improvements}\\
\text{(a) GRANT AUTHORITY.—Subject to the requirements of this section, the Secretary shall make grants of financial assistance to eligible States to support the development and implementation of effective programs by such States to—}\\
\text{(1) improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the safety data of the State that is needed to identify priorities for national, State, and local highway and traffic safety programs;}\\
\text{(2) evaluate the effectiveness of efforts to make such improvements;}\\
\text{(3) link the State data systems, including traffic records, with other data systems within the State, such as systems that contain medical, roadway, and economic data; and}\\
\text{(4) improve the compatibility and interoperability of the data systems of the State with national data systems and data systems of other States and with those of appropriate parties, shall determine the}\\
\text{(b) FIRST-YEAR GRANTS.—}\\
\text{(1) ELIGIBILITY.—To be eligible for a first-year grant under this section in a fiscal year, a State shall—}\\
\text{(A) have a blood alcohol content of 0.08 percent or higher; and}\\
\text{(B) develop and implement a plan that addresses existing deficiencies in the State’s highway safety data and traffic records system with the approval of the Secretary that the State will maintain its aggregate expenditures from all other sources for highway traffic safety information systems for at least five years following the date on which the grant is made.}\\
\text{(ii) the ratio that the funds apportioned to the State under section 402 of this title for fiscal year 2003 bears to the funds apportioned to all States under such section for fiscal year 2008; or}\\
\text{(B) $500,000.}\\
\text{(d) ADDITIONAL REQUIREMENTS AND LIMITATIONS.}\\
\text{(1) MODEL DATA ELEMENTS.—The Secretary, in consultation with States and other appropriate parties, shall determine the model data elements that are useful for the observation and analysis of State and national trends in occurrences, rates, outcomes, and circumstances of motor vehicle traffic accidents. In order to be eligible for a grant under this section, a State shall submit to the Secretary a certification that the State has adopted and used such model data elements, or a certification that the State will develop such data elements as quickly as possible.}\\
\text{(2) DATA ON USE OF ELECTRONIC DEVICES.—}\\
\text{The model data elements required under paragraph (1) shall include data elements, as determined appropriate by the Secretary in consultation with the States and with appropriate elements of the law enforcement community, on the impact on traffic safety of the use of electronic devices while driving.}\\
\text{No grant may be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary determines necessary to ensure that the State will maintain its aggregate expenditures from all other sources for highway traffic safety information systems.}\\
\text{(3) MAINTENANCE OF EFFORT.——No grant may be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary determines necessary to ensure that the State will maintain its aggregate expenditures from all other sources for highway traffic safety information systems.}\\
\text{The model data elements required under paragraph (1) shall include data elements, as determined appropriate by the Secretary in consultation with the States and with appropriate elements of the law enforcement community, on the impact on traffic safety of the use of electronic devices while driving.}\\
\text{No grant may be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary determines necessary to ensure that the State will maintain its aggregate expenditures from all other sources for highway traffic safety information systems.}\\
\text{The model data elements required under paragraph (1) shall include data elements, as determined appropriate by the Secretary in consultation with the States and with appropriate elements of the law enforcement community, on the impact on traffic safety of the use of electronic devices while driving.}\\
\text{No grant may be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary determines necessary to ensure that the State will maintain its aggregate expenditures from all other sources for highway traffic safety information systems.}
safety data programs at or above the average level of such expenditures maintained by such State in the 2 fiscal years preceding the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2004.

(4) FEDERAL SHARE.—The Federal share of the cost of adopting and implementing in a fiscal year a State program described in subsection (a) shall equal 80 percent under paragraph (2) that is directed to a State highway safety agency until after it has been submitted to that agency.

(5) LIMITATION ON USE OF GRANT PROCEEDS.—A State may use the proceeds of a grant received under this section only to implement a project described in subsection (a) for which the grant is made.

(6) APPLICABILITY OF CHAPTER 1.—Section 420(d) of this title shall apply in the administration of this section.

(b) CHERLICAL AMENDMENT.—The chapter analysis for chapter 4 is amended by adding at the end the following:

"412. State traffic safety information system improvements.

SEC. 4112. NHTSA ACCOUNTABILITY.

(a) IN GENERAL.—Chapter 4, as amended by section 4111, is amended by adding at the end the following:

"§ 413. Agency accountability.

"(a) TRIENNIAL STATE MANAGEMENT REVIEWS.—At least once every 3 years the National Highway Traffic Safety Administration shall conduct a review of each State highway safety program. The review shall include a management evaluation of all grant programs partially or fully funded under this title. The Administrator shall provide review-based recommendations on how each State may improve the management and oversight of its grant activities and may provide a management and oversight plan.

"(b) RECOMMENDATIONS BEFORE SUBMISSION.—In order to provide guidance to State highway safety agencies on matters that should be addressed in the State highway safety program goals and initiatives as part of its highway safety plan before the plan is submitted for review, the Administrator shall provide non-binding data-based recommendations to each State at least 90 days before the date on which the plan is to be submitted to the Administrator.

"(c) STATE PROGRAM REVIEW.—The Administrator shall—

"(1) conduct a program improvement review of any State that does not make substantial progress over a 3-year period in meeting its priority program goals; and

"(2) provide technical assistance and safety program recommendations to the State for any goal not achieved.

"(d) REGIONAL HARMONIZATION.—The Administrator shall issue uniform management reviews and program reviews conducted by Administration regional offices and formulate a report of best practices to be completed within 180 days after the date of enactment of the Highway Safety Grant Program Reauthorization Act of 2004.

"(e) BEST PRACTICES GUIDELINES.—

"(1) UNIFORM GUIDELINES.—The Administration shall issue uniform management review and program review guidelines based on the report under subsection (d). Each regional office shall use the guidelines in executing its State administrative review duties.

"(2) PUBLICATION.—The Administration shall make the following documents available to motor vehicle safety agencies upon their completion—

"(A) The Administration’s management review and program review guidelines.

"(B) State highway safety plans.

"(C) The Administration’s regional compliance reports.

"(D) The Administration’s State management reviews.

"(E) The Administration’s State program improvement plans.

"(F) REPORTS TO STATE HIGHWAY SAFETY AGENCIES.—The Administrator may make such modifications to make a proposal under paragraph (2) that is directed to a State highway safety agency until after it has been submitted to that agency.

"(G) GENERAL ACCOUNTING OFFICE REVIEW.—The General Accounting Office shall analyze the effectiveness of the National Highway Traffic Safety Administration’s oversight of traffic safety programs and the usefulness of the Administration’s advice to the States regarding grants administration and State activities, the extent to which recommendations incorporate the Administration’s recommendation into their highway safety plans and programs, and improvements that result in a State’s highway safety program that may be attributable to the Administration’s recommendations. Based on this analysis, the General Accounting Office shall submit a report by not later than the end of fiscal year 2008 to the House of Representatives and the Senate on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation.

"(h) CONFORMING AMENDMENT.—The chapter analysis for chapter 4 is amended by inserting after the item relating to section 30127 the following:

‘‘413. Agency accountability.’’.

PART II—SPECIFIC VEHICLE SAFETY-RELATED RULINGS

SEC. 4151. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise specifically provided, whenever in this subpart an amendment is expressed in terms of an amendment to a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 4152. VEHICLE CRASH EJECTION PREVENTION.

(a) IN GENERAL.—Subchapter II of chapter 301, as amended by section 301, is amended by adding at the end the following:

"§ 30128. Vehicle accident ejection protection.

"(a) IN GENERAL.—The Secretary of Transportation shall prescribe a safety standard under this chapter or upgrade existing Federal motor vehicle safety standards to reduce occupant ejection and the incidence of injury from motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds attributable to movement of such vehicles. The Administrator shall conduct the study within 1 year after the date of enactment of this Act and report its findings to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation.

"(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 301 is amended by inserting after the item relating to section 30127 the following:

‘‘30128. Vehicle accident ejection protection.’’.

SEC. 4153. VEHICLE BACKOVER AVOIDANCE TECHNOLOGY STUDY.

(a) IN GENERAL.—The Administrator of the National Highway Traffic Safety Administration shall conduct a study of effective methods for reducing the incidence of injury and death outside of parked passenger motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds attributable to movement of such vehicles. The Administrator shall complete the study within 1 year after the date of enactment of this Act and report its findings to the Senate Committee on Commerce, Science, and Transportation.

"(b) SPECIFIC ISSUES TO BE COVERED.—The study required by subsection (a) shall—

"(1) include an analysis of backover prevention technology;

"(2) identify, evaluate, and compare the available technologies for detecting people or objects behind a motor vehicle with a gross vehicle weight rating of not more than 10,000 pounds for their accuracy, effectiveness, cost, and feasibility for installation;

"(3) provide an estimate of cost savings that would result from widespread use of backover prevention devices and technologies in motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds, including savings attributable to the prevention of—

(A) injuries and fatalities; and

(B) damage to bumpers and other motor vehicle parts and damage to other objects.

SEC. 4154. VEHICLE BACKOVER DATA COLLECTION.

In conjunction with the study required in section 4153, the National Highway Traffic Safety Administration shall publish a method to collect and maintain data on the number and types of injuries and deaths involving motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds in non-traffic, non-accident incidents to assist in the analysis required in section 4153 of this Act regarding the inclusion of backover prevention technologies in motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds.

SEC. 4155. AGGRESSIVITY AND INCOMPATIBILITY REDUCTION.

(a) IN GENERAL.—Subchapter II of chapter 301, as amended by section 4152, is amended by adding at the end the following:

‘‘§ 30129. Vehicle incompatibility and aggressivity reduction.

"(a) IN GENERAL.—The Secretary of Transportation shall issue motor vehicle safety standards to reduce vehicle incompatibility and aggressivity for motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds. In formulating the standards, the Secretary shall consider factors such as backover prevention technologies in motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds.

"(b) RULEMAKING DEADLINES.—

"(1) RULEMAKING.—The Secretary of Transportation shall—

"(A) a notice of a proposed rulemaking under section 30128 of title 49, United States Code, not later than June 30, 2006; and

"(B) a final rule under section 30128 not later than 18 months after the publication of the notice of proposed rulemaking.
side impact crashes among different types, sizes, and weights of motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds in order to reduce occupant deaths and injuries.

"(b) STANDARDS.—The Secretary shall develop a standard rating metric to evaluate compatibility and aggressivity among motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds.

"(c) PUBLIC INFORMATION.—The Secretary shall create a public information program that includes vehicle ratings based on risks posed by vehicle incompatibility and aggressivity to occupants, risks posed by vehicle behavior and aggressivity to other motorists, and combined risks posed by vehicle incompatibility and aggressivity by vehicle make and model.

(b) RULEMAKING DEADLINES.

(1) RULEMAKING.—The Secretary of Transportation shall issue—

(A) a notice of a proposed rulemaking pursuant to section 30129, United States Code, not later than January 31, 2007; and

(B) a final rule under that section not later than 18 months after the publication of the notice of proposed rulemaking.

(2) EFFECTIVE DATE OF REQUIREMENTS.—In the final rule, the Secretary shall set forth effective dates for the requirements contained therein.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 301 is amended by inserting after the item relating to section 30128 the following:


SEC. 4156. IMPROVED CRASHWORTHINESS.

(a) IMPROVED CRASHWORTHINESS.—Subchapter II of chapter 301, as amended by section 4156, is amended by adding at the end the following:

30130. Improved crashworthiness of motor vehicles.

"(a) ROLLOVERS.—

"(1) IN GENERAL.—The Secretary of Transportation shall prescribe a motor vehicle safety standard under this chapter for rollover crashworthiness standards for motor vehicles with a gross weight rating of not more than 10,000 pounds that the Secretary considers necessary to improve the protection afforded to occupants in side impact crashes involving motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds.

"(2) TEST METHODOLOGY.—In determining the standard under paragraph (1), the Secretary shall—

"(A) evaluate additional test barriers and measurements of occupant head impact and neck injuries; and

"(B) review front impact criteria, including consideration of criteria established by the Insurance Institute for Highway Safety.

"(b) RULEMAKING DEADLINES.—

(1) RULEMAKING.—The Secretary of Transportation shall—

(A) issue a Notice of Proposed Rulemaking to encourage motor vehicle manufacturers to improve side impact protection and to adopt a system to test the potential of technological systems, particularly electronic stability control systems and rollover warning systems, to assist drivers in maintaining control of 15-passenger vans with a gross vehicle weight rating of not more than 10,000 pounds.

3158. ADDITIONAL SAFETY PERFORMANCE CRITERIA FOR TIRES.

(a) STRENGTHENING AND HAZARD PROTECTION.—The Secretary of Transportation shall issue a final rule to upgrade Federal Motor Vehicle Safety Standard No. 139 to include standards for road holding and tire safety performance criteria for light vehicle tires, which are criteria that were not addressed in the June 2003 final rule mandated by the Highway Safety Improvement Act of 2000.

(b) RESISTANCE TO BEAD UNSATING AND AGING.—The Secretary of Transportation shall issue a final rule to upgrade Federal Motor Vehicle Safety Standard No. 139 to include resistance to bead unseating and aging safety performance criteria for 15-passenger vans, which are criteria that were not addressed in the June, 2003, final rule mandated by the Transportation Recall Enhancement, Accountability, and Documentation Act of 2000.

(c) RULEMAKING DEADLINES.—The Secretary of Transportation shall—

(1) issue a notice of proposed rulemaking under subsection (a) not later than June 30, 2005, and under subsection (b) not later than December 31, 2005; and

(2) issue a final rule relating to subsection (a) not later than 18 months after June 30, 2005, and a final rule under subsection (b) not later than 18 months after December 31, 2005.

(d) TECHNOLOGY USE AND REPORT.—The Secretary shall reconsider the use of shearography analysis, on a sampling basis, for regulatory compliance and the Administrator of the National Highway Traffic Safety Administration shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure by December 31, 2005, on the potential benefits of seat belt usage reminder systems, particularly electronic stability control systems and rollover warning systems, to assist drivers in maintaining control of 15-passenger vans with a gross vehicle weight rating of not more than 10,000 pounds.

SEC. 4157. 15-PASSENGER VANS.

(a) NOTICE OF PROPOSED RULES TO ENCOURAGE MORE SEAT BELT USE.—Not later than 12 months after the date of enactment of this Act, the Secretary of Transportation shall issue a Notice of Proposed Rulemaking to amend the Federal Motor Vehicle Safety Standard No. 208 for motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds to require seat belt usage by drivers and passengers. The proposed rulemaking shall take into account the potential safety benefits and public acceptability of alternative means to encourage increased seat belt usage, including intermittent or continuous audible or visual reminders when a driver or passenger is not wearing a seat belt, features that enhance operation of convenience or entertainment features of the vehicle when a driver or passenger is not wearing a seat belt, features that enhance the operation of entertainment and road safety equipment, and technological limitations imposed by technology identified by the National Academy of Sciences in its study of the potential benefits of seat belt usage reminder technology.

(b) FINAL RULE.—Not later than 24 months after the date of enactment of this Act, the Traffic Safety Administration shall evaluate and test the potential of technological systems, particularly electronic stability control systems and rollover warning systems, to assist drivers in maintaining control of 15-passenger vans with a gross vehicle weight rating of not more than 10,000 pounds.
Secretary shall issue the final rule required by subsection (a).

(c) BURGER LAW.—

(1) IN GENERAL.—Section 30124 is amended—

(A) by striking "not" the first place it appears; and

(B) by striking "except" and inserting "including‖.

(2) CONFORMING AMENDMENT.—Section 30122 is amended by striking subsection (d).

SEC. 4160. MISSED DEADLINES REPORTS.

(a) IN GENERAL.—If the Secretary of Transportation fails to meet any rulemaking deadline established in this subtitle, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 90 days after missing the deadline.

(1) explaining why the Secretary failed to meet the deadline; and

(2) setting forth a date by which the Secretary anticipates that the rulemaking will be made.

(b) CONSIDERATION OF EFFECTS.—The Secretary of Transportation shall consider and report on the consequences, in terms of the number of deaths and the number and severity of injuries, that may result from not meeting the deadline.

SEC. 4161. GRANTS FOR IMPROVING CHILD PASSENGER SAFETY PROGRAMS.

(a) IN GENERAL.—Chapter 4 of title 23, United States Code, as amended by section 4112 of this Act, is amended by adding at the end the following:

"§ 414. Booster seat incentive grants.

"(a) IN GENERAL.—The Secretary of Transportation shall make a grant under this section to any eligible State.

"(b) ELIGIBILITY REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary shall make a grant to each State that, as determined by the Secretary, enacts or has enacted, and is enforcing a law requiring that children riding in passenger motor vehicles (as defined in section 45(d)(4)) who are too large to be secured in a child safety seat be secured in a child restraint (as defined in section 45(d)(4)) that takes effect after September 30, 2005, is first eligible to receive a grant under subsection (a) in fiscal year 2006.

"(2) SUBSEQUENT QUALIFICATION.—A State that enacts a law described in paragraph (1) that takes effect after September 30, 2005, is first eligible to receive a grant under subsection (a) in the first fiscal year beginning after the date on which the law is enacted.

"(3) BURGER LAW.—A State that is eligible under paragraph (1) to receive a grant may receive a grant during each fiscal year listed in subsection (f) in which it is eligible.

"(4) MAXIMUM NUMBER OF GRANTS.—A State may not receive more than 4 grants under this section.

"(c) GRANT AMOUNT.—Amounts available for grants under this section in any fiscal year shall be apportioned among the eligible States on the basis of—

"(d) USE OF GRANT AMOUNTS.—

"(1) IN GENERAL.—Of the amounts received by a State under this section for any fiscal year—

"(i) 50 percent shall be used for the enforcement of, and education to promote public awareness of, State child passenger protection laws; and

"(ii) 50 percent shall be used to fund programs that purchase and distribute child booster seats, child safety seats, and other appropriate passenger motor vehicle child restraints to indigent families without charge.

"(2) REPORT.—Within 60 days after the State fiscal year in which a State receives a grant under this section, the Secretary shall transmit to the Senate a report documenting the manner in which grant amounts were obligated or expended and identifying the specific programs supports by grant funds. The report shall be in a form prescribed by the Secretary and may be combined with other State grant reporting requirements under this chapter.

"§ 414. Booster seat incentive grants.

"(a) IN GENERAL.—The term "child safety seat" means any device (except safety belts (as such term is defined in section 465(d)(5)), designed for use in a motor vehicle on which it is defined in section 465(d)(1)) to restrain, seat, or position a child who weighs 50 pounds or less.

"(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation, out of the Highway Trust Fund—

"(1) $18,500,000 for fiscal year 2006;

"(2) $20,000,000 for fiscal year 2007;

"(3) $25,000,000 for fiscal year 2008; and

"(4) $30,000,000 for fiscal year 2009.

"(3) $20,000,000 for fiscal year 2005;

"(4) $134,500,000 for fiscal year 2007;

"(5) $130,500,000 for fiscal year 2004;

"(6) $133,500,000 for fiscal year 2005;

"(7) $135,600,000 for fiscal year 2006;

"(8) $134,500,000 for fiscal year 2007;

"(9) $138,000,000 for fiscal year 2008; and

"(10) $141,000,000 for fiscal year 2009.

PART III—MISCELLANEOUS PROVISIONS

SEC. 4171. DRIVER LICENSING AND EDUCATION.

(a) NATIONAL OFFICE OF DRIVER LICENSING AND EDUCATION.—Section 105 of title 49, United States Code, is amended by inserting after the term 'child safety seat' means any device (except safety belts (as such term is defined in section 465(d)(5)), designed for use in a motor vehicle on which it is defined in section 465(d)(1)) to restrain, seat, or position a child who weighs 50 pounds or less.

"(a) AUTHORITY.—The National Office of Driver Licensing and Education shall administer the program under this subtitle.

"(b) GRANT PROGRAM FOR IMPROVEMENT OF DRIVER LICENSING AND EDUCATION.—

"(1) AUTHORITY.—

"(A) Quality assurance testing, including follow-up testing to monitor the effectiveness of—

"(i) driver licensing and education programs;

"(ii) instructor certification testing; and

"(iii) other statistical research designed to evaluate the performance of driver education and licensing programs.

"(B) Improvement of motor vehicle driver education curricula.
(C) Training of instructors for motor vehicle driver education programs.

(D) Testing and evaluation of motor vehicle driver performance.

(E) Highway traffic safety education and outreach regarding motor vehicle driver education and licensing.

(F) Improvement with respect to State graduated licensing programs, as well as related enforcement activities.

(2) CONSULTATION REQUIREMENT.—In prescribing the regulations, the Secretary shall consult with the following:

(A) The Administrator of the National Highway Traffic Safety Administration.

(B) Other departments and agencies of the United States as the Secretary considers appropriate on the basis of relevant interests or expertise.

(C) Officials under the government of States and political subdivisions of States.

(D) Other relevant experts.

(3) MAXIMUM AMOUNT OF GRANT.—The maximum amount of a grant of financial assistance for a program, project, or activity under this section may not exceed 75 percent of the total cost of such program, project, or activity.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"412. Driver education and licensing."

(2) TIME FOR PROMULGATION OF REGULATIONS.—The Secretary of Transportation shall promulgate the regulations under section 412(b) of title 23, United States Code (as added by paragraph (1)), not later than October 1, 2005.

(c) GRANT PROGRAM FOR PUBLIC AWARENESS OF ORGAN DONATION THROUGH DRIVER LICENSING.

(1) AUTHORITY.—

(A) IN GENERAL.—Chapter 4 of title 23, United States Code (as amended by subsection (b)), is further amended by adding at the end the following new section:

"413. Organ donation through driver licensing.

(1) AUTHORITY.—

(A) IN GENERAL.—The Secretary shall carry out a program to provide eligible recipients, by grant, with financial assistance to carry out the regulations to increase public awareness of, and training on, authority and procedures under State law to provide for the donation of organs through a declaration recorded on the driver license or other similar document.

(B) ADMINISTRATIVE OFFICE.—The Secretary shall administer the program under this section through the Director of the National Office of Driver Licensing and Education.

(2) ELIGIBILITY REQUIREMENTS.—

(A) The Secretary shall prescribe in regulations the eligibility requirements, application and approval procedures and standards, and authorized uses of grant proceeds for the grant program under this section.

(B) CONSULTATION REQUIREMENT.—In prescribing the regulations, the Secretary shall consult with the following:

(A) The Administrator of the National Highway Traffic Safety Administration.

(B) The heads of such other departments and agencies of the United States as the Secretary considers appropriate on the basis of relevant interests or expertise.

(C) Appropriate officials of the governments of States and political subdivisions of States.

(D) Representatives of private sector organizations recognized for relevant expertise.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"413. Organ donation through driver licensing."

(2) TIME FOR PROMULGATION OF REGULATIONS.—The Secretary of Transportation shall promulgate the regulations under section 413(b) of title 23, United States Code (as added by paragraph (1)), not later than October 1, 2005.

(d) STUDY OF NATIONAL DRIVER EDUCATION STANDARDS.—

(1) REQUIREMENT FOR STUDY.—The Secretary of Transportation shall carry out a study to determine whether the establishment and imposition of nationwide minimum standards of motor vehicle driver education would improve highway traffic safety or the performance and legal compliance of novice drivers.

(2) TIME FOR COMPLETION OF STUDY.—The Secretary shall complete the study not later than 2 years after the date of the enactment of this Act.

(3) REPORT.—The Secretary shall publish a report on the results of the study under this section not later than 2 years after the study is completed.

(e) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts available to carry out section 403 of title 23, United States Code, for each of the fiscal years 2005 through 2010, $5,000,000 may be made available for each such fiscal year to carry out sections 412 and 413 of title 23, United States Code (as added by subsections (b) and (c), respectively).

SEC. 4172. AMENDMENT OF AUTOMOBILE INFORMATION LABELING REQUIREMENTS.

(a) SAFETY LABELING REQUIREMENT.—Section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1292) is amended by adding at the end the following:

"(g) if one or more safety ratings for such automobile have been assigned and formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program, information about safety ratings that—

(1) includes a graphic depiction of the number of stars that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion from stars indicating the unassigned rating;

(2) refers to frontal impact crash tests, side impact crash tests, and rollover resistance tests (whether or not such automobile has been assigned or formally published or released for such tests), including statements that—

(A) frontal impact crash test ratings are based on risk of head and chest injury;

(B) side impact crash test ratings are based on risk of chest injury; and

(C) rollover resistance ratings are based on risk of rollover in the event of a single automobile crash.

(3) is presented in a legible, visible, and prominent fashion and covers at least—

(A) 8 percent of the total area of the label; or

(B) an area with a minimum length of 4 1/2 inches and a minimum height of 3 inches; and

(4) contains a heading titled 'Government Safety Information' and a disclaimer including the following text: ‘Star ratings for frontal impact crash tests can only be compared to other vehicles in the same weight classes and those plus or minus 250 pounds. Side impact and rollover test ratings can be compared across all vehicle weights and classes. For more information on safety testing, please visit http://www.nhtsa.dot.gov’; and

(4) if an automobile has not been tested by the National Highway Traffic Safety Administration under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect.’.

(b) REGULATIONS.—Not later than January 1, 2005, the Secretary of Transportation shall promulgate the regulations to implement the labeling requirements under subsections (g) and (h) of section 3 of such Act (as added by subsection (a)).

(c) CONFORMING AND TECHNICAL AMENDMENTS.—Section 3 of such Act is further amended—

(1) in subsection (e), by striking ‘‘and’’ after the semicolon; and

(2) in subsection (f)—

(A) by adding ‘‘and’’ at the end of paragraph (1); and

(B) by striking the period at the end and inserting a semicolon.

(d) APPLICABILITY.—The labeling requirements under subsections (g) and (h) of section 3 of such Act (as added by subsection (a)), and the regulations prescribed under subsection (b), shall apply to new automobiles delivered on or after—

(1) September 1, 2005, if the regulations under subsection (b) are prescribed not later than August 31, 2004; or

(2) September 1, 2006, if the regulations under subsection (b) are prescribed after August 31, 2004.

SEC. 4173. CHILD SAFETY.

(a) INCORPORATION OF CHILD DUMMIES IN SAFETY TESTS.—

(1) RULEMAKING REQUIRED.—Not later than 2 years after the date of the enactment of this Act, the Administrator of the National Highway Traffic Safety Administration shall conduct a rulemaking to increase utilization of child dummies, including Hybrid-III child dummies, in motor vehicle safety tests, including crash tests, conducted by the Administration.

(b) CRITERIA.—In conducting the rulemaking under subsection (a), the Administrator shall select motor vehicle safety tests in which the inclusion of child dummies will lead to—

(A) increased understanding of crash dynamics with respect to children; and

(B) measurably improved child safety.

(3) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Transportation shall publish a report regarding the implementation of this section.

(b) CHILD SAFETY IN ROLLOVER CRASHES.—

(1) CONSUMER INFORMATION PROGRAM.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Transportation shall implement a consumer information program relating to child safety in rollover crashes. The Secretary shall make information related to the program available to the public following completion of the program.

(2) CHILD DUMMY DEVELOPMENT.—

(A) IN GENERAL.—The Administrator of the National Highway Traffic Safety Administration shall initiate the development of a biofidelic child crash test dummy capable of measuring injury forces in a simulated rollover crash.

(B) REPORTS.—The Secretary shall submit to Congress a report on progress related to such development—

(i) not later than one year after the date of the enactment of this Act; and

(ii) not later than two years after the date of the enactment of this Act.

(c) REPORT ON ENHANCED VEHICLE SAFETY TECHNOLOGIES.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Transportation shall submit to Congress a report that describes, evaluates, and determines the relative effectiveness of—

(1) currently available and emerging technologies, including auto-reverse functions
and child-safe window switches, that are designed to prevent and reduce the number of injuries and deaths to children left unattended inside parked motor vehicles, including incidents that result from hyperthermia or are related to power windows or power sunroofs; and

(2) currently available and emerging technologies that are designed to improve the performance of safety belts with respect to the safety of occupants aged between 4 and 8 years old.

(d) COMPLETION OF RULEMAKING REGARDING POWER WINDOWS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Transportation shall—

(1) rulemaking initiated by the National Highway Traffic Safety Administration that is ongoing on the date of the enactment of this Act and relates to a requirement that window switches be designed to reduce the accidental closing by children of power windows; and

(2) issue performance-based regulations to take effect not later than September 1, 2006, requiring that window switches or related technologies that are designed to prevent the accidental closing of power windows;

(e) DATABASE ON INJURIES AND DEATHS IN NONTRAFFIC, NONCRASH EVENTS.—

(1) IN GENERAL.—The Secretary of Transportation shall—

(1) require that all research databases that are created to improve the performance of safety belts with respect to the safety of occupants aged between 4 and 8 years old.

(2) RULEMAKING.—The Secretary shall conduct a rulemaking regarding how to structure and compile the database.

(3) AVAILABILITY.—The Secretary shall make the database available to the public.

SEC. 4175. STUDY ON INCREASED SPEED LIMITS.

(a) STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary of Transportation shall examine the effects of increased speed limits enacted by States after 1995.

(2) REQUIREMENTS.—The study shall collect empirical data regarding—

(A) increases or decreases in driving speeds on Interstate highways since 1995;

(B) correlations between changes in driving speeds and accident, injury, and fatality rates;

(C) correlations between posted speed limits and observed driving speeds;

(D) the difference in vehicle safety resulting from the repeal of the national maximum speed limit in 1995; and

(E) such other matters as the Secretary determines to be appropriate.

(b) REPORT.—Not later than 1 year after the date of completion of the study under subsection (a), the Secretary shall submit to Congress a report that describes the results of the study.

Subtitle B—Motor Carrier Safety and Unified Carrier Registration

PART I—ADMINISTRATIVE MATTERS

SEC. 4201. SHORT TITLE; AMENDMENT OF TITLE 49, UNITED STATES CODE.

(a) SHORT TITLE.—This subtitle may be cited as the “Motor Carrier Safety Reauthorization Act of 1999.”

(b) AMENDMENT OF TITLE 49, UNITED STATES CODE.—Except as otherwise specified specifically provided, whenever in this subtitle an amendment is expressed in terms of an amendment to a section or other provision of law, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 4202. REQUIRED COMPLETION OF OVERDUE STUDIES, AND RULEMAKING PROCEEDINGS.—In addition to completing the required number of reports, studies, and rulemaking proceedings according to the schedule set forth in subsection (c) during any fiscal year, the Secretary shall allocate to the States $3,000,000 from the amount authorized by section 3184(c)(1)(I) of title 49, United States Code, for the allocation of funds under the Federal Motor Carrier Safety Administration.

(a) REQUIREMENT FOR COMPLETION.—By no later than 36 months after the date of enactment of this Act, the Secretary of Transportation shall—

(1) examine the effects of increased speed limits enacted by States after 1995.

(2) eliminate a proposed provision in the Interim Final Rule address nonocation of the Federal Motor Carrier Safety Administration.

(b) RULEMAKING.—The Secretary shall—

(1) determine to be appropriate.

(c) SCHEDULE FOR COMPLETION.—No fewer than one hundred and ninety days after the date of enactment of this Act, the Secretary shall—

(1) examine the effects of increased speed limits enacted by States after 1995.

(2) conduct additional compliance reviews under section 5, Federal Motor Carrier Safety Administration.

(3) make an annual determination as to whether this schedule has been met.

(d) FAILURE TO COMPLY.—If the Secretary fails to complete the required number of reports, studies, and rulemaking proceedings in subsection (a) of this section, the Secretary shall—

(1) amend the Interim Final Rule addressing the required number of reports, studies, and rulemaking proceedings in subsection (a) of this section, the Secretary shall—

(2) eliminate a proposed provision in the Federal Motor Carrier Safety Administration.

(e) REQUIREMENTS.—The study shall collect empirical data regarding—

(1) the difference in vehicle safety resulting from the repeal of the national maximum speed limit in 1995; and

(2) such other matters as the Secretary determines to be appropriate.

(f) REPORT.—Not later than 1 year after the date of completion of the study under subsection (a), the Secretary shall submit to Congress a report that describes the results of the study.

Subtitle B—Motor Carrier Safety and Unified Carrier Registration

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(1) examine the effects of increased speed limits enacted by States after 1995.

(2) eliminate a proposed provision in the Interim Final Rule address nonocation of the Federal Motor Carrier Safety Administration.

(b) RULEMAKING.—The Secretary shall—

(1) determine to be appropriate.

(c) SCHEDULE FOR COMPLETION.—No fewer than one hundred and ninety days after the date of enactment of this Act, the Secretary shall—

(1) examine the effects of increased speed limits enacted by States after 1995.

(2) conduct additional compliance reviews under section 5, Federal Motor Carrier Safety Administration.

(3) make an annual determination as to whether this schedule has been met.

(d) FAILURE TO COMPLY.—If the Secretary fails to complete the required number of reports, studies, and rulemaking proceedings in subsection (a) of this section, the Secretary shall—

(1) amend the Interim Final Rule addressing the required number of reports, studies, and rulemaking proceedings in subsection (a) of this section, the Secretary shall—

(2) eliminate a proposed provision in the Federal Motor Carrier Safety Administration.

(e) REQUIREMENTS.—The study shall collect empirical data regarding—

(1) the difference in vehicle safety resulting from the repeal of the national maximum speed limit in 1995; and

(2) such other matters as the Secretary determines to be appropriate.

(f) REPORT.—Not later than 1 year after the date of completion of the study under subsection (a), the Secretary shall submit to Congress a report that describes the results of the study.

Subtitle B—Motor Carrier Safety and Unified Carrier Registration

PART I—ADMINISTRATIVE MATTERS

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(a) REQUIREMENT FOR COMPLETION.—By no later than 36 months after the date of enactment of this Act, the Secretary of Transportation shall—

(1) examine the effects of increased speed limits enacted by States after 1995.

(2) eliminate a proposed provision in the Interim Final Rule address nonocation of the Federal Motor Carrier Safety Administration.

(b) RULEMAKING.—The Secretary shall—

(1) determine to be appropriate.

(c) SCHEDULE FOR COMPLETION.—No fewer than one hundred and ninety days after the date of enactment of this Act, the Secretary shall—

(1) examine the effects of increased speed limits enacted by States after 1995.

(2) conduct additional compliance reviews under section 5, Federal Motor Carrier Safety Administration.

(3) make an annual determination as to whether this schedule has been met.

(d) FAILURE TO COMPLY.—If the Secretary fails to complete the required number of reports, studies, and rulemaking proceedings in subsection (a) of this section, the Secretary shall—

(1) amend the Interim Final Rule addressing the required number of reports, studies, and rulemaking proceedings in subsection (a) of this section, the Secretary shall—

(2) eliminate a proposed provision in the Federal Motor Carrier Safety Administration.

(e) REQUIREMENTS.—The study shall collect empirical data regarding—

(1) the difference in vehicle safety resulting from the repeal of the national maximum speed limit in 1995; and

(2) such other matters as the Secretary determines to be appropriate.

(f) REPORT.—Not later than 1 year after the date of completion of the study under subsection (a), the Secretary shall submit to Congress a report that describes the results of the study.
Fifteen Passengers which exempts commercial van operations that operate within a 75-mile radius.

(i) COMPLETION OF NEW RULEMAKING PRO-

(ii) Nothing in this section delays or changes the deadlines specified for new reports, studies, or rulemaking mandates contained in this title.

(g) REPORT OF OTHER AGENCY ACTIONS.—Within 12 months after the date of enactment of this Act, the Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and to the House Committee on Transportation and Infrastructure a report on the status of the following projects:

(1) Rescinding the current regulation which prohibits truck and bus drivers from viewing information on monitor screens while operating commercial vehicles.

(2) Incorporating Out-Of-Service Criteria regulations enforced by the Federal Motor Carrier Safety Administration.

(3) Revision of the safety fitness rating system of motor carriers.

(4) Amendment of Federal Motor Carrier Safety Administration rules of practice for conducting motor carrier administrative proceedings, investigations, disqualifications, and for issuing penalties.

(5) Requiring commercial drivers to have a sufficient functional speaking and reading comprehension of the English language.

(6) Inspection, repair and maintenance of infrastructure, and enforcement of major accidents.

(7) Authorization of Appropriations.

SEC. 4203. CONTRACT AUTHORITY.

Authorizations from the Highway Trust Fund (other than the Mass Transit Account) to carry out the activities under subsection (c) shall be available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first.
(6) Not more than $305,500,000 for fiscal year 2009.

(4) Section 31104 is amended by striking paragraph (2) and inserting the following:

(2) The Secretary may withhold up to 10 percent of the amounts made available under paragraph (1) for grants to States for border enforcement changes to improve the efficiency and effectiveness of the management of commercial motor vehicle safety programs and related enforcement activities and projects.

(5) The Secretary may withhold up to 10 percent of the amounts made available under paragraph (1) for grants to States for border enforcement changes to improve the efficiency and effectiveness of the management of commercial motor vehicle safety programs and related enforcement activities and projects.

(6) The Secretary may withhold up to 10 percent of the amounts made available under paragraph (1) for grants to States for border enforcement changes to improve the efficiency and effectiveness of the management of commercial motor vehicle safety programs and related enforcement activities and projects.

(b) GRANTS TO STATES FOR BORDER ENFORCEMENT—Section 31107 is amended to read as follows:

§ 31107. Border enforcement grants

(a) General Authority.—From the funds authorized by section 4222(c)(1) of the Motor Carrier Safety Reauthorization Act of 2004, the Secretary may make a grant to a State that shares a border with an- other country for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

(b) Maintenance of Expenditures.—The Secretary may designate up to 10 percent of the amounts made available under paragraph (a) for grants to States for border enforcement changes to improve the efficiency and effectiveness of the management of commercial motor vehicle safety programs and related enforcement activities and projects.

(c) Report.—Within 2 years after the date of enactment of this Act, the Secretary, on behalf of the working group, shall complete a report of the working group’s findings and recommendations for legislative, regulatory, and enforcement changes to improve the commercial driver’s license program. The Secretary shall submit the report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(d) Funding.—From the funds authorized by section 4222(c)(3) of this title, $200,000
shall be made available for each of fiscal years 2004 and 2005 to carry out this section.

SEC. 4225. CDL LEARNER'S PERMIT PROGRAM.

(a) In General.—Chapter 313 is amended—

(1) by striking “time.” in section 31302 and inserting “license, and may have only 1 learner’s permit at a time.”;

(2) by inserting “and learners’ permits” after “licenses” the first place it appears in section 31306;

(3) by striking “licenses.” in section 31308 and inserting “licenses and permits.”;

(4) by redesignating paragraphs (2) and (3) of section 31308 as paragraphs (3) and (4), respectively, and inserting after paragraph (1) the following:

“(2) before a commercial driver’s license learner’s permit can be issued to an individual, the individual must pass a written test on the operation of a commercial motor vehicle that complies with the minimum standards prescribed by the Secretary under section 31308(a) of this title;”;

(5) by inserting “or learner’s permit” after “license” each place it appears in paragraphs (3) and (4), as redesignated, of section 31308; and

(6) by inserting “or learner’s permit” after “license” each place it appears in section 31308(b).

(b) CONFORMING AMENDMENTS.—

(1) Section 31302 is amended by inserting “and learner’s permits” in the section caption.

(2) Sections 31308 and 31309 are each amended by inserting “and learner’s permit” after “license” in the section captions.

(3) The chapter analysis for chapter 313 is amended by striking the item relating to sections 31308 and 31309 and inserting the following:

“31302. Limitation on the number of driver’s licenses and learner’s permits.”.

(4) The chapter analysis for chapter 313 is amended by striking the items relating to sections 31308 and 31309 and inserting the following:

“31308. Commercial driver’s license and learner’s permit.

31309. Commercial driver’s license and learner’s permit information system.”.

SEC. 4226. HOBS ACT.

(a) Section 2342(3)(A) of title 28, United States Code, is amended to read as follows:

“(A) under the Secretary of Transportation in the United States, the Secretary of Transportation and the Administrator of the Federal Railroad Administration, the Federal Motor Carrier Safety Administration, the Secretaries of Transportation and the Federal Aviation Administration have the same authority that was vested in the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer. An action of the Secretary or Administrator in carrying out the duty or power has the same effect as when carried out by the department, agency, or instrumentality.”.

SEC. 4227. PENALTY FOR DENIAL OF ACCESS TO RECORDS.

Section 5221(b)(2) is amended by adding at the end the following:

“(E) COPYING OF RECORDS AND ACCESS TO EQUIPMENT, LANDS, AND BUILDINGS.—A motor carrier subject to chapter 51 of subtitle III, a motor carrier, broker, or freight forwarder subject to part B of subtitle IV, or the owner or operator of a commercial motor vehicle development facility, who fails to allow the Secretary, or an employee designated by the Secretary, promptly upon demand to inspect and copy any record or equipment, documents, premises, lands, buildings and other property in accordance with sections 504(c), 5121(c), and 14122(b) of this title shall be liable to the Secretary. The Secretary may impose a civil penalty not to exceed $500 for each offense, and each day the Secretary is denied the right to inspect and copy any record or equipment, documents, premises, lands, buildings and other property in accordance with sections 504(c), 5121(c), and 14122(b) of this title shall be liable to the Secretary. The Secretary is authorized to assess civil penalties not to exceed $5,000 for each offense. Nothing herein amends or supersedes the Secretary’s request or could not be timely produced without unreasonable expense or effort. Nothing herein amends or supersedes any remedy available to the Secretary under sections 502(d), 507(c), or other provision of this title.”.

SEC. 4228. MEDICAL PROGRAM.

(a) IN GENERAL.—Subchapter III of chapter 311 is amended by adding at the end the following:

“§ 31149. Medical program

“(a) MEDICAL REVIEW BOARD.—

“(1) ESTABLISHMENT AND FUNCTION.—The Secretary of Transportation shall establish a Medical Review Board to serve as an advisory committee to provide the Federal Motor Carrier Safety Administration with medical advice and recommendations on matters relating to the qualifications and written standards and to medical research.

“(2) CONVOY.—The Medical Review Board shall be appointed by the Secretary and shall consist of 5 members selected from medical institutions and private practice. The membership shall reflect expertise in a variety of medical fields relevant to the functions of the Federal Motor Carrier Safety Administration.

“(b) CHIEF MEDICAL EXAMINER.—The Secretary shall appoint a chief medical examiner for the Federal Motor Carrier Safety Administration.

“(c) MEDICAL STANDARDS AND REQUIREMENTS.—The Secretary, with the advice of the Medical Review Board and the chief medical examiner, shall—

“(1) establish, review, and revise—

“(A) medical standards for applicants for and holders of commercial driver’s licenses that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely;

“(B) medical requirements for periodic physical examinations of such operators performed by medical examiners who have received training in physical and medical examination standards and are listed on the national registry maintained by the Department of Transportation; and

“(C) requirements for notification of the chief medical examiner if such an applicant or holder—

“(i) fails to meet the applicable standards; or

“(ii) is found to have a physical or mental disability or impairment that would interfere with the individual’s ability to operate a commercial motor vehicle safely;

“(2) require each holder of a commercial driver’s license or learner’s permit to have a current valid medical certificate;

“(3) require such certificates to such holders and applicants who are found, upon examination, to be physically qualified to operate a commercial motor vehicle and to meet applicable medical standards; and

“(4) Issue such certificates, specific courses and materials for medical examiners listed in the national registry established under this section, and require those medical examiners to complete, including refresher courses, to be listed in the registry.

“(d) NATIONAL REGISTRY OF MEDICAL EXAMINERS.—The Secretary, through the Federal Motor Carrier Safety Administration—

“(1) shall establish and maintain a current national registry of medical examiners who are qualified to perform examinations and test for and issue such certificates, specific courses and materials for medical examiners listed in the national registry established under this section, and require those medical examiners to be listed in the registry in the manner prescribed by the Secretary for the registry established under this section.

“(e) CONSULTATION AND COOPERATION WITH FAA.—

“(1) IN GENERAL.—The Administrator of the Federal Motor Carrier Safety Administration shall consult with the Administrator of the Federal Aviation Administration with respect to examinations, the issuance of certificates, standards, and procedures under this section in order to ensure that such aspects of the Federal Aviation Administration’s airman certificate program under chapter 47 of this title as the Administrator determines appropriate for carrying out this section.

“(2) USE OF FAA-QUALIFIED EXAMINERS.—The Administrator of the Federal Motor Carrier Safety Administration may authorize the Administrator of the Federal Aviation Administration is authorized and encouraged to execute a memorandum of understanding under which individuals holding or applying for a commercial driver’s license or learner’s permit may be examined, for purposes of this section, by medical examiners who are qualified to administer medical examinations for airman certificates under chapter 47 of this title and the regulations thereunder—

“(A) until the national registry required by subsection (d) is fully established; and

“(B) to the extent that the Administrators determine appropriate, after that registry is established.

“(f) REGULATIONS.—The Secretary is authorized to promulgate such regulations as may be necessary to carry out this section.”.
(b) **MEDICAL EXAMINERS.—**Section 31313(a)(3) is amended to read as follows:

‘‘(3) the physical condition of operators of commercial motor vehicles is adequate to enable the operators to operate the vehicles safely, and the periodic physical examinations required of such operators are performed by medical examiners who have received training in medical transportation and are licensed by the Federal Motor Carrier Safety Administration as a medical examiner.’’

(c) **CONFORMING AMENDMENT.—**The chapter analysis for chapter 311 is amended by inserting the following:

‘‘31102 of this title, to file with the Secretary prescribed by the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed $1,000 for each offense, and each day of the violation shall constitute a separate offense, except that the total of all civil penalties assessed against any violator for all offenses related to any single violation shall not exceed $10,000; or

(ii) who knowingly falsifies, destroys, mutilates, or changes a required report or record, or knowingly falsifies, alters, or permits to be made a false or incomplete entry in that report about an operation or business of the person, or knowingly makes, prepares, or preserves a record in violation of a regulation or order of the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each violation, if any such action can be shown to have misrepresented a fact that constitutes a violation other than a violation or record-keeping violation.’’

(2) **Section 31310(1)(2) is amended to read as follows—

‘‘(2) The Secretary shall prescribe regulations establishing sanctions and penalties related to violations of out-of-service orders by individuals operating commercial motor vehicles. The regulations shall require at least that—

A. an operator of a commercial motor vehicle found to have committed a first violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 180 days and liable for a civil penalty of at least $2,500;

B. an operator of a commercial motor vehicle found to have committed a second violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 2 years and not more than 5 years and liable for a civil penalty of at least $5,000;

C. an employer that knowingly allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall be liable for a civil penalty of not more than $25,000; and

D. an employer that knowingly and willfully requires or permits an employee to operate a commercial motor vehicle in violation of an out-of-service order shall, upon conviction, be subject for each violation for a term not to exceed 1 year or a fine under title 18, United States Code, or both.’’

**SEC. 4232. ELIMINATION OF CONDUCTIVITY AND SERVICE EXEMPTIONS.**

(a) **Section 13506(a) is amended—

(1) by striking paragraphs (6), (11), (12), (13), and (15); and

(2) by redesignating paragraphs (7), (8), (9), (10), and (14) as paragraphs (6), (7), (8), (9), and (10), respectively;

(3) by inserting ‘‘or’’ after the semicolon in paragraph (9), as redesignated; and

(4) striking ‘‘13906(d); or’’ in paragraph (1), as redesignated, and inserting ‘‘1906(d);’’.

**SEC. 4230. FINANCIAL RESPONSIBILITY FOR PRIVATE MOTOR CARRIERS.—**

(a) **TRANSPORTATION OF PASSENGERS.—**Section 31313(a) is amended to read as follows:

‘‘(a) **GENERAL REQUIREMENT.—**The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability and property damage for the transportation of passengers by motor vehicle in the United States between a place in a State and—

(1) a place in another State;

(2) another place in the same State through a place outside of that State; or

(3) a place outside the United States.’’

(b) **TRANSPORTATION OF PROPERTY.—**Section 31319 is amended—

(1) by striking so much of subsection (b) as precedes paragraph (2) and inserting the following:

‘‘(b) **GENERAL REQUIREMENTS AND MINIMUM AMOUNT.—**

(1) The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and environmental restoration for the transportation of property by motor vehicle in the United States between a place in a State and—

(A) a place in another State;

(B) another place in the same State through a place outside of that State; or

(C) a place outside the United States.’’;

(2) by aligning the left margin of paragraph (2) of subsection (b) with the left margin of paragraph (1) of that subsection (as amended by paragraph (1) of this subsection); and

(3) by redesignating subsection (c) through (g) as subsections (d) through (h), respectively, and inserting after subsection (b) the following:

‘‘(c) **FILING OF EVIDENCE OF FINANCIAL RESPONSIBILITY.—**The Secretary may require a motor vehicle operator to file with the Secretary the evidence of financial responsibility specified in subsection (a)(1) of this section in an amount not less than that required by this section, and the laws of the State or States in which the person is operating, to the extent applicable. The extent of the financial responsibility must be sufficient to pay, not more than the amount of the financial responsibility, for each final judgment rendered by a Federal or State court, or death of, or injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles, or for loss or damage to property, or both.’’

(c) **PROPRIETARY MOTOR CARRIERS.—**Section 31317(h)(1)(B) is amended to read as follows:

‘‘(B) an employer that negligently allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall be liable for a civil penalty in an amount not to exceed $25,000; and

D. an employer that negligently and willfully requires or permits an employee to operate a commercial motor vehicle in violation of an out-of-service order shall, upon conviction, be subject for each violation for a term not to exceed 1 year or a fine under title 18, United States Code, or both.’’

**SEC. 4231. INCREASED PENALTIES FOR OUT-OF-SERVICE VIOLATIONS AND FALSE RECORD-MAKING OR RECORD-KEEPING VIOLATIONS.—**

(a) **Section 321(b)(2) is amended to read as follows—

‘‘(b) **RECORDMAKING AND REPORTING VIOLATIONS.—**A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under this title or a regulation issued by the Secretary pursuant to subchapter III of chapter 311 (except sections 31138 and 31319) or section 31502 of this title who—

(1) who, knowing that an out-of-service order has been issued, fails to make, prepare, or preserve that record in the form and manner prescribed by the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed $1,000 for each offense, and each day of the violation shall constitute a separate offense, except that the total of all civil penalties assessed against any violator for all offenses related to any single violation shall not exceed $10,000; or

(ii) who knowingly falsifies, destroys, mutilates, or changes a required report or record, or knowingly falsifies, alters, or permits to be made a false or incomplete entry in that report about an operation or business of the person, or knowingly makes, prepares, or preserves a record in violation of a regulation or order of the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each violation, if any such action can be shown to have misrepresented a fact that constitutes a violation other than a violation or record-keeping violation.’’

**SEC. 4235. REMOVAL FROM SERVICE EXEMPTIONS.—**

(a) **Section 13506(a) is amended—

(1) by striking paragraphs (6), (11), (12), (13), and (15); and

(2) by redesignating paragraphs (7), (8), (9), (10), and (14) as paragraphs (6), (7), (8), (9), and (10), respectively;

(3) by inserting ‘‘or’’ after the semicolon in paragraph (9), as redesignated; and

(4) striking ‘‘13906(d); or’’ in paragraph (1), as redesignated, and inserting ‘‘1906(d);’’.

**SEC. 4235. REMOVAL FROM SERVICE EXEMPTIONS.—**

(a) **Section 13506(a) is amended—

(1) by striking paragraphs (6), (11), (12), (13), and (15); and

(2) by redesignating paragraphs (7), (8), (9), (10), and (14) as paragraphs (6), (7), (8), (9), and (10), respectively;

(3) by inserting ‘‘or’’ after the semicolon in paragraph (9), as redesignated; and

(4) striking ‘‘13906(d); or’’ in paragraph (1), as redesignated, and inserting ‘‘1906(d);’’.

**SEC. 4235. REMOVAL FROM SERVICE EXEMPTIONS.—**

(a) **Section 13506(a) is amended—

(1) by striking paragraphs (6), (11), (12), (13), and (15); and

(2) by redesignating paragraphs (7), (8), (9), (10), and (14) as paragraphs (6), (7), (8), (9), and (10), respectively;

(3) by inserting ‘‘or’’ after the semicolon in paragraph (9), as redesignated; and

(4) striking ‘‘13906(d); or’’ in paragraph (1), as redesignated, and inserting ‘‘1906(d);’’.
SEC. 4233. INTRASTATE OPERATIONS OF INTER-STATE MOTOR CARRIERS.—
(a) Subsection (a) of section 31144 is amended to read as follows:

"(a) IN GENERAL.—The Secretary shall—
"(1) determine whether an owner or operator of a non-commercial motor vehicle, utilizing among other things the accident record of an owner or operator operating in intrastate commerce and the accident record and safety inspection record of such owner or operator in operations that affect interstate commerce;
"(2) periodically update such safety fitness determinations readily available to the public; and
"(3) prescribe by regulation penalties for violations of this section consistent with section 521."

(b) Subsection (c) of section 31144 is amended by adding at the end the following:

"(5) TRANSPORTATION AFFECTING INTER-STATE COMMERCE.—Owners or operators of motor vehicles, utilizing among other things the accident record of an owner or operator operating in intrastate commerce and the accident record and safety inspection record of such owner or operator in operations that affect interstate commerce.
"(6)"

SEC. 4235. REVOCATION OF OPERATING AUTHORITY.—
Section 31065(e) is amended—
"(1) by inserting ''(a) IN GENERAL.—'' before subsection (a) of section 31144; and
"(2) by striking paragraph (1) and inserting the following:

"(1) PROTECTION OF SAFETY.—Notwithstanding subsection (c) of section 5, the Secretary, if it determines that such owner or operator is fit.

SEC. 4236. AUTHORITY TO STOP COMMERCIAL MOTOR VEHICLES.—
(a) IN GENERAL.—Chapter 2 of title 18, United States Code, is amended by adding at the end the following:

"§ 38. Commercial motor vehicles required to stop for inspection.

"(a) A driver of a commercial motor vehicle, as defined in section 31132(1) of title 49, shall stop and submit to inspection of the vehicle, driver, cargo, and required records when directed to do so by an authorized employee of the Federal Motor Carrier Safety Administration, Department of Transportation, at or in the vicinity of an inspection site, until the inspection site is authorized to do so by a responsible employee.

(b) A driver of a commercial motor vehicle, as defined in (a) who knowingly fails to stop for inspection when directed to do so by an authorized employee of the Federal Motor Carrier Safety Administration at or in the vicinity of an inspection site, or leaves the inspection site without authorization, shall be fined under this title or imprisoned not more than 1 year, or both.

(c) The Secretary shall by regulation establish standards to implement subsections (b) and (c).

SEC. 4237. MOTOR CARRIER RESEARCH AND TECHNOLOGY PROGRAM.—
(a) IN GENERAL.—Section 13110 is amended to read as follows:

"§ 13110. Motor carrier research and technology program

"(a) RESEARCH, TECHNOLOGY, AND TECHNOLOGY TRANSFER ACTIVITIES.—

"(1) The Secretary of Transportation shall establish and carry out a motor carrier and motor coach research and technology program. The Secretary may carry out research, development, technology, and technology transfer activities with respect to any material, invention, patented article, or process related to the research and technology program;

"(2) The Secretary may test, develop, or evaluate testing and development of, any material, invention, patented article, or process related to the research and technology program;

"(3) The Secretary may make grants, or enter into contracts, cooperative agreements, and other transactions with, any Federal laboratory, State agency, authority, association, institution, for-profit or non-profit corporation, organization, foreign country, or person; and

"(b) COLLABORATIVE RESEARCH AND DEVELOPMENT.—

"(1) To advance innovative solutions to problems involving commercial motor vehicle and motor carrier safety, security, and efficiency, and to stimulate the deployment of emerging technology, the Secretary may carry out, on a cost-shared basis, collaborative research and development with—

"(A) non-Federal entities, including State and local governments, colleges and universities, corporations, institutions, partnerships, and sole
proprietaryships that are incorporated or estab-
lished under the laws of any State; and

"(B) Federal laboratories.

"(2) Not later than 1 year after the date of enactment of this Act, the Sec-
tary shall complete a review of part 372 of title 49, Code of Federal
Regulations, as it pertains to commercial vehicle registration sys-
tems and networks or completed such deployment before core deployment
grants under this Act have expired.

"(3)(A) The Secretary shall complete a review of subsection (a)(4);

"(B) shall certify to the Secretary that its

"(c) SECRETARY'S APPROVAL.—Approval by the Secretary of a contract or agree-
ment entered into under this section shall remain available until expended.

"(d) CONTRACT AUTHORITY.—Approval by the Secretary of a grant with funds made
available under section 4222(a) of the Motor Carrier Safety Reau-
thorization Act of 2004 to carry out this section shall remain available until expended.

"(2) The Secretary shall require the recipient to comply with the uniform policies, pro-
cedures, and technical and operational standards prescribed by the Secretary under
section (a)(4);

"(B) possess the authority to impose sanc-
tions relating to commercial motor vehicle registrations or operations out
of service by the Secretary;

"(C) cancel the motor vehicle registration of a motor vehicle, driver, and carrier-
specific information systems and networks program to—

"(1) improve the safety and productivity of the
commercial vehicle industry;

"(2) reduce costs associated with commer-
cial vehicle operations and Federal and
State commercial vehicle regulatory
requirements;

"(3) ELIGIBILITY.—To be eligible for a core
deployment grant under this Act, a State—

"(a) shall have a commercial vehicle infor-
mation systems and networks program plan
and a top level system design approved by the Secretary;

"(b) shall certify to the Secretary that its
commercial vehicle information systems and networks deployment activities, including
the acquisition of system development, and infrastructure modifica-
tions, are consistent with the national intel-
ligent transportation systems and commer-
cial vehicle information systems and net-
works architectures and available standards, and

"(2) AMOUNT OF GRANTS.—The maximum ag-
gregate amount a State may receive under this section for the core
deployment of commercial vehicle information systems and networks
may not exceed $1,000,000 per State.

"(3) USE OF FUNDS.—Funds from a grant
under this subsection may only be used for the
core deployment of commercial vehicle information systems and networks in States that have either completed the core
deployment of commercial vehicle information systems and networks or completed
such deployment before core deployment
grant funds under this Act have expired.

"(2) AMOUNT OF GRANTS.—The maximum ag-
gregate amount a State may receive under this section for the core
deployment of commercial vehicle information systems and networks
may not exceed $1,000,000 per State.

"(3) USE OF FUNDS.—Funds from a grant
under this subsection may only be used for the
core deployment of commercial vehicle information systems and networks in States that have either completed the core
deployment of commercial vehicle information systems and networks or completed
such deployment before core deployment
grant funds under this Act have expired.

"(3) USE OF FUNDS.—Funds from a grant
under this subsection may only be used for the
core deployment of commercial vehicle information systems and networks in States that have either completed the core
deployment of commercial vehicle information systems and networks or completed
such deployment before core deployment
grant funds under this Act have expired.

"(3) USE OF FUNDS.—Funds from a grant
under this subsection may only be used for the
core deployment of commercial vehicle information systems and networks in States that have either completed the core
deployment of commercial vehicle information systems and networks or completed
such deployment before core deployment
grant funds under this Act have expired.

"(3) USE OF FUNDS.—Funds from a grant
under this subsection may only be used for the
core deployment of commercial vehicle information systems and networks in States that have either completed the core
deployment of commercial vehicle information systems and networks or completed
such deployment before core deployment
grant funds under this Act have expired.

"(3) USE OF FUNDS.—Funds from a grant
under this subsection may only be used for the
core deployment of commercial vehicle information systems and networks in States that have either completed the core
deployment of commercial vehicle information systems and networks or completed
such deployment before core deployment
grant funds under this Act have expired.

"(3) USE OF FUNDS.—Funds from a grant
under this subsection may only be used for the
core deployment of commercial vehicle information systems and networks in States that have either completed the core
deployment of commercial vehicle information systems and networks or completed
such deployment before core deployment
grant funds under this Act have expired.
only for the expanded deployment of commercial vehicle information systems and networks.

(e) FEDERAL SHARE.—The Federal share of the cost of a project payable from funds made available to carry out this section shall not exceed 50 percent. The total Federal share of the cost of a project payable from such funds shall not exceed 80 percent.

(f) APPLICABILITY OF TITLE 23, UNITED STATES CODE.—Funds authorized to be appropriated under section 4222(c)(4) shall be available for obligation in the same manner and to the same extent as if such funds were appropriated under chapter 1 of title 23, United States Code, except that such funds shall remain available until expended.

(g) DEFINITIONS.—In this section:

(1) INTERSTATE VEHICLE INFORMATION SYSTEMS AND NETWORKS.—The term ‘‘commercial vehicle information systems and networks’’ means the information systems and communications networks that provide the capability to—

(A) improve the safety of commercial vehicle operations;

(B) increase the efficiency of regulatory inspection processes to reduce administrative burdens by advancing technology to facilitate processing, and to strengthen the effectiveness of enforcement efforts;

(C) advance electronic processing of registration information, driver licensing information, inspection information, and crash data, and other safety information;

(D) enhance the safe passage of commercial vehicles across United States and across international borders; and

(E) promote the communication of information among the States and encourage multistate cooperation and corridor development.

(2) COMMERCIAL VEHICLE OPERATIONS.—The term ‘‘commercial vehicle operations’’ means motor carrier operations and motor vehicle regulatory activities associated with the commercial movement of goods, including hazardous materials, and passengers; and

(B) with respect to the public sector, includes the issuance of operating credentials, the administration of motor vehicle and fuel taxes, and roadside safety and border crossing inspection and regulatory compliance operations.

(3) CORE DEPLOYMENT.—The term ‘‘core deployment’’ means the deployment of systems in a State necessary to provide the State with the following capabilities:

(A) IN SAFETY INFORMATION EXCHANGE.—Safety information exchange to—

(i) electronically collect and transmit commercial vehicle and driver inspection data at a majority of inspection sites;

(ii) connect to the Safety and Fitness Electronic Records system for access to inter-state carrier and commercial vehicle data, summaries of past safety performance, and commercial vehicle credentials information; and

(iii) exchange carrier data and commercial vehicle safety and credentials information within the State and connect to Safety and Fitness Electronic Records for access to inter-state carrier and commercial vehicle data.

(B) INTERSTATE CREDENTIAL ADMINISTRATION.—Interstate credentials administration to—

(i) perform end-to-end processing, including carrier application, jurisdiction application processing, and credential issuance, of at least the International Registration Plan and International Fuel Tax Agreement credentials and extend this processing to other credentials, including oversized/overweight, carrier registration, and hazardous materials;

(ii) connect to the International Registration Plan and International Fuel Tax Agreement clearinghouses; and

(iii) have at least 10 percent of the transactions conducted electronically, and have the capability to add more carriers and to extend to branch offices where applicable.

(C) ROADSIDE SCREENING.—Roadside electronic screening to electronically screen transponder-equipped commercial vehicles at a minimum of 1 fixed or mobile inspection sites and to replicate this screening at other sites.

(4) EXPANDED DEPLOYMENT.—The term ‘‘expanded deployment’’ means the deployment of systems in a State that exceed the requirements of commercial vehicle information systems and networks, improve safety and the productivity of commercial vehicle operations, and enhance transportation security.

SEC. 4242. OUTREACH AND EDUCATION.

(a) IN GENERAL.—The Secretary of Transportation, through the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration, may undertake outreach and education initiatives, including the ‘‘Share the Road Safely’’ program, that may reduce the number of highway accidents, fatalities, and injuries involving commercial motor vehicles. The Secretary may not use funds authorized by this part for the ‘‘Safety Is Good Business’’ program.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for fiscal year 2004 to carry out this section—

(1) $250,000 for the Federal Motor Carrier Safety Administration; and

(2) $750,000 for the National Highway Traffic Safety Administration.

SEC. 4243. OPERATION OF RESTRICTED PROP- ERTY-CARRYING UNITS ON NATIONAL HIGHWAY SYSTEM.

(a) RESTRICTED PROPERTY-CARRYING UNIT DEFINED.—Section 31111(a) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

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

‘‘(3) RESTRICTED PROPERTY-CARRYING UNIT DEFINED.—Subsection (a) of section 31112 defines a restricted property-carrying unit means any trailer, semitrailer, container, or other property-carrying unit that is longer than 83 feet.’’

(b) PROHIBITION OF RESTRICTED PROPERTY-CARRYING UNITS.—

(1) IN GENERAL.—Section 31111(b)(1)(C) is amended to read as follows:

‘‘(C) allows the operation of any segment of the National Highway System, including the Interstate System, of a restricted property-carrying unit unless the operation is specified on the list published under subsection (h):’’;

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect 270 days after the date of enactment of this subsection.

(c) LIMITATIONS.—Section 31111 is amended by adding at the end the following:

‘‘(h) RESTRICTED PROPERTY-CARRYING UNITS.—

(1) APPLICABILITY OF PROHIBITION.—

(A) IN GENERAL.—Notwithstanding subsection (f), a property-carrying unit may continue to operate on a segment of the National Highway System if the operation of such unit is specified on the list published under paragraph (2).

(B) APPLICABILITY OF STATE LAWS AND REGULATIONS.—All operations specified on the list published under paragraph (2) shall comply with the applicable State statutes, regulations, restrictions or prohibitions, and configuration-specific designations and all other restrictions, in force on June 1, 2003.

(2) LISTING OF RESTRICTED PROPERTY-CARRYING UNITS.—

(A) IN GENERAL.—Not later than 60 days after the date of enactment of the Motor Carrier Safety Reauthorization Act of 2004, the Secretary shall initiate a proceeding to determine and publish a list of restricted property-carrying units that were authorized by State officials pursuant to State statute or State regulations on June 1, 2003, and in actual and lawful operation on a regular or periodic basis (including seasonal operations) on or before June 1, 2003.

(B) LIMITATION.—A restricted property-carrying unit may not be included on the list published under subparagraph (A) on the basis that a State law or regulation could have authorized the operation of the unit at some prior date by permit or otherwise.

(C) PUBLICATION OF FINAL LIST.—Not later than 270 days after the date of enactment of this subsection, the Secretary shall publish a final list of restricted property-carrying units described in subparagraph (A).

(D) UPDATES.—The Secretary shall update the list published under subparagraph (C) as necessary to reflect new designations made to the National Highway System.

(E) APPLICABILITY OF PROHIBITION.—The prohibition established by subsection (b)(1)(C) shall apply to any new designation made to the National Highway System and remain in effect on those portions of the National Highway System that are designated as part of the National Highway System.

(F) LIMITATION ON STATUTORY CONSTRUCTION.—This subsection does not prevent a State from further restricting in any manner or prohibiting the operation of a restricted property-carrying unit; except that such restrictions or prohibitions shall be consistent with the requirements of this section and sections 31112 through 31114.

(d) ENFORCEMENT.—The second sentence of section 31112(a) of title 23, United States Code, is amended by striking ‘‘section 31112’’ and inserting ‘‘sections 31111 and 31112’’.

SEC. 4244. OPERATION OF LONGER COMBINATION VEHICLES ON NATIONAL HIGHWAY SYSTEM.

(a) IN GENERAL.—Section 31112 is amended—

(1) by redesigning subsections (f) and (g) as subsections (g) and (h), respectively; and

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

‘‘(i) NATIONAL HIGHWAY SYSTEM.—

(1) GENERAL RULE.—A State may not allow, on a segment of the National Highway System that is not covered under subsection (b) or (c), the operation of a commercial motor vehicle combination (except a vehicle or load that cannot be dismantled easily or divided easily and that has been issued a special permit under applicable State law with more than 1 property-carrying unit (not including the truck tractor) whose property-carrying units are more than—

(A) the maximum combined trailer, semitrailer, or other type of length limitation allowed by law or regulation of that State on June 1, 2003; or

(B) the length of the property-carrying units of those commercial motor vehicle combinations, by specific configuration, in actual and lawful operation on a regular or recurring basis (including seasonal operation) in that State on or before June 1, 2003.’’
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(2) ADDITIONAL LIMITATIONS.—

(1) APPLICABILITY OF STATE RESTRICTIONS.—A commercial motor vehicle combination whose operation in a State is not prohibited under paragraph (1) may continue to operate in the State on highways described in paragraph (1) only in compliance with all State laws, regulations, limitations, and conditions governing routine and configuration-specific designations and all other restrictions in force in the State on June 1, 2003. Subject to regulations prescribed by the Secretary under subsection (h), the State may make minor adjustments of a temporary and emergency nature to route designations and vehicle operating restrictions in effect on June 1, 2003, to address specific safety purposes and road construction.

(2) ADDITIONAL STATE RESTRICTIONS.—This subsection does not prevent a State from further restricting in any manner or prohibiting the operation of a commercial motor vehicle combination subject to this section, except that such restrictions or prohibitions shall be consistent with this section and sections 31133(a), 31133(b), and 31114.

(c) MINOR ADJUSTMENTS.—A State making a minor adjustment of a temporary and emergency nature as authorized by subparagraph (A) or further restricting or prohibiting the operation of a commercial motor vehicle combination authorized by subparagraph (B) shall advise the Secretary not later than 30 days after the action. The Secretary shall publish a notice of the action in the Federal Register.

(3) LIST OF STATE LENGTH LIMITATIONS.—

(A) STATE SUBMISSIONS.—Not later than 90 days after the date of enactment of the Motor Carrier Safety Reauthorization Act of 2004, each State shall submit to the Secretary for publication a complete list of State length limitations applicable to commercial motor vehicle combinations operating in the State on the highways described in paragraph (1). The list shall indicate the applicable State laws and regulations associated with the length limitations. If a State does not submit the information as required, the Secretary shall complete and file the information for the State.

(B) PUBLICATION OF INTERIM LIST.—Not later than 90 days after the date of enactment of the Motor Carrier Safety Reauthorization Act of 2004, the Secretary shall begin a procedure to publish an interim list in the Federal Register consisting of all information submitted under subparagraph (A). The Secretary shall review the interim list, solicit comments submitted by a State under subparagraph (A) and shall solicit and consider public comments on the accuracy of the information.

(c) LIMITATION.—A law or regulation may not be included on the list submitted by a State or published by the Secretary merely because it authorized, or could have authorized, but did not authorize, the operation of commercial motor vehicle combinations not in actual operation on a regular or periodic basis before June 1, 2003.

(D) PUBLICATION OF FINAL LIST.—Except as revised under this subparagraph or subparagraph (E), the list shall be published as final in the Federal Register not later than 270 days after the date of enactment of the Motor Carrier Safety Reauthorization Act of 2004. In publishing the final list, the Secretary may make any revisions necessary to correct inaccuracies identified under subparagraph (B). After publication of the final list, commercial motor vehicle combinations prohibited under paragraph (1) may not operate on a highway described in paragraph (1) except as published on the list.

(E) INACCURACIES.—On the Secretary's own initiative, or by request of any State (including a State), the Secretary shall review the list published under subparagraph (D). If the Secretary decides there is reason to believe a mistake was made in the accuracy of the list, the Secretary shall begin a proceeding to decide whether a mistake was made. If the Secretary decides there was a mistake, the Secretary shall publish the correction.

(b) CONFORMING AMENDMENTS.—Section 31122 is amended—

(1) by inserting “126(e) or” before “127(d)” in subsection (g)(1) (as redesignated by subsection (a) of this section); and

(2) by inserting “(or June 1, 2003, with respect to highways described in subsection (h)(1))” after “June 2, 1991” in subsection (g)(3) (as redesignated by subsection (a) of this section); and

(c) by striking “Not later than June 15, 1992, the Secretary in subsection (h)(2) (as redesignated by subsection (a) of this section) and inserting “The Secretary”; and

(d) by inserting “or (f)” in subsection (h)(2) (as redesignated by subsection (a) of this section) after “subsection (d)”. SEC. 4245. APPLICATION OF SAFETY STANDARDS TO CERTAIN FOREIGN MOTOR CARRIER COMBINATIONS OPERATING IN THE UNITED STATES.

(a) APPLICATION OF SAFETY STANDARDS.—

Section 30112 is amended—

(1) by striking “person” in subsection (a) and inserting “foreign motor carrier”; and

(2) by adding at the end the following:

(c) DEFINITION.—

(1) FOREIGN MOTOR CARRIER.—The term ‘foreign motor carrier’ has the meaning given that term in section 13102 of this title.

(2) IMPORT.—The term ‘import’ means transport by any means into the United States, on a permanent or temporary basis, including the transportation of a motor vehicle into the United States for the purpose of providing the transportation of cargo or passengers.

(b) REQUIREMENT FOR CERTIFICATE OF COMPLIANCE.—

Section 31115 is amended by adding at the end the following:

(c) APPLICATION TO FOREIGN MOTOR CARRIERS.—

(1) IN GENERAL.—The requirement for certification described in subsection (a) shall apply to a foreign motor carrier that imports a motor vehicle or motor vehicle equipment into the United States. Such certification shall be made to the Secretary of Transportation prior to the import of the vehicle or equipment.

(2) DEFINITIONS.—In this subsection:

(A) FOREIGN MOTOR CARRIER.—The term ‘foreign motor carrier’ has the meaning given that term in section 13102 of this title.

(B) IMPORT.—The term ‘import’ has the meaning given that term in section 30112 of this title.

(c) TIME FOR COMPLIANCE.—The amendments made by sections (a) and (b) shall take effect on September 1, 2004.

SEC. 4246. BACKGROUND CHECKS FOR MEXICAN AND CANADIAN DRIVERS HAULING HAZARDOUS MATERIALS.

(a) IN GENERAL.—No commercial motor vehicle operators who operate in Mexico or Canada may operate a commercial motor vehicle transporting a hazardous material in commerce in the United States until the operators undergo a background check similar to the background checks required for commercial motor vehicle operators licensed in the United States to transport hazardous materials in commerce.

(b) DEFINITIONS.—In this section:

(1) HAZARDOUS MATERIALS.—The term “hazardous material” means any material determined by the Secretary of Transportation to be a hazardous material for purposes of this section.

(2) COMMERCIAL MOTOR VEHICLE.—The term “commercial motor vehicle” has the meaning given that term by section 31101 of title 49, United States Code.

(c) EFFECTIVE DATE.—This section takes effect on April 1, 2004.

SEC. 4247. EXEMPTION OF DRIVERS OF UTILITY SERVICE VEHICLES.

Section 346 of the Motor Carrier Safety Standards Act of 1999 (49 U.S.C. 31136) is amended—

(1) by striking “‘utility’” in subsection (a)(1), and inserting “‘drivers of utility service vehicles’”;

(b) REQUIREMENT FOR CERTIFICATE OF COMPLIANCE.—

Section 3465 is amended by adding at the end the following:

(c) APPLICATION TO FOREIGN MOTOR CARRIERS.—

(1) IN GENERAL.—The requirement for certificate described in subsection (a) shall apply to a foreign motor carrier that imports a motor vehicle or motor vehicle equipment into the United States. Such certification shall be made to the Secretary of Transportation prior to the import of the vehicle or equipment.

(2) DEFINITIONS.—In this subsection:

(A) FOREIGN MOTOR CARRIER.—The term ‘foreign motor carrier’ has the meaning given that term in section 13102 of this title.

(B) IMPORT.—The term ‘import’ has the meaning given that term in section 30112 of this title.

(c) TIME FOR COMPLIANCE.—The amendments made by sections (a) and (b) shall take effect on September 1, 2004.

SEC. 4248. OPERATION OF COMMERCIAL MOTOR VEHICLES TRANSPORTING AGRICULTURAL COMMODITIES AND FARM SUPPLIES.

(a) EXEMPTION FROM HOURS-OF-SERVICE REQUIREMENTS.—

(1) IN GENERAL.—Section 346(c) of the National Highway System Designation Act of 1995 (49 U.S.C. 31136 note), as amended by section 4247(3) of this title, is amended—

(b) REQUIREMENT FOR CERTIFICATE OF COMPLIANCE.—

Section 31125 is amended by adding at the end the following:

(c) APPLICATION TO FOREIGN MOTOR CARRIERS.—

(1) IN GENERAL.—The requirement for certificate described in subsection (a) shall apply to a foreign motor carrier that imports a motor vehicle or motor vehicle equipment into the United States. Such certification shall be made to the Secretary of Transportation prior to the import of the vehicle or equipment.

(2) DEFINITIONS.—In this subsection:

(A) FOREIGN MOTOR CARRIER.—The term ‘foreign motor carrier’ has the meaning given that term in section 13102 of this title.

(B) IMPORT.—The term ‘import’ has the meaning given that term in section 30112 of this title.

(c) TIME FOR COMPLIANCE.—The amendments made by sections (a) and (b) shall take effect on September 1, 2004.

SEC. 4249. SAFETY PERFORMANCE HISTORY SCREENING.

(a) IN GENERAL.—Subchapter III of chapter 311, as amended by section 4228, is amended by adding at the end the following:

(c) EFFECTIVE DATE.—This section takes effect on April 1, 2004.

SEC. 4250. EFFECTIVE DATE.

This Act shall be implemented on and after the date of enactment of this Act.
SEC. 4250. COMPLIANCE REVIEW AUDIT.

Within 1 year after the date of enactment of this Act, the Inspector General for the Department of Transportation shall audit the compliance reviews performed by the Federal Motor Carrier Safety Administration in fiscal year 2004 and submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure:

(1) the enforcement actions taken as a result of the compliance reviews, including fines, suspension or revocation of operating authority, satisfactory ratings, and follow-up actions to ensure compliance with Federal motor carrier safety regulations;

(2) whether compliance reviews are or should be based on a corporate-wide basis for all affiliates of the motor carrier selected for a compliance review as a result of its Safety Status Measurement System ranking; and

(3) whether the enforcement actions taken by the Federal Motor Carrier Safety Administration are adequate to assure future compliance of the motor carrier with Federal safety regulations and what deterrent effect those enforcement actions may have industry-wide.

SEC. 4254. UNIFIED CARRIER REGISTRATION SYSTEM.

(a) Section 13908 is amended to read as follows:

"§ 13908. Registration and other reforms

(a) ESTABLISHMENT OF UNIFIED CARRIER REGISTRATION SYSTEM.—The Secretary, in cooperation with the States, representatives of the motor carrier, motor private carrier, freight forwarder, and brokers, and after notice and opportunity for public comment, shall issue within 1 year after the date of enactment of the Unified Carrier Registration Act of 2004, an online Federal registration system to be named the Unified Carrier Registration System to replace—

(1) the current Department of Transportation identification number system, the Single State Registration System under section 14504 of this title;

(2) the current Federal registration system contained in this chapter and the financial responsibility information system under section 13906; and

(3) the service of process agent systems under sections 503 and 13304 of this title.

(b) ROLE AS CLEARINGHOUSE AND DEPOSITORY OF INFORMATION.—The Unified Carrier Registration System shall serve as a clearinghouse and depository of information on, and identification of, all foreign and domestic motor carriers, motor private carriers, brokers, and freight forwarders, and others required to register with the Department, including enforcement information with respect to a motor carrier, motor private carrier, broker, freight forwarder, or leasing company that is not otherwise prohibited by law.

(c) Procedures for Correcting Information.—Not later than 60 days after the effective date of this section, the Secretary shall prescribe regulations that include a procedure for drivers to remedy incorrect information in a timely manner.

(d) FEES SYSTEM.—The Secretary shall establish under this title, a fee system for the Unified Carrier Registration System according to the following guidelines:

(1) REGISTRATION AND FILING EVIDENCE OF FINANCIAL RESPONSIBILITY.—The fee for new registrants shall as nearly as possible cover the costs of processing the registration and conducting the safety audit or examination, if required, but shall not exceed $300.

(2) EVIDENCE OF FINANCIAL RESPONSIBILITY.—The fee for filing evidence of financial responsibility pursuant to this section shall not exceed $10 per filing. No fee shall be charged for a filing for purposes of designating an agent for service of process or the filing of other information relating to financial responsibility.

(3) ACCESS AND RETRIEVAL FEES.—

(A) IN GENERAL.—Except as provided in subsection (B) of this section, the fee system shall include a nominal fee for the access to or retrieval of information from the Unified Carrier Registration System to cover the costs of operating and upgrading the system, including the personnel costs incurred by the Department and the costs of administration of the Unified Carrier Registration Agreement.

(B) EXCEPTIONS.—There shall be no fee charged—

(i) to any agency of the Federal Government or a State government or any political subdivision of any such government for the access to or retrieval of information and data from the Unified Carrier Registration System for its own use;

(ii) to any representative of a motor carrier, motor private carrier, leasing company, broker, or freight forwarder (as each is defined in section 14504 of this title) for the access to or retrieval of the individual information related to such entity from the Unified Carrier Registration System for the individual use of such entity.

SEC. 4255. REGISTRATION OF MOTOR CARRIERS BY STATES.

(a) TERMINATION OF REGISTRATION PROVISIONS.—Section 14504 is amended by adding at the end the following:

"(d) TERMINATION OF PROVISIONS.—Subsections (b) and (c) shall cease to be effective 1 year after the date on which the Secretary certifies that State compliance reviews shall be conducted no later than 12 months after the date of enactment of the Unified Carrier Registration Act of 2004."
(b) **Unified Carrier Registration System Plan and Agreement.** Chapter 145 is amended by inserting after section 14504 the following:

> § 14504a. Unified carrier registration system plan and agreement

> "(a) Definitions.—In this section and section 14506 of this title:

> "(1) **Commercial motor vehicle.**—"(A) Except as provided in subparagraph (B), the term ‘commercial motor vehicle’ has the meaning given the term in section 31501 of this title.

> "(B) Except as provided in subsection (c), with respect to motor carriers required to make any filing or pay any fee to a State with respect to the motor carrier’s authority or insurance related to operation within such State, the term ‘commercial motor vehicle’ means any self-propelled vehicle used on the highway in commerce to transport passengers or property for compensation regardless of the gross vehicle weight rating of the vehicle or the number of passengers transported by such vehicle.

> "(2) **Base-state.**—

> "(A) In general.—The term ‘Base-State’ means, with respect to the Unified Carrier Registration Agreement, a State.

> "(B) **Designation of Base-State.**—A motor carrier, motor private carrier, broker, freight forwarder or lessor that maintains its principal place of business in the United States.

> "(C) **Intrastate Fee.**—The term ‘intrastate fee’ means the registration and use fees by a State, including per vehicle fees and gross receipts taxes, imposed on a motor carrier or motor private carrier for the renewal of the motor carrier’s or motor private carrier’s insurance filings of such carrier with a State.

> "(D) **Leasing Company.**—The term ‘leasing company’ means a lessor that is engaged in the business of leasing or renting for compensation motor vehicles without drivers to a motor carrier, motor private carrier, or freight forwarder.

> "(E) **Motor Carrier.**—The term ‘motor carrier’ has the meaning given the term in section 13102(12) of this title, but shall include all carriers that are otherwise exempt from the provisions of this title.

> "(F) **SSRS.**—The term ‘SSRS’ means the Single State Registration System in effect on the date of enactment of the Unified Carrier Registration Act of 2001.

> "(G) **Unified Carrier Registration Agreement.**—The terms ‘Unified Carrier Registration Agreement’ and ‘UCR Agreement’ mean the uniform, multistate, or multistate, freight forwarders and leasing companies pursuant to this section.

> "(H) **Unified Carrier Registration Plan.**—The terms ‘Unified Carrier Registration Plan’ and ‘UCR Plan’ mean the organization, registration and registration system developed under the Unified Carrier Registration Plan governing the collection and distribution of resources and financial responsibility information provided and fees paid by motor carriers, motor private carriers, brokers, freight forwarders and leasing companies pursuant to this section.

> "(i) **Board of Directors.**—

> "(A) Governance of Plan.—The Unified Carrier Registration Plan shall be governed by a Board of Directors consisting of representatives of the Department of Transportation, Participating States, and the motor carrier industry.

> "(B) Number.—The Board shall consist of 15 directors.

> "(C) Composition.—The Board shall be composed of directors appointed as follows:

> "(i) **Federal Motor Carrier Safety Administration.**—The Secretary shall appoint 1 direct previously the Motor Carriers Safety Administration for the 1-year terms.

> "(ii) **State Agencies.**—The Secretary shall appoint 5 directors from the professional staffs of State agencies responsible for overseeing the administration of the UCR Agreement in their respective States.

> "(iii) **Motor Carrier Industry.**—The Secretary shall appoint 5 directors from the motor carrier industry. At least 1 of the appointees shall be an employee of the national trade association representing the general motor carrier industry.

> "(iv) **Department of Transportation.**—The Secretary shall appoint 1 director as Chairperson and 1 director as Vice-Chairperson of the Board. The Chairperson and Vice-Chairperson shall serve in such capacity for the term of their appointment as directors.

> "(v) **Term.**—In appointing the initial Board, the Secretary shall designate 5 of the appointed directors for initial terms of 3 years, 5 of the appointed directors for initial terms of 2 years, and 5 of the appointed directors for initial terms of 1 year. Thereafter, all directors shall be appointed for terms of 3 years, except that the term of the Secretary may be extended by the Federal Motor Carrier or Administrator. The term of the Secretary appointed by the Secretary under paragraph (C)(i) shall be at the discretion of the Secretary. The director may be appointed to serve successive terms in such capacity when appointed by the Secretary.

> "(vi) **Rules and Regulations Governing the Agreement.**—The Board of Directors shall develop and submit to the Secretary provisions to govern the UCR Agreement and submit such rules and regulations to the Secretary for approval and adoption. The rules and regulations shall take effect on January 1 of the year following the approval of the first rules and regulations.

> "(A) **Prescribe uniform forms and formats.**—

> "(i) the annual submission of the information required by the Base-State, motor carrier, motor private carrier, leasing company, broker, or freight forwarder;

> "(ii) the transmission of information by a Participating State to the Unified Carrier Registration System;

> "(iii) the payment of excess fees by a State to the designated depository and the distribution of fees by each State so entitled; and

> "(iv) the providing of notice by a motor carrier, motor private carrier, broker, freight forwarder, or lessor to the Board of the intent of such entity to change its Base-State, and the procedures for a...
State to object to such a change under sub-
paragraph (C) of this paragraph;
“(B) provide for the administration of the Unified Carrier Registration Agreement, in-
cluding provisions for amendments to the Agree-
ment and obtaining clarification of any pro-
vision of the Agreement;
“(C) provide procedures for dispute resolu-
tion that provide due process for all involved
parties; and
“(D) designate a depository.

(3) COMPENSATION AND EXPENSES.—Except for the representatives of the United States, no employee of the Federal Government for serving on the
Board or being considered a Federal employee as a result of such service. All Directors
shall be reimbursed for expenses they incur while attending duly called meetings of the Board. In addition, the Board may approve the reim-
bursement of expenses incurred by mem-
bers of any subcommittee or task force ap-
pointed pursuant to paragraph (5). The reim-
bursement of expenses to directors and sub-
committee and task force members shall be based on the applicable rules of the General Service Administration governing reimbursement of expenses for travel by Fed-
eral employees.

(4) MEETINGS

“(A) IN GENERAL.—The Board shall meet at
least once per year. Additional meetings may
be called, as needed, by the Chairperson
of the Board or a majority of the directors, or
the Secretary.

“(B) QUORUM.—A majority of directors
shall constitute a quorum.

“(C) VOTING.—Approval of any matter be-
fore the Board shall require the approval of a
majority of all directors present at the meet-
ing.

“(D) OPEN MEETINGS.—Meetings of the
Board and any subcommittees or task forces
appointed pursuant to paragraph (5) of this
section shall be subject to the provisions of
section 552b of title 5.

“(5) SUBCOMMITTEES.—

“(A) INDUSTRY ADVISORY SUBCOMMITTEE.—The Chairperson shall appoint an Industry Advisory Subcommitte. The Industry Advi-
sory Subcommittee shall consider any mat-
ter before the Board and make recommenda-
tions to the Board.

“(B) OTHER SUBCOMMITTEES.—The Chair-
person shall appoint an Audit Subcom-
mittee, a State Resolution Sub-
mittee, and any additional subcommit-
tees and task forces that the Board deter-
mines to be necessary.

“(6) MINORITY MEMBERS.—The chairperson
of each subcommittee shall be director. The other
members of subcommittees and task forces shall be directors or non-directors.

“(D) Delegation of authority.—The Board
may contract with any private commercial or non-profit entity, or any agency of a State
or political subdivision of a State, to perform administrative functions required under
the Unified Carrier Registration Agreement,
but may not delegate its deci-
dion of any matter falling within
its responsibilities under the Unified
Carrier Registration Agreement. In
determining the level of fees to be assessed
in the next Agreement year, the Board shall consid-
ner—
“(A) the administrative costs associated with
the Unified Carrier Registration Plan and the Agree-
ment;
“(B) whether the revenues generated in the
previous year and any surplus or shortage from
that or prior years enable the Particip-
ating States to achieve the revenue levels
set by the Board; and
“(C) the parameters for fees set forth in
subsection (4).

“(8) LIABILITY PROTECTIONS FOR DIREC-
TORS.—No individual appointed to serve on
the Board shall be liable to any other direc-
tor or person for harm, either economic or non-economic, caused by an act or omission of the individual arising from the
individual’s service on the Board if—
“(A) the individual was acting within the
scope of his or her responsibilities as a direc-
tor; and
“(B) the harm was not caused by willful or
rash, reckless misconduct, or a conscious, flagrant in-
difference to the right or safety of the party
harmed by the individual.

“(9) BOARD OF ADVISORY COMMITTEE—
ACT.—The Federal Advisory Committee
Act (5 U.S.C. App.) shall not apply to the
Unified Carrier Registration Plan or its com-
mittees.

“(10) CERTAIN FEES NOT AFFECTED.—This
section does not limit the amount of money
a State may charge for vehicle registration
or the amount of any fuel use tax a State
may impose pursuant to the International
Fuel Tax Agreement.

“(e) STATE PARTICIPATION.—

“(1) STATE PLAN.—No State shall be eligi-
ble to participate in the Unified Carrier Reg-
istration Plan or to receive any revenues de-

dering States to achieve the revenue levels
set by the Board, or the Board submits to the Secretary, not later than 3
years after the date of enactment of the Uni-

cified Carrier Registration Act of 2004, a plan

“(A) identifying the State agency that has
or will have the legal authority, resources,
and qualified personnel necessary to admin-
ister the Unified Carrier Registration Agree-
ment in accordance with the rules and regu-
lations promulgated by the Board of Direc-
tors of the Unified Carrier Registration Plan;

“(B) containing assurances that an amount
at least equal to the revenue derived by the
State from the Unified Carrier Registration
Agreement for each year of the Agreement
shall be based on the number of commercial
motor vehicles that are subject to this Agree-
ment and have their registration applied for in the
State.

“(2) AMENDED PLANS.—A State may change
the agency designated in the plan submitted
under this subsection by filing an amended
plan with the Secretary and the Chairperson
of the Unified Carrier Registration Plan;

“(3) WITHDRAWAL OF PLAN.—In the event a
State withdraws, notifies the Secretary
that it is withdrawing, or is withdrawn by
the Secretary, the State may no longer participate in the Unified Carrier
Registration Agreement or receive any port-
tion of the revenues derived under the Agree-
ment.

“(d) TERMINATION OF ELIGIBILITY.—If a State fails to submit a plan to the Secretary as
required by paragraph (1) or withdraws its
plan under paragraph (3), the State shall be
prohibited from subsequently submitting or
recommencing a plan or participating in the
Agreement.

“(d) Provision of plan to chairperson.—The
Secretary shall provide a copy of each plan
submitted under this subsection to the initial Chairperson of the Board of Directors
in the plan. A State shall provide the plan not
later than 90 days of appointing the Chair-
person.
portion of the UCR Agreement revenues generated under the Agreement equivalent to the revenues it received from such interstate carriers in the last calendar year ending before the effective date of title 49, United States Code, as long as the State continues to comply with the provisions of subsection (e).

(5) States that comply with the requirements of subsection (e) of this section but did not participate in SSRIS during the last calendar year ending before the effective date of title 49, United States Code, Act of 2004 shall be entitled to an annual allotment not to exceed $500,000 from the UCR Agreement generated under the Agreement as long as the State continues to comply with the provisions of subsection (e).

(4) The amount of UCR Agreement revenues under this section shall be calculated by the Board and approved by the Secretary.

(b) DISTRIBUTION OF UCR AGREEMENT REVENUES.—

"(1) ELIGIBILITY.—Each State that in compliance with the provisions of subsection (e) shall be entitled to a portion of the revenues generated under the UCR Agreement in accordance with subsection (g).

"(2) ENTITLEMENT TO REVENUES.—A State that is in compliance with the provisions of subsection (e) may retain an amount of the gross revenues it collects from motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies from the UCR Agreement equivalent to the portion of revenues to which the State is entitled under subsection (g). All revenues a Participating State collects in excess of the amount to which the State is so entitled shall be forwarded to the depository designated by the Board under subsection (d)(2)(B).

"(3)Excess funds held by the depository after all distributions under subparagraph (A) have been made shall be used to pay the administrative costs of the UCR Plan and the UCR Agreement.

"(4) Any excess funds held by the depository after distributions and payments under subparagraphs (A) and (B) shall be retained in the depository, and the UCR Agreement fees for the motor carriers, motor private carriers, leasing companies, freight forwarders, and brokers for the next fee year shall be reduced by the Board accordingly.

"(1) CIVIL ACTIONS.—Upon request by the Secretary of Transportation, the Attorney General may bring a civil action in a court of competent jurisdiction to enforce compliance with this section and with the terms of the Unified Carrier Registration Agreement.

"(2) VIOLATION.—An action under this section may be brought in the Federal court sitting in the State in which an order is required to enforce such compliance.

"(3) RELIEF.—Subject to section 1341 of title 49, United States Code, the court, on a proper showing—

"(i) shall issue a temporary restraining order or a preliminary or permanent injunction; and

"(ii) may issue an injunction requiring that the State or any person comply with this section.

"(4) ENFORCEMENT BY STATES.—Nothing in this section—

"(A) prohibits a Participating State from issuing citations and imposing reasonable fines for violations of applicable State laws and regulations on any motor carrier, motor private carrier, freight forwarder, broker, or leasing company for failure to—

"(i) submit documents as required under subsection (d)(2); or

"(ii) pay the fees required under subsection (c); or

"(B) authorizes a State to require a motor carrier, motor private carrier, or freight forwarder to display as evidence of compliance any Federal regulations governing the household goods industry, and it shall be created to enhance enforcement against fraudulant moving companies.

"(5) The movement of an individual's household goods is unique and differs from the movement of a commercial shipment. A consumer is often unaware of the charges for such operations within 30 days after the goods are delivered.''

SEC. 4267. USE OF UCR AGREEMENT REVENUES AS MATCHING FUNDS.

Section 31506(a) is amended by inserting "Amounts generated by the Unified Carrier Registration Agreement, under section 14504 of this title, or in the estimate."

SEC. 4268. CLERICAL AMENDMENTS.

(a) Section 31506 is amended by—

"(i) 100 percent of the charges contained in a binding estimate provided by the carrier;

"(ii) not more than 10 percent of the charges contained in a nonbinding estimate provided by the carrier; or

"(iii) in the case of a partial delivery of the shipment, the prorated percentage of the charges calculated in accordance with subparagraph (B).

"(2) CALCULATION OF PRORATED CHARGES.—For purposes of subparagraph (A)(ii), the prorated percentage of the charges shall be the percentage of the total charges due to the carrier as described in clause (i) or (ii) of subparagraph (A) that is equal to the percentage of the weight of that portion of the shipment delivered to the total weight of the shipment.

"(3) POST-CONTRACT SERVICES.—Subparagraph (A) does not apply to additional services requested by a shipper after the contract of service is executed that were not included in the estimate.

"(D) IMPRACTICAL OPERATIONS.—Subparagraph (A) does not apply to impractical operations, as defined by the applicable carrier or motor private carrier, the shipper, or the charges for such operations within 30 days after the goods are delivered.''

SEC. 4302. FINDINGS; SENSE OF CONGRESS.

The Congress finds the following:

(1) There are approximately 1,500,000 interstate household moves every year. While the vast majority of these interstate moves are completed successfully, complaints have been increasing since the Interstate Commerce Commission was abolished in 1996 and oversight of the household goods industry was transferred to the Department of Transportation.

(2) While the overwhelming majority of household goods carriers are honest and operate within the law, there appears to be a growing criminal element that is exploiting a perceived void in Federal and State enforcement efforts. The growing criminal element tends to prey upon consumers.

(3) The movement of an individual's household goods is unique and differs from the movement of a commercial shipment. A consumer is often unaware of the charges for such operations within 30 days after the goods are delivered.''

SEC. 4269. IDENTIFICATION OF VEHICLES.

Chapter 145 is amended by adding at the end the following:

"(2) Submission of documents as required under subsection (d)(2); or

"(3) In connection with the Federal requirement for the force and effect of law that requires a motor carrier, motor private carrier, freight forwarder, or lessing company to display any form of identification on or in a commercial motor vehicle, other than forms of identification required by the Secretary of Transportation under section 390.21 of title 49, Code of Federal Regulations.

"(4) In connection with the Federal vehicle inspection standards under section 3136 of this title.''

SEC. 4303. DEFINITIONS.

In this title, the terms "carriers", "motor carriers", "motor private carriers", "freight forwarders" and "transportation" have the meaning given such terms in section 13102 of title 49, United States Code.

SEC. 4304. PAYMENT OF RATES.

Section 13707(b) is amended by adding at the end the following:

"(1) SHIPMENTS OF HOUSEHOLD GOODS.—

"(A) IN GENERAL.—A carrier providing transportation for a shipment of household goods shall give up possession of the household goods to the shipper at the destination upon payment of—

"(i) 100 percent of the charges contained in a binding estimate provided by the carrier; or

"(ii) not more than 10 percent of the charges contained in a nonbinding estimate provided by the carrier; or

"(iii) in the case of a partial delivery of the shipment, the prorated percentage of the charges calculated in accordance with subparagraph (B).

"(B) CALCULATION OF PRORATED CHARGES.—For purposes of subparagraph (A)(ii), the prorated percentage of the charges shall be the percentage of the total charges due to the carrier as described in clause (i) or (ii) of subparagraph (A) that is equal to the percentage of the weight of that portion of the shipment delivered to the total weight of the shipment.
SEC. 4305. HOUSEHOLD GOODS CARRIER OPERATIONS.

Section 14104 is amended—

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

"(1) REQUIREMENT FOR WRITTEN ESTIMATE.—A motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 335 shall provide to a prospective shipper a written estimate of all charges related to the transportation of the household goods, including charges for—

'(A) packing;
'(B) unpacking;
'(C) loading;
'(D) unloading; and
'(E) handling of the shipment from the point of origin to the final destination (whether that destination is storage or transit).'';

(2) by redesigning paragraph (2) of such subsection as paragraph (4); and

(3) by inserting after paragraph (1), as amended by paragraph (1), the following:

"(2) OTHER INFORMATION.—At the time that a motor carrier provides the written estimate required by paragraph (1), the motor carrier shall provide the shipper a copy of the Department of Transportation publication FMCSA–ESA–03–005, entitled 'Your shipper a copy of the Department of Transportation publication OCE 100, entitled 'Your

ready to move'. Before the execution of a contract for securities shall provide the shipper a copy of the Department of Transportation publication OCE 100, entitled 'Your

Rights and Responsibilities When You Move' required by section 375.2 of title 49, Code of Federal Regulations (or any corresponding similar regulation).

(3) BINDING AND NONBINDING ESTIMATES.—The written estimate required by paragraph (1) may be either binding or nonbinding. The written estimate shall be based on a visual inspection of the household goods if the household goods are located within a 50-mile radius of the location of the carrier's household goods agent preparing the estimate. The Secretary may not prohibit any such carrier from charging a prospective shipper for providing a written, binding estimate for the transportation and related services;'';

(4) by redesigning subsection (c) as subsection (a); and

(5) by inserting after subsection (b), as amended by paragraphs (1) and (2), the following:

"(5) NOTIFICATION OF FINAL CHARGES.—If the final charges for a shipment of household goods exceed 100 percent of a binding estimate or 110 percent of a nonbinding estimate, the motor carrier shall provide the shipper with an itemized statement of the charges. The statement shall be provided to the shipper within 24 hours prior to the delivery of the shipment unless the shipper waives this requirement or the shipper cannot be reached by fax, regular mail, or electronic mail. Such notification shall—

'(a) be delivered in writing at the motor carrier's expense; and

'(b) disclose the requirements of section 1307(b)(3) of this title regarding payment for delivery of a shipment of household goods.

(6) REQUIREMENT FOR INVENTORY.—A motor carrier providing transportation of a shipment of household goods, as defined in section 1302(10), that is subject to jurisdiction under subchapter I of chapter 335 of this title shall before or at the time of loading the shipment, prepare a written inventory of all articles tendered and accepted by the motor carrier for transportation. Such inventory shall—

'(a) list or otherwise reasonably identify each item tendered for transportation;

'(b) be signed by the shipper and the motor carrier, or the agent of the shipper or carrier, at the time the shipment is loaded and at the time the shipment is unloaded at the final destination;

'(c) be attached to, and considered part of, the bill of lading; and

'(d) be subject to the same requirements of the Secretary as preservation that apply to bills of lading.''

SEC. 4306. LIABILITY OF CARRIERS UNDER RECEIPTS AND BILLS OF LADING.

Section 1406(b) is amended—

(1) by redesigning paragraph (1) as a paragraph indenting 2 ems from the left margin and inserting—

'(1) IN GENERAL.—Before "A carrier";

'(2) by adding at the end, the following:

"(2) FULL VALUE PROTECTION OBLIGATION.—Unless the carrier receives a waiver in writing under paragraph (3), a carrier's maximum concerning damage or loss to the lost, damaged, destroyed, or otherwise not delivered to the final destination is an amount equal to the replacement value of such goods, subject to rules issued by the Surface Transportation Board and applicable tariffs.

(3) APPLICATION OF RATES.—The released rates established by the Board under paragraph (1) (commonly known as 'released rates') shall not apply to the transportation of household goods unless the ability of the carrier for the full value of such household goods under paragraph (2) is waived in writing by the shipper.''

SEC. 4307. DISPUTE SETTLEMENT FOR SHIPMENTS OF HOUSEHOLD GOODS.

(a) IN GENERAL.—Section 14708(a) is amended—

(1) by resetting the text as a paragraph indenting 2 ems from the left margin and inserting—

"(1) REQUIREMENT TO OFFER.—''(1) REQUIREMENT TO OFFER.—''(1) IN GENERAL.—Section 14708(b) is amended—

(2) REQUIREMENTS FOR CARRIERS.—If a dispute under this section but before—

"(2) REQUIREMENTS FOR CARRIERS.—If a dispute under this section but before—

'(A) the subject of, and amounts at issue is, the disputes;

'(B) patterns in disputes or settlements;

'(C) the prevailing party in disputes, if identifiable;

(b) ATTORNEY'S FEES TO CARRIERS.—Section 14708(d) is amended by striking ''(b)(7)'' andSES. 375.2 OF TITLE 49, CODE OF

"(B) after institution of an arbitration proceeding by the shipper to resolve such dispute under this section but before—

"(1) the period provided under subsection (b)(7) for resolution of such dispute (including, if applicable, an extension of such period under subsection (c)); and

"(2) the court decision resolving such dispute is rendered.''

(2) REVIEW AND REPORT ON DISPUTE SETTLEMENT PROGRAMS.—

(1) REVIEW AND REPORT.—Not later than 18 months after the date of enactment of this Act the Secretary of Transportation shall complete a review of the outcomes and the effectiveness of the programs carried out under title 49, United States Code, to settle disputes between motor carriers and shippers and submit a report on the review to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The report shall describe—

'(A) the subject of, and amounts at issue is, the disputes;

'(B) patterns in disputes or settlements;

'(C) the prevailing party in disputes, if identifiable;

'DISPUTE SETTLEMENT PROGRAMS.—

(2) REVIEW FOR PUBLIC COMMENT.—The Secretary shall publish notice of the review required by paragraph (1) and provide an opportunity for the public to submit comments on the effectiveness of such programs. Notwithstanding any provision of law to the contrary in section 552 of title 5, United States Code, the Secretary may not post on the Department of Transportation's electronic docket system, or make available to any member of the public in paper format, any information submitted to the Secretary by a motor carrier or shipper under the preceding sentence. The Secretary shall use the settlement agreements or other information submitted by a motor carrier or shipper solely to evaluate the effectiveness of the programs and shall not include in the report required by this subsection the names or, or other identifying information concerning, motor carriers or shippers that submitted comments or information under this subsection.
§ 147110. Enforcement of Federal laws and regulations with respect to transportation of household goods

(a) ENFORCEMENT BY STATES.—Notwithstanding any provision of law to the contrary, a State authority may enforce the consumer protection provisions, as determined by the Secretary of Transportation, of this title that are related to the transportation of household goods in interstate commerce. Any fine or penalty imposed on a carrier in a proceeding under this subsection shall, notwithstand the provisions of section 375.2 of title 49, Code of Federal Regulations, be paid to and retained by the State.

(b) STATE AUTHORITY DEFINED.—The term ‘State authority’ means an agency of a State that has authority under the laws of the State to regulate the intrastate movement of household goods.

§ 147111. Enforcement by State attorneys general

(a) IN GENERAL.—A State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enforce the consumer protection provisions, as determined by the Secretary of Transportation, of this title that are related to the transportation of household goods in interstate commerce, or for regulations or orders of the Secretary or the Board thereunder, or to impose the civil penalties authorized by this part or such regulation or order. Notwithstanding any provision of law, a State attorney general has authority (as defined in section 14710(c) in the State in which the complaint arose; or

(b) NOTICE.—The State shall serve written notice to the Secretary or the Board, as the case may be, of any civil action under subsection (a) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon institution of such action.

(c) AUTHORITY TO INTERVENE.—Upon receiving the notice required by subsection (b), the Secretary or Board may intervene in such civil action and upon intervening—

(1) be heard on all matters arising in such civil action; and

(2) file petitions for appeal of a decision in such civil action.

(d) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this section shall prevent the attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) VENUE: SERVICE OF PROCESS.—In a civil action brought under subsection (a)—

(1) the venue shall be a judicial district in which—

(A) the carrier, foreign motor carrier, or broker operates;

(B) the carrier, foreign motor carrier, or broker was registered under section 13902 of this title; or

(C) where the defendant in the civil action is found;

(2) process may be served without regard to the territorial limits of the district of or of the State in which the civil action is instituted; and

(3) a person who participated with a carrier or broker in the violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

(f) ENFORCEMENT OF STATE LAW.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court to enforce a criminal statute of such State.

(2) CONFORMING AMENDMENT.—The analysis for chapter 147 is amended by inserting after the item relating to section 14709 the following:

'14710. Enforcement of Federal laws and regulations with respect to transportation of household goods.

'14711. Enforcement by State attorneys general.''

SEC. 4309. WORKING GROUP FOR DEVELOPMENT OF PRACTICES AND PROCEDURES TO ENHANCE FEDERAL-STATE RELATIONS.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall establish a working group of State attorneys general to—

(1) establish a working group of State attorneys general, State authorities that regulate the movement of household goods, and Federal and local law enforcement officials for the purpose of developing practices and procedures to enhance the Federal-State partnership in enforcement efforts, exchange of information, and coordination of enforcement efforts with respect to interstate transportation of household goods and making legislative and regulatory recommendations to the Secretary concerning such enforcement practices and procedures;

(2) Consultation.—In carrying out subsection (a), the working group shall consult with industries involved in the transportation of household goods, the public, and other interested parties.

SEC. 4310. CONSUMER HANDBOOK ON DOT WEBSITE.

Within 6 months after the date of enactment of this Act, the Secretary shall take such action as may be necessary to ensure that the Department of Transportation publication OCE 100, entitled ‘Your Rights and Responsibilities When You Move’ required by section 375.2 of title 49, Code of Federal Regulations (or any corresponding similar regulation that replaces it), is available in language that is readily understandable by the general public, on the website of the Department of Transportation.

SEC. 4311. INFORMATION ABOUT HOUSEHOLD GOODS TRANSPORTATION ON CARRIERS’ WEBSITES.

Not later than 1 year after the date of enactment of this Act, the Secretary shall modify the regulations contained in part 375 of title 49, Code of Federal Regulations, to require a motor carrier or broker that is subject to such regulations and that establishes and maintains a website to prominently display on the website—

(1) the name assigned to the motor carrier or broker by the Department of Transportation;

(2) the OCE 100 publication referred to in section 4310; and

(3) in the case of a broker, a list of all motor carriers providing transportation of household goods used by the broker and a statement that the broker is not a motor carrier providing transportation of household goods.

SEC. 4312. CONSUMER COMPLAINTS.

(a) REQUIREMENT FOR DATABASE.—Subchapter II of chapter 141 is amended by adding at the end the following:

'(114124. Consumer complaints.

Establishment of System and Database.—The Secretary of Transportation shall—

(1) establish a system to record complaints made by a shipper that relates to motor carrier transportation of household goods; and

(b) To solicit information gathered by a State regarding the number and type of complaints involving the interstate transportation of household goods;

(2) establish a database of such complaints;

(3) develop a procedure—

(A) to provide the public access to the database;

(B) to forward a complaint, including the motor carrier bill of lading number related to the complaint to a motor carrier named in such complaint and to an appropriate State authority (as defined in section 14710(c) in the State in which the complaint resides; and

(C) to permit a motor carrier to challenge information in the database.

(b) REQUIREMENT FOR ANNUAL REPORTS.—The Secretary shall issue regulations requiring a motor carrier that provides transportation of household goods to submit to the Secretary, not later than March 31st of each year, an annual report covering the 12-month period ending on the preceding March 31st that includes—

(1) the number of interstate shipments of household goods that the motor carrier received from shippers and that were delivered to a final destination during the preceding calendar year;

(2) the number and general category of complaints lodged against the motor carrier during the preceding calendar year;

(3) the number of shipments described in paragraph (1) that resulted in the filing of a claim against the motor carrier for loss or damage to the shipment for an amount in excess of $500 during the preceding calendar year; and

(4) the number of shipments described in paragraph (3) that were—

(A) resolved during the preceding calendar year; or

(B) pending on the last day of the preceding calendar year.

(c) SUMMARY TO CONGRESS.—The Secretary shall transmit a summary each year of complaints filed and logged under subsection (a) for the preceding calendar year to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.''

(b) CONFORMING AMENDMENT.—The analysis for chapter 141 is amended by inserting after the item relating to section 14120 the following:

'(114124. Consumer complaints.''

SEC. 4313. REVIEW OF LIABILITY OF CARRIERS.

(a) REVIEW.—Not later than 1 year after the date of enactment of this Act, the Surface Transportation Board shall complete a review of the current Federal regulations relating to the level of liability provided by motor carriers that provide transportation of household goods and revise such
regulations, if necessary, to provide enhanced protection in the case of loss or damage.

(b) Determinations.—The review required by subsection (a) shall include a determination of—

(1) whether the current regulations provide adequate protection;

(2) the benefits of purchase by a shipper of insurance to supplement the carrier’s limitations on liability; and

(3) whether there are abuses of the current regulations that leave the shipper unprotected in the event of loss and damage to a shipment of household goods; and

(4) whether the section 17900 of title 49, United States Code, should be modified or repealed.

SEC. 4314. CIVIL PENALTIES RELATING TO HOUSEHOLD GOODS BROKERS. "Section 14901(d) is amended—

(1) by resetting the text as a paragraph indented 2 ems from the left margin and inserting—

"(1) IN GENERAL.—"’Before ‘If a carrier’; and

(2) by adding at the end the following:

‘‘(2) ESTIMATE OF BROKER WITHOUT CARRIER AGREEMENT.—If a broker for transportation of household goods subject to jurisdiction under subchapter I of chapter 135 of this title makes an estimate of the cost of transporting the goods before entering into an agreement with a carrier to provide transportation of household goods subject to such jurisdiction, the broker is liable to the United States for a civil penalty of not less than $10,000 for each violation.

‘‘(3) UNAUTHORIZED TRANSPORTATION.—If a person provides transportation of household goods subject to jurisdiction under section 13102(a) of this title and provides broker services for such transportation without being registered under chapter 139 of this title or being exempt from the registration requirement of paragraph (1) or (2), the Secretary shall order the person to cease providing transportation services as a motor carrier or broker, as the case may be, and such person is liable to the United States for a civil penalty of not less than $25,000 for each violation.

‘‘(4) CIVIL PENALTY FOR FAILING TO GIVE UP POSSESSION OF HOUSEHOLD GOODS. (a) In General.—Chapter 149 is amended by adding at the end the following:

‘‘8 14915. Penalties for failure to give up possession of household goods.

(1) Whoever is found to have failed to give up possession of household goods is liable to the United States for a civil penalty of not less than $10,000. Each day that such possession is not given up is a separate violation. If such person is a carrier or broker, the Secretary may suspend for a period of not less than 6 months the registration of such carrier or broker under chapter 139 of this title.

(b) Criminal Penalty.—Whoever is convicted of having failed to give up possession of household goods shall be fined under title 18 or imprisoned for not more than 2 years.

‘‘(c) Failure To Give Up Possession Of Household Goods Defined.—For purposes of this section, the term ‘failed to give up possession of household goods’ means the knowing and willful failure of a motor carrier to deliver to, or unload at, the destination of a shipment of household goods that is subject to jurisdiction under subchapter I or I of chapter 135 of this title, for which charges have been estimated by the motor carrier providing transportation of such goods and for which the shipper has tendered a payment described in clause (i), (ii), or (iii) of section 13705(b)(3)(A) of this title.’’.

(c) Additional Registration Requirements For Motor Carriers Of Household Goods. Section 13902(a) is amended—

(1) by striking paragraphs (2) and (3);

(2) by redesignating paragraph (4) as paragraph (5) and inserting after paragraph (4) the following:

‘‘(2) ADDITIONAL REGISTRATION REQUIREMENTS FOR HOUSEHOLD GOODS TRANSPORTATION.—Notwithstanding paragraph (1), the Secretary may register a person to provide transportation of household goods (as defined in section 13102(a) of this title) only after that person—

‘‘(A) provides evidence of participation in an arbitration program and provides a copy of the notice of that program as required by section 17906(b)(2) of this title;

‘‘(B) identifies the tariff and provides a copy of the notice of the availability of that tariff for inspection as required by section 13702(c) of this title;

‘‘(C) provides evidence that it has access to, has read, is familiar with, and will observe all laws relating to consumer protection, estimating, consumers’ rights and responsibilities, and insurance to supplement the carrier’s limitations on liability; and

‘‘(D) discloses any relationship involving common stock, common ownership, common management, or common familial relationships between that person and any other motor carrier, freight forwarder, or broker of household goods within the past 3 years.

‘‘(iii) Confidentiality and findings.—The Secretary may consider, and, to the extent applicable, make findings on any evidence demonstrating that the registrant is unable to comply with any applicable requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2).

‘‘(4) Withholding.—If the Secretary determines that a registrant under this section does not meet, or is not able to meet, any requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2), the Secretary shall withhold registration.’’.

‘‘(5) RETENTION OF AUTHORITY TO CANCEL REGISTRATION.—Notwithstanding paragraph (4), the Secretary may order the cancellation of an exemption for a registrant to which paragraph (2) applies, if the Secretary determines that the registrant is unable to comply with any applicable requirement of this section.

Subtitle D—Hazardous Materials Transportation Safety and Security

SEC. 4401. SHORT TITLE.

This subtitle may be cited as the ‘‘Hazardous Materials Transportation Safety and Security Reauthorization Act of 2004’’.

SEC. 4402. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this subtitle 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 of uniform title 49, United States Code.

PART I—GENERAL AUTHORITY ON TRANSPORTATION OF HAZARDOUS MATERIALS

SEC. 4403. PURPOSE. The text of section 5101 is amended to read as follows:

‘‘The purpose of this chapter is to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in interstate, intrastate, and foreign commerce.’’....

SEC. 4422. DEFINITIONS.

Section 5102 is amended as follows:

(1) COMMERCIAL.—Paragraph (1) is amended—

(A) by striking ‘‘or’’ after the semicolon in subparagraph (A);

(B) by striking the ‘‘State,’’ in subparagraph (B) and inserting ‘‘State;’’ and

(C) by adding at the end the following:

‘‘(1) a ‘United States-registered aircraft’.’’.

(2) HAZMAT EMPLOYER.—Paragraph (3) is amended to read as follows:

‘‘(3) ‘HAZMAT employer’ means an individual—

‘‘(A) who—

‘‘(i) is employed or used by a hazmat employer; or

‘‘(ii) is self-employed, including an owner-operator of a motor vehicle, vessel, or aircraft, transporting hazardous material in commerce; and

‘‘(B) who performs a function regulated by the Secretary under section 5103(b)(1) of this title.’’.

(3) HAZMAT EMPLOYER.—Paragraph (4) is amended to read as follows:

‘‘(4) ‘HAZMAT employer’ means a person—

‘‘(A) who—

‘‘(i) employs or uses at least 1 hazmat employee; or

‘‘(ii) is self-employed, including an owner-operator of a motor vehicle, vessel, or aircraft, transporting hazardous material in commerce; and

‘‘(B) who performs, or employs or uses at least 1 hazmat employee to perform, a function regulated by the Secretary under section 5103(b)(1) of this title.’’.

(4) IMMINENT HAZARD.—Paragraph (5) is amended by inserting ‘‘relating to hazardous material’’ after ‘‘of a condition’’.

(5) MOTOR CARRIER.—Paragraph (7) is amended to read as follows:

‘‘(7) motor carrier’’.

‘‘(A) means a motor carrier, motor private carrier, and freight forwarder as those terms are defined in section 13102 of this title; but

‘‘(B) does not include a freight forwarder, and, in the case of a person who is not performing a function relating to highway transportation.’’.

(6) NATIONAL RESPONSE TEAM.—Paragraph (8) is amended—

(1) by striking ‘‘national response team’’ both places it appears and inserting ‘‘National Response Team’’;

(B) by striking ‘‘national contingency plan’’ and inserting ‘‘National Contingency Plan’’.

(7) PERSON.—Paragraph (9)(A) is amended by striking ‘‘offering’’ and all that follows and inserting—

‘‘(A) offers hazardous material for transportation in commerce;’’.

(8) SECRETARY OF TRANSPORTATION.—Section 5101 is further amended—

(A) by redesignating paragraphs (11), (12), and (13), as paragraphs (12), (13), and (14), respectively; and

(B) by inserting after paragraph (10) the following:

""
"(1) ‘Secretary’ means the Secretary of Transportation except as otherwise provided.”

SEC. 4423. GENERAL REGULATORY AUTHORITY.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5106(a) is amended by striking “of Transportation”.

(b) DESIGNATING MATERIAL AS HAZARDOUS.—Section 5106(a) is further amended—

(1) by striking “etiologic agent” and all that follows through “corrosive material,” and inserting “infectious substance, flammable or combustible liquid, solid, or gas, toxic, oxidizing, or corrosive material.”;

(2) by striking “decides” and inserting “determines.”

(c) REGULATIONS FOR SAFE TRANSPORTATION.—Section 5106(b)(1)(A) is amended to read as follows:

“(A) apply to a person who—

(i) transports hazardous material in commerce;

(ii) causes hazardous material to be transported in commerce;

(iii) manufacturers, designs, inspects, tests, reconditions, marks, or repairs a packaging or packaging component that is represented as qualified for use in transporting hazardous material in commerce;

(iv) prepares or accepts hazardous material for transportation in commerce;

(v) is responsible for the safety of transporting hazardous material in commerce;

(vi) certifies compliance with any requirement under this chapter;

(vii) misrepresented whether such person is engaged in any activity under clause (i) through (vi) of this subparagraph; or

(viii) performs any other act or function related to the transportation of hazardous material in commerce.”

(d) TECHNICAL AMENDMENT REGARDING CONSULTATION.—Section 5106 is amended—

(1) by redesignating subsection (b)(1)(C); and

(2) by adding at the end the following:

“(c) CONSULTATION.—When prescribing a security regulation or issuing a security order that affects the safety of transporting hazardous material, the Secretary of Homeland Security shall consult with the Secretary of Transportation.”

SEC. 4424. LIMITATION ON ISSUANCE OF HAZMAT LICENSES.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5106 is amended by striking “of Transportation” each place it appears in subsections (a)(1), (c)(1)(B), and (d) and inserting “of Homeland Security.”

(b) COVERED HAZARDOUS MATERIALS.—Section 5106(a) is amended by striking “with respect to—” and all that follows and inserting “with respect to any material defined as hazardous material by the Secretary for which the Secretary requires placarding of a commercial motor vehicle transporting that material in commerce.”

(c) RECOMMENDATIONS ON CHEMICAL OR BIOLOGICAL MATERIALS.—Section 5106(a) is further amended—

(1) by redesigning subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

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

“(c) RECOMMENDATIONS ON CHEMICAL AND BIOLOGICAL MATERIALS.—The Secretary of Health and Human Services shall recommend to the Secretary any chemical or biological material or agent for regulation as a hazardous material under section 5106(a) of this title if the Secretary of Health and Human Services determines that such material or agent is a threat to the national security of the United States.”

(d) CONFORMING AMENDMENT.—Section 5106(a)(1) is amended by striking “sub-

SEC. 4425. REPRESENTATION AND TAMPERING.

(a) REPRESENTATION.—Section 5106(a) is amended—

(1) by striking “a container,” and all that follows through “package,” and inserting “a packaging, component of a package, or packaging for”;

(2) by striking “the container” and all that follows through “packaging) and inserting “the package, component of a package, or packaging)”; and

(b) TAMPERING.—Section 5106(b) is amended—

(1) by inserting “, without authorization from the owner or custodian,” after “may not”;

(2) by striking “unlawfully”; and

(3) by inserting “component of a package, or packaging,” after “package,” in paragraph (2).
SEC. 4433. AIR TRANSPORTATION OF IONIZING RADIATION MATERIAL.
Section 5114(b) is amended by striking “of Transportation.”

SEC. 4434. TRAINING CURRICULUM FOR THE PUBLIC SECTOR.
(a) IN GENERAL.—Section 5115(a) is amended to read as follows:
“(a) IN GENERAL.—In coordination with the Director of the Federal Emergency Management Agency, the Chairman of the Nuclear Regulatory Commission, the Administrator of the National Institute of Environmental Health Sciences, and using existing coordinating mechanisms of the National Response Team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee, the Secretary shall maintain a current curriculum of lists of courses necessary to train public sector emergency response and preparedness teams in matters relating to the transportation of hazardous material.”.

(b) REQUIREMENTS.—Section 5115(b) is amended as follows:
“(1) by striking “developed” in the matter preceding paragraph (1) and inserting “maintained”;

(2) by striking “under other United States Government grant programs” in paragraph (1)(C) and all that follows and inserting “with Federal assistance; and”.

(c) COMPLIANCE WITH FEDERAL REQUIREMENTS.—Section 5115(c)(3) is amended by striking “Association,” and inserting “Association or by any other voluntary organization establishing consensus-based standards that the Secretary considers appropriate.”.

(d) DISTRIBUTION AND PUBLICATION.—Section 5116(d) is amended—
“(1) by striking “national response team” and inserting “National Response Team”;

(2) by striking “publish a list” in paragraph (2) and all that follows and inserting “publish and distribute the list of courses maintained under this section, and of any programs utilizing such courses.”.

SEC. 4435. PLANNING AND TRAINING GRANTS; EMERGENCY PREPAREDNESS FUND.
(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5118 is amended by striking “Department of Transportation” each place it appears in subsections (a), (b), (c), (d), (e), and (l).

(b) REPEAL OF FUND; USES OF FUND.—Section 5118(e) is amended by striking the second sentence.

(c) MONITORING AND TECHNICAL ASSISTANCE.—Section 5118(f) is amended by striking “national response team” and inserting “National Response Team”.

(d) DELEGATION OF AUTHORITY.—Section 5118(g)(1)(C) is amended by striking “Government grant programs” and inserting “Federal financial assistance programs”.

(e) EMERGENCY PREPAREDNESS FUND.—
(1) by striking the first paragraph of paragraph (1) and inserting “(1) To register and issue permits to persons engaged in the transportation of hazardous material by motor vehicles in a State.”

(2) by striking paragraph (3) as a separate section and redesignating paragraph (2) as a separate section.

(f) REQUIREMENTS AND LIMITATIONS.—Section 5118(h) is amended—
“(1) by striking “(a)” and inserting “(b)”;

(2) by inserting “to the hazardous material contents, the seal adjacent to the hazardous material contents, and property relating to a function described under subsection (a) of this section;” after “security seals;”.

(g) FUND EXPENDITURES.—Section 5118(i)(2) is amended by striking “the hazardous material contents, the seal adjacent to the hazardous material contents, and property relating to a function described under subsection (a) of this section;” and

(h) DELEGATION OF AUTHORITY.—Section 5118(i)(3) is amended by striking “the hazardous material contents, the seal adjacent to the hazardous material contents, and property relating to a function described under subsection (a) of this section;” and

(i) by inserting “the hazardous material contents, the seal adjacent to the hazardous material contents, and property relating to a function described under subsection (a) of this section;” after “security seals.”

SEC. 4436. SPECIAL PERMITS AND EXCLUSIONS.
(a) SPECIAL PERMITS AND EXCLUSIONS.—(1) In general.—Section 5117(a)(1) is amended by striking “the Secretary of Transportation may issue” and inserting “the Secretary may issue” and inserting “The Secretary shall make available to the public annually information on the location and use of plans and regulations under subparts B through G of this section, and under subtitle (J) of such part, of the regulations prescribed under subsection (a) of this section, to a person performing a function regulated by the Secretary under section 5103(b)(1) of this title in a way”;

(2) DURATION.—Section 5117(a)(2) is amended to read as follows:
“(2) A special permit under this subsection—
“(A) shall be effective when first issued for not more than 2 years; and

“(B) may be renewed for successive periods of not more than 4 years each.”

(b) CONFORMING AMENDMENTS.—(1) Section 5117 is further amended—
“(1) by striking “an exemption” each place it appears and inserting “a special permit”;

(2) by striking “the exemption” each place it appears and inserting “the special permit.”

(c) CONFORMING AND CLERICAL AMENDMENTS.—(1) CONFORMING AMENDMENT.—The heading of section 5117 is amended by striking “§ 5117. Special permits and exclusions” and inserting “§ 5117. Special permits and exclusions”.

(2) CLERICAL AMENDMENT.—The chapter analysis for chapter 51 is amended by striking the item relating to section 5117 and inserting the following:
“§ 5117. Special permits and exclusions.”

(d) REPEAL OF SPECIAL PERMITS.—(1) Section 5118 is repealed.

(2) The chapter analysis for chapter 51 is amended by striking the item relating to section 5118 and inserting the following:
“§ 5118. Repealed.”

SEC. 4437. HAZARDOUS MATERIALS TRANSPORTATION SAFETY AND SECURITY.
(a) IN GENERAL.—The text of section 5120 is amended to read as follows:
“(a) GENERAL AUTHORITY.—
“(1) To carry out this chapter, the Secretary may investigate, conduct tests, make reports, issue subpoenas, conduct hearings, require the production of records, take depositions, and conduct research, development, demonstration, and training activities.

(2) Except as provided in subsections (c) and (d) of this section, the Secretary shall provide notice and an opportunity for a hearing before issuing an order directing compliance with this chapter; a regulation prescribed under this chapter, or an order, special permit, or approval issued under this chapter.

(b) RECORDS, REPORTS, PROPERTY, AND INFORMATION.—A person subject to this chapter shall—
“(1) maintain records, make reports, and provide property and information that the Secretary by regulation or order requires; and

“(2) make the records, reports, property, and information available for inspection when the Secretary undertakes an inspection or investigation.

(c) INSPECTIONS AND INVESTIGATIONS.—
“(1) A designated officer or employee of the Secretary may—
“(A) inspect and investigate, at a reasonable time and in a reasonable way, records and property relating to a function described in section 5103(b)(1) of this title;

“(B) except for packaging immediately adjacent to the hazardous material contents, gain access to, open, and examine a package offered for or in transportation when the officer or employee has an objectively reasonable and articulable belief that the package may contain hazardous material;

“(C) remove from transportation a package or related packages in a different manner offered for or in transportation for which—
“(i) such officer or employee has an objectively reasonable and articulable belief that the package may pose an imminent hazard; and

“(ii) such officer or employee contemplates documents such belief in accordance with paragraph (1) of this subsection.

“(d) EFFECTIVE DATE.—“(1) In general.—Except as provided in paragraph (2) of this subsection, the regulations prescribed under subsection (a) of this section shall take effect 1 year after the date on which prescribed.

“(2) EXTENSION.—The Secretary may extend the 1-year period prescribed in subsection (a) for an additional year for good cause.

“(e) STATE REGULATIONS.—After the regulations prescribed under subsection (a) of this section become effective, each State may—
“(1) establish, maintain, or enforce a requirement relating to the same subject matter only if the requirement is consistent with applicable requirements with respect to such activity in the regulations.

“(2) INTEGRITY STATE PROGRAMS.—Pending the prescription of regulations under subsection (a) of this section, States may participate in the program of uniform forms and procedures recommended by the Alliance for Uniform Hazmat Transportation Procedures.”.

SEC. 4438. INTERNATIONAL UNIFORMITY OF STANDARDS AND REQUIREMENTS.
Section 5120 is amended by striking “of Transportation” each place it appears in subsections (a), (b), and (c)(1).

SEC. 4439. HAZARDOUS MATERIALS TRANSPORTATION SAFETY AND SECURITY.
“(E) as necessary under terms and conditions prescribed by the Secretary, order the offeror, carrier, or other person responsible for a package or packages to have the package or packages forthwith brought to an inspectable facility, opened, examined, and analyzed; and

“(F) when safety might otherwise be compromised, to authorize properly qualified personnel to assist in activities carried out under this paragraph.

“(2) An officer or employee acting under the authority of the Secretary under this subsection shall display proper credentials when requested.

“(3) A determination that a violation of a provision of this chapter, a regulation prescribed under this chapter, or an unsafe condition or practice, constitutes or is causing an imminent hazard, and the issuance of emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for a hearing, but only to the extent necessary to mitigate the imminent hazard.

“(4) The action of the Secretary under paragraph (1) of this subsection shall be in a written emergency order, which—

“(A) describes the violation, condition, or practice that constitutes or is causing the imminent hazard;

“(B) states the restrictions, prohibitions, recalls, or out-of-service orders issued or imposed; and

“(C) describes the standards and procedures for obtaining relief from the order.

“(5) After taking action under paragraph (1) of this subsection, the Secretary shall provide for review of the action under section 554 of title 5 if a petition for review is filed within 20 calendar days of the issuance of the order for the action.

“(6) A petition for review of an action is filed under paragraph (5) of this subsection and the review under that paragraph is not completed by the end of the 30-day period beginning on the date the petition is filed, the action shall cease to be effective at the end of such period unless the Secretary determines, in writing, that the imminent hazard providing a basis for the action continues to exist.

“(7) In this term, the term ‘out-of-service order’ means a requirement that an aircraft, motor vehicle, train, railroad locomotive, other vehicle, transport unit, transport vehicle, freight container, potable tank, or other package not be moved until specified conditions have been met.

“(e) REGULATIONS.—The Secretary shall prescribe in accordance with section 553 of this title regulations to carry out the authority in subsections (c) and (d) of this section.

“(f) FACILITY, STAFF, AND REPORTING SYSTEM ON RISKS, EMERGENCIES, AND ACTIONS.—

“(1) The Secretary of Transportation shall—

“(A) maintain a facility and technical staff sufficient to provide, within the United States Government, the capability of evaluating a risk relating to the transportation of hazardous material and material alleged to be hazardous;

“(B) maintain a central reporting system and information center capable of providing information and advice to law enforcement and firefighting personnel, and other interested individuals, and officers and employees of the United States Government and State and local governments on meeting an emergency relating to the transportation of hazardous materials;

“(C) conduct a continuous review on all aspects of transporting hazardous material to decide on and take appropriate actions to ensure safe transportation of hazardous material.

“(2) Paragraph (1) of this subsection shall not prevent the Secretary from making contract with a private entity for use of a supplemental reporting system and information center operated and maintained by the contractor.

“(g) GRANTS, COOPERATIVE AGREEMENTS, AND OTHER TRANSACTIONS.—The Secretary may enter into grants, cooperative agreements, and other transactions with a person, agency, or instrumentality of the United States, a unit of State or local government, an Indian tribe, a foreign government (in cooperation with the Department of State), an educational institution, or other appropriate entity—

“(1) to expand risk assessment and emergency response capabilities with respect to the security of transportation of hazardous material; and

“(2) to conduct research, development, demonstration, risk assessment and emergency response planning and training activities; or

“(3) to otherwise carry out this chapter.

“(h) REPORTS.—

“(1) The Secretary shall, once every 2 years, submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a comprehensive report on the transportation of hazardous materials during the preceding 2 calendar years. Each report shall include, for the period covered by such report—

“(A) a summary of the hazardous material shipments, deliveries, and movements during the preceding 2 calendar years.

“(B) a summary of accident, incident, and casualty data related to the transportation of hazardous material during such period;

“(C) a list with summary of applicable Government regulations, criteria, orders, and special permits; and

“(D) a summary of the basis for each special permit issued;

“(E) an evaluation of the effectiveness of enforcement activities relating to the transportation of hazardous material during such period, and of the degree of voluntary compliance with regulations;

“(F) a summary of outstanding problems in carrying out this section, set forth in order of priority; and

“(G) any recommendations for legislative or administrative action that the Secretary considers appropriate.

“(2) Before December 31, 2005, and every 3 years thereafter, the Secretary, through the Bureau of Transportation Statistics and in consultation with other Federal departments and agencies, shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the transportation of hazardous material in all modes of transportation during such calendar years.

“(3) Each report shall include, for the period covered by such report—

“(A) a summary of the hazardous material shipments, deliveries, and movements during such period, set forth by hazardous material type, by tonnage and ton-miles, and by mode, both domestically and across United States borders;

“(B) a summary of shipment estimates during such period as a proxy for risk.

“(1) SECURITY REPORT.—

“(1) If the Secretary determines that particular information may reveal a vulnerability of a hazardous material to attack during transportation in commerce, or may facilitate the diversion of hazardous material during transportation in commerce for use in an attack on people or property, the Secretary may disclose such information only—

“(A) to the owner, custodian, offeror, or carrier of such hazardous material;

“(B) to an officer, employee, or agent of the United States Government, or a State or local government, including volunteer fire departments, concerned with carrying out transportation safety and security of hazardous material in the course of transportation in commerce, protecting public safety or national security, or enforcing Federal law designed to protect public health or the environment; or

“(C) in an administrative or judicial proceeding brought under this chapter, under other Federal law intended to address terrorist actions or threats of terrorist actions.

“(2) The Secretary may make determinations under paragraph (1) of this subsection with respect to categories of information in accordance with regulations prescribed by the Secretary.

“(3) A release of information pursuant to a determination under paragraph (1) of this subsection shall not be treated as a release of such information to the public for purposes of section 552 of title 5.

SEC. 4440. ENFORCEMENT.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5122(a)(1) is amended by striking “Transportation”.

(b) G ENERAL.—Section 5122(a) is further amended—

“(1) by striking “chapter or a regulation prescribed or order” in the first sentence and inserting “chapter, a regulation prescribed under this chapter, or an order, special permit, or approval”;

“(2) by striking the second sentence and inserting “In an action under this subsection, the court may award appropriate relief, including a temporary or permanent injunction, civil penalties under section 5123 of this title, and punitive damages.”

(c) I MMINENT HAZARDS.—Section 5123(b)(1)(B) is amended by striking “ameliorate” and inserting “mitigate”.

SEC. 4441. CIVIL PENALTIES.

(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5123(d) is amended by striking “Transportation”.

(b) P ENALTY.—Section 5123(a)(1) is amended—

“(1) by striking “chapter or a regulation prescribed or order” and inserting “chapter, a regulation prescribed under this chapter, or an order, special permit, or approval”; and

“(2) by striking “$25,000” and inserting “$100,000”.

(c) H EARING REQUIREMENT.—Section 5123(b) is amended by striking “chapter or a regulation prescribed” and inserting “chapter, a regulation prescribed under this chapter, or an order, special permit, or approval issued”.

(d) C IVIL ACTIONS TO COLLECT.—Section 5123(d) is amended by striking “section.” and inserting “section 5122(d)”.

(e) E FFECTIVE DATE.—(1) The amendments made by subsections (b) and (c) of this section shall take effect on the enactment of this Act, and shall apply with respect to violations described in section 552 of title 5.

February 26, 2004
SEC. 4442. CRIMINAL PENALTIES.  
(a) IN GENERAL.—Section 5124 is amended—
(1) by inserting “(a) IN GENERAL.—” before “A person”;
(2) by striking “chapter or a regulation prescribed or order” and inserting “chapter, a regulation prescribed or order”;
(3) by striking “or order” as redesignated in this chapter, an order,” or an order, special permit, or approval”;
(b) ADDITIONAL MATTERS.—That section is further amended by adding at the end the following:
“(b) AGGRAVATED VIOLATIONS.—A person knowingly violating section 510(b) of this title or willfully violating this chapter or a regulation prescribed or order, who thereby causes the release of hazardous material, shall be fined under title 18, imprisoned for not more than 20 years, or both.
(c) SEPARATE VIOLATIONS.—A separate violation occurs for each day the violation, common of violations occurring for each cause to be transported hazardous material, continues.”

SEC. 4443. PREEMPTION.  
(a) REFERENCE TO SECRETARY OF TRANSPORTATION.—Section 5125(b)(2) is amended by striking “of Transportation”.
(b) PURPOSE.—Section 5125 is amended—
(1) by redesignating subsections (a), (b), (c), (d), (e), (f), and (g) as redesignated by subsection (b)(4) of this section, as subsection (j); and
(2) by inserting after subsection (f), as redesignated by subsection (b)(1) of this section, the following:
“(g) EMERGENCY WAIVER OF PREEMPTION.—
“(1) The Secretary may, in a finding of good cause, waive the application of a requirement of a State, political subdivision of a State, or Indian tribe under this section without prior notice or an opportunity for public comment thereon.
“(2) For purposes of paragraph (1) of this subsection, good cause exists when—
“(A) there is a potential threat that hazardous material being transported in commerce may be used in an attack on people or property;
“(B) notice and an opportunity for public comment thereon are impracticable or contrary to the public interest.
“(3) (A) A waiver of preemption under paragraph (1) shall remain in effect for a period determined by the Secretary, but not more than 6 months.
“(B) If the Secretary determines before the expiration of a waiver of preemption under subparagraph (A) of this paragraph that the potential threat providing the basis for the waiver continues to exist, the Secretary may, in the interest of public safety, extend the duration of the waiver for such period after the expiration of the waiver under that subparagraph as the Secretary considers appropriate.
“(4) An action of the Secretary under paragraph (1) or (3) of this subsection shall be in writing and shall set forth the standards and procedures for seeking reconsideration of the action.
“(5) After taking action under paragraph (1) or (3) of this subsection, the Secretary shall provide for review of the action if a petition for review of the action is filed within 20 calendar days after the date of the action.
“(6) If a petition for review of an action is filed under paragraph (5) of this subsection and review of the action is not completed by the end of the 30-day period beginning on the date the petition is filed, the waiver under this subsection shall cease to be effective at the end of such period unless the Secretary determines that the potential threat providing the basis for the waiver continues.
“(b) APPLICATION OF EACH PREEMPTION STANDARD.—Each standard for preemption in subsection (b), (c)(1), (d) or (g) of this section, and in section 5119(b) of this title, is independent in its application to a requirement of a State, political subdivision of a State, or other standard utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material.
“(i) NON-FEDERAL ENFORCEMENT STANDARDS.—This section does not apply to any provision of a State, political subdivision of a State, or other standard utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material.

SEC. 4444. RELATIONSHIP TO OTHER LAWS.  
Section 5126 is amended—
(1) by striking “or causes to be transported hazardous material, and”, inserting “hazardous material, or causes hazardous material to be transported,”; and
(2) by striking “manufactures,” and all that follows through “or sells” in subsection (a) and inserting “manufactures, designs, inspects, tests, reconditions, marks, or repairs packaging or packaging component that is represented”; and
(3) by striking “must” in subsection (a) and inserting “shall”;
(4) by striking “manufacturing,” in subsection (a) and all that follows through “testing” and inserting “manufacturing, designing, inspecting, testing, reconditioning, marking, or repairing”;
(5) by striking “39.” in subsection (b)(2) and inserting “39, except in the case of an imminent hazard.”

SEC. 4445. JUDICIAL REVIEW.  
(a) IN GENERAL.—Chapter 51 is amended—
(1) by redesigning section 5127 as section 5128; and
(2) by inserting after section 5128 the following:
“(a) FILING AND VENUE.—Except as provided in section 2011(c) of this title, a person suffering legal wrong or adversely affected or aggrieved by a final action of the Secretary under this chapter may petition for review of the final action in the United States Court of Appeals for the District of Columbia or in the court of appeals of the United States for the circuit in which the person resides or has the principal place of business. The petition shall be filed not more than 60 days after the action of the Secretary becomes final.
“(b) PROCEDURES.—When a petition on a final action is filed under subsection (a) of this section, the clerk of the court shall immediately send a copy of the petition to the Secretary. The Secretary shall file with the court a record of any proceeding in which the final action was issued as provided in section 2112 of title 28.
“(c) AUTHORITY OF COURT.—The court in which a petition on a final action is filed under subsection (a) of this section has exclusive jurisdiction, as provided in subchapter II of chapter 5 of title 5 to affirm or set aside any part of the final action and may order the Secretary to conduct further proceedings. Findings of fact by the Secretary, if supported by substantial evidence, are conclusive.
“(d) REQUIREMENT FOR PRIOR OBJECTIONS.—In reviewing a final action under this section, the court may consider an objection to the final action only if—
“(1) the objection was made in the course of a proceeding or review conducted by the Secretary; or
“(2) there was a reasonable ground for not making the objection in the proceeding.”
(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 51 is amended by striking the item relating to section 5127 and inserting the following:
“5128. Authorization of appropriations.”

SEC. 4446. AUTHORIZATION OF APPROPRIATIONS.  
Section 5128, as redesignated by section 4445 of this title, is amended to read as follows:
“(a) IN GENERAL.—In order to carry out this chapter (except sections 5110(e), 5108(g), 5112, 5113, 5115, 5116, and 5119 of this title), the following amounts are authorized to be appropriated to the Secretary:
“(1) For fiscal year 2004, not more than $27,000,000.
“(2) For fiscal year 2005, not more than $27,000,000.
“(3) For fiscal year 2006, not more than $29,000,000.”
(4) For each of fiscal years 2007 through 2009, not more than $30,000,000.

(b) EMERGENCY PREPAREDNESS FUND.—There shall be available from the Emergency Preparedness Fund under section 516(a) of this title, amounts as follows:

(1) To carry out section 5107(e) of this title, $4,000,000 for each of fiscal years 2004 through 2009.

(2) To carry out section 5115 of this title, $200,000 for each of fiscal years 2004 through 2009.

(3) To carry out section 5116(a) of this title, $8,000,000 for each of fiscal years 2004 through 2009.

(4) To carry out section 5116(b) of this title, $13,800,000 for each of fiscal years 2004 through 2009.

(5) To carry out section 5116(f) of this title, $1,000,000 for each of fiscal years 2004 through 2009.

(6) To carry out section 5116(h)(4) of this title, $150,000 for each of fiscal years 2004 through 2009.

(7) To carry out section 5116(j)(1) of this title, $1,000,000 for each of fiscal years 2004 through 2009.

(8) To publish and distribute an emergency response guidebook under section 5116(h)(3) of this title, United States Code, $500,000 for each of fiscal years 2004 through 2009.

(c) SECTION 5121 REPORTS.—There are authorized to be appropriated to the Secretary of Transportation for the use of the Bureau of Transportation Statistics such sums as may be necessary to carry out section 5121(h) of this title.

(d) CREDITS TO APPROPRIATIONS.—The Secretary may credit to any appropriation to carry out this chapter an amount received from a State, political subdivision of a State, Indian tribe, or other authority or entity for the purposes of providing the training to the State, political subdivision, Indian tribe, or other authority or entity.

(e) AVAILABILITY OF AMOUNTS.—Amounts available under subsections (a) and (b) of this section shall remain available until expended.

SEC. 4457. ADDITIONAL CIVIL AND CRIMINAL PENALTIES.

(a) TITLE 49 PENALTIES.—Section 46312 is amended—

(1) by redesigning subsection (n) as subsection (o); and

(2) by inserting "or chapter 51 of this title," before "section 46312,".

(b) TITLE 18 PENALTIES.—Section 3663(a)(3)(A) of title 18, United States Code, is amended by inserting "5124," before "46312,:

PART II—OTHER MATTERS

SEC. 4461. ADMINISTRATIVE AUTHORITY FOR RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION.

Section 112 is amended—

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

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

"(e) ADMINISTRATIVE AUTHORITY.—"

"(1) GRANTS, COOPERATIVE AGREEMENTS, AND OTHER TRANSACTIONS.—The Administrator may enter into grants, cooperative agreements, and other transactions with Federal agencies, State and local government agencies, other public entities, private organizations, and other persons—"

"(A) to conduct research into transportation service and infrastructure assurance; and"

"(B) to carry out other research activities of the Administrator;"

"(2) LIMITATION ON DISCLOSURE OF CERTAIN INFORMATION.—"

"(A) LIMITATION.—If the Administrator determines that particular information developed in research sponsored by the Administrator may reveal a systemic vulnerability or threat to transportation service or infrastructure, such information may be disclosed only to—"

"(i) a person responsible for the security of the transportation service or infrastructure; or"

"(ii) a person responsible for protecting public safety; or"

"(iii) an officer, employee, or agent of the Federal Government, or a State or local government, who, as determined by the Administrator, has need for such information in the performance of official duties.

"(B) PRIVACY.—The release of information under subparagraph (A) shall not be treated as a release to the public for purposes of section 552 of title 5.

SEC. 4462. NONMAILABILITY OF HAZARDOUS MATERIALS.

(a) NONMAILABILITY GENERALLY.—Section 3001 of title 39, United States Code, is amended—

(1) by redesigning subsection (n) as subsection (o); and

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

"(n)(1) Except as otherwise authorized by law or regulations of the Postal Service under section 3018 of this title, hazardous material is not mailable.

"(2) In this subsection, the term 'hazardous material' means a substance or material designated by the Secretary of Transportation as hazardous material under section 5103 of this title.

(b) MAILABILITY.—

"(1) IN GENERAL.—Chapter 30 of title 39, United States Code, is amended by adding at the end the following:

"§ 3018. Hazardous material

"(a) IN GENERAL.—The Postal Service shall prescribe regulations for the safe transportation of hazardous materials in the mails.

"(b) PROHIBITIONS.—No person may—"

"(1) mail or cause to be mailed hazardous material that has been declared by statute or Postal Service regulation to be nonmailable;

"(2) mail or cause to be mailed hazardous material in violation of any statute or Postal Service regulation at the same time, place, or manner in which hazardous material may be mailed; or"

"(3) manufacture, distribute, or sell any container, packaging kit, or similar device that—"

"(A) is represented, marked, certified, or sold by such person for use in the mailing of hazardous material, and"

"(B) fails to conform with any statute or Postal Service regulation setting forth standards for a container, packaging kit, or similar device used for the mailing of hazardous material.

"(c) VIOLATION.—A person who knowingly violates this section or a regulation prescribed under this section shall be punishable by a civil penalty of at least $250, but not more than $100,000, for each violation;

"(d) LAWS.—The use of the Postal Service regulation is not an element of an offense under this subsection.

"(e) SEPARATE VIOLATIONS.—A separate violation under this subsection occurs for each item containing hazardous material that is mailed or caused to be mailed in noncompliance with this section.

"(f) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty for a violation of this section, the Postal Service shall consider—"

"(1) the nature, circumstances, extent, and gravity of the violation;

"(2) with respect to the person who committed the violation, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue in business;

"(3) the impact on Postal Service operations; and"

"(4) any other matters that justice requires.

"(g) CIVIL ACTIONS TO COLLECT.—"

"(1) IN GENERAL.—Sections 3001(d) and 3002 of title 39, United States Code, are amended by striking the following:

"(2) LIMITATION.—In a civil action under paragraph (1), the validity, amount, and appropriateness of the civil penalty, clean-up costs, and damages assessed under subsection (c) shall not be subject to review.

"(3) COMPELLING OR COMPROVISION.—The Postal Service may compromise the amount a civil penalty, clean-up costs, and damages assessed under subsection (c) before commencing a civil action with respect to such civil penalty, clean-up costs, and damages under paragraph (1).

"(h) CIVIL JUDICIAL PENALTIES.—"

"(1) IN GENERAL.—At the request of the Postal Service, the United States Attorney may bring a civil action in an appropriate district court of the United States to collect a civil penalty, clean-up costs, and damages assessed under subsection (c).

"(2) RELIEF.—The court in a civil action under paragraph (1) may award appropriate relief, including a permanent injunction, civil penalties as determined in accordance with this section, or punitive damages.

"(i) CONSTRUCTION.—A civil action under this subsection shall be in lieu of civil penalties for the same violation under subsection (c)(1)(A).

"(j) DEPOSIT OF AMOUNTS COLLECTED.—Amounts collected under this section shall be deposited into the Postal Service Fund under section 3003 of this title.

"(k) CONFORMING AMENDMENT.—The chapter analysis for chapter 30 of title 39, United States Code, is amended by adding at the end the following:

"§ 3018. Hazardous material.

"(l) CONFORMING AMENDMENT.—Section 3003(b) of title 39, United States Code, is amended—"
SEC. 4463. CRIMINAL MATTERS.
Section 845(a)(1) of title 18, United States Code, is amended by striking “which are regulated” and all that follows and inserting “that is subject to the authority of the Department of Transportation and Homeland Security.”

SEC. 4464. CARGO INSPECTION PROGRAM.
(a) IN GENERAL.—The Secretary of Transportation may establish a program of random inspections of cargo at points of entry into the United States for the purpose of determining whether cargo is subject to regulation under this Act, and for the purpose of identifying any cargo that does not comply with such regulations.
(b) REQUIREMENTS.—Chapter IV of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341 et seq.) is amended by adding at the end the following:

"SEC. 416. SANITARY TRANSPORTATION PRACTICES.
(1) DEFINITIONS.—In this section:
(A) "bulk vehicle."—The term "bulk vehicle" includes a tank truck, hopper truck, tank car, hopper car, tank car, portable tank, freight container, or hopper bin, and any other vehicle in which food is shipped in bulk, with the food coming into direct contact with the vehicle.
(B) "transportation."—The term "transportation" means any movement in commerce by motor vehicle or rail vehicle.
(C) "regulations."—The Secretary shall by regulation require any carrier, motor vehicle or rail vehicle, receivers, and other persons engaged in the transportation of food to comply with sanitary transportation practices prescribed by the Secretary to ensure that food is not transported under conditions that may render the food adulterated.
(D) "contaminants."—The regulations shall—
(i) provide that the Secretary determines to be appropriate relating to—
(A) sanitation;
(B) packaging, isolation, and other protective measures;
(C) limitations on the use of vehicles;
(D) information on vehicles;
(ii) to a carrier or a person arranging for the transportation of food; and
(iii) to a manufacturer or other person that—
(A) arranges for the transportation of food by carrier; or
(B) furnishes a tank vehicle or bulk vehicle for the transportation of food; and
(E) recordkeeping; and
(ii) "include"—
(A) a list of nonfood products that the Secretary may, if sold, shipped, or handled, render adulterated food that is subsequently transported in the same vehicle; and
(B) a list of nonfood products that the Secretary determines may, if shipped in a motor vehicle or rail vehicle (other than a tank vehicle or bulk vehicle), render adulterated food that is simultaneously or subsequently transported in the same vehicle.
(d) WAIVERS.—
(1) IN GENERAL.—The Secretary may waive any requirement under this section, with respect to any class of persons, vehicles, food, or nonfood products, if the Secretary determines that such waiver—
(A) will not be contrary to the public interest.
(2) PUBLIC.—The Secretary shall publish in the Federal Register any waiver and the reasons for the waiver.
(e) PREEMPTION.—
(1) IN GENERAL.—No State or political subdivision of a State may directly or indirectly establish or continue in effect, as to any food in interstate commerce, any authority or requirement concerning transportation of food that is not identical to an authority or requirement under this section.
(2) APPLICABILITY.—This subsection applies to transportation that occurs on or after the effective date of the regulations promulgated under subsection (b).
(3) ASSISTANCE OF OTHER AGENCIES.—The Secretary of Transportation, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and the heads of other Federal agencies, as appropriate, shall provide assistance on request, to the extent resources are available to the Secretary for the purposes of carrying out this section.
(f) INVESTIGATION OF TRANSPORTATION RECORDS.—
(1) REQUIREMENT.—Section 703 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 373) is amended—
(A) by inserting after the section heading and all that follows through "For the purpose" and inserting the following:
"SEC. 703. RECORDS.
(a) IN GENERAL.—For the purpose
(1) "food transportation records."—A shipper, carrier by motor vehicle or rail vehicle, receiver, or other person subject to section 416 shall, on request of an officer or employee designated by the Secretary, permit the officer or employee, at reasonable times, to have access to all records that the Secretary requires to be kept under section 416(c)(1)(E)."
(2) CONFORMING AMENDMENT.—Subsection (a) of section 703 of the Federal Food, Drug, and Cosmetic Act (as designated by paragraph (1)(A)) is amended by striking "carriers," and inserting "carriers, except as provided in subsection (b);"
(d) PROHIBITED ACTS.—
(1) RECORDS INSPECTION.—Section 301(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(e)) is amended by striking "416," before "504," each place it appears.
(2) UNSAFE FOOD TRANSPORTATION.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by adding at the end the following:
"(hh) NONCOMPLIANCE WITH SANITARY TRANSPORTATION PRACTICES.—The failure by a shipper, carrier by motor vehicle or rail vehicle, receiver, or any other person engaged in the transportation of food to comply with the sanitary transportation practices prescribed under the Secretary under section 416 ."
SEC. 4465. DEPARTMENT OF TRANSPORTATION REGULATIONS.
Chapter 57, is amended to read as follows:
"CHAPTER 57—SANITARY FOOD TRANSPORTATION
"Section 5701. Food transportation safety inspections.
"(7) Food transportation safety inspections.
(2) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture shall—
(A) establish procedures for transportation safety inspections for the purpose of identifying suspected incidents of contamination or adulteration of—
(i) food in violation of regulations promulgated under section 416 of the Federal Food, Drug, and Cosmetic Act; and
(ii) meat subject to detention under section 402 of the Federal Meat Inspection Act (21 U.S.C. 672); and
(B) train personnel of the Department of Transportation in the appropriate use of the procedures.
(3) APPLICABILITY.—The procedures established under paragraph (1) of this subsection..."
shall apply, at a minimum, to Department of Transportation personnel that perform commercial motor vehicle or railroad safety inspections.

"(b) NOTICE TO SECRETARY OF HEALTH AND HUMAN SERVICES OR SECRETARY OF AGRICULTURE.—The Secretary of Transportation shall promptly notify the Secretary of Health and Human Services or the Secretary of Agriculture, as applicable, of any instances of potential food contamination or adulteration of a food identified during transportation safety inspections.

"(c) USE OF STATE EMPLOYEES.—The means by which the Secretary of Transportation carries out subsection (b) of this section may include the deployment of State employee funds authorized to be appropriated under sections 31102 through 31104 of this title.

SEC. 4484. EFFECTIVE DATE.

This part takes effect on October 1, 2003.

Subtitle E—Recreational Boating Safety Programs

SEC. 4501. SHORT TITLE.

This subtitle may be cited as the "Sport Fishing and Recreational Boating Safety Act".

PART I—FEDERAL AID IN SPORT FISH RESTORATION ACT AMENDMENTS

SEC. 4521. AMENDMENT OF FEDERAL AID IN FISH RESTORATION ACT.

Except as otherwise expressly provided, whenever in this subtitle 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 Act entitled "An Act to provide that the Secretary of the Interior for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note)."

SEC. 4523. DIVISION OF ANNUAL APPROPRIATIONS.

Section 4 (16 U.S.C. 777c) is amended—

(1) by striking "the succeeding fiscal year."

SEC. 4525. BOATING INFRASTRUCTURE.


SEC. 4526. REQUIREMENTS AND RESTRICTIONS CONCERNING USE OF AMOUNTS FOR EXPENSES PROGRAM.

Section 9 (16 U.S.C. 777b) is amended—

(1) by striking "section 4(d)(1)" in subsection (a) and inserting "section 4(a)(6)";

and

(2) by striking "section 4(d)(1)" in subsection (b)(1) and inserting "section 4(a)(6)".


Section 9 (16 U.S.C. 777k) is amended by striking "in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation," and inserting "to supplement the 55.3 percent of each annual appropriation to be apportioned among the States under section 4(b) of this title.

SEC. 4528. MULTISTATE CONSERVATION GRANT PROGRAM.

Section 11 (16 U.S.C. 777m) is amended—

(1) by striking so much of subsection (a) as precedes paragraph (2) and inserting the following:

"(a) IN GENERAL.—21 percent to the Secretary for that program may be expended by the Secretary under subsection (b) of this section.

"(b) SET-ASIDE FOR EXPENSES FOR ADMINISTRATION OF THIS CHAPTER.—

"(1) A IN GENERAL.—21 percent to the Secretary of the Interior for expenses for administration incurred in implementation of this title, in accordance with this section, section 9, and section 29.

"(2) APPORTIONMENT OF UNAPPORTIONED FUNDS.—If any portion of the amount made available to the Secretary under subparagraph (1) remains unexpended and unutilized at the end of a fiscal year, that portion shall be apportioned among the States, on the same basis and in the same manner as other amounts made available under this title are apportioned among the States under subsection (b) of this section, within 60 days after the end of that fiscal year. Any amount apportioned among the States under this subparagraph shall be in addition to any amounts otherwise available for apportionment among the States under subsection (b) for the fiscal year.

"(3) by striking "of the Interior, after the distribution and use under subsections (a), (b), (c), and (d), respectively, and inserting "shall be apportioned among the States under subsection (b) of this section, within 60 days after the end of that fiscal year. Any amount apportioned among the States under this subparagraph shall be in addition to any amounts otherwise available for apportionment among the States under subsection (b) for the fiscal year."

"(4) by striking "per centum" each place it appears in subsection (b), as redesignated, and inserting "shall apportion 55.3 percent."

"(5) by striking "paragraphs (1) and (2) of section (b) and inserting "paragraphs (1), (3), (4), and (5) of subsection (a)";

and

(6) by adding at the end the following:

"(e) TRANSFER OF CERTAIN FUNDS.—

"(1) Amounts available under paragraphs (3) and (4) of subsection (a) that are unobligated by the Secretary after 3 fiscal years shall be transferred to the Secretary of Homeland Security and shall be apportioned for State recreational boating safety programs under section 13106(a) of title 46, United States Code.

"SEC. 4541. GRANT PROGRAM.

Section 5606(c)(2) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note) is amended—

(1) by striking subparagraph (A) and

(2) by redesigning subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

PART III—RECREATIONAL BOATING SAFETY PROGRAM AMENDMENTS

SEC. 4561. STATE MATCHING FUNDS REQUIREMENT.

Section 13102(b) of title 46, United States Code, is amended by striking "one-half" and inserting "75 percent."

SEC. 4562. AVAILABILITY OF ALLOCATIONS.

Section 13104(a) of title 46, United States Code, is amended—

(1) by striking "2 years" in paragraph (1) and inserting "3 years";

and

(2) by striking "2-year" in paragraph (2) and inserting "3-year".

SEC. 4563. AUTHORIZATION OF APPROPRIATIONS FOR STATE RECREATIONAL BOATING SAFETY PROGRAMS.

Section 13106(c) of title 46, United States Code, is amended—

(1) by striking "Secretary of Transpor- tation pursuant to paragraph (3) of section 4(b)" and inserting "Secretary under subsections (a)(2) and (e) of section 4;" and

February 26, 2004
(2) by inserting “a minimum of” before 
“$3,063,333”.

SEC. 4564. MAINTENANCE OF EFFORT FOR STATE RECREATIONAL BOATING SAFETY PROGRAMS.

(a) In General.—Chapter 131 of title 46, United States Code, is amended by inserting after section 13106 the following:

"§ 13107. Maintenance of effort for State recreational boating safety programs

“(a) In General.—The amount payable to a State for a fiscal year from an allocation under section 13103 of this chapter shall be reduced if, or in an amount required by the State for the State's recreational boating safety program, as determined under section 13105 of this chapter, for the previous fiscal year, is less than the average of the total of such expenditures for the 3 fiscal years immediately preceding that previous fiscal year. The reduction shall be proportionate, as a percentage, to the amount by which the level of State expenditures for such previous fiscal year is less than the average of the total of such expenditures for the 3 fiscal years immediately preceding that previous fiscal year.

“(b) Reduction of Threshold.—If the total amount available for allocation and distribution under this chapter in a fiscal year for all participating State recreational boating safety programs is less than such amount, for the preceding fiscal year, the level of State expenditures required under subsection (a) of this section for the preceding fiscal year shall be decreased proportionately.

“(c) Waiver.—

“(1) IN GENERAL.—Upon the written request of a State, the Secretary may waive the provisions of subsection (a) of this section for a fiscal year if the Secretary determines that a reduction in expenditures for the State's recreational boating safety program is attributable to a non-selective reduction in expenditures for the programs of all Executive branch agencies of the State government, or for other reasons if the State demonstrates to the Secretary's satisfaction that such waiver is warranted.

“(2) 30-DAY DECISION.—The Secretary shall approve or deny a request for a waiver not later than 30 days after the date the request is received.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 131 of title 46, United States Code, is amended by inserting after the item relating to section 13106 the following:

"13107. Maintenance of effort for State recreational boating safety programs."

PART IV—MISCELLANEOUS

SEC. 4581. TECHNICAL CORRECTION TO HOME-LAND SECURITY ACT.

Section 1011(c)(2) of the Homeland Security Act of 2002 (Pub. L. 107-296) is amended by striking “and to any funds provided to the Coast Guard from the Aquatic Resources Trust Fund” and inserting “and to any funds provided to the Coast Guard from the Aquatic Resources Trust Fund for boating safety programs.”

Subtitle F—Rail Transportation

PART I—AMTRAK

SEC. 4602. ESTABLISHMENT OF BUILD AMERICA CORPORATION.

There is established a nonprofit corporation, to be known as the “Build America Corporation.” The Corporation shall—

(i) conduct a program to support qualified projects described in section 4603(c)(2) through the issuance of Build America bonds. The Corporation shall be subject, to the extent contained in this section, to the laws of the State of Delaware applicable to corporations not for profit.

SEC. 4603. FEDERAL BONDS FOR TRANSPORTATION INFRASTRUCTURE.

(a) USE OF BOND PROCEEDS.—The proceeds from the sale of—

(1) any bonds authorized, issued, or guaranteed by the Federal Government that are available to fund passenger rail projects pursuant to any Federal law (enacted before, on, or after the date of the enactment of this Act), and

(2) any Build America bonds issued by the Build America Corporation as authorized by section 4602,

may be used to fund a qualified project if the Secretary of Transportation determines that the qualified project is a cost-effective alternative for efficiently maximizing mobility of individuals and goods.

(b) COMPLIANCE WITH FEDERAL LAWS.—A recipient of proceeds of a grant, loan, Federal tax-credit, or other Federal assistance provided under this title shall comply with the standards described in section 23082 of title 49, United States Code, as in effect on June 25, 2003, with respect to any qualified public transportation project described in subsection (c)(1) in the same manner that the National Passenger Railroad Corporation is required to comply with such standards in connection with qualified public transportation projects described in section 23082 of such title.

(c) QUALIFIED PROJECT DEFINED.—In this section—

(1) IN GENERAL.—Except as provided in paragraph (2), the term "qualified project" means any transportation infrastructure project of any governmental unit or other person that is proposed by a State, including a highway project, a transit system project, a railroad project, a port project, and an inland waterways project.

(2) BUILD AMERICA CORPORATION PROJECTS.—

(A) IN GENERAL.—With respect to any Build America Corporation project, the Build America Corporation as authorized by section 4602, the term “qualified project” means—

(i) qualified highway project,

(ii) qualified public transportation project, and

(iii) congestion relief project.

(B) QUALIFIED PUBLIC TRANSPORTATION PROJECT.—The term “qualified public transportation project” means a project for public transportation facilities or other facilities which are eligible for assistance under chapter 23, United States Code.

(C) QUALIFIED PUBLIC TRANSPORTATION PROJECT.—The term “qualified public transportation project” means a project for public transportation facilities or other facilities which are eligible for assistance under chapter 23, United States Code.

(D) CONGESTION RELIEF PROJECT.—The term “congestion relief project” means an inter- modal freight transfer facility, freight rail facility, freight movement corridor, inter- city passenger rail or facility, intercity bus facility, public or private transit facility, or other public or private facility approved as a congestion relief project by the Secretary of Transportation. In making such approvals, the Secretary of Transportation shall—

(i) consider the economic, environmental, mobility, and national security improvements to be realized through the project, and

(ii) give preference to projects with national or regional significance, including any qualified public transportation projects assisted with those funds, and which would otherwise apply to projects to which the United States is a party or to funds made available under such law and projects assisted with those funds are applied to.

(f) COSTS OF QUALIFIED PROJECTS.—The requirement of this clause is met if the costs of the qualified project funded by Build America bonds only relate to capital investments in depreciable assets and do not include any costs relating to operations, maintenance, or rolling stock.

(g) APPLICABILITY OF FEDERAL LAW.—The requirement of this clause is met if the requirements of any Federal law, including title 49, United States Code, which would otherwise apply to projects to which the United States is a party or to funds made available under such law and projects assisted with those funds are applied to.

(h) FEDERAL FUNDS.—If funds made available under Build America bonds for similar qualified projects, and other funds made available with those funds by the Build America Corporation through the use of such funds.

(i) UTILIZATION OF UPDATED CONSTRUCTION TECHNOLOGY FOR QUALIFIED PROJECTS.—The requirement of this clause is met if the appropriate State agency relating to the qualified project has updated its construction technology standards, as described by the Secretary of Transportation and in effect on the date of the approval of the project as a qualified project.

PART II—RAILROAD TRACK MODERNIZATION

SEC. 4631. SHORT TITLE.

This part may be cited as the “Railroad Track Modernization Act of 2004”.

SEC. 4632. CAPITAL GRANTS FOR RAILROAD TRACK MODERNIZATION.

(a) AUTHORITY.—Chapter 223 of title 49, United States Code, is amended to read as follows:

"CHAPTER 223—CAPITAL GRANTS FOR RAILROAD TRACK MODERNIZATION

"Sec. 22301. Capital grants for railroad track modernization.

"§ 22301. Capital grants for railroad track modernization.

(1) Establishment.—The Secretary of Transportation shall establish a program of capital grants for the rehabilitation, preservation, or improvement of railroad track (including rail, roadbed, bridges, and related track structures) of class II and class III railroads. Such grants shall be for rehabilitation, preserving, or improving track used primarily for freight transportation to a standard ensuring that the track can be operated safely and efficiently, including grants for rehabilitation, preserving, or improving track to handle 266,000 pound rail cars. Grants may be provided under this chapter—

(A) directly to the class II or class III railroad, or

(B) under the concurrence of the class II or class III railroad, to a State or local government.

(2) STATE COOPERATION.—Class II and class III railroad applicants for a grant under this chapter are encouraged to utilize the expertise and assistance of State transportation..."
SEC. 4653. REGULATIONS.
(a) REGULATIONS.—The Secretary of Transportation shall prescribe regulations to carry out the program set forth in subsection (c).

(b) REPORT.—Not later than March 31, 2004, the Secretary shall submit to Congress a report on the results of the study under subsection (a).

SEC. 4654. STUDY OF GRANT-FUNDED PROJECTS.
(a) REQUIREMENT FOR STUDY.—The Secretary of Transportation shall conduct a study of the projects carried out with grants awarded under title V of United States Code (as added by section 4601), to determine the public interest benefits associated with the light density rail networks for Federal infrastructure financing.

SEC. 4655. AUTHORIZATION OF APPROPRIATIONS.
The Secretary of Transportation is authorized to make grants to the States to fund the rail line relocation projects.

SEC. 4656. CAPITAL GRANTS FOR RAIL LINE RELOCATION PROJECTS.
(a) ESTABLISHMENT OF PROGRAM.—Chapter 201 of title V of United States Code, is amended by adding at the end of subchapter II the following:

"§20154. Capital grants for rail line relocation projects

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Transportation shall carry out a grant program to provide financial assistance for local rail line relocation projects.

(b) ELIGIBILITY.—A State is eligible for a grant under this section for any project for the improvement of the route or structure of a rail line passing through a municipality of the State that—

(1) is carried out for the purpose of mitigating the effects of rail traffic on safety, motor vehicle traffic flow, or economic development in the municipality;

(2) involves a lateral or vertical relocation of any portion of the rail line within the municipality to avoid a closing of a grade crossing or the construction of a road underpass or overpass;

(3) meets the costs-benefits requirement set forth in subsection (c).

(c) COSTS-BENEFITS REQUIREMENT.—A grant under this section may be awarded for a project for the relocation of a rail line only if the benefits of the project for the period equal to the estimated economic life of the relocated rail line exceed the costs of the project for that period, as determined by the Secretary considering the following factors:

(1) The effects of the rail line and the rail traffic on motor vehicle traffic, safety, and area commerce if the rail line were not so relocated.

(2) The effects of the rail line, relocated as proposed, on motor vehicle and pedestrian traffic, safety, and area commerce.

(3) The effects of the rail line, relocated as proposed, on the freight and passenger rail operations on the rail line.

(d) CONSIDERATIONS FOR APPROVAL OF GRANT APPLICATIONS.—In addition to considering the relative merits in determining whether to award a grant to an eligible State under this section, the Secretary shall consider the following factors:

(1) The capability of the State to fund the rail line relocation project without Federal grant funding.

(2) The requirement and limitation relating to the grant of funds provided in subsection (e).

(3) Equitable treatment of the various regions of the United States.

(4) ALLOCATION INSTRUCTIONS.—

(1) GRANTS NOT GREATER THAN $20,000,000.—At least 50 percent of all grant awards under this section (as defined by section 4601), shall be provided as grant awards of not more than $20,000,000 each.

(2) LIMITATION PER PROJECT.—Not more than 25 percent of the total amount available for carrying out this section for a fiscal year may be provided for any 1 project in that fiscal year.

(3) FEDERAL SHARE.—The total amount of a grant awarded under this section for a rail line relocation project shall be 90 percent of the total costs of the project, as determined under subsection (g)(4).

(g) STATE SHARE.—

(1) PERCENTAGE.—A State shall pay 10 percent of the total costs of a project that is funded in part by a grant awarded under this section.

(2) FORMS OF CONTRIBUTIONS.—The share required by paragraph (1) may be paid in cash or in kind.

(3) IN-KIND CONTRIBUTIONS.—The in-kind contributions that are permitted to be counted under paragraph (2) for a project for a State are as follows:

(A) A contribution of real property or tangible personal property that is provided by the State or a person for the State.

(B) A contribution of the services of employees of the State, calculated on the basis of the employee's benefits, excluding overhead and general administrative costs.

(C) A payment of any costs that were incurred for the project before the filing of an application for a grant for the project under this section, and any in-kind contributions that were made for the project before the filing of an application, if, and to the extent that the costs were incurred or in-kind contributions were made, as the case may be, to comply with a provision of a statute required to be satisfied in order to carry out the project.

(D) COSTS NOT SHARED.—
“(a) IN GENERAL.—For the purposes of subsection (f) and this subsection, the shared costs of a project in a municipality do not include any cost that is defrayed with any funds contributed by the municipality, except to the extent that the municipality makes available for the use of the municipality without imposing at least 1 of the following conditions:

(1) The condition that the municipality use the funds or contribution only for the project.

(2) The condition that the availability of the funds or contribution to the municipality is contingent on the execution of the project.

(b) MULTISTATE AGREEMENTS TO COMBINE AMOUNTS.—Two or more States (not including political subdivisions of States) may, pursuant to an agreement entered into by the States, combine any part of the amounts provided through grants for a project under this title in a manner that is mutually satisfactory to the States entering into the agreement; and

(c) EXTENSION OF TAXES.—

(1) IN GENERAL.—The following provisions are each amended by striking ‘‘2005’’ each place it appears and inserting ‘‘2009’’:

(A) Section 4903(c)(1)(A)(i) and (ii) (relating to rate of tax on certain busses). (B) Section 4901(a)(2)(B) (relating to rate of tax on special motor fuels).

(C) Section 4901(c)(3) (relating to certain alcohol fuels produced from natural gas).

(D) Section 4905(c)(2) (relating to termination of tax on heavy trucks and trailers).

(E) Section 4701(d) (relating to termination of tax on tires).

(F) Section 4081(d)(1) (relating to termination of tax on gasoline, diesel fuel, and kerosene).

(G) Section 4481(e) (relating to period tax is in effect).

(H) Section 4482(c)(4) (relating to taxable period).

(2) FLOOR STOCKS REFUNDS.—Section 612a(a)(1) (relating to floor stocks refunds) is amended—

(A) by striking ‘‘2005’’ each place it appears and inserting ‘‘2009’’, and

(B) by striking ‘‘2006’’ each place it appears and inserting ‘‘2010’’.

(d) EXTENSION OF CERTAIN EXEMPTIONS.—The following provisions are each amended by striking ‘‘2009’’ and inserting ‘‘2009’’:

(1) Section 4221(a) (relating to certain tax-free sales).

(2) Section 4483(g)(relating to termination of exemptions for highway use tax).

(e) EXTENSION OF DEPOSITS INTO, AND CERTAIN TRANSFERS FROM, TRUST FUND.—

(1) IN GENERAL.—Subsections (b), (c), (d), (e), (f), (g), and (h) of section 9503 (relating to the Highway Trust Fund) are amended—

(A) by striking ‘‘2005’’ each place it appears and inserting ‘‘2009’’, and

(B) by striking ‘‘2006’’ each place it appears and inserting ‘‘2010’’.

(2) CONFORMING AMENDMENTS TO LAND AND WATER CONSERVATION FUND.—Section 201(b) of the Land and Water Conservation Act of 1965 (16 U.S.C. 4601-11(b)) is amended—

(A) by striking ‘‘2003’’ and inserting ‘‘2009’’, and

(B) by striking ‘‘2007’’ each place it appears and inserting ‘‘2010’’.

(f) CONFORMING AMENDMENTS TO THE HIGHWAY TRUST FUND ACT OF 1995.—Subsections (b) and (c) of section 9503(c) (relating to transfers from Highway Trust Fund for certain repayments and credits) are amended by adding at the end the following new paragraph:

(1) PROHIBITION ON USE OF HIGHWAY ACCOUNT FOR RAIL PROJECTS.—Section 9503(c)(1) (relating to transfers from Highway Trust Fund for certain rail projects) is amended by adding at the end the following new paragraph:

(g) PROHIBITION ON USE OF HIGHWAY ACCOUNT FOR CERTAIN RAIL PROJECTS.—With respect to rail projects beginning after the date of the enactment of this paragraph, no amount shall be available from the Highway Account (as defined in subsection (e)(5)(B) for any rail project, except for any rail project involving publicly owned rail facilities, for any rail project yielding a public benefit.”.

(h) HIGHWAY TRUST FUND EXPENDITURES FOR HIGHWAY USE TAX EVASION PROJECTS.—Section 9503(c)(1) (relating to expenditures from Boat Safety Account) is amended by subsection (g), is amended to add at the end the following new paragraph:
been extended through the end of the 48-month period referred to in paragraph (1)(B), and
(B) with respect to each tax that may be imposed under subsection (b) of this section, the rate of such tax during the 48-month period referred to in paragraph (1)(B) to be the same as the rate of such tax as in effect on the taxable income of the taxpayer for the taxable year in which such tax is imposed.
(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Volumeetric Alcohol Excise Tax Credit
SEC. 5010. SHORT TITLE.
This subtitle may be cited as the ‘‘Volumeetric Alcohol Excise Tax Credit (VEETC)’’ Act of 2004.

SEC. 5012. ALCOHOL AND BIODIESEL EXCISE TAX CREDIT AND EXTENSION OF ALCOHOL FUELS INCOME TAX CREDIT.
(a) In General.—Subchapter B of chapter 44 (relating to rules of special application) is amended by inserting after section 4425 the following new section:

SEC. 4426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL MIXTURES.
(1) ALLOWANCE OF CREDITS.—There shall be allowed as a credit against the tax imposed by section 4081 an amount equal to the sum of—
(A) the alcohol fuel mixture credit, plus
(B) the biodiesel mixture credit.
(2) ALCOHOL FUEL MIXTURE CREDIT.—
(A) IN GENERAL.—Except as provided in subparagraph (B), the alcoholic content of alcohol fuels shall be determined by taking into account only the portion of the taxes which are deposited into the Highway Trust Fund.
(B) THERMAL CREDIT.—The amount of the tax imposed by section 4081 shall be reduced by an amount equal to the sum of the following:
(i) the amount of the tax imposed by section 4081 for alcohol produced from petroleum, natural gas, or coal (including peat), which consists of—(I) alcohol produced from petroleum, natural gas, or coal (including peat), which consists of alcohol other than as a fuel, or
(II) alcohol for which a calculation is made or that is used in the production of alcohol fuel only as a fuel.
(ii) the amount of the tax imposed by section 4081 for alcohol produced from petroleum, natural gas, or coal (including peat), which consists of alcohol used in the production of alcohol fuel that is used in the production of alcohol fuel other than as a fuel.
(C) BIODIESEL MIXTURE CREDIT.—
(A) IN GENERAL.—For purposes of this section, the term ‘‘alcoholic content’’ for purposes of this section shall be determined by—
(i) the percentage of alcohol in the alcohol fuel mixture, or
(ii) the percentage of alcohol in the alcohol fuel mixture, in the case of alcohol produced from natural gas or coal.
(B) Adjunctive Alcohol Tax Credit.—
(i) IN GENERAL.—The credit provided by section 4426 shall apply in respect of any tax imposed under section 4081 which is also imposed under section 40A shall have the meaning given such term by section 40A.
(ii) THERMAL CREDIT.—The amount of the tax imposed by section 4081 shall be reduced by an amount equal to the sum of—
(i) the amount of the tax imposed by section 4081 for alcohol produced from petroleum, natural gas, or coal (including peat), which consists of—(I) alcohol produced from petroleum, natural gas, or coal (including peat), which consists of alcohol other than as a fuel, or
(II) alcohol for which a calculation is made or that is used in the production of alcohol fuel only as a fuel.
(ii) the amount of the tax imposed by section 4081 for alcohol produced from petroleum, natural gas, or coal (including peat), which consists of alcohol used in the production of alcohol fuel that is used in the production of alcohol fuel other than as a fuel.
(C) BIODIESEL MIXTURE CREDIT.—
(A) IN GENERAL.—For purposes of this section, the term ‘‘alcoholic content’’ for purposes of this section shall be determined by—
(i) the percentage of alcohol in the alcohol fuel mixture, or
(ii) the percentage of alcohol in the alcohol fuel mixture, in the case of alcohol produced from natural gas or coal.
(B) Adjunctive Alcohol Tax Credit.—
(i) IN GENERAL.—The credit provided by section 4426 shall apply in respect of any tax imposed under section 4081 which is also imposed under section 40A shall have the meaning given such term by section 40A.
(ii) THERMAL CREDIT.—The amount of the tax imposed by section 4081 shall be reduced by an amount equal to the sum of—
(i) the amount of the tax imposed by section 4081 for alcohol produced from petroleum, natural gas, or coal (including peat), which consists of—(I) alcohol produced from petroleum, natural gas, or coal (including peat), which consists of alcohol other than as a fuel, or
(II) alcohol for which a calculation is made or that is used in the production of alcohol fuel only as a fuel.
(ii) the amount of the tax imposed by section 4081 for alcohol produced from petroleum, natural gas, or coal (including peat), which consists of alcohol used in the production of alcohol fuel that is used in the production of alcohol fuel other than as a fuel.

(2) Other DEFINITIONS.—Any term used in this section which is also used in section 40A shall have the meaning given such term by section 40A.
(3) THERMAL CREDIT.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2006.

(d) IMPOSITION OF TAX.—
(A) In General.—The excise tax imposed under this section on alcohol fuel mixture or biodiesel mixture, respectively, and
(B) any person—
(i) separates the alcohol or biodiesel from the mixture,
(ii) without separation, uses the mixture other than as a fuel,
then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol or biodiesel.

(2) 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 paragraph (1) as if such tax were imposed by this section and not by this section.
(3) Coordination With exemption From excise tax.—Rules similar to the rules under section 4426 shall apply for purposes of this section.
(b) Registration requirement.—Section 4010(a)(1) (relating to registration), as amended by sections 5211 and 5242 of this Act, is amended by inserting ‘‘and every person producing or importing biodiesel’’ (as defined in section 40A(1)) or alcohol (as defined in section 40B(1)(A))’’ after ‘‘40A’’.
(c) Adjunctive Alcohol tax credit.—
(1) Section 40(c) is amended by striking ‘‘subsection (b)(2), (k), or (m) of section 40A, or section 502(c)’’ and inserting ‘‘subsection A(1)(b), section 6126, or section 6127(e)’’.
(2) Paragraph (4) of section 48(d) is amended to read as follows:

(2) VOLUME OF ALCOHOL.—
(A) Alcohol.—
(i) 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 denaturants).
Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

(B) Taxable fuel.—
(i) the term ‘‘taxable fuel’’ includes—(I) alcohol produced from petroleum, natural gas, or coal (including peat), or
(II) biodiesel.

(3) BIODIESEL MIXTURE CREDIT.—

(A) In General.—For purposes of this section, the term ‘‘alcoholic content’’ for purposes of this section shall be determined by—
(i) the percentage of alcohol in the alcohol fuel mixture, or
(ii) the percentage of alcohol in the alcohol fuel mixture, in the case of alcohol produced from natural gas or coal.

(B) Adjunctive Alcohol tax Credit.—
(i) IN GENERAL.—The credit provided by section 4426 shall apply in respect of any tax imposed under section (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formula approved by 10 years after the date of enactment of this Act.

(4) VOLUME OF ALCOHOL.—
For purposes of determining under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formula approved by 10 years after the date of enactment of this Act.

(5) BIODIESEL Mixture Credit.—

(A) In General.—For purposes of this section, the term ‘‘alcoholic content’’ for purposes of this section shall be determined by—
(i) the percentage of alcohol in the alcohol fuel mixture, or
(ii) the percentage of alcohol in the alcohol fuel mixture, in the case of alcohol produced from natural gas or coal.

(B) Adjunctive Alcohol tax Credit.—
(i) the term ‘‘alcoholic content’’ includes—(I) the percentage of alcohol in the alcohol fuel mixture, or
(II) the percentage of alcohol in the alcohol fuel mixture, in the case of alcohol produced from natural gas or coal.
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(B) by striking "2008" in subparagraph (B) and inserting "2011".

(4) Section 40(h) is amended—

(A) by striking "2007" in paragraph (1) and inserting "2010";

(B) by striking "2006, or 2007" in the table contained in paragraph (2) and inserting "through 2010";

(C) by striking subparagraph (B) of section 4041(b)(2)(B) is amended by striking "a substance other than petroleum or natural gas and" inserting "coal (including peat)";

(D) by inserting at the end of subparagraph (C),

(E) by striking subsection (d)(1) in subparagraph (B) and inserting "subsection (e)(1)";

(F) by striking "20 days of the date of the filing of such claim" in subparagraph (B) and inserting "the date of the filing of such claim (20 days in the case of an electronic claim)";

(G) by striking "(F) by striking "ALCOHOL MIXTURE" in the heading and inserting "ALCOHOL FUEL AND BIODIESEL MIXTURE".

(11) Section 9503(b)(1) is amended by adding at the end the following new flush sentence: "For purposes of this paragraph, taxes received under sections 4041 and 4081 shall be determined without reduction for credits under section 4081.

(12) Section 9503(b)(4), as amended by section 5101 of this Act, is amended—

(A) by adding "or" at the end of subparagraph (C),

(b) by striking the comma at the end of subparagraph (D)(iii) and inserting a period,

and

(C) by striking subparagraphs (E) and (F).

(13) The table of sections for subchapter B of chapter 36 is amended by inserting after the item relating to section 4325 the following new item:

"Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.

(14) TARIFF SCHEDULE.—Headings 9901.00.50 and 9901.00.52 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 3007) are each amended in the effective period column by striking "10-1-2007" each place it appears and inserting "1-1-2011."

(15) EFFECTIVE DATES.—

(a) FUEL, ETC.—The amount of the credit determined under this section for the taxable year is 50 cents for each gallon of biodiesel used in the production of any qualified biodiesel mixture.

(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section,

(1) BIODIESEL.—The term ‘‘biomass-based diesel’’ means the products of the partial oxidation of a class of oxygenated hydrocarbons, such as vegetable or animal fats or oils, used to produce fuel.

(2) AGRI-BIODIESEL.—The term ‘‘agri-biodiesel’’ means the biodiesel derived from the products of plants derived from plant or animal material which meet—

(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

(B) the requirements of the American Society of Testing and Materials D7651.

(3) MIXTURE OR BIODIESEL NOT USED AS A FUEL.—

(4) CERTIFICATION.—No credit shall be allowed under this section unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

(c) COORDINATION WITH CREDIT AGAINST EXCISE TAX.—The amount of the credit determined under this section with respect to any biodiesel shall be properly reduced to take into account any benefit provided with respect to such biodiesel solely by reason of the application of section 6426 or 6427.

(d) DETERMINATIONS AND SPECIAL RULES.—For purposes of this section—

(1) BIODIESEL.—The term ‘‘biomass-based diesel’’ means the products of the partial oxidation of a class of oxygenated hydrocarbons, such as vegetable or animal fats or oils, used to produce fuel.

(2) AGRI-BIODIESEL.—The term ‘‘agri-biodiesel’’ means the biodiesel derived from the products of plants derived from plant or animal material which meet—

(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

(B) the requirements of the American Society of Testing and Materials D7651.

(3) MIXTURE OR BIODIESEL NOT USED AS A FUEL.—

(4) CERTIFICATION.—No credit shall be allowed under this section unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

(c) COORDINATION WITH CREDIT AGAINST EXCISE TAX.—The amount of the credit determined under this section with respect to any biodiesel shall be properly reduced to take into account any benefit provided with respect to such biodiesel solely by reason of the application of section 6426 or 6427.

(d) DETERMINATIONS AND SPECIAL RULES.—For purposes of this section—

(1) BIODIESEL.—The term ‘‘biomass-based diesel’’ means the products of the partial oxidation of a class of oxygenated hydrocarbons, such as vegetable or animal fats or oils, used to produce fuel.

(2) AGRI-BIODIESEL.—The term ‘‘agri-biodiesel’’ means the biodiesel derived from the products of plants derived from plant or animal material which meet—

(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

(B) the requirements of the American Society of Testing and Materials D7651.
number of gallons of such biodiesel in such mixture.

"(B) BIODIESEL.—If—

(i) any credit was determined under this section with respect to the retail sale of any biodiesel, and

(ii) any person mixes such biodiesel with fuel other than diesel fuel, then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(2)(A) and the number of gallons of such biodiesel.

(C) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply to any tax imposed under subparagraph (A) or (B) as if such tax were imposed by section 4081 and not by this chapter.

(4) PASS-THRU 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 sale or use after December 31, 2006.

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit) is amended by striking "plus" at the end of paragraph (14), and by adding at the end the following new paragraph:

"(16) the biodiesel fuels credit determined under section 40A(a).

(c) CONFORMING AMENDMENTS.—

(1) Section 39(d) is amended by adding at the end the following new paragraph:

"(4) the table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(2) Subpart II of subchapter A of chapter 32 is amended by striking subpart B and redesignating subpart B as subpart A.

(3) Subsection (b) of section 4261(h) is amended by striking "or 4091" and inserting "or 4081".

(4) Subsection (a) of section 4282 is amended by striking subsection (d) and by redesignating subpart B as subpart A.

(5) Subsection (a) of section 4283 is amended by striking subsection (d) and by inserting after subsection (c) the following new subsection:

"(d) the biodiesel fuels credit determined under section 40A(a)".

(6) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(7) Subsection (a) of section 4291 is amended by striking subsection (d) and by redesignating subpart B as subpart A.

(8) Subsection (a) of section 4292 is amended by striking subsection (f) and by inserting after subsection (e) the following new subsection:

"(e) the biodiesel fuels credit determined under section 40A(a)".

The following new paragraph:

"(f) the biodiesel fuels credit determined under section 40A(a)".

(3) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(4) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(5) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(6) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(7) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(8) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(9) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

The following new paragraph:

"(a) the biodiesel fuels credit determined under section 40A(a)".

(4) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(5) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(6) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(7) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(8) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(9) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(10) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

The following new paragraph:

"(a) the biodiesel fuels credit determined under section 40A(a)".

(4) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(5) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(6) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(7) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(8) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(9) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(10) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

The following new paragraph:

"(a) the biodiesel fuels credit determined under section 40A(a)".

(4) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(5) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(6) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(7) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(8) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(9) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(10) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

The following new paragraph:

"(a) the biodiesel fuels credit determined under section 40A(a)".

(4) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(5) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(6) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(7) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(8) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(9) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.

(10) The table of sections for subpart D of chapter 1 is amended by striking subpart C and redesignating subpart C as subpart B.
Section 6427 is amended by striking subsection (f).

Section 6427(j)(1) is amended by striking "4081, and 4091" and inserting "and 4091."

Section 6427(1)(k) is amended by striking "made by this section shall apply to aviation-".

Subchapter A of chapter 32 is amended to read as follows:

"Subpart B. Special provisions applicable to aviation fuels tax.".

"(5)(B) of section 6427(1) is amended by striking "Paragraph (1)(A) shall not apply to kerosene" and inserting "Paragraph (1) shall not apply to kerosene (other than aviation-grade kerosene)"."

Subparagraph (B) of section 6724(d)(1) is amended by striking clause (xv) and by redesignating the succeeding clauses accordingly.

Paragraph (2) of section 6724(d) is amended by striking subparagraph (W) and by redesignating the succeeding subparagraphs accordingly.

Paragraph (1) of section 9502(b) is amended by adding "and" at the end of subparagraph (B) and by striking subparagraphs (C) and (D) and inserting the following new subparagraph:

"(C) section 4081 with respect to aviation gasoline and aviation-grade kerosene, and".

The last sentence of section 9502(b) is amended to read as follows:

"There shall not be taken into account under paragraph (1) so much of the taxes imposed by section 4081 as are determined at the rate specified in section 4081(a)(2)(B).".

Subsection (b) of section 9508 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

Section 9508(c)(2)(A) is amended by striking "sections 4081 and 4091" and inserting "section 4081".

The table of subparts for part III of subchapter A of chapter 32 is amended to read as follows:

"Subpart A. Motor and aviation fuels.

Subpart B. Special provisions applicable to fuels tax."

The heading for subpart A of part III of subchapter A of chapter 32 is amended to read as follows:

"Subpart A—Motor and Aviation Fuels"

(3) Ea...
SEC. 6717. REFUSAL OF ENTRY.

(a) In General.—In addition to any other penalty provided by law, any person who refuses to admit entry or refuses to permit any other person to admit any other person to the area in which such person is located shall be, if any penalty provided by section 4083(d)(1) shall pay a penalty of $1,000 for such refusal.

(b) Joint and Several Liability.—(1) In general.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity, or any other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

(2) Affiliated Groups.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be joint and severally liable with such entity for the penalty imposed under this section.

(c) Reasonable Cause Exception.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

(b) Conforming Amendments.—(1) Section 6717 of this Act, as amended by section 5211 of this Act, is amended by inserting: "(A) FORFEITURE.—The penalty", and "(B) ASSESSABLE PENALTY.—For additional purposes, the Secretary authorized by paragraph (1), see section 6717.

(2) The table of sections for part I of subchapter B of chapter 68, as amended by section 5232 of this Act, is amended by adding at the end the following new item:

"Sec. 6717. Refusal of entry.".

(c) Effective Date.—The amendments made by this section shall take effect on October 1, 2004.

PART IV.—REGISTRATION AND REPORTING REQUIREMENTS

SEC. 5241. REGISTRATION OF PIPELINE OR VESSEL OPERATORS REQUIRED FOR EXEMPTION OF BULK TRANSFERS TO REGISTERED TERMINALS OR REFINERIES.

(a) In General.—Section 4081(a)(1)(B) (relating to exemptions for bulk transfers to registered terminals or refineries) is amended—

(1) by striking "Every" and inserting the following: "Every operator of a vessel who fails to display proof of registration pursuant to section 4101 (relating to registration) is amended—

(1) by striking "Every" and inserting the following: "Every operator of a vessel who fails to display proof of registration pursuant to section 4101 (relating to registration) is amended—

(2) by adding at the end the following new subparagraph:

"(B) CIVIL PENALTY FOR CARRYING TAXABLE FUELS BY NONREGISTERED PIPELINES OR VESSELS.—

(1) IN GENERAL.—In addition to any other penalty provided by law, any person, subsection (a) shall be applied by increasing the amount in subsection (a) by the number of prior penalties (if any) imposed by this section during any calendar month.

(2) MULTIPLE VIOLATIONS.—In determining the penalty under subsection (a) on any person, paragraph (1) shall be applied by increasing the amount in paragraph (1) by the product of such amount and the number of prior penalties (if any) imposed by this section during any calendar month. The penalty shall be jointly and severally liable with such entity for such penalty.

(d) Effective Date.—The amendments made by subsections (a) and (b) shall take effect on October 1, 2004.

PART V.—DISPLAY OF REGISTRATION

SEC. 5242. DISPLAY OF REGISTRATION.

(a) In General.—Subsection (a) of section 4101 (relating to registration) is amended—

(1) by striking "Every" and inserting the following: "Every operator of a vessel who fails to display proof of registration pursuant to section 4101 (relating to registration) is amended—

(2) by adding a new subparagraph:

"(B) CIVIL PENALTY FOR CARRYING TAXABLE FUELS BY NONREGISTERED PIPELINES OR VESSELS.—

SEC. 6719. FAILURE TO DISPLAY REGISTRATION.

(a) Failure to Display Registration.—Every operator of a vessel who fails to display proof of registration pursuant to section 4101 shall pay a penalty of $500 for each such failure. With respect to any vessel, only one penalty shall be imposed by this section during any calendar month.

(b) Civil Penalty for Failure to Display Registration.—

(1) In General.—Part I of subsection B of chapter 68 (relating to assessable penalties), as amended by section 5241 of this Act, is amended by adding at the end the following new section:

"Sec. 6719. Failure to display registration.".

(c) Reasonable Cause Exception.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

(2) Clerical Amendment.—The table of sections for part I of subsection B of chapter 68, as amended by section 5242 of this Act, is amended by adding the following new item:

"Sec. 6719. Failure to display registration.".
SEC. 5254. PENALTIES FOR FAILURE TO REGISTER AND FAILURE TO REPORT.

(a) INCREASED PENALTY.—Subsection (a) of section 7272 (relating to penalty for failure to register) is amended by inserting "($10,000 in the case of a failure to report under section 4101)" after "$50".

(b) INCREASED CRIMINAL PENALTY.—Section 7232 (relating to failure to register under section 4101) is amended by inserting "($10,000" after "$500".

(c) ASSUMABLE PENALTY FOR FAILURE TO REGISTER.

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties, as amended by section 5242 of this Act), is amended by adding at the end the following new section:

"SEC. 6720. FAILURE TO REGISTER.

(a) FAILURE TO REGISTER.—Every person who is required to register under section 4101 and fails to do so shall pay a penalty in addition to the tax (if any).

(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

(1) $10,000 for each initial failure to register, and

(2) $1,000 for each day thereafter such person fails to register.

(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.

(d) CLERICAL AMENDMENT.—The table of sections for part II of subchapter B of chapter 68 is amended by adding at the end the following new item:

"SEC. 4101. Information reporting for persons claiming certain tax benefits.

(a) IN GENERAL.—The Secretary shall require any person claiming tax benefits—

(1) under the provisions of section 34, 40, and 40A to file a return at the time such person claims such benefits (in such manner as the Secretary may prescribe);

(2) under the provisions of section 401(b)(2), 6256, or 6271(e) to file a monthly return (in such manner as the Secretary may prescribe);

(3) CONTENTS OF RETURN.—Any return filed under this section shall provide such information as is necessary to determine that the coordination of such benefits as the Secretary may require to ensure the proper administration and use of such benefits.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

PART V—IMPORTS

SEC. 5251. TAX AT POINT OF ENTRY WHERE IMPORT NOT REGISTERED.

(a) TAX AT POINT OF ENTRY WHERE IMPORT NOT REGISTERED.

(1) IN GENERAL.—Section 4101(d), as amended by section 5273 of this Act, is amended by adding at the end the following new sentence: "Any person who is required to report under this subsection and who has 25 or more reportable transactions in a month shall file such report in electronic format.''

(2) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

PART VI—MISCELLANEOUS PROVISIONS

SEC. 5261. TAX ON SALE OF DIESEL FUEL WITHOUT RULES FOR USE OR NOT IN A DIESEL-POWERED VEHICLE OR TRAIN.

(a) IN GENERAL.—Section 4083(a)(3) is amended—

(1) by striking "The term" and inserting the following:

"The term...

(b) CONFORMING AMENDMENTS.—

(1) Section 519(a)(1)(B), as amended by section 5261 of this Act, is amended by striking "4083(a)(3)(A)" and inserting "4083(a)(3)(A)".

(2) Section 652(e)(3), as added by section 5102 of this Act, is amended by striking "4083(a)(3)(A)" and inserting "4083(a)(3)(A)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.
'"(A) IN GENERAL.—In the case of diesel fuel or kerosene used on a farm for farming purposes (within the meaning of section 6202(c)), paragraph (1) shall not apply to the aggregate amount of such diesel fuel or kerosene if such amount does not exceed 500 gallons (as determined under subsection (1)(5)(A)(1)).'

'"(B) CREDIT CARD PURCHASES OF DIESEL FUEL OR KEROSENE BY STATE AND LOCAL GOVERNMENTS.—Section 6271(l)(5)(C) (relating to nontaxable use of diesel fuel, kerosene, and aviation fuel) is amended by adding the term "credit card," if the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.'

'"(C) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.'

Section 5264. Two-party exchanges.

(a) IN GENERAL.—Subpart C of part III of subchapter A of chapter 32, as amended by section 5261 of this Act, is amended by adding at the end the following new section:

"SEC. 4106. TWO-PARTY EXCHANGES.

"(a) IN GENERAL.—In a two-party exchange, the delivering person shall not be liable for the tax imposed under section 4081(a)(1)(A)(i)."

"(b) TWO-PARTY EXCHANGE.—The term 'two-party exchange' means a transaction in which the taxable fuel is transferred from a delivering person registered under section 4101 as a taxable fuel registrant to a receiving person who is so registered when the following occur:

"(1) The transaction includes a transfer of the tangible personal property across the border from the delivery terminal to the receiving person.

"(2) The exchange transaction occurs before or contemporaneously with completion of remediation of damage resulting from the delivery of the fuel to the receiving person.

"(3) The receiving person in its books and records treats the receiving person as the person that removes the product across the terminal rack for purposes of reporting the transaction to the Secretary.'

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Section 5265. Motorcycle fuel refunds.

(a) NO PROHIBITION OF TAX UNLESS VEHICLE IS DESTROYED OR STOLEN.—(1) IN GENERAL.—Section 4481(c) (relating to prohibition of tax) shall be amended by adding at the end the following new sentence:

"(2) The transaction is the subject of a written contract.'"

(b) DISPLAY OF TAX CERTIFICATE.—Paragraph (2) of section 4481(d) (relating to a tax certificate) shall be amended by adding at the end the following new sentence:

"(3) The terminal operator in its books and records treats the receiving person as the person that removes the product across the terminal rack for purposes of reporting the transaction to the Secretary.'"

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Section 5266. Dedication of revenues from certain penalties to the highway trust fund.

(a) IN GENERAL.—Subsection (b) of section 9503 (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes), as amended by section 5001 of this Act, is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

"(5) CERTAIN PENALTIES.—There are hereby appropriated to the Highway Trust Fund amounts equivalent to the penalties assessed under sections 6715, 6715A, 6717, 6718, 6719, 6720, 6725, 7225, and 7272 (but only with regard to penalties under such section related to failure to register under section 4011)'."

(b) CONFORMING AMENDMENTS.—

(1) The heading of section 9503 is amended by inserting "and inclusion into the Highway Trust Fund of amounts equivalent to certain taxes'".

(2) The heading of paragraph (1) of section 9503 is amended by adding at the end the following new sentence:

"(5) CERTAIN PENALTIES TO THE HIGHWAY TRUST FUND.

"(a) IN GENERAL.—Subsection (b) of section 9503 is amended by inserting "and inclusion into the Highway Trust Fund of amounts equivalent to certain taxes'".

"(1) The transaction includes a transfer of the tangible personal property across the border from the delivery terminal to the receiving person.'"

(b) ELECTRONIC FILING.—Section 4481, as amended by section 5001 of this Act, is amended by redesignating subsection (e) as subsection (f) and by inserting after paragraph (5) the following new paragraph:

"(6) ELECTRONIC FILING.—Any taxpayer on which a return or reclassification is required under section 4481 is required to file such return or reclassification after the date of the enactment of this Act electronically, with the Secretary of the Treasury.

"(7) ELECTRONIC FILING.—Section 4481, as amended by section 5001 of this Act, is amended by redesignating subsection (e) as subsection (f) and by inserting after paragraph (5) the following new paragraph:

"(8) ELECTRONIC FILING.—Any taxpayer on which a return or reclassification is required under section 4481 is required to file such return or reclassification after the date of the enactment of this Act electronically, with the Secretary of the Treasury.'"
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(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or deliveries made after the date of the enactment of this Act.

PART VII—TOTAL ACCOUNTABILITY

SEC. 5271. TOTAL ACCOUNTABILITY.

(a) TAXATION OF REPORTABLE LIQUIDS.—

(1) IN GENERAL.—Section 4081(a), as amended by this Act, is amended—

(A) by inserting “or reportable liquid” after “taxable fuel” each place it appears, and

(B) by inserting such liquid after “such fuel” in paragraph (1)(A)(iv).

(2) RATE OF TAX.—Subparagraph (A) of section 4081(a)(2), as amended by section 5211 of this Act, is amended by striking “and” at the end of clause (iii), by striking the period at the end of clause (iv) and inserting “,” and”, and by adding at the end the following new clause:

“(v) in the case of reportable liquids, the rate determined under section 4083(c)(2).”.

(3) “EXEMPTION.—Section 4081(a)(3) is amended by adding at the end the following new subparagraph:

“(C) EXEMPTION FOR REPORTED TRANSPORTS OF NONREPORTABLE LIQUIDS.—The tax imposed by this paragraph shall not apply to any removal, entry, or sale of a reportable liquid if—

(i) such removal, entry, or sale is to a registered person who certifies that such liquid will not be used as a fuel or in the production of a fuel, or

(ii) the sale is to the ultimate purchaser of such liquid.”.

(4) REPORTABLE LIQUIDS.—Section 4083, as amended by the Act, is amended by redesignating subsections (c) and (d) as redesignated by section 5211 of this Act as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new section:

“(c) REPORTABLE LIQUID.—For purposes of this subpart—

(i) IN GENERAL.—The term ‘reportable liquid’ means any petroleum-based liquid other than a taxable fuel.

(ii) (A) GASOLINE BLEND STOCKS AND ADDITIVES.—Gasoline blend stocks and additives which are reportable liquids (as defined in paragraph (1)) shall be subject to the tax rate of tax under clause (1) of section 4081(a)(2)(A).

(B) OTHER REPORTABLE LIQUIDS.—Any reportable liquid (as defined in paragraph (1)) not described in subparagraph (A) shall be subject to the rate of tax under clause (iii) of section 4081(a)(2)(A).

(iii) QUANTITATIVE AMENDMENTS.—

(A) Section 4081(e) is amended by inserting “or reportable liquid” after “taxable fuel”.

(B) Section 4083(d) (relating to certain use described as removal), as redesignated by paragraph (4), is amended by inserting “or reportable liquid” after “taxable fuel”.

(C) Section 4083(e)(1) (relating to administrative authority), as redesignated by paragraph (4), is amended—

(i) in subparagraph (A)—

(1) by inserting “or reportable liquid” after “taxable fuel”, and

(2) by inserting “or such liquid” after “such fuel” each place it appears, and

(ii) by inserting “(B), (I), by inserting “or any reportable liquid” after “any taxable fuel”.

(D) Section 4101(a)(2), as added by section 5243 of this Act, is amended by inserting “or reportable liquid” after “taxable fuel”.

(E) Section 4101(a)(3), as added by section 5242 of this Act, is amended by inserting “or any reportable liquid” before the period at the end.

(F) Section 4102 is amended by inserting “or any reportable liquid” before the period at the end.

(G)(i) Section 6718, as added by section 5241 of this Act, is amended—

(I) in subsection (a), by inserting “or any reportable liquid (as defined in section 4083(c)(1))”, and

(ii) in the heading, by inserting “or reportable liquids” after “taxable fuel”.

(ii) The item relating to section 6718 in table of sections for part I of subchapter B of chapter 68, as added by section 5241 of this Act, is amended by inserting “or reportable liquids” after “taxable fuel”.

(H) Section 6427(b) is amended to read as follows:

“(b) GASOLINE BLEND STOCKS OR ADDITIVES AND REPORTABLE LIQUIDS.—Except as provided in subsection (k),—

“(1) ‘gasoline blend stock or additive (within the meaning of section 4083(a)(2))’ is not used by any person to produce gasoline and such person establishes that the ultimate use of such gasoline blend stock or additive is not to produce gasoline, or

“(2) if any reportable liquid (within the meaning of section 4083(c)(1)) is not used by any person to produce a taxable fuel and such person establishes that the ultimate use of such reportable liquid is not to produce a taxable fuel, then the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of the tax imposed on such person under section 4083(c)(1) on such gasoline blend stock or additive or such reportable liquid.”.

(i) Section 7232, as amended by this Act, is amended by inserting “or reportable liquid (within the meaning of section 4083(c)(1))” after “section 4083”.

(j) Section 343 of the Trade Act of 2002, as amended by section 5252 of this Act, is amended by inserting “and reportable liquids (as defined in section 4083(c)(1) of such Code)” after “the Internal Revenue Code of 1986”.

(k) Section 4483 (relating to the use of any vehicle described in section 4083(c)(1)) is amended by inserting “or reportable liquid” after “taxable fuel”.

(l) Section 4482(b) is amended by striking “and” at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting “and”, and by inserting after paragraph (3) the following new paragraph:

“(4) which is removed, entered, or sold by a person registered under section 4101.”.

(m) EFFECTIVE DATE.—The amendments made by this subsection shall apply to reportable liquids removed, entered, or sold by a person registered under this section on or after the day after the date of the enactment of this Act, and

(2) E FFECTIVE DATE.—The amendments made by this subsection shall take effect on the day after the date of the enactment of this Act.

(2) EXEMPTION FROM FUEL TAXES FOR MOBILE MACHINERY.

(a) EXEMPTION FROM TAX ON HEAVY TRUCKS AND TRAILERS SOLD AT RETAIL.—

(1) IN GENERAL.—Section 4033 (relating to exemptions) is amended by adding at the end the following new paragraph:

“(B) MOBILE MACHINERY.—Any vehicle which consists of a chassis—

“(A) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

“(B) which has been specially designed to serve only as a mobile container and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation.

“(C) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

(b) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the day after the date of the enactment of this Act.

(2) EXEMPTION FROM TAX ON USE OF CERTAIN VEHICLES.—

(a) IN GENERAL.—Section 4483 (relating to exemptions) is amended by redesignating subsection (g) as subsection (b) and by inserting after subsection (b) the following new subsection:

“(g) EXEMPTION FOR MOBILE MACHINERY.—

No tax shall be imposed by section 4481 on the use of any vehicle described in section 4053(b).”.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the day after the date of the enactment of this Act.

(d) EXEMPTION FROM FUEL TAXES.—

(1) IN GENERAL.—Section 6421(e)(2) (defining off-highway business use) is amended by adding at the end the following new subparagraph:

“(C) USES IN MOBILE MACHINERY.—

“(I) ‘off-highway business use’ shall include any use in a vehicle which meets the requirements described in clause (ii).(II) REQUIREMENTS FOR MOBILE MACHINERY.—The requirements described in this clause are—

“(i) the design-based test, and

“(ii) the use-based test.

(iii) DESIGN-BASED TEST.—For purposes of clause (ii)(1), the design-based test is met if the vehicle consists of—

“(I) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation
of the machinery or equipment is unrelated to transportation on or off the public highways.

"(II) which has been specially designed to serve a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is, in conjunction,

"(III) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any other load other than that particular machinery or equipment or similar machinery or equipment requiring such a special design.

"(iv) USE-BASED TEST.—For purposes of clause (I), clause (II), the use-based test is met if the use or operation of the vehicle on public highways was less than 10,000 miles during the taxpayer’s taxable year.

"(v) SPECIAL RULE FOR USE BY CERTAIN TAX-EXEMPT ORGANIZATIONS.—In the case of any use in a vehicle by an organization which is described in section 501(c) and exempt from tax under section 501(a), clause (II) shall be applied without regard to clause (II) thereof.

(2) Annual Refund of Tax Paid.—Section 6221(f)(2) (relating to exceptions) is amended by adding at the end the following new subparagraph:

"(C) NONAPPLICATION OF PARAGRAPH.—This paragraph shall not apply to any fuel used in any off-highway use described in section 6221(e)(2)(C).

(3) Effective Date.—The amendments made by this subsection shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 5302. MODIFICATION OF DEFINITION OF HIGHWAY VEHICLE.

(a) In General.—Section 7701(a) (relating to definitions) is amended by adding after the end the following new paragraph:

"(A) OFF-HIGHWAY TRANSPORTATION VEHICLES.—

"(i) In General.—A vehicle shall not be treated as a highway vehicle if such vehicle is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of such design, such vehicle is incapable of transporting a load on the public highway substantially limited or impaired.

"(ii) Determination of Vehicle’s Design.—For purposes of clause (I), a vehicle’s design is determined solely on the basis of its physical characteristics.

"(iii) Determination of Substantial Limitation or Impairment.—For purposes of clause (I), in determining whether substantial limitation or impairment exists, account shall be taken of the size of the vehicle, whether such vehicle is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether such vehicle can transport a load at a sustained speed of at least 25 miles per hour. It is immaterial that a vehicle can transport a greater load off the public highway than such vehicle is permitted to transport over the public highway.

"(B) Nontransportation Trailers and Semitrailers.—A trailer or semitrailer shall not be treated as a highway vehicle if it is specially designed to function only as an enclosed stationary shelter for the carrying on of an off-highway function at an off-highway site.

(c) Effective Dates.—

(1) In General.—Except as provided in paragraphs (3) and (4), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) Fuel Taxes.—With respect to taxes imposed under subchapter B of chapter 31 and part III of subchapter A of chapter 32, the amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

Subtitle E—Excise Tax Reform and Simplification

PART I—HIGHWAY EXCISE TAXES

SEC. 5401. DEDICATION OF GAS GUGGLER TAX TO HIGHWAY TRUST FUND.

(a) In General.—Section 9505(b)(1) (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes), as amended by section 5002(b) of this Act, is amended by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F) respectively, and by inserting after subparagraph (D) the following new subparagraph:

"(F) section 4014 (relating to gas guggler tax).

(b) Uniform Application of Tax.—Subparagraph (A) of section 4014(b)(1) (defining automobile) is amended by striking the second sentence.

(c) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5402. MODIFICATION OF FUND USE TAXES ON RAIL DIESEL AND INLAND WATERWAY BARGE FUELS.

(a) Taxes on Trains.—

"(1) In General.—Subparagraph (A) of section 4014(a)(1) is amended by striking “or a diesel-powered train” each place it appears and by striking “or train”.

"(2) Conforming Amendments.—

(A) Subparagraph (C) of section 4014(a)(3), as amended by section 5001 of this Act, is amended by striking clause (ii) and by redesignating clause (i) as clause (ii).

(B) Subparagraph (C) of section 4014(b)(1) is amended by striking all that follows “section 4021(e)(2)” and inserting after paragraph (2) the following new paragraph:

"(3) DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4001) used in a railroad vehicle for transportation on or off the public highway that is specially designed for the primary function of transporting any load other than that load for which such vehicle is treated as a highway vehicle.

"(ii) by striking the comma at the end of subparagraph (B) and inserting “and” in the heading of subparagraph (C)

"(iii) by inserting “of the Treasury” in the heading of subparagraph (D) and by redesignating subparagraphs (B), (C), (D), and (E) as subparagraphs (B), (C), (D), and (E) respectively.

"(iv) USE-BASED TEST.—For purposes of clause (I), the use-based test is met if the use or operation of the vehicle on public highways was less than 5,000 miles during the taxpayer’s taxable year.

"(v) Special Rule for Use by Certain Tax-Exempt Organizations.—In the case of any use in a vehicle by an organization which is described in section 501(c) and exempt from tax under section 501(a), clause (II) shall be applied without regard to clause (II) thereof.

(2) Annual Refund of Tax Paid.—Section 6221(f)(2) (relating to exceptions) is amended by adding at the end the following new subparagraph:

"(C) NONAPPLICATION OF PARAGRAPH.—This paragraph shall not apply to any fuel used in any off-highway use described in section 6221(e)(2)(C).

(3) Effective Date.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

PART II—AQUATIC EXCISE TAXES

SEC. 5411. ELIMINATION OF AQUATIC RESOURCES TAXES BY TRANSFORMATION OF SPORT FISH RESTORATION ACCOUNT.

(a) Simplification of Funding for Boat Safety Account.

"(1) In General.—Section 9503(c)(3) (relating to transfers from Trust Fund for motorboat fuel taxes), as redesignated by section 5002 of this Act, is amended—

(A) by striking “Fund—” and all that follows through “shall be transferred” in subparagraph (B) and inserting “Fund which is attributable to motorboat fuel taxes shall be transferred”, and

(B) by striking subparagraph (A), and

"(2) Conforming Amendments.—

(A) Subparagraph (B) of section 9503(c)(3), as redesignated by section 5002 of this Act and subsection (a)(3), is amended—

(i) by striking “Account” in the heading and inserting “TRUST FUND”.

(ii) by striking “or (B)” in clause (ii), and

(iii) by striking “Account in the Aquatic Resources”.

(B) Subparagraph (C) of section 9603(a), as redesignated by section 5002 of this Act and subsection (a)(3), is amended by striking “but only to the extent such taxes are deposited into the Highway Trust Fund”, and

(C) Paragraph (6) of section 9603(a), as redesignated by section 5002 of this Act, is amended—

(i) by striking “Account in the Aquatic Resources” in subparagraph (B), and

(ii) by striking “but only to the extent such taxes are deposited into the Highway Trust Fund” in subparagraph (B).

(b) Merger of Accounts.

"(1) In General.—Subsection (a) of section 9501 is amended to read as follows:

"(a) Creation of Trust Fund.—There is hereby established in the Treasury of the United States a trust fund to be known as the ’Sport Fish Restoration Trust Fund’. Such Trust Fund shall consist of such amounts as may be appropriated, credited, or paid to it as provided in this section, section 9503(c)(3), section 9503(c)(4), or section 9602(b).

"(2) Conforming Amendments.—

(A) Subsection (b) of section 9504 is amended—

(i) by striking “Account” in the heading and inserting “Trust Fund”, and

(ii) by striking “Account” both places it appears in paragraphs (1) and (2) and inserting “Trust Fund”. 
(B) Subsection (d) of section 9504, as amended by section 5001 of this Act, is amended—
   (i) by striking “AQUATIC RESOURCES” in the heading;
   (ii) by striking any “Account in the Aquatic Resources” in paragraph (1) and inserting “the Sports Fish Restoration Account” in paragraph (1) and inserting “such Trust Fund”;
   (C) Subsection (e) of section 9504, as amended by section 5002 of this Act, is amended by striking “Boat Safety Account and Sport Fish Restoration Account” and inserting “Sport Fish Restoration Trust Fund”;
   (D) Section 9504 is amended by striking “AQUATIC RESOURCES” in the heading and inserting “SPORT FISH RESTORATION”.

(E) The item relating to section 8506 in the tables of sections for subchapter A of chapter 98 is amended by striking “aquatic resources” and inserting “sport fish restoration”.

(2) Section 4463(a)(2) of this Act is amended to read as follows:

   “(c) EXEMPTION FROM TAX ON AERATED BAIT CONTAINERS.—
   (A) EXEMPTION.—Subparagraph (A) is amended by striking “or” at the end of clause (i) and inserting “, or”, and by striking “as described in subparagraph (A)” and inserting “as described in subparagraph (A)”, and by striking “as described in clause (i)” and inserting “as described in clause (i)”, and by striking clause (i) and inserting clause (ii).”.

(3) Section 4464 is amended—
   (a) in general—Subsection (d)(5) is amended by striking “or” at the end of paragraph (4) and inserting “, or”, and by adding at the end the following new paragraph:

   “(5) an LED display.”;
   (b) EFFECTIVE DATE.—The amendments made by this section shall apply to tax returns filed after December 31, 2004.

SEC. 5412. EXEMPTION OF LED DEVICES FROM AUDIO DEVICES SUITABLE FOR FINDING FISH.

(a) IN GENERAL.—Section 4162(b) (defining sonar device suitable for finding fish) is amended by striking “or” at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting “, or”, and by adding at the end the following new paragraphs:

   “(5) if the person so using the gasoline is an aerial or other aircraft operator of the goodwill of a person who has dedicated the gasoline, then subparagraph (A) of this paragraph shall apply and the aerial or other aircraft operator shall be treated as having used such gasoline on a farm for farming purposes.”;
   (b) EXEMPTION INCLUDES FUEL USED BY AERIAL APPLICATORS.—Subparagraph (B) of section 4162(b)(2)(A) (relating to certain farming use other than by owner, etc.) is amended to read as follows:

   “(B) if the person so using the gasoline is an aerial or other aircraft operator of the goodwill of the owner, then subparagraph (A) of this paragraph shall not apply and the aerial or other aircraft operator shall be treated as having used such gasoline on a farm for farming purposes.”;
   (c) EFFECTIVE DATE.—The amendments made by this section shall apply to tax returns filed after December 31, 2004.

SEC. 5413. REPEAL OF HARBOR MAINTENANCE TAX ON EXPORTS.

(a) IN GENERAL.—Subsection (d) of section 4462 (relating to definitions and special rules) is amended to read as follows:

   “(d) NONAPPLICABILITY OF TAX TO EXPORTS.—The tax imposed by section 4462(a) shall not apply to any port use with respect to any commercial cargo to be exported from the United States.”
   (b) CONFORMING AMENDMENTS.—
   (1) Section 4462(c)(1) is amended by adding “or” at the end of subparagraph (A), by striking subparagraph (B), and by redesignating subparagraph (C) as subparagraph (B).
   (2) Section 4462(c)(2) is amended by striking “imposed”— and all that follows through “any other case,” and inserting “imposed”—

   “(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as of, and after the date of the enactment of this Act.”

SEC. 5414. CAP ON EXCISE TAX ON CERTAIN FISHING EQUIPMENT.

(a) IN GENERAL.—Paragraph (1) of section 44509 (relating to special fishing equipment) is amended by striking “as described in subparagraph (A)” and inserting “as described in subparagraph (A)”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to tax returns filed after December 31, 2004.

SEC. 5415. REDUCTION IN RATE OF TAX ON PORTABLE AERATED BAIT CONTAINERS.

(a) IN GENERAL.—Section 4161(a)(2) is amended by striking “or” at the end of clause (i) and inserting “, or”.

(b) CONFORMING AMENDMENT.—The heading of section 4161(e) (relating to certain fishing equipment) is amended by striking “portable bait container” and inserting “portable aerated bait container”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2004.

SEC. 5416. EXEMPTION FROM TICKET TAXES FOR TRANSPORTATION PROVIDED BY SEAPLANES.

(a) IN GENERAL.—Section 4511 (relating to imposition of tax) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

   “(i) EXEMPTION FOR SEAPLANES.—No tax shall be imposed by this section or section 4271 on any air transportation by a seaplane with respect to any segment consisting of a takeoff from, and a landing on, water, but only if the places at such takeoff and landing occur have not received and are not receiving financial assistance from the Airport and Airways Trust Fund.”
   (b) EFFECTIVE DATE.—The amendments made by this section shall take effect as of, and after the date of the enactment of this Act.

SEC. 5417. CERTAIN SIGHTSEEING FLIGHTS EXEMPT FROM TAXES ON AIR TRANSPORTATION.

(a) IN GENERAL.—Section 4511 (relating to imposition of tax) is amended by striking “or” at the end of subparagraph (B) and inserting “, or”.

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

PART IV—ALCOHOLIC BEVERAGE EXCISE TAXES

SEC. 5421. REPEAL OF SPECIAL OCCUPATIONAL TAXES ON PRODUCERS AND MARKETERS OF ALCOHOLIC BEVERAGES.

(a) REPEAL OF OCCUPATIONAL TAXES.—(1) IN GENERAL.—The provisions of part II of subchapter A of chapter 51 (relating to occupational taxes) are hereby repealed:

   (A) Subpart A (relating to proprietors of distilled spirits plants, bonded wine cellars, etc.);
   (B) Subpart B (relating to brewer).
   (C) Subpart D (relating to wholesale dealers (other than sections 5114 and 5116).
   (D) Subpart E (relating to retail dealers (other than section 5116).
   (E) Subpart G (relating to general provisions (other than sections 5142, 5143, 5145, and 5146).

(b) EFFECTIVE DATE.—Section 5313 is amended by striking “on payment of a special tax per annum.”.
(3) INDUSTRIAL USE OF DISTILLED SPIRITS.—
Section 5276 is hereby repealed.
(b) CONFORMING AMENDMENTS.—
(1)(A) The heading for part II of subsection A of chapter 51 and the table of subparts for such part are amended to read as follows:

**PART II—MISCELLANEOUS PROVISIONS**

Subpart A. Manufacturers of stills.

Subpart B. Nonbeverage domestic drawback claimants.

Subpart C. Recordkeeping by dealers.

Subpart D. Other provisions.

(B) The table of parts for such subchapter A is amended by striking the item relating to part II and inserting the following new item:

"Part II. Miscellaneous provisions."

(2) Subpart C of part II of such subchapter (relating to manufacturers of stills) is redesignated as subpart A.

(3)(A) Subpart P of such part II (relating to nonbeverage domestic drawback claimants) is redesignated as sections 5131 through 5134 are redesignated as sections 5111 through 5114, respectively.

(B) The table of sections for such subpart B, as redesignated, is amended—

(i) by redesignating the items relating to sections 5131 through 5134 as redesignated as sections 5111 through 5114, respectively, and

(ii) by striking "AND RATE OF TAX" in the item relating to section 5111, as so redesignated.

(C) Section 5111, as redesignated by subparagraph (A), is amended—

(i) by striking "AND RATE OF TAX" in the section heading,

(ii) by striking the subsection heading for subsection (a), and

(iii) by striking subsection (b).

(4) Part II of subchapter A of chapter 51 is amended by adding at the end thereof the following new subpart:

"SUBPART C—RECORDKEEPING BY DEALERS

**Sec. 5121. Recordkeeping by wholesale dealers.**

Sec. 5122. Recordkeeping by retail dealers.

Sec. 5123. Preservation and inspection of records, and entry of premises for inspection.

(D) The table of sections for such subpart A is amended by striking "this part" each place it appears and inserting "this subchapter".

(5)(A) Section 5131 (relating to records) is moved to subpart C of such part II and inserted after the table of sections for such subpart.

(B) Section 5134 is amended—

(i) by striking the section heading and inserting the following new heading:

**Sec. 5121. RECORDKEEPING BY WHOLESALE DEALERS.**

and

(ii) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) WHOLESALE DEALERS.—For purposes of this part—

(1) WHOLESALE DEALER IN LIQUORS.—The term "wholesale dealer in liquors" means any dealer (other than a wholesale dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to another dealer.

(2) WHOLESALE DEALER IN BEER.—The term 'wholesale dealer in beer' means any dealer who sells, or offers for sale, distilled spirits, wines, or beer, to another dealer.

(3) WHOLESALE DEALER IN BEER (as defined in section 5121(c)).

(4) PRESUMPTION IN CASE OF SALE OF 20 WINE GALLONS.—The sale of wine, or offering for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumed to be made only to such person for the use of such person, or if for sale, to another dealer.

(B) The term 'wholesale dealer in beer' means any person who sells, or offers for sale, any distilled spirits, wines, or beer.

(C) PREJUDICE IN CASE OF SALE OF 20 WINE GALLONS.—The sale of wine, or offering for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumed to be made only to such person for the use of such person, or if for sale, to another dealer.

(D) The term 'wholesale dealer in beer' means any person who sells, or offers for sale, any distilled spirits, wines, or beer.

(E) PREJUDICE IN CASE OF SALE OF 20 WINE GALLONS.—The sale of wine, or offering for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumed to be made only to such person for the use of such person, or if for sale, to another dealer.

(F) The term 'wholesale dealer in beer' means any person who sells, or offers for sale, any distilled spirits, wines, or beer.

(G) PREJUDICE IN CASE OF SALE OF 20 WINE GALLONS.—The sale of wine, or offering for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumed to be made only to such person for the use of such person, or if for sale, to another dealer.

(H) The term 'wholesale dealer in beer' means any person who sells, or offers for sale, any distilled spirits, wines, or beer.

"(4) Part II of subchapter A of chapter 51 is amended—

(i) by striking ''subpart F'' and inserting ''section 5122''

(ii) by striking ''section 5146'' in subsection (c) and inserting ''section 5123''

(iii) by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

"(4) RETAIL DEALERS.—For purposes of this section—

(1) RETAIL DEALER IN LIQUORS.—The term 'retail dealer in liquors' means any dealer (other than a retail dealer in beer or a limited retail dealer who sells, or offers for sale, distilled spirits, wines, or beer, to any person other than a wholesale dealer) who sells, offers for sale, beer, but not distilled spirits or wines, to any person other than a dealer.

(2) RETAIL DEALER IN BEER.—The term 'retailer in beer' means any dealer (other than a limited retail dealer) who sells, or offers for sale, beer, but not distilled spirits or wines, to any person other than a dealer.

(3) LIMITED RETAIL DEALER.—The term 'limited retail dealer' means any fraternal, civic, church, labor, charitable, benevolent, or ex-servicemen's organization making sales of distilled spirits, wine or beer on the occasion of any kind of entertainment, dance, picnic, bazaar, or festival held by it, or any person making sales of distilled spirit s, wines, or beer to patrons of bona fide fairs, reunions, picnics, carnivals, or other similar outings, if such organization or person is not otherwise engaged in business as a dealer.

(4) DEALER.—The term 'dealer' has the meaning given such term by section 5121(c)(3).

(5) Section 5146 is moved to subpart C of part II of subchapter A of chapter 51, inserted after section 5122, and redesignated as section 5122.

(6)(A) Section 5124 (relating to records) is amended by striking ''section 5121'' and inserting ''section 5123''.

(B) The table of sections for such subpart C is redesignated as subpart D and moved to subchapter D of chapter 52, inserted after section 5731, redesignated as sections 5732, 5733, and 5734, respectively, and amended by striking ''this part'' each place it appears and inserting "this subchapter".

(B) Section 5732, as redesignated by subparagraph (A), is amended by striking "(except the tax imposed by section 5311)" each place it appears.

(7) Paragraph (2) of section 5733(c), as redesignated by subparagraph (A), is amended by striking "liquors" both places it appears and inserting "tobacco products and cigarettes papers and tubes".

(D) The table of sections for subchapter D of chapter 52 is amended by adding at the end thereof the following:

"Sec. 5732. Payment of tax.

"Sec. 5733. Provisions relating to liability for occupational taxes.

"Sec. 5734. Application of State laws."

(E) Section 5731 is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(20) Paragraph (1) of section 7652(a) is amended—

(A) by striking "subpart F" and inserting "subpart B", and

(B) by striking "section 5121(a)" and inserting "section 5111".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2004, but shall not apply to taxes imposed for periods before such date.

SEC. 5452. SUSPENSION OF LIMITATION ON RATE OF RUM EXCISE TAX COVER OVER TO PUERTO RICO AND VIRGIN ISLANDS.

(a) IN GENERAL.—Section 7652(c)(1) (relating to limitation on cover over of tax on distilled spirits) is amended by striking "January 1, 2004" and inserting "October 1, 2004, and 2015" in the caption of the section and bringing into the United States after September 30, 2004, and before January 1, 2006".
SEC. 5441. CUSTOM GUNSMITHS.

(a) SMALL MANUFACTURERS EXEMPT FROM FIREARMS EXCISE TAX.—Section 4182 (relating to exemptions) is amended by redesignating paragraph (c) as paragraph (d) and inserting after subsection (b) the following new subsection:

"(c) SMALL MANUFACTURERS, ETC.—

"(1) the tax imposed by section 4181 shall not apply to any article described in such section if manufactured, produced, or imported by a person who manufactures, produces, or imports less than 500 cases in any lot of distilled spirits during the taxable year, directly from the United States, and

"(2) CONTROLLED GROUPS.—All persons treated as a single employer for purposes of subparagraph (a) shall be treated as one person for purposes of paragraph (1)."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer on or after the first day of the month beginning at least 2 weeks after the date of the enactment of this Act.

(2) NO INERENCE.—Nothing in the amendments made by this section shall be construed to create any inference with respect to the proper tax treatment of any sales before the effective date of such amendments.

SEC. 5442. MODIFIED TAXATION OF IMPORTED ARCHERY PRODUCTS.

(a) BOWS.—(1) In general.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a peak draw weight of 30 pounds or more, a tax equal to 12 percent of the price for which so sold.

(2) ARROWS.—(A) In general.—There is hereby imposed on the sale by the manufacturer, producer, or importer—

"(i) of any quiver or broadhead suitable for use with an arrow described in paragraph (2), a tax equal to 11 percent of the price for which so sold;

"(ii) of any arrow component described in paragraph (2), a tax equal to 12 percent of the price for which so sold.

(B) ARCHERY EQUIPMENT.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a peak draw weight of 30 pounds or more, a tax equal to 12 percent of the price for which so sold.

(c) CONFORMING AMENDMENTS.—Section 4161 and 4162 are amended by—

(1) In general.—Subsection (b) of section 4161 (relating to bows and arrows, etc.) is amended by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (4) the following:

"(3) ARROWS.—

"(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a peak draw weight of 30 pounds or more, a tax equal to 12 percent of the price for which so sold.

"(B) EXCLUSION.—In the case of any arrow of which the shaft or any other component has been previously taxed under paragraph (1) or (2)—

"(i) section 4161(b)(3) shall not apply, and

"(ii) the tax imposed by subparagraph (A) shall be an amount equal to the excess (if any) of—

"(I) the amount of tax imposed by this paragraph (determined without regard to this subparagraph), over

"(II) the amount of tax paid with respect to the tax imposed under paragraph (1) or (2) on such components.

(C) ARROW.—For purposes of this paragraph, the term 'arrow' means any shaft described in paragraph (2) to which additional components are attached.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after the date of the enactment of this Act.

SEC. 5443. TREATMENT OF TRIBAL GOVERNMENTS FOR PURPOSES OF FEDERAL WAGERING EXCISE AND OCCUPATIONAL TAXES.

(a) IN GENERAL.—Subsection (a) of section 7871 (relating to Indian tribal governments treated as States for certain purposes) is amended—

(1) by striking "and" and a point at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting "; and", and

(2) by inserting at the end of the following new paragraph:

"(8) for purposes of chapter 35 (relating to taxes on wagering)."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2004, but shall not apply to taxes imposed for periods before such date.

PART VI—OTHER PROVISIONS

SEC. 5451. INCOME TAX CREDIT FOR DISTILLED SPIRITS WITH HOLDINGS IN CONTROLLED GROUPS OR FOR DISTILLED SPIRITS IN CONTROL STATE BAILMENT WAREHOUSES FOR COSTS OF CARRYING FEDERAL EXCISE TAXES ON BOTTLED DISTILLED SPIRITS.

(a) IN GENERAL.—Subpart A of part 3 of chapter 31 of title 26 (relating to alcoholic beverages) is amended—

(1) IN general.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bottle of distilled spirit which the Secretary of the Treasury shall not deem to create any inference with respect to the proper tax treatment of any sales before the effective date of such amendments.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxes imposed for periods before such date.

SEC. 5401. INCOME TAX CREDIT FOR AVERAGE COST OF CARRYING EXCISE TAX.

(a) IN GENERAL.—For purposes of section 38, the amount of the distillers spirits credit for any taxable year is the amount equal to the product of—

"(1) in the case of—

"(i) any eligible wholesaler—

"(II) the number of cases of bottled distilled spirits—

"(I) which were bottled in the United States, and

"(II) which are purchased by such wholesaler during the taxable year directly from the bottler of such spirits, or

"(B) any person which is subject to section 5005 and which is not a Federal excise tax dealer, the number of cases of bottled distilled spirits which are stored in a warehouse operated by, or on behalf of, a State, or agency or political subdivision thereof, on which the tax has not passed on an unconditional sale basis, and

"(2) the average tax-financing cost per case for such most recent calendar year ending during the taxable year beginning before the beginning of such taxable year.

"(b) ELIGIBLE WHOLESALE.—For purposes of this section, the term 'eligible wholesaler' means any person which holds a permit under the Federal Alcoholic Administration Act as a wholesaler of distilled spirits which is not a State, or agency or political subdivision thereof.

"(c) AVERAGE TAX-FINANCING COST.—

"(1) IN GENERAL.—For purposes of this section, the average tax-financing cost per case for any calendar year is the average of the corporate overpayment rates under paragraph (1) of section 6621(a) (determined without regard to the last sentence of such paragraph) for calendar quarters of such year.

"(2) DEEMED FINANCING RATE.—For purposes of paragraph (1), the deemed financing rate for any calendar year is the average of the corporate overpayment rates under subchapter A of chapter 51 (relating to the treatment of certain corporate overpayment rates for federal excise tax purposes) for calendar quarters of such year.

"(3) DEEMED FEDERAL EXCISE TAX PER CASE.—For purposes of paragraph (1), the deemed federal excise tax per case is $25.68.

"(4) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) CASE.—The term 'case' means 12 80-proof 750-milliliter bottles.

"(2) NUMBER OF CASES IN LOT.—The number of cases of any lot of distilled spirits shall be determined by dividing the number of liters in such lot by 9."

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to the credit allowed to each tax year beginning after the date of enactment of this Act) is amended by—

(1) by striking "and" and a point at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting "; and", and

(2) by inserting at the end of the following new paragraph:

"(8) for purposes of chapter 35 (relating to taxes on wagering)."
(17) the distilled spirits credit determined under section 501(a).

(c) CONFORMING AMENDMENTS.—
(1) Section 58(b), as amended by section 5103 of this Act, is amended by adding at the end the following new paragraph:

``(12) NO CARRYBACK OF SECTION 501 CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 501(a) may be carried back to a taxable year beginning before the date of the enactment of section 501(a).''

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

``Sec. 5011. Income tax credit for average cost of carrying excise tax.''

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

SEC. 5452. CREDIT FOR TAXPAYERS OWNING COMMERCIAL POWER TAKEOFF VEHICLES.

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

``SEC. 45G. COMMERCIAL POWER TAKEOFF VEHICLES CREDIT.

``(a) GENERAL RULE.—For purposes of section 38, the commercial power takeoff vehicles credit determined under this section for the taxable year taxable year of the taxpayer ends.

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

``(1) QUALIFIED COMMERCIAL POWER TAKEOFF VEHICLE.—The term ‘qualified commercial power takeoff vehicle’ means any highway vehicle described in paragraph (2) which is propelled by any fuel subject to tax under section 4041 or 4081 if such vehicle is used in a trade or business or for the production of income (and is licensed and insured for such use).

``(2) HIGHWAY VEHICLE DESCRIBED.—A highway vehicle is described in this paragraph if such vehicle is—

``(A) designed to engage in the daily collection of refuse or recyclables from homes or businesses (and is equipped with a mechanism under which the vehicle’s propulsion engine provides the power to operate a load compactor, or

``(B) designed to deliver ready mixed concrete on a daily basis and is equipped with a mechanism under which the vehicle’s propulsion engine provides the power to operate a mixer drum to agitate and mix the product on route to the delivery site.

``(c) EXCEPTION FOR VEHICLES USED BY GOVERNMENTS, ETC.—No credit shall be allowed under subsection (a) with respect to any vehicle owned by any person at the close of a calendar year if such vehicle is used at any time during such year by—

``(1) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions;

``(2) an organization exempt from tax under section 501(a).

``(d) TERMINATION.—This section shall not apply with respect to any calendar year after 2006.''

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by section 5451 of this Act, is amended by striking “plus” at the end of paragraph (17), by striking the period at the end of paragraph (17) and inserting “plus”, and by adding at the end the following new paragraph:

``(18) the commercial power takeoff vehicles credit determined under section 45G(a).''

(c) CONFORMING AMENDMENTS.—
(1) Section 38(d), as amended by section 5452 of this Act, is amended by adding at the end the following new paragraph:

``(14) NO CARRYBACK OF SECTION 45H CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45H(a) may be carried back to a taxable year beginning on or before the date of the enactment of section 45H(a).''

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

``Sec. 45H. Auxiliary power unit credit.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to auxiliary power units purchased and installed for taxable years beginning after the date of the enactment of this Act.

Subtitle F—Miscellaneous Provisions

SEC. 5501. MOTOR FUEL TAX ENFORCEMENT ADVISORY COMMISSION.

(a) ESTABLISHMENT.—There is established a Motor Fuel Tax Enforcement Advisory Commission (in this section referred to as the “Commission”).

(b) FUNCTION.—The Commission shall—

(1) review motor fuel revenue collections, historical and current;

(2) review the progress of investigations;

(3) evaluate and make recommendations regarding—

(A) the effectiveness of existing Federal enforcement programs regarding motor fuel taxes;

(B) enforcement personnel allocation, and

(C) proposals for regulatory projects, legislation, and funding;

(c) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of the following representatives appointed by the Chairmen and the Ranking Members of the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives:

(A) At least 1 representative from each of the following Federal entities: the Department of Homeland Security, the Department of Transportation—Office of Inspector General, the Environmental Protection Agency, the Department of Defense, and the Department of Justice.

(B) At least 1 representative from the Federation of State Tax Administrators.

(C) At least 1 representative from any State department of transportation.

(D) At least 2 representatives from the highway construction industry.

(E) 5 representatives from industries relating to fuel distribution — refineries (2 representatives), distributors (1 representative), pipelines (1 representative), and terminal operators (2 representatives).

(F) 1 representative from the retail fuel industry.

(G) 2 representatives from the staff of the Committee on Finance of the Senate and 2 representatives from the staff of the Committee on Ways and Means of the House of Representatives.

(2) TERMS.—Members shall be appointed for terms of 3 years.

(3) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(F) TRAVEL EXPENSES.—Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(G) CHAIRMAN.—The Chairman of the Commission shall be elected by the members.
(d) FUNDING.—Such sums as are necessary shall be available from the Highway Trust Fund for the expenses of the Commission.

(e) CONSULTATION.—Upon request of the Committees of the Senate and the House of Representatives, the Secretary of Transportation and the Administrator of the Federal Highway Administration shall be available for consultation to assist the Commission in carrying out its duties under this section.

(f) OBTAINING DATA.—The Commission may secure directly from any department or agency of the United States, information (other than information required to be kept confidential by any law to be kept confidential by such department or agency) necessary for the Commission to carry out its duties under this section. Upon request of the Commission, the head of that department or agency shall furnish such nonconfidential information to the Commission. The Commission shall also gather evidence and information as it considers appropriate, including through holding hearings and soliciting comments by means of Federal Register notices.

(g) TERMINATION.—The Commission shall terminate after September 30, 2009.

SEC. 5502. NATIONAL SURFACE TRANSPORTATION INFRASTRUCTURE FINANCING COMMISSION.

(a) ESTABLISHMENT.—There is established a National Surface Transportation Infrastructure Financing Commission (in this section referred to as the "Commission"). The Commission shall hold its first meeting within 90 days of the appointment of the eighth individual to be named to the Commission.

(b) FUNCTION.—

(1) IN GENERAL.—The Commission shall—

(A) make a thorough investigation and study of revenues flowing into the Highway Trust Fund under current law, including the individual components of the overall flow of such revenues; and

(B) assess the alternatives that would yield; the choice, fuel use, or travel alternatives that are necessary to ensure that Federal levels of investment in highways and transit do not decline in real terms; and

(c) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of 15 members, appointed as follows—

(A) 7 members appointed by the Secretary of Transportation with the consultation with the Secretary of the Treasury; (B) 2 members appointed by the Chairman of the Committee on Ways and Means of the House of Representatives; (C) 2 members appointed by the Ranking Minority Member of the Committee on Ways and Means of the House of Representatives; (D) 2 members appointed by the Chairman of the Committee on Finance of the Senate; (E) 2 members appointed by the Ranking Minority Member of the Committee on Finance of the Senate;

(d) STAFF.—The Commission may appoint such personal services as it considers appropriate, including through holding hearings and soliciting comments by means of Federal Register notices.

(e) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(f) TRAVEL EXPENSES.—Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(g) CHAIRMAN.—(1) The Chairman of the Commission shall—

(A) be an individual who has demonstrated a commitment to the transportation system, and is not employed by any Federal, State, or local government agency; and

(B) may detail any of the personnel of that department or agency to the Commission.

(h) STAFF.—The Commission shall provide such personnel services as it considers appropriate.

(i) FUNDING.—(1) From amounts available in the Highway Trust Fund, there is authorized to be appropriated—

(A) $50,000,000 for administrative and policy functions, to be provided by the Secretary of the Treasury; and

(B) such sums as may be necessary to carry out the responsibilities of the Commission, including such sums as may be necessary to study such other matters closely related to those specified in paragraph (1).

(j) STAFF.—The staff and number of personnel shall be determined by the Chairman of the Commission, and the Chairman shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the results of such investigations and prosecutions.

(k) ENVIRONMENTAL ACTIVITIES.—With respect to enforcement activities, the report required under subsection (a) shall include—

(1) the number and geographic distribution of audits conducted annually, by fiscal year, between October 1, 2001, and September 30, 2005;

(2) the total volume involved for each of the taxable fuels covered by such audits and a comparison to the annual production of such fuels;

(3) the staff hours and number of personnel devoted to the audits per year; and

(4) the results of such audits per year, including total tax collected, total penalties collected, and number of referrals for criminal prosecution.

(l) CONSULTATION.—(1) Before undertaking criminal investigations or prosecutions, the Commission shall consult with the Secretary of Transportation, the Secretary of the Treasury, and the Administrator of General Services for determination of joint action and cooperation between the Departments of Transportation, the Treasury, and by the Secretary of Transportation, the Secretary of the Treasury, and the Committee on Environment and Public Works of the Senate, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

SEC. 5503. TREASURY STUDY OF FUEL TAX COMPLIANCE AND INTERAGENCY COORDINATION.

(a) IN GENERAL.—Not later than January 31, 2006, the Secretary of the Treasury shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report regarding fuel tax enforcement which shall include the information and analysis described in subsection (b) and any other information and recommendations the Secretary of the Treasury may deem appropriate.

(b) REPORT.—With respect to audits conducted by the Internal Revenue Service, the report required under subsection (a) shall include—

(1) the number and geographic distribution of audits conducted annually, by fiscal year, between October 1, 2001, and September 30, 2005;

(2) the total volume involved for each of the taxable fuels covered by such audits and a comparison to the annual production of such fuels;

(3) the staff hours and number of personnel devoted to the audits per year; and

(4) the results of such audits per year, including total tax collected, total penalties collected, and number of referrals for criminal prosecution.

(5) ENVIRONMENTAL ACTIVITIES.—With respect to enforcement activities, the report required under subsection (a) shall include—

(1) the number and geographic distribution of criminal investigations and prosecutions conducted annually, by fiscal year, between October 1, 2001, and September 30, 2005, and the results of such investigations and prosecutions; and

(2) the extent to which such investigations and prosecutions involved other agencies, State or Federal, a breakdown by agency of the number of joint investigations involved; and

(3) an assessment of the effectiveness of joint action and cooperation between the Departments of the Treasury and other Federal and State agencies, including a discussion of the ability and need to share information across agencies for both civil and criminal Federal tax enforcement and enforcement of State or Federal laws relating to fuels; and

(4) the staff hours and number of personnel devoted to criminal investigations and prosecutions per year;

(5) the staff hours and number of personnel devoted to administrative collection of fuel taxes; and

(6) the results of administrative collection efforts annually, by fiscal year, between October 1, 2001, and September 30, 2005.

SEC. 5504. EXPANSION OF HIGHWAY TRUST FUND EXPENDITURE PURPOSES TO INCLUDE FUNDING FOR STUDIES OF SUPPLEMENTAL OR ALTERNATIVE FUNDING SOURCES FOR THE HIGHWAY TRUST FUND.

(a) IN GENERAL.—From amounts available in the Highway Trust Fund, there is authorized to be expended for studies of supplemental or alternative funding sources for the Highway Trust Fund—
(1) $1,000,000 to the Western Transportation Institute of the College of Engineering at Montana State University for the study and report described in subsection (b), and
(2) to the Public Policy Center of the University of Iowa for the study and report described in subsection (c).

(b) STUDY OF FUNDING MECHANISMS.—Not later than January 1, 2006, the Secretary of the Treasury shall report the findings of the study required under subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 5506. DELTA REGIONAL TRANSPORTATION PLAN

(a) STUDY.—The Delta Regional Authority shall conduct a study of the transportation assets and needs in the States of Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, and Tennessee which comprise the Delta region.

(b) REGIONAL STRATEGIC TRANSPORTATION PLAN.—Upon completion of the study required under subsection (a), the Delta Regional Authority shall establish a regional strategic transportation plan to achieve efficient transportation systems in the Delta region.

In developing the regional strategic transportation plan, the Delta Regional Authority shall consult with local planning and development agencies, State, local, and regional governments, metropolitan planning organizations, State transportation entities, and Federal transportation agencies.

(c) ELEMENTS OF STUDY AND PLAN.—The study and plan under this section shall include the following transportation modes and systems: transit, rail, highway, interstate, bridge, air, airports, waterways, and ports.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Delta Regional Authority $1,000,000 to carry out the purposes of this section, to remain available until expended.

SEC. 5507. TREATMENT OF EMPLOYER-PROVIDED TRANSPORT AND VAN POOLING BENEFITS.

(a) IN GENERAL.—Subparagraph (A) of section 132(f)(2)(A) (relating to limitation on exclusion) is amended by striking "$100" and inserting "$120".

(b) INCLUSION ADJUSTMENT CONFORMING AMENDMENTS.—The last sentence of section 132(f)(2)(A) (relating to inflation adjustment) is amended—

(1) by striking "2002" and inserting "2005", and
(2) by striking "2001" and inserting "2004".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 5508. STUDY OF INCENTIVES FOR PRODUCTION OF BIODIESEL.

(a) STUDY.—The General Comptroller of the United States shall conduct a study related to biodiesel fuels and the tax credit for biodiesel fuels established under this Act.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall report the findings of the study required under subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

PART II.—REVENUE OFFSETS

SEC. 5601. EXPANSION OF LIMITATION ON DEPRECIATION OF CERTAIN PASSENGER AUTOMOBILES

(a) IN GENERAL.—Section 179(b) (relating to limitations) is amended by adding at the end the following new paragraph:

"(c) LIMITATION ON TAKEN INTO ACCOUNT FOR CERTAIN PASSENGER VEHICLES.—"(A) IN GENERAL.—The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed $25,000.

"(B) SPORT UTILITY VEHICLE.—For purposes of subparagraph (A), "sport utility vehicle" means any 4-wheeled vehicle which—

"(i) is manufactured primarily for use on public streets, roads, and highways.

"(ii) has a seating capacity of more than 12 individuals.

"(iii) is designed for more than 9 individuals in seating rearward of the driver's seat.

"(iv) has a gross vehicle weight rating of more than 14,000 pounds.

"(v) certain vehicles excluded.—Such term does not include any vehicle which—

"(I) does not have the primary load carrying device or container attached;

"(II) has a seating capacity of more than 12 individuals.

"(III) is designed for more than 9 individuals in seating rearward of the driver's seat.

"(IV) is equipped with an open cargo area, or a covered box not readily accessible from the passenger compartment, of at least 72.0 cubic feet.

"(V) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

"(VI) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after February 2, 2004.

PART II.—PROVISIONS DESIGNED TO CURTAIL TAX SHELTERS

SEC. 5611. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 701 is amended by.—

"(1) by amending subsection (b) (relating to limitations) by—

"(A) by adding after subparagraph (B) the following new subparagraph:

"(II) the taxpayer has a substantial nontax business purpose, and

"(B) by adding after subparagraph (F) the following new subparagraph:

"(II) the taxpayer's principal purpose in entering into the arrangement is to accomplish such purpose.

"(C) by striking "2001" and inserting "2004".

"(D) by inserting "(E)" as the first line of new paragraph (E) of subsection (b).

"(2) by striking "2001" and inserting "2004".

"(3) by striking "2001" and inserting "2004".

"(4) by adding after subparagraph (D) the following new subparagraph:

"(II) the taxpayer has a substantial nontax business purpose, and

"(E) by adding after subparagraph (B) the following new subparagraph:

"(III) the taxpayer's principal purpose in entering into the arrangement is to accomplish such purpose.

"(B) EFFECTIVE DATE.—The amendments made by this section shall apply to the taxable year beginning after December 31, 2004.

"(C) ECONOMIC SUBSTANCE DOCTRINE.—For purposes of paragraphs (1) and (2), an arrangement has economic substance only if—

"(I) the parties have a substantial nontax business purpose, and

"(II) the taxpayor's principal purpose in entering into the arrangement is to accomplish such purpose.

"(II) the taxpayer has a substantial nontax business purpose, and

"(III) the taxpayer's principal purpose in entering into the arrangement is to accomplish such purpose.

"(G) EFFECTIVE DATE.—The amendments made by this section shall apply to the taxable year beginning after December 31, 2004.
shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

(II) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

(III) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under paragraph (1).

(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly, which is the same as, or substantially similar to, a transaction entered into in connection with a trade or business or an activity engaged in for the production of income, shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital.

(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any party with respect to a transaction if (i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction lacks a business purpose.

(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity with respect to a transaction if such person or entity lacks a business purpose.

(C) EXCEPTION FOR PERSONAL TRANSACTIONS.—In the case of a transaction entered into in connection with a trade or business or an activity engaged in for the production of income, the form of such transaction shall not be respected if the transaction lacks a business purpose.

(D) TREATMENT OF LESSORS.—In applying paragraph (B)(ii) to the lessor of tangible property subject to a lease—

(i) any tax benefits with respect to the leased property shall not include the benefits of—

(I) depreciation,

(II) any tax credit, or

(III) any other deduction as provided in guidance by the Secretary, and

(ii) the deduction allowed by paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or modifying the application of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exceptions from the application of this subsection."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after February 2, 2004.

SEC. 5612. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 of this title is amended by inserting after section 6707 the following new section:

"SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

"(a) Imposition of Penalty.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under subsection (b) to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

"(b) Amount of Penalty.—

"(I) IN GENERAL.—In general, the penalty under paragraph (a) with respect to a listed transaction shall be $50,000.

"(II) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

"(III) INCREASE IN PENALTY FOR LARGE ENTITIES.—For purposes of this paragraph—

"(A) is required to pay a penalty under section 6662A with respect to any reportable transaction, and

"(B) is required to pay a penalty under such section, the penalty under subsection (a) shall apply to the aggregate amount of penalties imposed, and the Committee on Finance of the Senate shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

"(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

"(B) a description of each penalty rescinded under this subsection and the reasons therefor.

"(c) PENALTY REPORTED TO SEC.—In the case of a person—

"(1) which is required to file periodic reports under sections 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be so filed with another person for purposes of such reports, and

"(2) which—

"(A) is required to pay a penalty under this section with respect to a listed transaction, and

"(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

"(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction, and

the requirement to pay such penalty shall be satisfied if the person discloses in such reports filed by such person for such periods as the Secretary shall specify, in a manner to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

(C) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title."

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:
(a) In General.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

"SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

"(a) Imposition of Penalty.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

"(b) Capital Losses.—For purposes of subparagraph (A), any reduction in the amount of any capital losses which would (without regard to the date of the enactment of this Act) be included in a first letter of graph (1) applies be included in a letter of

"(c) Coordination with Other Penalties.—

"(1) Application of Fraud Penalty.—Reference to an underpayment in section 6661 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

"(2) Rules Applicable to Assertion and Determination of Other Understatement.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' means the sum of—

"(A) the product of—

"(i) the amount of the increase (if any) in taxable income results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

"(ii) the highest rate of tax imposed by section 1 (in the case of a taxpayer which is a corporation), and

"(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

"For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital loss which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

"(2) Items to Which Section Applies.—This section shall apply to any item which is attributable to—

"(A) a listed transaction, and

"(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

"(c) Higher Penalty for Nondisclosed Listed and Other Avoidance Transactions.—

"(1) In General.—Subsection (a) shall be applied by substituting '30 percent' for '20 percent' with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6662(d)(2)(A) is not met.

"(2) Rules Applicable to Assertion and Compromise of Penalty.—

"(A) In General.—Only upon the approval by the Chief Counsel for the Internal Revenue Service or the Chief Counsel's delegate at the national office of the Internal Revenue Service may a penalty to which paragraph (1) applies be included in a letter of proposed adjustment which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. Unless otherwise provided to the taxpayer, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

"(B) Special Rules.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

"(d) Definitions of Reportable and Listed Transactions.—For purposes of this section, the terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

"(e) Special Rules.—

"(1) Coordination with Penalties, etc., on Other Understatements.—In the case of an understatement (as defined in section 6662(d)(2))—

"(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatement and noneconomic substance transaction understatement for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

"(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatement and noneconomic substance transaction understatement.

"(2) Coordination with Other Penalties.—

"(A) Application of Fraud Penalty.—Reference to an underpayment in section 6661 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

"(B) No Double Penalty.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

"(3) Special Treatment of Amended Returns.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

"(4) Noneconomic Substance Transaction Understatement.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' shall be treated as including references to a tax treatment included with an item to which this section applies which results from a difference between the taxpayer's treatment of such item and the proper tax treatment of such item.

"(5) Cross Reference.—"For reporting of section 6662(a) penalty to the Securities and Exchange Commission, see section 6707A(e)."

"(b) Determination of Other Understatements.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

"(i) The amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatement and noneconomic substance transaction understatement for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

"(ii) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatement and noneconomic substance transaction understatement.

"(1) In General.—Subparagraph (C) of section 461(i)(3) is amended by adding at the end the following new subsection:

"(2) Determination of Other Understatement.—

"(1) In General.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement unless the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

"(C) The taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

"A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was reduced under section 6707A(b).

"(4) Rules Relating to Reasonable Belief.—For purposes of paragraph (2)(C)—

"(A) In General.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

"(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

"(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will be resulted on audit, or such treatment will be resolved through settlement if it is raised.

"(B) Certain Opinions May Not Be Relied Upon.—

"(i) In General.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

"(I) the tax advisor is described in clause (i), and

"(II) the opinion is described in clause (iii).

"(ii) Disqualified Tax Advisors.—A tax advisor is described in this clause if the tax advisor—

"(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

"(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

"(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

"(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

"(3) Disqualified Opinions.—For purposes of clause (i), an opinion is disqualified if the opinion—

"(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

"(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

"(III) does not identify and consider all relevant facts, or

"(IV) fails to meet any other requirement as the Secretary may prescribe.

"(2) Conforming Amendment.—The heading for subsection (c) of section 461 is amended by inserting "for Underpayments" after "Exception".

"(b) Conforming Amendment.—Subparagraph (C) of section 461(1)(3) is amended by striking "section 6662(d)(2)(C)(iii)" and inserting "section 1274(b)(3)(C)".

"(2) Paragraph (d) of section 1274(b) is amended—

"(A) by striking "(as defined in section 6662(d)(2)(C)(iii))" in subparagraph (B)(i), and
made by this section shall apply to taxable "(A) The heading for section 6662 is amended to read as follows: "SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS." (B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items: "Sec. 6662. Imposition of accuracy-related penalty on underpayments. "Sec. 6662A. Reduction in accuracy-related penalty on understatements with respect to reportable transactions." (e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act. SEC. 5614. PENALTIES FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC. (a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section: "SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC. "(a) IMPROPER PENALTY.—If a taxpayer has a noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement. "(b) REDUCTION FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting 20 percent for ‘40 percent’ with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return. "(c) NONCONFORMING SUBSTANCES TRANSACTION UNDERSTATEMENT.—For purposes of this section— "(1) IN GENERAL.—The term ‘noneconomic substance transaction understatement’ means an amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph. "(2) NONCONFORMING SUBSTANCE TRANSACTION.—The term ‘noneconomic substance transaction’ means any transaction if— "(A) there is a lack of economic substance (within the meaning of section 7701(n)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(n)(2), or "(B) the transaction fails to meet the requirements for a tax shelter under section 7701(a).
"(d) RULES APPLICABLE TO VIOLATION OF PENALTY.— "(1) IN GENERAL.—If the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals, in addition to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty. "(2) APPLICABILITY.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1). "(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this part. "(f) CROSS REFERENCES.— "(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e). "(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e)." (c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after February 2, 2004. SEC. 5615. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NON-RECOGNITION INDIVIDUALS. (a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows: "(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of— "(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or "(ii) $10,000,000." (b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR REPRESENTATIVE.—Section 6662(d)(2)(B) (relating to substantial authority) is amended to read as follows: "(B) THRESHOLD AMOUNT.—For purposes of this subsection, the term ‘threshold amount’ means— "(1) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and "(ii) $250,000 in any other case. "(2) REPORTABLE TRANSACTION.—The term ‘reportable transaction’ has the meaning given to such term by section 6707A(c)." (c) REGULATIONS.—The Secretary may prescribe regulations which provide— "(1) that only 1 person shall be required to make the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements, "(2) exemptions from the requirements of this section, and "(3) such rules as may be necessary or appropriate to carry out the purposes of this section.". (b) CONFORMING AMENDMENTS.— "(1) The item relating to section 6111 in the table of sections for subsection B of chapter 61 is amended to read as follows: "Sec. 6111. Disclosure of reportable transactions." (2) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows: "SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST LIST IDENTIFIABLE INFORMATION." (a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to
any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

"(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

"(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b), and redesignating subsections (c) through (d) as subsections (d) through (f). The section is accordingly redesignated as follows:

"(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting "write", as defined in subsection (c), before "request" in paragraph (1)(A), and

(ii) by striking "shall prescribe" in paragraph (2) and inserting "may prescribe".

(D) The item relating to section 6112 in the table of sections for chapter 61 is amended to read as follows:

"Sec. 6112. Material advisors to reportable transactions must keep lists of advisees."

(3)(A) The heading for section 6708 is amended to read as follows:

"Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions."

(B) The item relating to section 6708 in the table of sections for part I of chapter 68 is amended to read as follows:

"Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions."

(c) **REOUIRED DISCLOSURE NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.**—Subparagraph (A) of section 6708(a), as redesignated by subsection (b)(2)(B), is amended by adding at the end the following new flush sentence:

"For purposes of this section, the identity of any person on such list shall not be privileged."

(d) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this section shall apply to returns made after the due date of the return under section 6707, or 6708.

(2) **EFFECTIVE DATE.**—The amendments made by this section shall apply to returns made after the due date of the return under section 6707, or 6708.

SEC. 5618. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

(a) **IN GENERAL.**—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

"Sec. 6707. Failure to furnish information regarding reportable transactions.

"(a) **IN GENERAL.**—If any listed transaction shall be an amount equal to the greater of—

"(A) $200,000, or

"(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return including the transaction is filed under section 6707.

(Subparagraph (B) shall be applied by substituting "75 percent" for "50 percent" in the case of an intentional failure or act described in clause (ii).)

(c) **CERTAIN RULES TO APPLY.**—The provisions of section 6707A(d) shall apply to any penalty imposed under this section.

(d) **REPORTABLE AND LISTED TRANSACTIONS.**—The terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

(b) **CLERICAL AMENDMENT.**—The item relating to section 6707 in the table of sections for part I of chapter 68 is amended by striking "tax shelters" and inserting "reportable transactions".

SEC. 5619. MODIFICATION OF PENALTY FOR FAILING TO MAINTAIN LISTS OF INVECTORS. (a) **IN GENERAL.**—Subsection (a) of section 6708 is amended to read as follows:

"(a) **IMPOSITION.**—

"(1) **IN GENERAL.**—If any person who is required to maintain a list under section 6121(a) fails to make such list available upon written request to the Secretary in accordance with section 6121(b)(1)(A) within 20 business days after the date of the Secretary's request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

"(2) **REASONABLE CAUSE EXCEPTION.**—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause."

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to returns made after the date of the enactment of this Act.

SEC. 5620. MODIFICATION OF ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) **IN GENERAL.**—Section 7408 (relating to actions to enjoin specified conduct related to tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

"(A) **AUTHORIZED TO SEEK INJUNCTION.**—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the principal place of business, or has engaged in specified conduct, the court may exercise its jurisdiction over such action (as provided in section 7408(a)) separate and apart from any other action brought by the United States against such person.

"(B) **THE JUDGMENT AND DECREE.**—In any action under subsection (a), if the court finds—

"(i) that the person has engaged in any specified conduct, and

"(ii) that injunctive relief is appropriate to prevent recurrence of such conduct, the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

"(C) **SPECIFIED CONDUCT.**—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, subject to penalty under sections 6700, 6701, 6707, or 6708."

(b) **CONFORMING AMENDMENTS.**—

The heading for section 7408 is amended to read as follows:

"Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions."

(2) The table of sections for subsection A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

"Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions."

(c) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 5621. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) **STANDARDS CONFORMED TO TAXPAYER STANDARDS.**—Section 6662(a) (relating to understatements due to unrealistic positions) is amended—

"(1) by striking "realistic possibility of being sustained on its merits" in paragraph (1) and inserting "reasonable belief that the tax treatment in such position was more likely than not the proper treatment", and

"(2) by striking "or" in paragraph (3) and inserting "or there was no reasonable basis for the tax treatment in such position".

(b) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5622. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) **IN GENERAL.**—Section 5311(a)(5) of title 31, United States Code, is amended to read as follows:

"(5) **FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.**—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 6304."

(b) **AMOUNT OF PENALTY.**—

"(1) **IN GENERAL.**—Except as provided in subparagraph (C), the amount of any civil money penalty imposed under subparagraph (A) shall not exceed $5,000.

"(II) the amount (not exceeding $10,000) determined under subparagraph (A) with respect to any violation if—

"(i) such violation was due to reasonable cause, and

"(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

"(C) **WILLFUL VIOLATIONS.**—In the case of any person willfully violating, or willfully aiding and abetting any violation of, any provision of section 5314—

"(I) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

"(A) $25,000, or

"(B) the amount (not exceeding $100,000) determined under subparagraph (D), and

"(II) the amount determined under subparagraph (B)(i) shall not apply.

"(D) **AMOUNT.**—The amount determined under this subparagraph is—
The administration of Federal tax laws.

Secretary has identified as frivolous under sub-

that the Secretary determines meets the re-

revise) a list of positions which the Sec-

LOUS SUBMISSIONS.—

the administration of Federal tax laws.

Secretary has identified as frivolous under sub-

means a specified submission if any portion

requirement of section 6662(d)(2)(B)(ii)(II).

If the Secretary provides a person

SEC. 5623. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is

amended to read as follows:

SEC. 5622. FRIVOLOUS TAX SUBMISSIONS.

(b) CIVIL PENALTY FOR SPECIFIED FRIVO-

(1) IMPOSITION OF PENALTY.—Except as

provided in paragraph (3), any person who sub-

mits a specified frivolous submission shall

pay a penalty of $5,000.

(2) SPECIFIED FRIVOLOUS SUBMISSION.—For

purposes of this section—

(A) SPECIFIED FRIVOLOUS SUBMISSION.—

The term ‘specified frivolous submission’ means

a specified submission if any portion

of such submission—

(i) is based on a position which the Sec-

retary has identified as frivolous under sub-

section (c), or

(ii) reflects a desire to delay or impede

the administration of Federal tax laws.

(B) SPECIFIED SUBMISSION.—The term

‘specified submission’ means—

(i) a request for a hearing under

(ii) a request for a hearing before levy,

and

(ii) an application under—

(I) section 6159 (relating to agreements

for payment of tax liability in installments),

(II) section 7122 (relating to com-

promises), or

(III) section 7811 (relating to taxpayer

assistance orders).

(3) OPPORTUNITY TO WITHDRAW SUBMIS-

SION.—If the Secretary provides a person

with notice that a submission is a specified

frivolous submission and such person

withdraws such submission within 30 days after

such notice, the penalty imposed under para-

graph (1) shall not apply with respect to such

submission.

(c) PENALTIES FOR FRIVOLOUS POSITIONS.—The

Secretary shall prescribe (and periodically

revise) a list of positions which the Sec-

retary has identified as being frivolous for

purposes of subsection (b). The Secretary

shall not include in such list any position

that the Secretary determines meets the re-


(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR

OFFERS-IN-COMPROMISE AND INSTALL-

MENT AGREEMENTS.—Section 7122 is amend-

ed by adding at the end the following new sub-

section:

(e) FRIVOLOUS APPROPRIATIONS FOR

TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT

REPORTED.

(a) PENALTY ON PROMOTING ABUSIVE TAX

SHELTERS.—Section 6703(a) is amended by

adding the following new subsection:

(f) EFFECTIVE DATE.—The amend-

ments made by this section shall apply to ac-

tivities after the date of the enactment of

this Act.

SEC. 5625. PENALTY ON PROMOTING TAX SHELTERS.

(a) PENALTY ON PROMOTING ABUSIVE TAX

SHELTERS.—Section 6703(a) is amended by

adding the following new subsection:

(b) EFFECTIVE DATE.—The amend-

ments made by this section shall apply to ac-

tivities after the date of the enactment of

this Act.

SEC. 5626. STATUTE OF LIMITATIONS FOR TAX-

ABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT

REPORTED.

(a) In General.—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

(b) EFFECTIVE DATE.—The amend-

ments made by this section shall apply to tax-

able years for which required listed transac-

tions not reported on or before the date of the enactment of this Act.
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February 26, 2004

“(m) INTEREST ON UNPAID TAXES ATTRIBUTIBLE TO NONDISCLOSED REPORTABLE TRANSACTIONS AND NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduction shall be allowed under chapter 1 (relating to items specifically included in gross income, including interest) for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

(1) the portion of any reportable transaction, as defined in section 6662A(b), with respect to which the requirement of section 6662(d)(2)(A) is not met, or

(2) any nontaxable substance transaction under paragraph (3) of section 6622(b)(5).”.

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

SEC. 5628. AUTHORIZATION OF APPROPRIATIONS FOR TAX LAW ENFORCEMENT.

There is authorized to be appropriated $300,000,000 for each fiscal year beginning after September 30, 2003, for the purpose of carrying out tax law enforcement to combat tax shelters, including the use of offshore financial accounts to conceal taxable income.

PART III—OTHER CORPORATE GOVERNANCE PROVISIONS

SEC. 5631. ABOLITION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end of such section the following new subsection:

“(a) nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after April 27, 2003, except that such subsection shall not apply to amounts paid or incurred under any binding order or agreement entered into on or before April 27, 2003. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained on or before April 27, 2003.

SEC. 5634. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

SEC. 5636. DECLARATION OF CERTAIN PENALTIES.

SEC. 5637. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

(a) GENERAL RULE.—If—

(1) a taxpayer eligible to participate in—

(A) the Department of the Treasury’s Offshore Voluntary Compliance Initiative, or

(B) the Department of the Treasury’s voluntary disclosure initiative which applies to the taxpayer by reason of the taxpayer’s underreporting of United States income tax liability through financial arrangements which rely on the use of offshore arrangements which were the subject of the initiative described in subparagraph (A), and

“Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise (including liability insurance of any kind) to pay punitive damages.”.

(3) CONFORMING AMENDMENT.—The table of sections for part II of chapter 6 (relating to insurance or otherwise (including liability insurance of any kind) to pay punitive damages) is amended by adding at the end the following new item:

“Sec. 91. Punitive damages compensated by insurance or otherwise.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made or incurred on or after the date of the enactment of this Act.

SEC. 5635. INCREASE IN CERIAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.

SEC. 5639. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking “Any person who—” and inserting “(A) any person who—”;

(2) by adding at the end the following new subsection:

“1 year” and inserting “10 years”; and

(3) by striking “2 years” and inserting “5 years”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

SEC. 5638. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

SEC. 5640. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.
SEC. 5641. LIMITATION ON TRANSFER OR IMPOR TATION OF BUILT-IN LOSSES.  

(a) In General.—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:  

"(e) LIMITATIONS ON IMPORTATION OF BUILT-IN LOSSES.—"  

"(1) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—"  

"(A) In General.—If in any transaction described in subparagraph (a) or (b) the transferee (but for this subsection) is an importation of a built-in loss, the basis of each property described in subparagraph (b) which is acquired by the transferee shall be its fair market value immediately after such transaction.  

"(B) PROPERTY DESCRIBED.—For purposes of subparagraph (A), property is described in this subparagraph if—  

(i) gain or loss with respect to such property is subject to tax under this title in the hands of the transferor immediately before the transfer, and  

(ii) the transferee is not subject to tax under this title in the hands of the transferee immediately after such transfer.  

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner’s proportionate share of the property of such partnership.  

"(C) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of subparagraph (A), there is an importation of a built-in loss in a transaction if the transferee’s aggregate adjusted bases of property described in subparagraph (B) (which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction).  

"(2) LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 331 TRANSACTIONS.—"  

"(A) IN GENERAL.—If—  

(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and  

(ii) the transferee’s aggregate adjusted bases of property transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,  

then, notwithstanding subsection (a), the transferee’s aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.  

"(B) ALLOCATION OF BASIS REDUCTION.—The aggregate reduction in basis in reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately after the transaction.  

"(C) EXCEPTION FOR TRANSFERS WITHIN AFFILIATED GROUP.—Subparagraph (A) shall not apply to any transaction if the transferor owns stock in the transferee meeting the requirements of section 1564(a)(2).  

In the case of property to which subparagraph (A) does not apply by reason of the preceding sentence, the transferor’s basis in the stock received shall not exceed its fair market value immediately after the transfer.  

"(D) EXCEPTION FOR TRANSFER OF BUILT-IN LOSSES.—"  

"(1) In General.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution.  

"(A) In any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or  

"(B) in any case in which the liquidating corporation is a foreign corporation, the corporation distributee is a domestic corporation, and the corporate distributee’s aggregate adjusted bases of property described in section 332(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.  

"(2) In general.—Except that the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution.—  

"(A) In any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or  

"(B) in any case in which the liquidating corporation is a foreign corporation, the corporation distributee is a domestic corporation, and the corporate distributee’s aggregate adjusted bases of property described in section 332(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.  

"(c) EFFECTIVE DATE.—The provisions of this section shall apply to any transfer after February 13, 2003.
(B) QUALIFIED RESERVE FUND.—For purposes of subparagraph (A), the term ‘qualified reserve fund’ means any reasonably required reserve to—

(1) provide for full payment of expenses of the REMIC or amounts due on regular interest in the event of defaults on qualified mortgage loans; or

(2) provide for full payment of cash flow investments or

(ii) a source of funds for the purchase of obligations described in clause (i) or (iii) of paragraph (3). The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the aggregate interest in the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of paragraph (3).

(b) Paragraph (C) of section 1320(e)(4) is amended by striking “REMIC, or FASIT” and inserting “or REMIC”.

(c) Clause (xii) of section 7701(a)(19)(C) is amended—

(A) by striking “and any regular interest in a FASIT,” and

(B) by striking “or FASIT” each place it appears.

(b) Section 163(l) is amended by striking “or a related party” held by such person and inserting “or equity held by the issuer or a related party”.

(c) The aggregate fair market value of the assets of the domestic corporation is reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of paragraph (3).

(d) Effective date.—The amendments made by this section shall apply to debt instruments issued after February 13, 2003.

SEC. 5645. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT

(a) Limitation on Exception from PFIC Rules for United States Shareholders of Controlled Foreign Corporations.—Paragraph (2) of section 1297(e) (relating to passive foreign investment companies) is amended by adding at the end the following flush sentence:

“Such term shall not include any period if the earning of subpart F income by such corporation pursuant to section 951(a)(1)(A)(i) would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i).”

(b) Effective date.—The amendment made by this section shall apply to stock and property acquired after February 13, 2003.

SEC. 5646. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES

(a) Limitation on Exception from PFIC Rules for United States Shareholders of Controlled Foreign Corporations.—Paragraph (2) of section 1297(e) (relating to passive foreign investment company) is amended by adding at the end the following flush sentence:

“Such term shall not include any period if the earning of subpart F income by such corporation pursuant to section 951(a)(1)(A)(i) would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i).”

(b) Effective date.—The amendment made by this section shall apply to tax years of controlled foreign corporations beginning after February 13, 2003, and to taxable years of United States shareholders with respect to such controlled foreign corporations.

(b) ACQUIRED ENTITY.—For purposes of this section—

(A) IN GENERAL.—The term ‘acquired entity’ means an acquired domestic corporation, an acquired entity would be treated as an inverted domestic corporation if, pursuant to a plan or arrangement described in section 368(a)(1)(A), the acquiring corporation treated as an acquired domestic corporation if, pursuant to a plan or arrangement described in section 368(a)(1)(A), the acquiring corporation, or

(1) the acquiring corporation, or

(2) the acquired entity, is treated as an inverted domestic corporation if, pursuant to a plan or arrangement described in section 368(a)(1)(A), the acquiring corporation, or

(3) the acquiring corporation, or

(b) IN GENERAL.—If a foreign incorporated entity would be treated as an inverted domestic corporation if, pursuant to a plan or arrangement described in section 368(a)(1)(A), the acquiring corporation, or

(C) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the law of which the entity is created or organized when compared to the total business activities of such acquired affiliated group.

(c) FORMING CORPORATION.—As used in paragraph (b), the term ‘acquiring corporation’ means any corporation formed for the purpose of acquiring the stock of an acquired entity.

(d) EFFECTIVE DATE.—The amendment made by this section shall apply to corporations created after February 13, 2003.
the 10-year period beginning on January 1, 2003.
"(c) TAX ON INVERSION GAINS MAY NOT BE OBLIGATORY. — Paragraph (b) applies—
"(1) IN GENERAL.—The taxable income of an acquired entity (or any expanded affiliated group which includes such entity) for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.
"(2) CREDITS NOT ALLOWED AGAINST TAX ON INVERSION GAIN.—Credits shall be allowed against the tax imposed by this chapter on an acquired entity for any taxable year described in paragraph (1) only to the extent such tax exceeds the product of—
"(A) the amount of the inversion gain for the taxable year, and
"(B) the highest rate of tax specified in section 11(b)(1).
For purposes of determining the credit allowed by section 901, inversion gain shall be treated as from sources within the United States.
"(3) SPECIAL RULES FOR PARTNERSHIPS.—In the case of an acquired entity which is a partnership—
"(A) the limitations of this subsection shall apply at the partner rather than the partnership level,
"(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—
"(i) the partner’s distributive share of inversion gain of the partnership for such taxable year, plus
"(ii) income or gain required to be recognized for the taxable year by the partner under section 367(a), 741, or 1001, or under any other provision of chapter 1, by reason of the transfer during the applicable period of stock or other properties by an acquired entity to a domestic corporation or partnership in return for stock or other properties.
"(C) the highest rate of tax specified in the rate schedule applicable to the partner under chapter 1 shall be substituted for the rate of tax under paragraph (2)(B).
"(4) INVERSION GAIN.—For purposes of this section, the term ‘inversion gain’ means any income or gain required to be recognized under section 367(a), 311(b), 367, 301, or 1248, or under any other provision of chapter 1, by reason of the transfer during the applicable period of stock or other properties by an acquired entity to a domestic corporation or partnership in return for stock or other properties.
"(5) TRANSFERS OF A PARTNERSHIP.—In the case of a transfer of a partnership interest of the partner in an acquired entity for any taxable year described in subsection (a)(2)(B) or any expanded affiliated group which includes such entity, and
"(C) the highest rate of tax specified in the rate schedule applicable to the partner under chapter 1 shall be substituted for the rate of tax under paragraph (2)(B).
"(6) INVERSION GAIN.—For purposes of this section, the term ‘inversion gain’ means any income or gain required to be recognized under section 367(a), 311(b), 367, 301, or 1248, or under any other provision of chapter 1, by reason of the transfer during the applicable period of stock or other properties by an acquired entity to a domestic corporation or partnership in return for stock or other properties.
"(A) as part of the acquisition described in subsection (a)(2)(B) to which subsection (b) applies, or
"(B) after such acquisition to a foreign related person.
The Secretary may provide that income or gain from the sale of inventories or other transactions in the ordinary course of a trade or business shall not be treated as inversion gain under subparagraph (B) to the extent the Secretary determines such treatment would not be inconsistent with the purposes of this section.
"(7) Coordination with sections 1231 and 1301.—Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of this section.
"(8) LIMITATIONS.—
"(A) IN GENERAL.—The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any taxable year shall not begin before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(A) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of other law or rule of law which would otherwise prevent such assessment.
"(B) PRE-INVERSION YEAR.—For purposes of subparagraph (A), the term ‘pre-inversion year’ means any taxable year if—
"(i) any portion of the applicable period is included in such taxable year, and
"(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(B) is made.
"(d) SPECIAL RULES APPLICABLE TO ACQUIRED ENTITIES TO WHICH SUBSECTION (B) APPLIES.——
"(1) INCREASES IN ACCURACY-RELATED PENALTIES.—In the case of any underpayment of tax of an acquired entity to which subsection (b) applies—
"(A) section 6662(a) shall be applied with respect to such underpayment by substituting ‘30 percent’ for ‘20 percent’, and
"(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(b) shall be to 50 percent rather than 30 percent.
"(2) MODIFICATIONS OF LIMITATION ON INTEREST DEDUCTION.—In the case of an acquired entity to which subsection (b) applies, sections 6621(a) and 6621(a)(2)(A) to which such gain relates and such subsection (b) applies—
"(A) without regard to paragraph 2(2)(A)(ii) thereof, and
"(B) before substituting ‘25 percent’ for ‘50 percent’ each place it appears in paragraph 2(b)(2).
"(e) OTHER DEFINITIONS AND SPECIAL RULES FOR PARTNERSHIPS.—For purposes of this section—
"(1) RULES FOR APPLICATION OF SUBSECTION (a)(2).—In applying subsection (a)(2) for purposes of subsections (a) and (b), the following rules shall apply:
"(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (a)(2)(B) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, and
"(B) PLAN DEEMED IN CERTAIN CASES .—If a domestic corporation acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the owner of the transferred stock holds such stock, such acquisition shall be treated as pursuant to a plan.
"(f) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including the avoidance of such purposes through—
"(1) the use of related persons, pass-thru or other noncorporate entities, or other intermediaries, or
"(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.
"(b) INFORMATION REPORTING.—The Secretary shall provide such regulations as are necessary to carry out this section, including the avoidance of such purposes through—
"(1) the use of related persons, pass-thru or other noncorporate entities, or other intermediaries, or
"(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.
"(c) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is amended by adding at the end the following new item:

Sec. 7874. Rules relating to inverted corporate entities.
(d) TRANSITION RULES FOR CERTAIN REGULATED INVESTMENT COMPANIES AND UNIT INVESTMENT TRUSTS.—Notwithstanding section
SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATES.
(a) General Rules.—For purposes of this subtitle—
(1) Mark to Market.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expiration date of the chapter for the taxable year of the covered expatriate.
(b) Recognition of Gain or Loss.—In the case of any sale under paragraph (1)—
(A) notwithstanding any provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the covered expatriate;
(B) any loss arising from such sale shall be taken into account for the taxable year of the covered expatriate only if the loss is required to be recognized by reason of the subsequent death of the covered expatriate.
(c) Determination of Tax with Respect to Property.—For purposes of paragraph (1), the additional tax attributable to any property treated as sold by reason of subsection (a) is the amount of the additional tax attributable to such property that shall be postponed until the due date of the return for the taxable year in which such property is disposed of, or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe.
(d) Election to Continue to Be Taxed as a Covered Expatriate.—(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of, or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe.
(2) Determination of Tax with Respect to Property.—For purposes of paragraph (1), the additional tax attributable to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to the property shall be postponed until the due date of the return for the taxable year in which the property is disposed of, and the proceeds of the additional tax attributable to such property shall be applied to reduce the taxable income of the covered expatriate for such taxable year.
(e) Election to Continue to Be Taxed as a Covered Expatriate.—(1) IN GENERAL.—Except as provided in paragraph (2), the term ‘covered expatriate’ means an expatriate.
(2) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—
(A) the individual—
(i) became at birth a citizen of the United States and a citizen of another country and, as of the expiration date, continues to be a citizen of both countries or is taxed as a resident of, such other country, and
(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or
(B)(i) the individual’s relinquishment of United States citizenship occurs before such individual attains age 18, and
(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.
(f) Exempt Property; Special Rules for Pension Plans.—
(1) Exempt Property.—This section shall not apply to the following—
(A) United States real property interests.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property corporation and real property acquired from a covered expatriate before the expiration date, shall be disregarded for purposes of this section if the covered expatriate is treated as an inverted domestic corporation under section 7874(a) of the Internal Revenue Code of 1986 (as added by subsection (c)(3)) and the requirements of section 897(c)(2).
(B) Specified Property.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.
(2) Special Rules for Certain Retirement Plans.—
(A) IN GENERAL.—If a covered expatriate holds on the day before the expiration date any interest in a retirement plan to which this paragraph applies—
(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but
(ii) an amount equal to the present value of the expatriate’s nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.
(B) Treatment of Subsequent Distributions.—In the case of any distribution on or after the expiration date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the distribution shall be treated as if it were a distribution on account of death.
(C) Treatment of Subsequent Distributions by Plan.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan’s behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.
(D) Applicable Plans.—This paragraph shall apply to—
(i) any qualified retirement plan (as defined in section 7903(b)(1)) of an eligible employer employee (as defined in section 457(c)(1)(A)), and
(ii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.
(e) Definitions.—For purposes of this section—
(1) Covered Expatriate.—For purposes of this section—
(2) Covered Expatriate.—For purposes of this section—
(3) Exempt Property; Special Rules for Pension Plans.—
(1) Exempt Property.—This section shall not apply to the following—
(A) United States real property interests.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property corporation and real property acquired from a covered expatriate before the expiration date, shall be disregarded for purposes of this section if the covered expatriate is treated as an inverted domestic corporation under section 7874(a) of the Internal Revenue Code of 1986 (as added by subsection (c)(3)) and the requirements of section 897(c)(2).
(B) Specified Property.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.
(2) Special Rules for Certain Retirement Plans.—
(A) IN GENERAL.—If a covered expatriate holds on the day before the expiration date any interest in a retirement plan to which this paragraph applies—
(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but
(ii) an amount equal to the present value of the expatriate’s nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.
(B) Treatment of Subsequent Distributions.—In the case of any distribution on or after the expiration date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the distribution shall be treated as if it were a distribution on account of death.
(C) Treatment of Subsequent Distributions by Plan.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan’s behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.
(D) Applicable Plans.—This paragraph shall apply to—
(i) any qualified retirement plan (as defined in section 7903(b)(1)) of an eligible employer employee (as defined in section 457(c)(1)(A)), and
(ii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.
(e) Definitions.—For purposes of this section—
(1) Covered Expatriate.—For purposes of this section—
(2) Covered Expatriate.—For purposes of this section—
(1) EXPATRIATE.—The term ‘expatriate’ means—
(A) any United States citizen who relinquishes citizenship, and
(B) any long-term resident of the United States who—
(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or
(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty right with respect to such distribution.

(2) RELINQUISHER.—The term ‘relinquisher’ means—
(A) the date an individual relinquishes United States citizenship, or
(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

(3) RELINQUISHER OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—
(A) the date the individual renounces such individual’s United States nationality before a diplomatic or consular officer of the United States Department of State pursuant to paragraph (5) of section 394(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),
(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States citizenship confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 394(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1–4)),
(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or
(D) the date a court of the United States cancels a naturalized citizen’s certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

(4) LONG-TERM RESIDENT.—The term ‘long-term resident’ has the meaning given to such term by section 877(e)(2).

(f) SPECIAL RULES APPLICABLE TO BENEFICIARY IN TRUST.—

(I) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—
(A) the individual shall not be treated as having sold such interest,
(B) such interest shall be treated as a separate share in the trust, and
(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

(iii) the individual shall be treated as having received distributions from the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution from such separate trust.

(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

(i) paragraph (1) and subsection (a) shall not apply, and

(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax equal to the lesser of—

(A) the highest rate of tax imposed by section 1(b) for the taxable year which includes (or, in the case of any distribution described in subparagraph (B), the day before the expiration date), multiplied by the amount of the distribution, or

(B) the balance in the deferred tax account with respect to such interest a tax equal to the lesser of—

(i) the highest rate of tax imposed by section 1(b) for the taxable year which includes (or, in the case of any distribution described in subparagraph (B), the day before the expiration date), multiplied by the amount of the distribution, or

(ii) the balance in the deferred tax account with respect to such interest.

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

(I) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

(A) the methodology used to determine such beneficiary’s trust interest shall be treated as if the day before the expatriation date and the unpaid portion of the tax imposed by this title were the date of such cessation, disposition, or death, whichever is applicable, or

(B) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

(i) QUALIFIED TRUST.—The term ‘qualified trust’ means a trust which is described in section 7701(a)(39)(E).

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

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

(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments as the Secretary considers necessary to prevent the escape of tax, avoid tax, or to prevent an abuse of trust.

(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is a part of a retirement plan to which subsection (d)(2) applies.

(vi) DETERMINATION OF BENEFICIARIES’ INTERESTS IN TRUST.—

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

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

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

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

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

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

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

(i) any period during which recognition of income or gain is deferred shall be treated as if it occurred on the day before the expiration date, and

(ii) any extension of time for payment of tax shall cease to apply on the day before the expiration date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

(h) IMPOSITION OF TENTATIVE TAX.—
“(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

“(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

“(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

“(4) DEFERRED TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

“(1) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

“(1) IMPOSITION OF LIEN.—

“(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, additional tax, assessable penalties (including contributions attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

“(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate’s income tax which, for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

“(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

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

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

“(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6224A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6224A.

“(4) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

“(b) INCLUSION IN INCOME OF GIFTS AND REQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (as in section 264A(d) thereof, or as in section 6224A(d) thereof, or as in section 6224(d) thereof, or other similar provisions) shall apply to gifts and bequests received on or after February 2, 2004, by any individual who relinquishes United States citizenship (within the meaning of section 871(e)(3)) after section 871(e)(3).

“(c) CONFORMING AMENDMENTS.—Section 212(a)(10)(E) of the Internal Revenue Code of 1986 is amended by inserting at the end the following new paragraph:

“(A) the gift, bequest, devise, or inheritance acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is defined in section 877A shall have the same meaning as when used in section 877A.

“(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO TAX.—Subsection (c)(1) shall not apply to any property if either—

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

“(B) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

“(3) EFFECTIVE DATES.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 871(e)(3)) of the Internal Revenue Code of 1986, and who is not in compliance with section 871A of such Code (relating to expatriation).

“(4) TREATMENT OF INSPECTIONS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Upon written request of the Attorney General or the Attorney General’s delegate, the Secretary shall disclose whether an individual is in compliance with section 877A and is not in compliance with section 871A of such Code (relating to expatriation).

“(5) COMPLIANCE.—Any person required to file a return under section 6038E shall disclose whether an individual is in compliance with section 877A or 871A of such Code (relating to expatriation).

“(f) APPLICATION.—This section shall not apply to any individual who is a covered expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after February 2, 2004.

“(g) APPLICABILITY.—The provisions of section 877A(e) shall not apply to any individual who is a covered expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after February 2, 2004.

“(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

“(A) the gift, bequest, devise, or inheritance acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is defined in section 877A shall have the same meaning as when used in section 877A.

“(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO TAX.—Subsection (c)(1) shall not apply to any property if either—

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

“(B) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

“(3) EFFECTIVE DATES.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 871(e)(3)) of the Internal Revenue Code of 1986, and who is not in compliance with section 871A of such Code (relating to expatriation).

“(4) TREATMENT OF INSPECTIONS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Upon written request of the Attorney General or the Attorney General’s delegate, the Secretary shall disclose whether an individual is in compliance with section 877A and is not in compliance with section 871A of such Code (relating to expatriation).

“(5) COMPLIANCE.—Any person required to file a return under section 6038E shall disclose whether an individual is in compliance with section 877A or 871A of such Code (relating to expatriation).

“(f) APPLICATION.—This section shall not apply to any individual who is a covered expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after February 2, 2004.

“(g) APPLICABILITY.—The provisions of section 877A(e) shall not apply to any individual who is a covered expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after February 2, 2004.

“(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

“(A) the gift, bequest, devise, or inheritance acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is defined in section 877A shall have the same meaning as when used in section 877A.

“(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO TAX.—Subsection (c)(1) shall not apply to any property if either—

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

“(B) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

“(3) EFFECTIVE DATES.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 871(e)(3)) of the Internal Revenue Code of 1986, and who is not in compliance with section 871A of such Code (relating to expatriation).

“(4) TREATMENT OF INSPECTIONS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Upon written request of the Attorney General or the Attorney General’s delegate, the Secretary shall disclose whether an individual is in compliance with section 877A and is not in compliance with section 871A of such Code (relating to expatriation).

“(5) COMPLIANCE.—Any person required to file a return under section 6038E shall disclose whether an individual is in compliance with section 877A or 871A of such Code (relating to expatriation).

“(f) APPLICATION.—This section shall not apply to any individual who is a covered expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after February 2, 2004.

“(g) APPLICABILITY.—The provisions of section 877A(e) shall not apply to any individual who is a covered expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after February 2, 2004.

“(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

“(A) the gift, bequest, devise, or inheritance acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is defined in section 877A shall have the same meaning as when used in section 877A.

“(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO TAX.—Subsection (c)(1) shall not apply to any property if either—

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

“(B) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

“(3) EFFECTIVE DATES.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 871(e)(3)) of the Internal Revenue Code of 1986, and who is not in compliance with section 871A of such Code (relating to expatriation).

“(4) TREATMENT OF INSPECTIONS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Upon written request of the Attorney General or the Attorney General’s delegate, the Secretary shall disclose whether an individual is in compliance with section 877A and is not in compliance with section 871A of such Code (relating to expatriation).

“(5) COMPLIANCE.—Any person required to file a return under section 6038E shall disclose whether an individual is in compliance with section 877A or 871A of such Code (relating to expatriation).

“(f) APPLICATION.—This section shall not apply to any individual who is a covered expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after February 2, 2004.

“(g) APPLICABILITY.—The provisions of section 877A(e) shall not apply to any individual who is a covered expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after February 2, 2004.
(2) DATE FOR DETERMINING VALUE.—The determination of value shall be made—

(A) in the case of specified stock compensation held on the inversion date, on such date.

(B) in the case of such compensation which is canceled during the 6 months before the inversion date, on the day before such cancellation.

(C) in the case of such compensation which is granted after the inversion date, on the date such compensation is granted.

(3) APPLICABILITY.—This subsection shall apply to any disqualified individual with respect to stock in any corporation, if such corporation treated as an inverted corporation.

(4) TAKING OF ACTIONS.—The Secretary shall take such actions as may be necessary or appropriate to carry out the purposes of this section.

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

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

(1) IN GENERAL.—The term ‘specified stock compensation’ means any compensation (as defined in section 162(a)) determined by substituting ‘July 10, 2002’ for ‘March 20, 2002’ with respect to such corporation.

(2) EXCEPTION WHERE GAIN RECOGNIZED ON COMPENSATION.—Subsection (a) shall not apply to—

(A) any stock option which is exercised on the inversion date or during the 6-month period before the cancellation occurring subsequent to such exercise, if income is recognized under section 83 on or before the inversion date with respect to the stock acquired pursuant to such exercise, and

(B) any specified stock compensation which is exercised, sold, exchanged, distributed, cashed out, or otherwise paid during such period in a transaction in which gain or loss is recognized in full.

(3) DISQUALIFIED INDIVIDUAL.—The term ‘disqualified individual’ means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the inversion date—

(A) is subject to the requirements of section 162(a) of the Securities Exchange Act of 1934 with respect to such corporation, or

(B) would be subject to such requirements if such corporation were an issuer of equity securities referred to in such section.

(4) INVERTED CORPORATION; INVERSION DATE.—

(A) INVERTED CORPORATION.—The term ‘inverted corporation’ means any corporation to which subsection (a) or (b) of section 7874 applies determined—

(i) by substituting ‘July 10, 2002’ for ‘March 20, 2002’ in section 7874(a)(2), and

(ii) without regard to subsection (b)(1)(A).

Such term includes any predecessor or successor of such corporation.

(B) INVERSION DATE.—The term ‘inversion date’ means, with respect to a corporation, the date on which the corporation first becomes an inverted corporation.

(5) NON-APPLICABILITY.—

(A) IN GENERAL.—The term ‘specified stock compensation’ means any compensation paid by or with respect to an inverted corporation (or by any member of the expanded affiliated group which includes such corporation) to any person in connection with the performance of services by a disqualified individual for such corporation or member if the value of such payment or right to payment is based on or determined by reference to the value (or change in value) of stock in such corporation (or any such member).

(B) EXCEPTIONS.—Such term shall not include—

(i) any option to which part II of subchapter D of chapter 1 applies, or

(ii) any payment or right to payment from a plan referred to in section 220G(b)(6).

(6) TREATMENT OF SPECIFIED STOCK COMPENSATION.—

(A) IN GENERAL.—Section 845(a)(6) relating to the treatment of stripped bonds (as subsection (a) and (e)(1) of section 5000A of the Internal Revenue Code of 1986, as added by this section.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any risk reinsured after April 11, 2002.

Subtitle II—Additional Revenue Provisions

PART I—ADMINISTRATIVE PROVISIONS

SEC. 5671. EXTENSION OF IRS USER FEES.

(a) In General.—Section 330(e) (relating to termination) is amended by striking “December 31, 2004” and inserting “September 30, 2013”.

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

SEC. 5672. CLARIFICATION OF RULES FOR PAYMENT OF ESTIMATED TAX FOR CERTAIN DEEMED ASSET SALES.

(a) In General.—(1) Paragraph (13) of section 330(b) (relating to deemed sale not taken into account for estimated tax purposes) is amended by adding at the end the following: “The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transactions occurring after the date of the enactment of this Act.

PART II—FINANCIAL INSTRUMENTS

SEC. 5673. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.

(a) In General.—Section 1226 (relating to tax treatment of stripped bonds) is amended by adding at the end the following new subsection:

“(f) as subsections (e), (f), and (g), respectively, and inserting after subsection (e) the following new subsection:

“(g) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Sec-

Reference.—(e) Sec. 1115(e) (relating to Secretary required to enter into installment agreements in certain cases) is amended to read: ‘such subsection (c) the following new subsection:

“(4) PROPERTY TRANSFERS.—Any transfer of property shall be treated as a payment and any right to a transfer of property shall be treated as a right to a payment.

(6) OTHER ADMINISTRATIVE PROVISIONS.—For purposes of subsection F, any tax imposed by this section shall be treated as a tax imposed by title IV, subtitle A, of the Internal Revenue Code of 1986.”.

(b) EFFECTIVE DATE.—The amendments made by this section entered into force on or after the date of the enactment of this Act.
For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1268(d)."

(c) Effective Date.—The amendments made by this section shall apply to purchases and dispositions after the date of the enactment of this Act.

SEC. 5676. APPLICATION OF EARNINGS STRIPPING PROVISIONS TO PARTNERSHIPS AND S CORPORATIONS.

(a) In General.—Section 168(f) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (b) as paragraph (c) and by inserting after paragraph (b) the following new paragraph:

"(8) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—

"(A) In General.—This subsection shall apply to partnerships and S corporations in the same manner as it applies to C corporations.

"(B) ALLOCATIONS TO CERTAIN CORPORATE PARTNERS.—If a C corporation is a partner in a partnership—

"(i) the corporation’s allocable share of indebtedness and interest income of the partnership shall be taken into account in applying the rules of this section to the corporation, and

"(ii) if a deduction is not disallowed under this subsection with respect to any interest expense of the partnership, this subsection shall be applied separately in determining whether a deduction is allowable to the corporation with respect to the corporation’s allocable share of such interest expense.

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

SEC. 5677. RECOGNITION OF CANCELLATION OF INDEBTEDNESS INCOME REALIZED ON SATISFACTION OF DEBT WITH STOCK.

(a) In General.—Paragraph (8) of section 108(e) (relating to general rules for discharge of indebtedness (including discharges not in title 11 cases or insolvencies)) is amended to read as follows:

"(8) INDEBTEDNESS SATISFIED BY CORPORATE STOCK OR PARTNERSHIP INTEREST.—For purposes of determining income of a debtor from discharge of indebtedness, if—

"(A) a debtor corporation transfers stock, or

"(B) a debtor partnership transfers a capital or profits interest in such partnership, to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied such indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.

(b) Effective Date.—The amendment made by this section shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act.

SEC. 5678. MODIFICATION OF STRADDLE RULES.

(a) Rules Relating to Identified Straddles.

(1) In General.—Subparagraph (A) of section 1092(a)(2) (relating to special rule for identified straddles) is amended to read as follows:

"(A) In General.—In the case of any straddle which is an identified straddle—

"(i) paragraph (1) shall not apply with respect to identified positions comprising the identified straddle;

"(ii) if there is any loss with respect to any identified position of the identified straddle, the basis of each of the identified offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to any identified position bears to the aggregate unrecognized gain with respect to all such offsetting positions, and

"(iii) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.

(2) IDENTIFIED STRADDLE.—Section 1092(a)(2)(B) (defining identified straddle) is amended—

"(A) by striking clause (ii) and inserting the following—

"(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and

"(B) by adding at the end the following new flush sentence:

"The Secretary shall prescribe regulations which specify the proper methods for clearly identifying a straddle as an identified straddle (and the positions comprising such straddle), which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle.

(b) Unrecognized Gain.—Section 1092(a)(3) (defining unrecognized gain) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) SPECIAL RULE FOR IDENTIFIED STRADDLES.—For purposes of paragraph (2)(A)(ii), to any unrecognized gain to which any identified offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.

(c) Conforming Amendment.—Section 1092(c)(2) is amended by striking subparagraph (A) and by redesignating subparagraph (B) as subparagraph (A).

(d) Physically Settled Positions.—Section 1092(d) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

"(B) SPECIAL RULE FOR PHYSICALLY SETTLED POSITIONS.—For purposes of subsection (a), if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

"(A) terminated the position for its fair market value immediately before the settlement, and

"(B) sold the property so delivered by the taxpayer at the taxpayer’s fair market value immediately before such settlement.

(e) Repeal of Stock Exception.—

"(1) In General.—Section 1092(d)(3) is repealed.

"(2) Conforming Amendment.—Section 1258(d)(1) is amended by striking "; except that the term ‘personal property’ shall include stock".

"(d) REPEAL OF QUALIFIED COVERED CALL EXCEPTION.—Section 1092(c)(4) is amended by adding at the end the following new subparagraph:

"(1) TERMINATION.—This paragraph shall not apply to any position established on or after the date of the enactment of this subchapter.

"(e) Effective Date.—The amendments made by this section shall apply to positions established on or after the date of the enactment of this Act.

SEC. 5679. DENIAL OF INSTALLMENT SALE TREATMENT FOR ALL READILY MARKETABLE DEBT.

(a) In General.—Section 453(f)(4)(B) (relating to purchaser evidences of indebtedness payable on demand or readily tradeable) is amended by striking "or a corporation or a government or political subdivision thereof".

(b) Effective Date.—The amendment made by this section shall apply to sales occurring on or after the date of the enactment of this Act.

PART III—CORPORATIONS AND PARTNERSHIPS

SEC. 5680. MODIFICATION OF TREATMENT OF TRANSFERS TO CREDITORS IN DIVISIVE REORGANIZATIONS.

(a) In General.—Section 356(b)(3) (relating to treatment of transfers to creditors) is amended by adding at the end the following new sentence: "In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355 after ‘section 368(a)(1)(D)’.

(b) Liabilities in Excess of Basis.—Section 357(c)(1)(B) is amended by inserting "with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355 after ‘section 368(a)(1)(D)’.".

(c) Effective Date.—The amendments made by this section shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act.

SEC. 5681. CLARIFICATION OF DEFINITION OF NONQUALIFIED PREFERRED STOCK.

(a) In General.—Section 351(g)(3)(A) is amended by adding at the end the following: "Stock shall not be treated as participating stock if it is issued by a corporation which possesses—

"(I) TERMINATION.—This paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred.

"(II) Stock shall not be treated as participating stock if—

"(B) SPECIAL RULE FOR IDENTIFIED STRADDLES.—For purposes of paragraph (2)(A)(ii), to any unrecognized gain to which any identified offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.

(b) Physically Settled Positions.—Section 1092(d) (relating to definitions and special rules) is amended by inserting "in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.".

(c) Effective Date.—The amendment made by this section shall apply to transactions after May 14, 2003.

SEC. 5682. MODIFICATION OF DEFINITION OF CONTROLLED GROUP OF CORPORATIONS.

(a) In General.—Section 1563(a)(2) (relating to brother-sister controlled group) is amended by striking "possessing"—and all that follow through "(B)" and inserting "possessing:"

(b) Application of Existing Rules to Other Code Provisions.—Section 1563(f) (relating to other definitions and rules) is amended by adding at the end the following new paragraph:

"(5) BROTHER-SISTER CONTROLLED GROUP DEFINED.—In section 162(c)(5), paragraph (5) shall be applied to any combination of corporations other than this part.

"(A) In General.—Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

"(B) Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2)) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the
(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent of the stock held in each corporation in question, and with respect to each such corporation.

(c) APPlicable Provision.—For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).

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

SEC. 5685. MANDATORY BASIS ADJUSTMENTS IN CONNEcTION WITH PARTNERSHIP DISTRIBUTIONS AND TRANSFERS OF PARTNER INTERESTS

(a) IN GENERAL.—Section 754 is repealed.

(b) ADJUSTMENT TO BASIS OF UNDIISTRIBUTED Earnings AND PROFITs.—Section 709 is amended—

(1) by inserting ``with respect to which the election provided in section 751 is in effect, in the matter preceding paragraph (1) of subsection (b),''

(2) by inserting the following new subparagraph:

``(1) ALLOWANCE OF DEDUCTION.—If a tax-payer elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

``(A) the taxpayer shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

``(i) the amount of organizational expenses with respect to the partnership,

``(ii) $5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed $50,000, and

``(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.''

(c) TREATMENT OF ORGANIZATIONAL AND SYNDICATION FEES OR PARTNERSHIPS.—In general.—Section 734 is amended by striking (A) relating to amortization of organizational fees is amended by redesignating paragraph (2) as paragraph (3) and by amending paragraph (1) to read as follows:

``(1) ALLOWANCE OF DEDUCTION.—If a tax-payer elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

``(A) the taxpayer shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

``(i) the amount of organizational expenses with respect to the partnership,

``(ii) $5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed $50,000, and

``(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.''

``(2) DISPOSITIONS BEFORE CLOSE OF AMORTIZATION PERIOD.—In any case in which a partnership is liquidated before the end of the period to which paragraph (1) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 166.''

(2) CONFORMING AMENDMENT.—Subsection (b) of section 709 is amended by striking ``AMORTIZATION'' and inserting ``DEDUCTION'' in the heading.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts placed in service after the date of the enactment of this Act.

PART I—Tax-Exempt Financing of Highway Projects and Rail-Trail Transfer Facilities

SEC. 5691. TAX-EXEMPT FINANCING OF HIGHWAY PROJECTS AND RAIL-TRUCK TRANSFER FACILITIES.

(a) TREATMENT AS EXEMPT FACILITY Bond.—Subsection (a) of section 142 relating to exempt facility bond is amended by striking ``or'' at the end of paragraph (12), by striking the period at the end of paragraph (12), by inserting after paragraph (12) the following new paragraph:

``(14) qualified highway facilities, or

``(15) qualified surface freight transfer facilities.''

(b) QUALIFIED HIGHWAY FACILITIES AND QUALIFIED SURFACE FREIGHT TRANSFER FACILITIES.—Section 142 is amended by adding at the end the following:

``(1) QUALIFIED HIGHWAY AND SURFACE FREIGHT TRANSFER FACILITIES.—

``(1) QUALIFIED highway facilities.''

(2) PURPOSES OF SUBSECTION.—For purposes of subsection (a)(14), the term 'qualified highway facilities' means—

``(A) any surface transportation project which receives Federal assistance under title 23, United States Code (as in effect on the date of the enactment of this Act), or

``(B) any project for an international bridge or tunnel for which an international
entity authorized under Federal or State law is responsible and which receives Federal assistance under such title 23.

(2) QUALIFIED SURFACE FREIGHT TRANSFER FACILITIES.—In subsections (a)(14) and (a)(15) of the term “qualified surface freight transfer facilities” means facilities for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under either title 23 or title 49, United States Code (as in effect on the date of the enactment of this subsection).

(3) AGGREGATE FACE AMOUNT OF TAX-EXEMPT FINANCING FOR FACILITIES.—(A) An issue shall not be treated as an issue described in subsections (a)(14) or (a)(15) if the aggregate face amount of bonds issued by any State pursuant thereto (when added to the aggregate face amount of bonds previously so issued) exceeds $15,000,000,000.

(B) ALLOCATION BY SECRETARY OF TRANSPORTATION.—The Secretary of Transportation shall allocate the amount described in subparagraph (A) among eligible projects described in subsections (a)(14) and (a)(15) in such manner as the Secretary determines appropriate.

(c) EXEMPTION FROM GENERAL STATE VOLUNTARY EMISSIONS CONTROL REQUIREMENTS.—(1) QUALIFIED SURFACE FREIGHT TRANSFER FACILITIES.—(A) Paragraph (1)(B) of section 146(g) of the Internal Revenue Code of 1986 (relating to exception to the definition of section 197 intangible is amended by striking “(B)” and all that follows through the end of the paragraph and inserting “the Secretary determines appropriate.”.

(B) CONFORMING AMENDMENTS.—(A) Section 1056 (relating to basis limitation for player contracts transferred in connection with the sale of a franchise) is repealed.

(B) The table of sections for part IV of chapter 1 of title 26 is amended by striking the item relating to section 1056.

(2) QUALIFIED SURFACE FREIGHT TRANSFER FACILITIES.—(A) Paragraph (6) of section 197(e) of the Internal Revenue Code of 1986 is amended by striking “(B)” and all that follows through the end of the paragraph and inserting “(A)”.

(B) Paragraph (7) of section 197(e) of the Internal Revenue Code of 1986 is amended by striking paragraphs (6) and (7), respectively.

(d) EFFECTIVE DATE.—The amendments made by this section apply to sales and uses on or after the date of the enactment of this Act.

SEC. 5692. ADDITION OF VACCINES AGAINST HEPATITIS A TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4123(a)(1) (defining taxable vaccine) is amended by redesignating subparagraphs (J), (K), (L), and (M) as subparagraphs (K), (L), and (M), respectively, and by inserting after subparagraph (H) the following new subparagraph:

“(I) Any vaccine against hepatitis A.”.

(b) CONFORMING AMENDMENT.—Section 9510(c)(1)(A) is amended by striking “October 18, 2000” and inserting “the date of the enactment of the Affordable, Accountable, Flexible, and Efficient Transportation Equity Act of 2004”.

(c) EFFECTIVE DATE.—(1) SALES, ETC.—The amendments made by this section to sales and uses on or after the date of the enactment of this Act.

(2) DELIVERIES.—For purposes of paragraphs (1) and section 4331 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 5693. ADDITION OF VACCINES AGAINST INFLUENZA TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4123(a)(1) (defining taxable vaccine) is amended by section 6528 of this Act, as amended by adding at the end the following new subparagraph:

“(N) Any trivalent vaccine against influenza.”.

(b) EFFECTIVE DATE.—(1) SALES, ETC.—The amendment made by this section shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act.

(2) DELIVERIES.—For purposes of paragraphs (1) and section 4331 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 5694. EXTENSION OF AMORTIZATION OF INTANGIBLES TO SPORTS FRANCHISES.

(a) IN GENERAL.—Section 197(e) (relating to exceptions to definition of section 197 intangible is amended by striking paragraph (6) and all that follows through the end of the paragraph and inserting “(A)”.

(b) CONFORMING AMENDMENTS.—(1) Paragraph (2)(A) of section 197(e) is amended by inserting “2004” after “2000”.

(2) Paragraph (2)(B) of section 197(e) is amended by inserting “2004” after “2000”.

(c) EFFECTIVE DATE.—The amendments made by this section apply to property acquired after the date of the enactment of this Act.
receipts in clause (iii) plus any amount previously calculated and included in the President’s Budget under clause (i)(II) for that year.

(2) OMB shall—

(aa) take the amount calculated under subclause (I) and add that amount to the amount of obligations set forth in section 6103 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 for the highway category for the budget year, and calculate the outlay change resulting from that change in obligations relative to that amount for the budget year and each outyear using current estimates; and

(bb) after making the calculation under item (aa), adjust the amount of obligations set forth in section 6103 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004 for the budget year by adding the amount calculated under subclause (I) ;

and

(3) by adding at the end the following:

(iii) The estimated level of highway receipts for the purpose of this subparagraph are—

(I) for fiscal year 2004, $29,945,838,902; and

(II) for fiscal year 2005, $30,294,778,392; and

(III) for fiscal year 2006, $37,766,517,123;

(iv) for fiscal year 2007, $36,785,661,111; and

(V) for fiscal year 2008, $39,832,795,606; and

(VI) for fiscal year 2009, $40,964,722,457.

(iv) In this subparagraph, the term ‘highway receipts’ means the governmental receipts and interest credited to the highway account as defined by the Highway Trust Fund.

(c) CONTINUATION OF SEPARATE SPENDING CATEGORIES.—For the purpose of section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(c)), the discretionary spending limits for the highway category and the mass transit category shall be—

(1) for fiscal year 2004—

(A) $29,876,732,956 for the highway category; and

(B) $6,262,000,000 for the mass transit category;

(2) for fiscal year 2005—

(A) $31,991,246,160 for the highway category; and

(B) $6,903,000,000 for the mass transit category;

(3) for fiscal year 2006—

(A) $35,396,640,776 for the highway category; and

(B) $7,974,000,000 for the mass transit category;

(4) for fiscal year 2007—

(A) $37,871,760,938 for the highway category; and

(B) $8,658,000,000 for the mass transit category;

(5) for fiscal year 2008—

(A) $38,722,907,474 for the highway category; and

(B) $9,222,000,000 for the mass transit category; and

(6) for fiscal year 2009—

(A) $40,577,569,867 for the highway category; and

(B) $9,897,000,000 for the mass transit category.

(d) ADDITIONAL ADJUSTMENTS.—Section 251(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(1)) is amended by—

(1) in subparagraph (C)—


(B) in clause (ii), by striking ‘‘2002 and 2003’’ and inserting ‘‘2006 and 2009’’; and

(2) in subparagraph (D)—

(A) in clause (i), by striking ‘‘1999’’ and inserting ‘‘2005’’; and


SEC. 6108. LEVEL OF OBLIGATION LIMITATIONS.

(a) HIGHWAY CATEGORY.—For the purpose of section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)), the level of obligation limitations for the highway category is—

(I) for fiscal year 2004, $34,651,000,000; and

(II) for fiscal year 2005, $38,927,000,000; and

(III) for fiscal years 2006, $40,229,000,000; and

(IV) for fiscal year 2007, $40,229,000,000; and

(V) for fiscal year 2008, $40,563,000,000; and

(VI) for fiscal year 2009, $40,964,722,457.

(b) MASS TRANSIT CATEGORY.—For the purpose of section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)), the level of obligation limitations for the mass transit category is—

(I) for fiscal year 2004, $7,265,877,000; and

(II) for fiscal year 2005, $8,085,123,000; and

(III) for fiscal year 2006, $9,650,000,000; and

(IV) for fiscal year 2007, $10,489,000,000; and

(V) for fiscal year 2008, $10,962,000,000; and

(VI) for fiscal year 2009, $11,220,000,000.

For the purpose of this subsection, the term ‘obligation limitations’ means the sum of budget authority and obligation limitations.

TITLE VII—MISCELLANEOUS PROVISIONS

SECTION 7001. REIMBURSEMENT OF CERTAIN TRANSPORTATION COSTS INCURRED BY MEMBERS OF THE UNITED STATES ARMED FORCES ON REST AND RECOVERY LEAVE.

The Secretary of Defense shall reimburse a member of the United States Armed Forces (including members on duty or a member of the United States Armed Forces on rest and recreation leave) for those transportation expenses incurred by such member for 1 round trip by such member between 2 locations within the United States in connection with leave taken under the Central Command Rest and Recreation Leave Program during the period beginning on September 25, 2003, and ending on December 18, 2003.

SECTION 7002. MATTERS TO BE ADDRESSED.

The study shall—

(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution; and

(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral components in certain cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

SEC. 7003. REPORT.

Not later than 30 months after the date of enactment of this section, the Administrator shall submit to Congress a report on the study.

(4) ADDITIONAL PROCUREMENT REQUIREMENTS.—Unless the study conducted under subsection (4) identifies any effects or other problems described in subsection (6) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the release of the report in accordance with subsection (6), take additional actions authorized under

February 26, 2004

CONGRESSIONAL RECORD — SENATE
S1847
AUTHORIZING USE OF ROTUNDA OF CAPITOL BY JOINT CONGRESSIONAL COMMITTEE ON INAUGURAL CEREMONIES

ESTABLISHING JOINT CONGRESSIONAL COMMITTEE ON INAUGURAL CEREMONIES

Mr. MCCONNELL. I ask unanimous consent that the resolutions be agreed to, the motions to reconsider be laid upon the table en bloc, and any statements relating to the resolutions be printed in the Record.

Mr. MCKINNELL. The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCKINNELL. The concurrent resolutions (S. Con. Res. 93 and S. Con. Res. 94) were agreed to, on the Democratic side, that Senator CONRAD be recognized for 45 minutes, Senator HARKIN for 30 minutes, Senator BYRD for 30 minutes; and, of course, if the majority wants whatever time in whatever order they wish, they would be interspersed with these speakers, meaning there would be a Republican, a Democrat, as we do all the time.

Mr. MCKINNELL. The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCKINNELL. The concurrent resolutions (S. Con. Res. 93 and S. Con. Res. 94) were agreed to, as follows:

S. Con. Res. 93

Resolved by the Senate (the House of Representatives concurring).

SECTION 1. USE OF THE ROTUNDA OF THE CAPITOL BY THE JOINT CONGRESSIONAL COMMITTEE ON INAUGURAL CEREMONIES.

The rotunda of the United States Capitol is authorized to be used on January 20, 2005, by the Joint Congressional Committee on Inaugural Ceremonies in connection with the proceedings and ceremonies conducted for the inauguration of the President-elect and the Vice President-elect of the United States.

S. Con. Res. 94

Resolved by the Senate (the House of Representatives concurring).

SECTION 1. ESTABLISHMENT OF JOINT COMMITTEE.

There is established a Joint Congressional Committee on Inaugural Ceremonies in connection with the inauguration of the President-elect and the Vice President-elect of the United States, to be known as the ‘joint committee’, consisting of 3 Senators and 3 Members of the House of Representatives appointed by the President of the Senate and the Speaker of the House of Representatives, respectively.

ARTICLE 2. SUPPORT OF THE JOINT COMMITTEE.

The joint committee—

(1) is authorized to utilize appropriate equipment and facilities of appropriate personnel of departments and agencies of the Federal Government, under arrangements between the joint committee and the heads of the departments and agencies, in connection with the inaugural proceedings and ceremonies; and

(2) may accept gifts and donations of goods and services to carry out its responsibilities.

ORDERS FOR FRIDAY, FEBRUARY 27, 2004

Mr. MCKINNELL. Mr. President, the Senate will continue consideration of S. 1805, the gun liability bill.

Mr. REID. Mr. President, it is my understanding that tomorrow the majority will allow a period of morning business that will come sometime during the day. I would ask that the consent be, on the Democratic side, that Senator CONRAD be recognized for 45 minutes, Senator HARKIN for 30 minutes, Senator BYRD for 30 minutes; and, of course, if the majority wants whatever time in whatever order they wish, they would be interspersed with these speakers, meaning there would be a Republican, a Democrat, as we do all the time.

Mr. MCKINNELL. The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. MCKINNELL. Mr. President, tomorrow the Senate will resume consideration of S. 1805, the gun liability bill. There will be no rollcall votes tomorrow, and the next vote will occur Monday evening. We will have more to say about Monday’s session tomorrow.

ADJOURNMENT UNTIL 9:30 A.M. THE MORNING AFTER

Mr. MCKINNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:55 p.m., adjourned until Friday, February 27, 2004, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate February 26, 2004:

DEPARTMENT OF COMMERCE

THEODORE WILLIAM KASSINGER, OF MARYLAND, TO BE DEPUTY SECRETARY OF COMMERCE, VICE SAMUEL W. BODMAN, RENAMED.

DEPARTMENT OF STATE

JOHN J. DANILOVICH, OF CALIFORNIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE FEDERATIVE REPUBLIC OF BRAZIL.

MICHAEL CHRISTIAN POLT, OF TENNESSEE, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELLOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO SERBIA AND MONTENEGRO.

MERIT SYSTEMS PROTECTION BOARD

NEIL McFIE, OF VIRGINIA, TO BE CHAIRMAN OF THE MERIT SYSTEMS PROTECTION BOARD, VICE SUSANNE T. MARSHALL.

This Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

(2) eliminate barriers identified under subsection (c).

(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) is amended by adding after the item relating to section 6002 the following:

Sec. 6005. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete projects involving the use of recovered mineral component as an aggregate for cement and concrete projects, so as to—

(a) CEMENT TAILINGS.—

(1) In general.—Not later than 180 days after the date of enactment of this section, the Administrator, in consultation with the Secretaries of Transportation and Health of other Federal agencies, shall establish criteria (including an evaluation of whether it is feasible or appropriate to establish a numerical standard for concentration of lead and other hazardous substances for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as ‘chat’, for—

(A) cement and concrete projects; and

(B) transportation construction projects (including transportation construction projects involving the use of asphalt) that are carried out, in whole or in part, using Federal funds.

(2) REQUIREMENTS.—In establishing criteria under paragraph (1), the Administrator shall consider—

(A) the current and previous uses of granular mine tailings as an aggregate for asphalt; and

(B) environmental and public health risks and benefits derived from the removal, transportation, and use in transportation projects of granular mine tailings.

(3) PUBLIC PARTICIPATION.—In establishing the criteria under paragraph (1), the Administrator shall solicit and consider comments from the public.

(4) APPLICABILITY OF CRITERIA.—On the establishment of the criteria under paragraph (1), any use of the granular mine tailings described in paragraph (1) in a transportation project that is carried out, in whole or in part, using Federal funds, shall meet the criteria established under paragraph (1).

(b) EFFECT OF SECTIONS.—Nothing in this section or section 6003 affects any requirement of any law (including a regulation) in effect on the date of enactment of this section.

(b) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. 6901) is amended by adding after the item relating to section 6002 the following:

Sec. 6005. Use of granular mine tailings.

Passed the Senate February 12, 2004.

Attest:

S.1848

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February 26, 2004

(2) may accept gifts and donations of goods and services to carry out its responsibilities.
The following nominated officers for appointment to the grade indicated in the United States Air Force under Title 10, U.S.C., sections 624 and 1552:

To be major

RAAN R. AALGAARD, 0000
JOSHDUB D. ABELE, 0000
JOSEPH A. ABRIGO, 0000
ELIZABETH F. ADAMS, 0000
JAMIES J. ADAMS, 0000
BRIAN T. ADKINS, 0000
CHRISTOPHER A. ALBRIGHT, 0000
MARK R. ALBRECHT, 0000
GREGOR C. ALVAREZ, 0000
GREGORY C. ANDERSON, 0000
DANIEL L. ANDERSON, 0000
JON M. ANDERSON, 0000
MARK RICHARD ANDERSON, 0000
MICHAEL A. ANDERSON, 0000
RICHARD S. ANDERSON, 0000
STEPHEN L. ANDREASEN, 0000
KEITH R. ANDREWS, 0000
BENJAMIN C. ANGUS, 0000
JOHN D. ANTONOFF, 0000
ANTHONY R. ARBERDO, 0000
ROBERT C. ARMSTRONG, 0000
JOHN K. ARMSTRONG, 0000
JOHN T. ARMSTRONG, 0000
DAVID R. ARTHURS, 0000
AMY M. ARWOOD, 0000
MIRON Y. ARZUMANIAN, 0000
TROY A. ASHLEY, 0000
JAMIE A. ASPEY, 0000
GARY A. ASHworth, 0000
CHRISTOPHER B. ASTABRAH, 0000
RANS E. AUGUSTUS, 0000
DAVID A. AUFFEHRER, 0000
ERIC AXELBANK, 0000
JOSEPH L. BACA, 0000
JOSEPH A. BADDELEY, 0000
BRYAN J. BAGLEY, 0000
FRANCISCO L. BAILES, 0000
WILLIAM D. BAILLEY, 0000
JEFFREY A. BAILLON, 0000
CRAIG A. BARD, 0000
RONALD B. BALLARD, 0000
CHRISTOPHER BALLOWY, 0000
MARK B. BALENKO, 0000
MARK M. BALENZO, 0000

The following nominated officer for appointment to the grade indicated in the United States Air Force under Title 10, U.S.C., section 624:

To be colonel

BRIG. GEN. DONALD D. YODER, 0000

The following nominated officers for appointment to the grade indicated in the United States Air Force under Title 10, U.S.C., sections 624 and 1552:

To be colonel

RICHARD G. HUTCHISON, 0000

The following nominated officer for appointment to the grade indicated in the United States Air Force under Title 10, U.S.C., sections 624 and 351:

To be major

JEFFREY C. SIMS, 0000

The following nominated officers for appointment to the grade indicated in the Reserve of the Army under Title 10, U.S.C., section 531:

To be colonel

JARED D. CURRY, 0000
JON M. DOLAN, 0000
RANDY A. DUHET, 0000
MALCOLM F. RISHOP, 0000
RAPPAPORT F. PRINZ, 0000
SYMONS E. SHORT JR., 0000
RONALD E. TRIGGS, 0000
JEFFREY W. WHEELER, 0000

The following nominated officer for appointment to the grade indicated in the Reserve of the Army under Title 10, U.S.C., section 12201:

To be colonel

JON M. ARMITstead, 0000
MICHAEL L. BRITTON, 0000
WILLIAM L. BROWN, 0000
JOHN T. DINSMORE, 0000
HENRY P. FISCHER, 0000
LAWRENCE M. HENDEL, 0000
MELVIN B. JACOB, 0000
ALAN J. JOHNSON Jr., 0000
BONNIE K. KOEFFEL, 0000
BENNETE P. LAMBERT, 0000
COYSE D. MCMURDO, 0000
HERB F. MILLER, 0000
BILLY R. MILLER, 0000
ERik CHABOIS, 0000
BRANDON K. TRAVIS, 0000
ALEXANDER P. WHITTEN, 0000
FRANKLIN E. WESTER, 0000
JAMES P. WOMACK, 0000
RICHARD P. WOOD, 0000

CENTERS FOR MEDICARE AND MEDICAID SERVICES

MARK B. MCCULLOCH, OF THE DISTRICT OF COLUMBIA, TO BE ADMINISTRATOR OF THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, VICE THOMAS SCULLY, RESIGNED.

The national security education board

KRON KANNA SKINNER, OF PENNSYLVANIA, TO BE A MEMBER OF THE NATIONAL SECURITY EDUCATION BOARD FOR A TERM OF FOUR YEARS, VICE HERBESCHILS & CHALLENGER.

IN THE MARINE CORPS

The following nominated officer for appointment in the United States marine corps reserve to the grade indicated under Title 10, U.S.C., section 12201:

To be colonel

ALAN C. DICKERSON, 0000

ROBERT F. FEEK, 0000
VINCENT F. FLOYDMAN, 0000
CATHERINE KEY, 0000
JEFFREY G. LIGHT, 0000
ELEONORE PAUVONIC, 0000
CAMILLE PHILLIPS, 0000

The following nominated officers for appointment to the grade indicated in the Reserve of the Air Force under Title 10, U.S.C., section 12201:

To be colonel

WALTER F. BURGARDT, 0000
ALBERTA R. BURLEIGH, 0000
DSHEL B. DOWSON, 0000
JOSEPH F. DOLCETTO, 0000
JEFFREY P. HILSOVSKY, 0000
JOSEPH P. LOQDO, 0000
WILLIAM H. MARTIN, 0000
RICKY K. MARTINEZ, 0000
WILLIAM H. MCCARTHY, 0000
CHRISTOPHER L. TAYLOR, 0000
RICHARD M. WALTHER, 0000
PHILIPP Y. YOSHIMAURA, 0000

The following nominated officer for appointment to the grade indicated in the Reserve of the Air Force under Title 10, U.S.C., section 12201:

To be colonel

MONICA M. ALDONDO, 0000
WINNIE E. BRYANT, 0000
JAMES T. FORREST, 0000
RAYMOND J. HARDY, 0000
JOHN B. HART, 0000
THOMAS M. RAYES, 0000
ALISA W. JAMES, 0000
PATRICIA A. KERSH, 0000
STEVEN D. LINDSEY, 0000
MICHAEL R. LUNO, 0000
CHARLES S. MARATHON, 0000
GEORGE F. MAY, 0000
LIBA T. MILLER, 0000
ANN M. MINTZ, 0000
DIXIE A. NELSON, 0000
SAMUEL C. NOLL, 0000
CARRIE O. OBERON, 0000
GREGORY G. PARROTT, 0000
DANIEL V. PETERSON, 0000
JAMES R. THOMAS Jr., 0000
MARK J. YOST, 0000

The following nominated officer for appointment to the grade indicated in the Reserve of the Air Force under Title 10, U.S.C., section 12201:

To be colonel

PATRICIA S. ANGELIAMB, 0000
LINDA K. ARNDT, 0000
CHRISTINE H. ARNOLD, 0000
CHRISTINE M. RUCHER, 0000
MARY M. CAPPARELLI, 0000
TERRELL A. CUNNINGHAM, 0000
DEBORAH A. DANNEMEYER, 0000
DIHORAR J. DODD, 0000
KELINIA DORFNER, 0000
MARGARET A. DRAGANAC, 0000
SANDRA L. FINKBURY, 0000
CHRISTINA A. GILLIOTT, 0000
SUSAN R. KADROH, 0000
NANCY K. KESH, 0000
SUSAN M. KNOX, 0000
LYNN A. MATTES, 0000
KENNETH L. MONEely, 0000
CONNIE S. MUCK, 0000
KAREN A. NAGAPUCHI, 0000
TRISHA A. OSNIBUR, 0000
DONNA A. RAYL, 0000
MARYGEN N. RYAN, 0000
SHARON J. THOMAS, 0000
SUSAN K. WALTON, 0000
KATHLEEN L. ZYDOWICZ, 0000

The following nominated officers for appointment to the grade indicated in the Reserve of the Air Force under Title 10, U.S.C., section 12201:

To be colonel

MICHAEL A. ALDAY, 0000
GANANAMANARU, 0000
JOEL S. BORGH, 0000
JOSEPH L. DAVIS, 0000
ANDREAS C. DICKERSON, 0000
PAUL S. DWAN, 0000
JOHN A. ELLIS, 0000
JAMES W. GUYER, 0000
AIMEE L. HAWLEY, 0000
PAUL D. HAYLES, 0000
MARK D. HOPKINS, 0000
AIMEE L. HAWLEY, 0000
JOHN A. ELLIS, 0000
PAUL S. DWAN, 0000
JOHN A. ELLIS, 0000
JAMES W. GUYER, 0000
S1850

To be colonel
PERRY L. AMERINE, 0000
JAMES R. PATTERSON, 0000
THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE
UNITED STATES OFFICERS FOR APPOINTMENT TO THE
GRADE INDICATED IN THE RESERVE OF THE AIR FORCE
UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE
UNITED STATES OFFICERS FOR APPOINTMENT TO THE
GRADE INDICATED IN THE RESERVE OF THE AIR FORCE
UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel
WILLIAM E. ENRIGHT JR., 0000
JOSEPH P. MOAN, 0000
VICTORIA A. REARDON, 0000
CASSIE A. STROM, 0000
MICHAEL F. VANHOOMISSEN, 0000
THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE
UNITED STATES OFFICER FOR APPOINTMENT TO THE
GRADE INDICATED IN THE RESERVE OF THE AIR FORCE
UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel
COLLEN B. HOUGH, 0000
THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT
TO THE GRADE INDICATED IN THE UNITED STATES AIR
FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED
BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS
624 AND 531:

To be colonel
NORMA L. ALLGOOD, 0000
DAVID E. ANISMAN, 0000
GARY I. ARISHITA, 0000
STEVEN L. BARNES, 0000
SVEN T. BERG, 0000
MARTIN D. BOMALASKI, 0000
DEAN A. *BRICKER, 0000
ELIZABETH P. CLARK, 0000
RICHARD A. CLARK, 0000
ROBERT B. CONNOR, 0000
STEVEN C. DECOUD, 0000
VICTOR A. FOLARIN, 0000
MICHAEL C. *GORDON, 0000
THOMAS C. *GRAU, 0000
DAVID E. HOLCK, 0000
KENNETH K, KNIGHT, 0000
CHRISTOPHER LEWANDOWSKI, 0000
THOMAS D. FADELL LUNA, 0000
ROBERT E. MANAKER, 0000
KURT D. MCCARTNEY, 0000
LYNN S. MCCURDY, 0000
ROBERT S. MICHAELSON, 0000
PATRICK P. MILES, 0000
RICHARD J. MONTMINY, 0000
DAVID M. OBRIEN, 0000
LORETTA M. OBRIEN, 0000
HERNANDO J. *ORTEGA JR., 0000
JOSEPH V. *PACE, 0000
AUGUST C. PASQUALE III, 0000
TIMOTHY LEE PENDERGRASS, 0000
CHRISTOPHER SARTORI, 0000
JEFFREY A. *SCHIEVENIN, 0000
THOMAS M. SEAY, 0000
TIMOTHY W. SOWIN, 0000
WAYNE K. SUMPTER, 0000
CRESCENCIO TORRES, 0000
MATTHEW P. *WICKLUND, 0000

JOHN A. ALEXANDER, 0000
WILLIE ALLEN, 0000
WILLIAM E. ANDERSON JR., 0000
BRUCE D. BABCOCK, 0000
STEVEN T. BECK, 0000
DENNIS R. BLACK, 0000
MICHAEL L. BRICKNER II, 0000
JORGE R. CANTRES, 0000
CHRISTOPHER J. COCHRAN, 0000
STEVEN A. CRAY, 0000
JAMES L. CRUMPTON, 0000
RICHARD J. DENNEE, 0000
WILLIAM K. DUCKETT, 0000
DONALD P. DUNBAR, 0000
LOUIS M. DURKAC, 0000
TRULAN A. EYRE, 0000
MARK K. FOREMAN, 0000
GREGORY C. GRAF, 0000
BILLY T. GRAHAM JR., 0000
JOSEPH P. GRIFFIN, 0000
FLOYD H. HARBIN, 0000
JOSEPH G. HIGGINS, 0000
MICHAEL T. HINMAN, 0000
MARK W. HUGHES, 0000
BENJAMIN F. JABLECKI JR., 0000
JOSEPH A. JETT, 0000
MICHAEL L.KING, 0000
WILLIAM M. KREIGHBAUM, 0000
ENRIQUE LAMOUTTE, 0000
PATRICK L. MARTIN, 0000
JOHN E. MCCOY, 0000
CHARLES R. MELTON, 0000
BRIAN G. NEAL, 0000
PETER NEZAMIS, 0000
TIMOTHY R. OBRIEN, 0000
GRADY L. PATTERSON III, 0000
CHRISTOPHER A. POPE, 0000
RICHARD G. POPPELL, 0000
CARLOS A. QUINONESNIEVES, 0000
PHILIP D. QUINTENZ, 0000
WILLIAM N. REDDEL III, 0000
JOHN J. SAMUHEL, 0000
SIDNEY M. SCARBOROUGH, 0000
HENRY P. SERMONS JR., 0000
WAYNE M. SHANKS, 0000
ROY J. SHETKA, 0000
JOANNA O. SHUMAKER, 0000
ELIZABETH A. STANLEY, 0000
WILLIAM E. STANTON, 0000
ELSON E. STAUGAARD JR., 0000
FRANK J. SULLIVAN, 0000
DAVID A. TORRES, 0000

RICHARD C. BATZER, 0000
TIMOTHY L. BRAY, 0000
WILLIAM R. BUHLER, 0000
PAUL N. CARDON, 0000
MICHAEL J. *CONLAN, 0000
MULLEN O. COOVER JR., 0000
DAVID P. DEWITT, 0000
WILLIAM E. DINSE, 0000
WILLIAM J. DUNN, 0000
BRYAN D. DYE, 0000
BLAKE J. EDINGER, 0000
DIANE J. FLINT, 0000
ROBERT F. GAMBLE, 0000
RIDGE M. GILLEY, 0000
LYNN C. HARRIS, 0000
CHARLES A. HIGGINS, 0000
RAY S. JETER, 0000
MICHAEL P. KLEPCZYK, 0000
MICHAEL A. KOCH, 0000
THOMAS S. MARSHALL, 0000
ALAN J. MORITZ, 0000
LARRY P. PARWORTH, 0000
JAMES L. PAUKERT, 0000

Jkt 081600

TODD B. * ABEL, 0000
BRADLEY S. ABELS, 0000
LAURA K. ABTS, 0000
PAUL J. AFFLECK, 0000
SAKET K. AMBASHT, 0000
KATHLEEN C. AMYOT, 0000
JEFFREY A. * BAILEY, 0000
ALBERT H. * BONNEMA, 0000
MICHELE L. BRENNERVINCENT, 0000
JOHN R. * BRENT, 0000
MARK J. * BROOKS, 0000
MARY T. * BRUEGGEMEYER, 0000
MICHAEL G. BRYAN, 0000
LOUISE M. BRYCE, 0000
JOHN R. BURROUGHS, 0000
BRET D. * BURTON, 0000
EDITH D. * CANBYHAGINO, 0000
CREG A. * CARPENTER, 0000
THOMAS N. * CHEATHAM, 0000
NICOLA A. * CHOATE, 0000
BRANDON D. * CLINT, 0000
CHARLES D. * CLINTON, 0000
MARK R. * COAKWELL, 0000
LUBOV M. COVERDELL, 0000
MARCUS M. * CRANSTON, 0000
RANDOLPH K. * CRIBBS, 0000
BRAIN K. CROWNOVER, 0000
JEANINE M. CZECH, 0000
DEVIN L. * DONNELLY, 0000
PAUL D. * DOUGHTEN, 0000
COLLEEN M. DUGAN, 0000
JAMES R. * ELLIOTT, 0000
HARRY L. ERVIN JR., 0000
RENEE D. ESPINOSA, 0000
SUSAN C. FARRISH, 0000
MERLIN B. FAUSETT, 0000
CAROL M. * FERRUA, 0000
ERIC W. FESTER, 0000
WILLIAM F. * FOODY JR., 0000
KRISTEN A. FULTSGANEY, 0000

PO 00000

Frm 00240

Fmt 4624

Sfmt 9801

JOEL E. * GOLDBERG, 0000
PHILIP L. * GOULD, 0000
STEPHEN U. * HANLON, 0000
ALEXANDER V. HERNANDEZ III, 0000
KAREN A. HEUPEL, 0000
TERRY G. * HOEHNE, 0000
ROBERT G. * HOLCOMB, 0000
CAROL J. * IDDINS, 0000
JAMES L. JABLONSKI II, 0000
KERRY G. JEPSEN, 0000
WILMER T. * JONES III, 0000
JAMES A. * KEENEY, 0000
THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT
TO THE GRADE INDICATED IN THE UNITED STATES AIR
FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED
BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS
624 AND 531:

To be lieutenant colonel
DOUGLAS P. * BETHONEY, 0000
KEVIN C. * BOYLE, 0000
SEAN W. * DIGMAN, 0000
LARRY J. * EVANS, 0000
LORI L. * EVERETT, 0000
TOMMY D. * FISHER, 0000
MICHAEL E. * FULTON, 0000
KIMBERLY M. * GILL, 0000
JAMES B. * GRAHAM, 0000
MARK R. HENDERSON, 0000
TODD A. * LINCOLN, 0000
DAVID W. * NUNEZ, 0000
JACOB E. * PALMA, 0000
HYEKYUNG HELENA PAE * PARK, 0000
PHILLIP C. * PORTERA, 0000
ROGER E. * PRADELLI, 0000
DOUGLAS E. * THOMAS, 0000
THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT
TO THE GRADE INDICATED IN THE UNITED STATES AIR
FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be major

To be lieutenant colonel

To be colonel

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THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE
UNITED STATES OFFICERS FOR APPOINTMENT TO THE
GRADE INDICATED IN THE RESERVE OF THE AIR FORCE
UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT
TO THE GRADE INDICATED IN THE UNITED STATES AIR
FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED
BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS
624 AND 531:

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT
TO THE GRADE INDICATED IN THE UNITED STATES AIR
FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED
BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS
624 AND 531:

22:26 Jan 29, 2014

DOUGLAS L. RISK, 0000
JANET Y. ROBINSON, 0000
PAUL M. ROGERS, 0000
RIDLEY O. ROSS, 0000
KENT A. SABEY, 0000
PHILLIP R. SANDEFUR, 0000
JEFFREY A. STAPLES, 0000
DANIEL S. *STRECK, 0000
DALE C. THAMES JR., 0000
RICHARD I. VANCE, 0000

To be colonel

STEWART J. HAZEL, 0000
JILL L. HENDRA, 0000
CHRISTOPHER J. KNAPP, 0000
CLEE E. LLOYD, 0000
WILLIAM W. POND, 0000

VerDate Mar 15 2010

February 26, 2004

CONGRESSIONAL RECORD — SENATE

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE
UNITED STATES OFFICERS FOR APPOINTMENT TO THE
GRADE INDICATED IN THE RESERVE OF THE AIR FORCE
UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

ADAM M. ANDERSON, 0000
BRETT C. ANDERSON, 0000
PAULA E. ANDERSON, 0000
BRETT M. ANDRES, 0000
ROBERT S. ANDREWS, 0000
MARIA M. ANGLES, 0000
WILLIAM A. ANKNEY, 0000
SHERYL L. ANTHOS, 0000
DANIEL W. ARNOLD, 0000
JORGE ARZOLA, 0000
DIANE M. ASLANIS, 0000
KAREN J. AYERS, 0000
KAREN M. AYOTTE, 0000
CARL W. BAKER II, 0000
SHAROLYN H. BALDWIN, 0000
ELLEN W. BALLERENE, 0000
KIMBERLY M. BALOGH, 0000
MICHAEL A. BARNETT, 0000
SAMUEL B. BARONE, 0000
JEFFREY W. BARR, 0000
JOSE E. BARRERA, 0000
CHRISTOPHER J. BASSETT, 0000
KRISTEN BAUER, 0000
CHAD C. BAUERLY, 0000
ETHAN A. BEAN, 0000
PETRAN J. BEARD, 0000
JEFFREY N. BEEN, 0000
AMY L. BELISLE, 0000
RICHARD W. BENTLEY, 0000
DONALD J. BERNARDINI, 0000
JOHN N. BERRY, 0000
HEIDI C. BERTRAM, 0000
JEFFREY J. BIDINGER, 0000
SCOTT R. BISHOP, 0000
JEFFREY F. BLEAKLEY, 0000
JAMES A. BLEDSOE, 0000
JESSICA J. BLOOM, 0000
ERIK A. BOATMAN, 0000
JAMES V. BODRIE JR., 0000
KEVIN J. BOHNSACK, 0000
DOUGLAS E. BOLER, 0000
WILLIAM S. BOLLING, 0000
DENNIS F. BOND II, 0000
CRAIG D. BOREMAN, 0000
STACEY L. BRANCH, 0000
BRETT D. BRIMHALL, 0000
WILLIAM R. BRODERICK, 0000
JODY L. BROWN, 0000
STEVEN S. BRUMFIELD, 0000
ERIC C. BRUNO, 0000
CHARLES L. BRYANT, 0000
JOHN T. BRYANT, 0000
CRAIG M. BURNWORTH, 0000
THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT
TO THE GRADE INDICATED IN THE UNITED STATES AIR
FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be major
MARYA J. BARNES, 0000
ERIC R. BAUGH JR., 0000
GEORGE E. BOUGHAN, 0000
DORON BRESLER, 0000
STEPHEN H. CHARTIER, 0000
JILL A. CHERRY, 0000
KEITH L. CLARK, 0000
FREDERICK A. CONNER, 0000
GREGORY A. CONNER, 0000
MICHELLE D. DULLANTY, 0000
SARAH C. EAGER, 0000
JOSE F. EDUARDO, 0000
JONATHAN D. EVANS, 0000
ANDREW R. FENTON, 0000
TEGRAN O. FRAITES, 0000

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CONGRESSIONAL RECORD — SENATE
S1851

February 26, 2004

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDERS TITLE 10, U.S.C. SECTION 624.
To be major

PETER D. CHABONNEAU, 0000
KERYN W. CLAYTON, 0000
STEVEN R. HERRED, 0000
BERNARD J. GRIFFIN, 0000
ROBERT L. HANDROVIC, 0000
THOMAS MUNILLAR, 0000
JOHN A. TANIZAKI, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDERS TITLE 10, U.S.C. SECTION 624.
To be major

BALWINDAR K. RAWALVANDAROYER, 0000
TROY A. TYLE, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDERS TITLE 10, U.S.C. SECTION 624.
To be lieutenant colonel

RICHARD K. KOHR, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDERS TITLE 10, U.S.C. SECTION 624.

WILLIAM R. RIDLE, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDERS TITLE 10, U.S.C. SECTION 624.
To be lieutenant colonel

RONDAL W. COCHRAN, 0000
JOHNATHAN D. LAWSON, 0000
PAUL J. MINER, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDERS TITLE 10, U.S.C. SECTION 624.
To be lieutenant colonel

TODD P. OHMAN, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDERS TITLE 10, U.S.C. SECTION 624.
To be lieutenant colonel

MICHAEL E. BRYAN, 0000

WITHDRAWALS

Executive message transmitted by the President to the Senate on February 26, 2004, withdrawing from further Senate consideration the following nominations:


IN HONOR OF ORAH BELLE SHERMAN

HON. JOHN LEWIS
OF GEORGIA
IN THE HOUSE OF REPRESENTATIVES

Thursday, February 26, 2004

Mr. LEWIS of Georgia. Mr. Speaker, in the last days of Black History Month, I want to be sure this Congress honors the memory of Orah Belle Sherman, a woman who served our democracy well. In the eyes of some, her labor may have seemed humble, but her spirit was great. For 41 years, Orah Belle Sherman served the citizens of Atlanta as the hostess of Paschal’s restaurant, and the comfort and hospitality of Paschal’s reached the very soul of the Civil Rights Movement.

The role of the capable hostess is fully acknowledged in politics today. Sometimes decisions that impact the history of mankind may be made in the relaxation of social environments. A hostess is the architect of that relaxation, creating a seamless atmosphere of comfort where minds can meet undistracted and strike an agreement. Her grace eases the tension of division, and the ambience she offers invites opposing sides to sit down together. Orah Belle Sherman was a master hostess because her grace not only cooled the tensions of ideological differences but momentarily silenced the ravages of racism.

In a segregated Atlanta, where a cacophony of signs declared “White Only,” “Colored Only,” “Colored Waiting,” “White Waiting,” in the heart of a hostile America, in the recesses of the Jim Crow South where a wilderness of racism threatened the future of this nation, Paschal’s became an oasis of friendship, brotherhood and peace. There African Americans were always welcomed by Orah Belle Sherman.

She created a safe space where men and women who were outcasts of mainstream America could socialize in dignity and peace. In her haven of comfort and acceptance, Dr. Martin Luther King, Jr., Ambassador Andrew Young, Supreme Court Justice Thurgood Marshall, Dr. Benjamin Mays and many other soon-to-be great men of the Civil Rights Movement were welcomed, fed, and given the room to deliberate. In the loving glow of Orah Belle Sherman, they strategized the actions that would become the Movement we know today. Many of the great civil rights speeches, the plans for marches and sit-ins, the boycotts and sermons were discussed in the ambience of Paschal’s restaurant.

Dr. Martin Luther King, Jr. once said that, “Love is the most durable power in the world. This creative force is the most potent instrument available in mankind’s quest for security and peace.” The love of Orah Belle Sherman has an enduring place in the history of the Civil Rights Movement. She is a gem of the South that reminds us of a culture of hospitality that is slipping away. Her graciousness and charm consolled the builders of a new day for America. She will long be remembered in the hearts of all the lives she touched.

RECOGNIZING THE HONOREES OF THE 57TH ANNUAL PUBLIC SERVANTS MERIT AWARDS

HON. STEPHANIE TUBBS JONES
OF OHIO
IN THE HOUSE OF REPRESENTATIVES

Thursday, February 26, 2004

Mrs. JONES of Ohio. Mr. Speaker, I rise today to recognize the nine honorees of the 57th Annual Public Servants Merit Awards Luncheon, held Friday, February 13, 2004. This event was hosted by the Cuyahoga County Bar Foundation and the Cuyahoga County Bar Association.

Tim Brennan currently serves as the Civil Division’s Assistant Personnel Director/Acting Office Manager for the Clerk of Courts, Cuyahoga County Court of Common Pleas. Tim assists with interviewing applicants for the Clerk’s office, promoting employees, and assisting in resolving personnel disputes.

Tim and his wife, Janene are Lakewood residents and have been married almost as long as Tim has worked in the Clerk’s office. They met as employees of the Clerk’s office and have three children, Patrick, Megan, and Molly.

Tim is very active in Lakewood and Cuyahoga County Democratic Party activities. He became interested in politics at an early age, as the son of Judge Hugh P. Brennan. Also, Tim has been active for many years with St. Mark’s Church.

Despite his many accomplishments in work and politics, Tim feels that his greatest achievement is securing the love and support of his family.

Since 1974, Tom Bykowski has been an office mainstay for the Cleveland Municipal Court. As a supervisor in the office, he is responsible for drafting the judgment entries and other pleadings.

Tom attended St. John Cantius High School and the Parma High School. He is active in Lakewood community affairs, in his parish church, as well as his ward & county Democratic Party activities.

He often spends his days asking the tide of people passing through the Clerk’s office, “How can I help you” because he enjoys contact with the public.

Richard Lewis has been employed at the Lakewood Municipal Court since 1974. He began his tenure in the Criminal Division and, for more than 20 years, has been the Clerk of Court.

Richard has been honored by many organizations for his work, and is particularly proud of his 1991 nomination as the Outstanding Clerk by the Ohio Association of Municipal Court Clerks. He is a Past President of that organization, as well as Past President of the Northeastern Ohio Municipal Court Clerk’s Association. He remains an active member in both organizations.

Richard is also an Army veteran of the Vietnam campaign and a graduate of Baldwin-Wallace College. He and his wife of more than three decades, Janice, live in Lakewood where they raised their two children, Jessica and Alissa.

Terri Lynn Hudak is a Deputy Clerk/Supervisor in the Cuyahoga County Probate Court’s Data Entry Department. She began her employment with the Court after graduating from Parma’s Valley Forge High School, 23 years ago.

Terri and her department are responsible for entering new filings on the court’s docket, organizing files for transmission to the Court of Appeals and assisting the public in locating court records.

She still lives in Parma with her husband Paul and their children Matthew and Valerie. She is active in St. Charles school events, parish activities, and her neighborhood block committees.

Terri says that raising her family, supporting her children’s sporting events, and working full-time are her most outstanding accomplishments.

Dorothy Lawson began her work with the Cuyahoga County Common Pleas Court as a typist in the court constable’s office. She then went on to serve as a scheduler for as many as four judges at one time.

For the past 15 years, Dorothy has served as the personal bailiff, first for Judge William E. Mahon and currently for Judge Brian J. Corrigan. She views her 1989 promotion to personal bailiff as one of her greatest accomplishments in life.

A Euclid resident, Dorothy lives with John, her husband of almost a quarter century. She spends much of her time evaluating the creativity of the excuses given by tardy lawyers. However, she fundamentally believes that her three decades of service has allowed her a deeper understanding of the judicial system.

Regina Laura Mandanci has worked for Domestic Relations Court for 24 years. She is the nominee of Administrative Judge Timothy M. Flanagan. For the past two years, Gina serves as Personal Bailiff to Judge James P. Celebreze, after over 20 years in the Central Scheduling Department.

Gina, a Florida native and Brecksville High School graduate, lives in Brecksville with her children, Nickolas and Jessica. She is proud of her service in the Domestic Relations Court, which she started with just out of high school.

Mary Jo O’Toole is a Judicial Secretary at the Eighth District Court of Appeals with 17 years of service. She was the nominee of Administrative Judge Ann Dyke. Nominated by Judge Kenneth A. Rocco and Presiding Judge Michael J. Corrigan, Mary Jo, after a brief detour into the private sector, has worked in the courts for over 20 years, shortly after her graduation from Holy Name High School.

Mary Jo and Patrick, her husband of 16 years, live in Avon with their two children,
Megan and Brian. The family enjoys weekend stays at their cottage and spent many years renovating their residence, a century home.

Carolyn Penn, nominated by Juvenile Court Administrative Judge Joseph F. Russo, is a Probation Manager at the Court’s Bedford Heights office, where she manages a staff of probation officers and administrative assistants who deal with delinquent, unruly and violent children living in the southeast portion of Cuyahoga County.

A graduate of Central State University with a master’s degree from Case’s School of Applied Social Sciences Administration, Carolyn lives in Cleveland Heights. The widow of James E. Penn, Jr., and the mother of a grown son, James E. Penn III, Carolyn was also honored by a Cleveland Mayoral proclamation for her years of service to at-risk children and the community.

Carolyn volunteers with senior citizens and participates in charities, along with actively supporting individual political candidates and social service ballot issues. She takes pride in her work and protecting her community.

Pauline Pope is the Assistant Chief of Security in the Bailiffs Department of the Cleveland Municipal court, where she has worked since 1986.

Presiding and Administrative Judge Larry A. Jones’s nominee, Pauline previously worked for the City of Cleveland, as part of more than a quarter century of public service. She works hard to assure that the employees and the public enjoys a safe environment in the Court.

Pauline came to Cleveland after graduating from high school in South Carolina. She is active in ministries, nursing homes and prisons. Early in her court employment career, she was assigned to provide security to the late Judge Carl B. Stokes.

On behalf of the people of the 11th Congressional District of Ohio and the United States Congress, I pay tribute to the leadership, dedication, support, and commitment of the 2004 Annual Public Servants Merit Award honorees.

HON. THE WORK OF REVEREND RUBEN LOUIS ARCHIelda, Sr.

HON. CIRO D. RODRIGUEZ
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. RODRIGUEZ. Mr. Speaker, I rise today to recognize Reverend Ruben Louis Archielda, Sr., a great friend, teacher, and counselor. As pastor of Friendship Baptist Church in San Antonio, since 1963, Reverend Archielda has served the spiritual needs of his congregation and the San Antonio community.

Under Reverend Archielda’s direction, Friendship Baptist Church has enjoyed an unparalleled period of growth as many new buildings have been added and programs expanded to serve the ever-changing needs of the surrounding community.

Reverend Archielda has also contributed to the community through involvement with organizations such as the Baptist Ministers’ Union, the Citywide Brotherhood of San Antonio, the National Baptist Convention and the San Antonio Development Agency, and the Project Drug Abuse Center. For these extraordinary deeds, Reverend Archielda received the San Antonio Register’s Pulpit Heritage Award and the Patriarch Award from Greater Love Baptist Church.

February 22, 2004 marks Friends and Family Day at Friendship Baptist Church, a time to come together with special friends and loved ones to worship and express thanks for our many blessings. I wish Reverend Archielda and the members of Friendship Baptist Church all the best on this special day.

RECOGNIZING THE FAIRFAX COUNTY CHAMBER OF COMMERCE 2004 VALOR AWARD RECIPIENTS FROM THE FAIRFAX COUNTY OFFICE OF THE SHERIFF

HON. TOM DAVIS
OF VIRGINIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. TOM DAVIS of Virginia. Mr. Speaker, Mr. MORAN, Mr. WOLF and I rise today to recognize an extraordinary group of men and women who serve as public safety officers and administrative assistants to the Fairfax County Sheriff. Receiving the Lifesaving Award, the Certificate of Valor, or the Gold, Silver, or Bronze Medal of Valor. During the 26th Annual Awards Ceremony, 53 men and women from the Office of the Sheriff, Fire and Rescue Department, and the Police Department received one of the aforementioned honors for their bravery and heroism.

It is with great honor that we enter into the RECORD the names of the recipients of the 2004 Valor Awards in the Fairfax County Office of the Sheriff. Receiving the Lifesaving Award: Second Lieutenant Steven J. Elbert, Sergeant William E. Friedman, Private First Class Morris F. Hood Jr., Private First Class Dena M. Hubbard, Private First Class Steven P. Queen, Master Deputy Sheriff Juan L. Romero, Sergeant Mark W. Sites, Second Lieutenant Elaine M. Stanley, Private First Class Zachary D. Taylor, Private First Class Hulhau Wang, Private First Class Kenneth W. Wing, Jr.; the Certificate of Valor: Private First Class Peter J. Fox; the Bronze Medal of Honor: Deputy William L. Bishop, Second Lieutenant Gregory A. Merck, Sergeant Eli G. Rejeili.

Mr. Speaker, in closing, we would like to take this opportunity to thank all men and women in Northern Virginia who serve in the Office of the Sheriff. The events of September 11th serve as a reminder of the sacrifices our emergency service workers make for us each day. These individuals’ continuous efforts on behalf of Fairfax County citizens are paramount to preserving security, law, and order within our community. Their selfless acts of heroism truly merit our highest praise. We ask our colleagues to join us in applauding this group of remarkable citizens.

IN RECOGNITION OF THE MEKHITARIST FATHERS’ ARMENIAN SCHOOL’S 25TH ANNIVERSARY

HON. ADAM B. SCHIFF
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. SCHIFF. Mr. Speaker, I rise today to honor the Mekhitarist Fathers’ Armenian School. On Saturday, February 28, 2004, members of the Armenian community in Southern California will gather to celebrate the 25th anniversary of the establishment of the Mekhitarist Fathers’ Armenian School.

The school is the pride of the Armenian community. Its impressive curriculum, dedicated faculty and administration, quality extra-curricular activities, devoted parents, alumni and committed Trustees serve as strong pillars of this unique educational institution.

The Mekhitarist Fathers’ Armenian school was established in 1979 with dreams of rearing and educating young Armenians about their past. Yet they taught their pupils to appreciate their new home in America and establish respectable, productive and thriving communities. Each year, the Armenian school commends individuals who courageously have demonstrated selfless dedication to public safety. The Valor Award.

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In 1998, when the school had prospered to more than 350 students, they leased a campus in La Crescenta. The school was facing unlimited difficulties. Mekhitarist Fathers had a very short time to find a home for those whose educational responsibilities were put upon their shoulders. They proved without a doubt that despite insurmountable obstacles, they fulfilled their seemingly impossible responsibility to this community when they purchased their own land on Foothill Boulevard, in Tujunga.

Today, the number of students has dropped due to obstacles that the school has had to overcome. Yet, that is what has made this institution stronger. As Fr. Augustine Szekula said, “It is the very existence of nurturing Armenian schools in the Diaspora that supports and indeed, enables our Mother country [Armenia] to exist, and for our rich Armenian cultural heritage to continue to flourish with dignity and grace.”

It is with great honor to recognize the Mekhitarist Fathers’ Armenian School’s invaluable service to the community and congratulate them upon their 25th anniversary.

TRIBUTE TO BOEING ENGINEERING TEAM

HON. ROBERT E. (BUD) CRAMER, JR.
OF ALABAMA
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. CRAMER. Mr. Speaker, I have the honor to represent NASA’s Marshall Space Flight Center and numerous space contractors. Throughout North Alabama, scientists and engineers are working diligently to create the necessary technology to take humans and cargo into space. In addition, the innovative research and development that is being done at the Marshall Space Flight Center and its partners is having significant and positive impact on our Nation’s quality of life.

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Mr. Speaker, I rise today to honor the members of Boeing’s Space Launch Initiative TA-2 Self-Reacting Friction Stir Welding Cryogenic Tank Demonstration Team. Recently, these engineers from Huntsville, Alabama and Huntington Beach, California, successfully joined two twenty-seven foot diameter aluminum barrels together using a new process that utilizes friction rather than traditional welding methods. This successful test at the Marshall Space Flight Center was the largest test of the circumferential self-reacting friction stir welding. Boeing officials recognized this significant achievement by awarding this engineering team with the Boeing Silver Phantom Award.

This process will help NASA to overcome many technical obstacles that it will face during its ambitious exploration plans. By using friction, rather than electrical or gas fusion methods, the weld is significantly stronger and performed at a higher quality and lower cost. This process enables a wider range of options as NASA considers designs for future space launch vehicles.

Mr. Speaker, I close by sending my sincere congratulations to the Self-Reacting Friction Stir Welding Cryogenic Tank Demonstration Team for winning Boeing’s Silver Phantom Award. I am proud to recognize their hard work and dedication that led to this important technical achievement.

ACADEMY NOMINEES FOR 2003 11TH CONGRESSIONAL DISTRICT OF NEW JERSEY

HON. RODNEY P. FRELINGHUYSEN
OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. FRELINGHUYSEN. Mr. Speaker, every year, more high school seniors from the 11th Congressional District trade in varsity jackets for Air Force flight suits, and Army brass buckles than most other districts in the country. But this is nothing new—our area has repeatedly sent an above average portion of its sons and daughters to the Nation’s military academies for decades.

This fact should not come as a surprise. The educational excellence of area schools is well known and has long been a magnet for families looking for the best environment in which to raise their children. Our graduates are skilled not only in mathematics, science, and social studies, but also have solid backgrounds in sports, debate teams, and other extracurricular activities. This diverse upbringing makes military academy recruiters sit up and take note—indeed, many recruiters know our towns and schools by name.

Since the 1830’s, Members of Congress have enjoyed meeting, talking with, and nominating these superb young people to our military academies. But how did this process evolve? In 1843, when West Point was the sole academy, Congress ratified the nominating process and became directly involved in the makeup of our military’s leadership. This was not an act of an imperial Congress bent on controlling every aspect of Government. Rather, it was the procedures still used today. And, is a further check and balance in our democracy. It was originally designed to weaken and divide political coloration in the officer corps, provide geographical balance to our armed services, and to make the officer corps more resilient to unfettered nepotism and handicapped European armies.

In 1854, Representative Gerritt Smith of New York added a new component to the academy nomination process—the academy review board. This was the first time a Member of Congress appointed prominent citizens from his district to screen applicants and assist with the serious duty of nominating candidates for academy admission. Today, I am honored to continue this wise tradition in my service to the 11th Congressional District.

The Academy Review Board is composed of six local citizen volunteers who have shown exemplary service to New Jersey, to their communities, and to the continued excellence of education in our area—many are veterans. Though from diverse backgrounds and professions, they all share a common dedication that the best qualified and motivated graduates attend our nation’s military academies. And, as a result of their volunteer panels, their service goes largely unnoticed.

I would like to take a moment to recognize these men and women and thank them publicly for participating in this important panel. Being on the board requires hard work and an objective mind. Members have the responsibility of interviewing upwards of 50 outstanding high school seniors every year in the academy review process.

The nomination process follows a general timetable. High school seniors mail personal information directly to the Military Academy, the Naval Academy, the Air Force Academy, and the Merchant Marine Academy once they become interested in attending. Information includes academic achievement, college entry test scores, and other activities. At this time, they also inform my office of their desire to be nominated.

The academies then assess the applicants, rank them based on the data supplied, and return the files to my office. The files are then sent to my office. The files are then reviewed and analyzed by our office, our office, our office, and to the continued excellence of education in our area—many are veterans. Though from diverse backgrounds and professions, they all share a common dedication that the best qualified and motivated graduates attend our nation’s military academies. And, as a result of their volunteer panels, their service goes largely unnoticed.

The nominees and my office of their final decision on admission

This year the board interviewed over 50 applicants. Nominations included 9 to the Naval Academy, 10 to the Military Academy, 5 to the Merchant Marine Academy, and 8 to the Air Force Academy. The Coast Guard Academy does not use the Congressional nomination process. The recommendations are then forwarded to the academies by January 31, where reviewers reviewed files and notified applicants and my office of their final decision on admission.

As these highly motivated and talented young men and women go through the academy nominating process, never let us forget the sacrifice they are preparing to make: to defend our country and protect our citizens. This holds especially true at a time when our nation is fighting the war against terrorism. Whether it is in Afghanistan, Iraq, or other hot spots around the world, no doubt we are constantly reminded that wars are fought by the young. And, as the young adults are both important and dangerous, it is reassuring to know that we continue to put America’s best and brightest in command.

HONORING U.S. MARSHAL MARK TUCKER
OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. PRICE of North Carolina. Mr. Speaker, I rise today in honor of one of North Carolina’s most respected law enforcement officers, a man whom I am proud to have called a friend. Deputy Mark Reid Tucker served our community as both a Wake County Sheriff’s Deputy and a U.S. Marshal for eastern North Carolina. No matter the rank, law enforcement was a job he loved—and a job he did exceedingly well. He was killed in the line of duty earlier this month at 49 years of age.
Always equipped with a strong sense of right and wrong, Mark thought of law enforce-
ment as a calling. It was a job that suited him perfectly.
Mark joined Wake County’s Sheriff’s Depart-
ment in 1976. I first knew him as the president of the local chapter of the Fraternal Order of
Police, and he has championed the interests of rank and file law enforcement officers from that
position since 1988. After serving with the Sheriff’s Department for some 20 years, Mark’s lifelong interest in politics spurred him to pur-
suit a federal judicial appointment in the Clinton administration. It was a long, hard battle, but Mark showed characteristic stamina as the process dragged out for several years. When his nomination appeared indefinitely stalled because of partisan battles over Presi-
dential appointments, President Clinton de-
cided to use a rarely invoked recess appoint-
ment privilege, and Mark went on to be con-
firmed to a full term as U.S. Marshal for the
Eastern District of North Carolina on May 24, 2000. There is no federal appointment that has
given me more satisfaction, both because we worked on it so long and because Mark served with such dedication and distinction.
Mark was thrilled to be a part of the U.S. Marshals Service. He took security very seri-
ously, working with local judges, Federal agencies, and my office to ensure that the
Court was brought up to the standards for Federal judicial facilities. He also recog-
nized that he had a responsibility to maintain
good relations with the community. Taking on this role of an unofficial goodwill ambassador
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nized that he had a responsibility to maintain
good relations with the community. Taking on
the role of an unofficial goodwill ambassador
for the Marshals Service, Mark usually carried a
deputy’s badge in his pocket that he could
give to a smiling child or interested citizen.
When President Clinton left office, Mark re-
turned to the beat in Wake County, going back to his roots and to the people who had long
depended on his commitment to the job.
Mark was only the fourth officer to be killed
in the line of duty in the Wake County Sheriff’s
Office’s 71-year history, and the overwhelming response of his fellow officers makes clear
how acutely they felt his loss. An entire com-
munity of law enforcement officers—from the
DEA, the Marshals Service to local deputi-
es—came together to find the person respon-
sible, making an arrest within 48 hours. They
said it was the least they could do for the depu-
ty described as “well-respected,” “dedi-
cated,” and “a gentleman, as well as a friend.”
Close to 1,500 people from law en-
f orcement across the State attended his me-
 morial service.
Mark leaves behind his loving parents, Dal-
las and Virginia Tucker, his wife, Patricia, and sons Chad and Matthew. This tragedy has
thrust the family into the media spotlight, and Patricia in particular has spoken of her
husband and the circumstances sur-
rounding his death with courage, compassion,
and dignity.
Mark Tucker perfectly exemplified the dedi-
cation of our law enforcement community, and
his death is a reminder of the risks these offi-
cers take for us every single day. But Mark was one of a kind, a unique combination—a
cop’s cop, a skilled political leader, an active
and engaged citizen, a solid family man, a
magnetic personality. His death is a great loss
for the law enforcement family, we will miss him inevitably. May we find comfort in the outpouring of affection and respect and gratitude that his memory has brought forth.

RECOGNIZING THE CONTRIBUTIONS OF CRISTINA VILLARREAL
HON. HILDA L. SOLIS
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Ms. SOLIS. Mr. Speaker, today I rise to rec-
ognize Cristina Villarreal, a staff member who will be leaving my Washington, DC, office this
week.
Cristina came to our office after graduating from American University to work as a staff assistant. She worked her way up to serve as a scheduler and as a legislative aide working on foreign affairs issues. Cristina has worked with me as we developed legislation (H. Res. 466) to call attention to the disturbing abduc-
tion and murder of hundreds of women taking place in Ciudad Juárez, Mexico. H. Res. 466 conveys the sympathy of the U.S. House of Representatives to the families of the young women murdered in the State of Chihuahua, Mexico, and encourages increased United States involvement in the battle to end these crimes. Cristina also helped me organize a Congressional delegation to travel to Mexico to bring light to the over 300 young women who have been killed in Ciudad Juárez over the last decade. Cristina shares my commit-
ment to bringing light to this human rights issue.
Cristina is beloved by her colleagues and will be missed by them. As Cristina moves on to pursue graduate education, I wish her the best of luck in her future endeavors.

THANKING COL. LEE FARMER FOR HIS SERVICE TO THE UNITED STATES OF AMERICA
HON. DARRELL E. ISSA
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. ISSA. Mr. Speaker, I rise today to honor Colonel Lee Farmer for his service to the country for over 30 years in the United States Marine Corps. On March 4, Colonel Farmer will be retiring from the Corps, completing a career marked by dedication and excellence.
Colonel Farmer was commissioned as an
officer in November 1973. Early in his career
he served as a Rifle and Weapons Platoon
Commander as well as the Executive Officer
and Commanding Officer of Company A, 1st
Battalion, 4th Marines. He remained with the
Battalion as it became the first unit to initiate the unit rotation program, relocating to
Twentynine Palms, Calif. There he served as a
Rifle Company Commander for two years and
was later assigned as the Staff Secretary of
the 7th Marine Amphibious Brigade.
After graduating from the Amphibious War-
fare School in 1982, Colonel Farmer served
as Aide-de-camp to the Commandant of the
Marine Corps. In July 1984 he was reassigned
to the Basic School, Quantico, VA, where he eventually assumed command of Company A. He then attended Marines Corps Command and Staff College.
He later transferred to Okinawa, Japan, where he served as the Assistant Plans Officer
to Marine Aircraft Group–36. Transferring to Camp Pendleton in 1987, Colonel Farmer
was later deployed to Southwest Asia and part-
ticipated in Operation Desert Shield.
Following the war, he attended the Defense Language Institute in Monterey, California, in
preparation for his two-year assignment to
Chile where he attended the Chilean Naval
War College. He was reassigned to the Office
of the Secretary of Defense at the Pentagon, in July 1993, where he worked counter-nar-
cotics issues until his assignment as the Mili-
tary Assistant to the Under Secretary of De-
fense for Policy.
Following this assignment, he returned to
Camp Pendleton to command the School of
Infantry. After leaving Camp Pendleton for an-
other brief assignment in Okinawa, Japan, he
again returned to Camp Pendleton, where he
served as the Assistant Chief of Staff, Oper-
ations and Training until his reassignment as
the Chief of Staff in May 2001.
Since Colonel Farmer assumed his role as
Chief of Staff, he has worked closely with my
office on a number of issues. Colonel Farmer
distinguished himself as an honest, sin-
cere, and hard-working leader—ready to listen and always ready to help. During Colonel Farmer’s tenure, Camp Pendleton has be-
come one of our Nation’s finest defense instal-
lations, training Marines who have served on
the front lines of Operation Enduring Freedom
and Operation Iraqi Freedom.
Camp Pendleton Marines are in the process
of returning to Iraq, replacing the Army’s 4th
Infantry Division in the largest troop rotation
in history. These Marines will now carry out a
task that is critical to our national security and
to the security of the entire Middle East. They
have been prepared by the leadership of
Camp Pendleton—Colonel Farmer—and the
commanding officers who serve alongside
him. These leaders of Marines have good rea-
son to be proud of their service.
It has been a pleasure working with Colonel
Farmer. We are grateful for his distinguished service to our country. He will be missed.

MINORITY HOME OWNERSHIP AND THE WOW INITIATIVE
HON. DANNY K. DAVIS
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. DAVIS of Illinois. Mr. Speaker, I rise
today to address the importance of home-
ownership in our country; the difficulties that
many Americans have become homeowners;
and the financial strain put on Americans, par-
ticularly minorities, when seeking reasonable housing options.
Homeownership is an effective way for Americans to establish wealth and solidarity
for their families. More should have the ability
to pass homes from generation to generation,
with the comfort and knowledge that home is
more than a roof over one’s head, but that
home is a possession. Most consider purchas-
ing a house a major investment, perhaps the
largest that one will ever make, but to many it is more than an investment; it is the first step in achieving the American Dream. For many that over homes are entitled to an added sense of pride and feeling of belong-
ing to a neighborhood or community.
We should strive for all families to have the
means necessary to become homeowners and
to live comfortably. The fact that homeownership is unreal for so many Americans is disheartening. Homeownership has proven to be a tremendous difficulty for a large number of Americans. As housing has gradually become less affordable, families are struggling to pay the rent, let alone a mortgage. Housing is considered affordable when a person spends less than 30 percent of their income on rent or mortgage, but contrastingly, 4.9 million Americans spend more than 50 percent of their income to remain in their homes. In Illinois, nearly 420,000 renting families, about 30 percent of the total number of renters spend more than 35 percent of their income on rent, 258,000 spend more than half of their salaries on rent; as a result many do not consider home owning an option when apartment living is a struggle in itself. Subsequently, of the Illinois residents who have been fortunate enough to purchase homes, 370,000 of them are spending more than the affordable rate of 30 percent, which is a 38 percent increase from 1990 to 2000.

Financial stress due to housing costs has become an incredible burden in the United States. Unfortunately the frustration shared amongst all Americans occurs at an increased level for minorities, particularly African Americans. African Americans lag behind the U.S. population four percent to 68 percent in homeownership. The great wealth gap between African Americans and the rest of the nation creates varying levels of housing affordability, thus what is affordable to some is not affordable for others. In the Chicago metropolitan area alone, there are 850,000 individuals living at or below the poverty level, and African Americans whose everyday reality is grim and discouraging due to lack of financial resources; for Americans who are overlooked despite their hard work; the means to live comfortably are unattainable unless a considerable increase in affordable housing is made.

The Congressional Black Caucus Foundation has joined with many partners and sponsors including Habitat for Humanity, Fannie Mae, and Freddie Mac to strive towards a resolution for the homeownership gap where African American minorities and low-income families are receiving the short end of the stick. The With Ownership, Wealth Initiative ( WOW), was created several years ago to ensure housing affordability for minorities, particularly African Americans. The Initiative recognized the rates of African American poverty and homeownership as significant imbalanced with those of Americans as a whole, and in turn set forth to begin closing the gap. WOW offers credit counseling, housing counseling, home buying assistance and other services to help families get on a track that will lead to homeownership. After participating in events organized by the WOW Initiative, I am proud to report 200 preapproved mortgages and 103 actual closings in the Chicago area. I commend the CBCF, WOW and its partners for understanding the urgent need to end poverty and to encourage affordable homeownership for families and low-income families. Further, I applaud their success leading families a step closer to our American Dream.

Mr. Speaker, I would like to stress the need for affordable housing for all Americans and further I would like to recognize the emerging importance of WOW and other programs which share similar goals. These programs along with an end to drastic cuts in funding for housing and the development of more affordable homes are an absolute necessity to aid our country in its current housing crisis.

COMMENTS ON THE BUSH ADMINISTRATION DNC BLACK HISTORY MONTH PLEDGE

HON. JOHN LEWIS
OF GEORGIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. LEWIS of Georgia. Mr. Speaker, I would like to enter into the record some Georgia residents into the CONGRESSIONAL RECORD. For Black History Month, the Democratic National Committee queried African Americans asking them to write in and describe how the policies of President George W. Bush’s administration are affecting them. The following are the words of Georgia residents who responded:

John A. Olagoke, Dallas, Ga.: “Dear Mr. President, For the very first time in American History I have never seen a recession hit the American Economy. So many of us African Americans have lost their jobs, their homes, their assets and everything they have worked hard for. I am talking about well-educated people, Mr. President. Most of our telecommunication jobs are being moved overseas for cheaper labor. Last week, again, over 200 co-workers were laid-off at my company, I and others can no longer wait until the November election. I intend to take two of my family members who have not voted for eight years with me to the polling station to express our feelings.”

Arminia Lawson, College Park, Ga.: “In spite of the fact that I have a job, I am very worried that the job I do have will not last. I was laid off once because of 9/11, as well as other family members. [I was] forced to take menial jobs and worry about how to get food for the children, pay bills and try to get a job. I am very distrusting of Republicans such as George W. Bush.”

Ginny Albert, Atlanta, Ga.: “Mr. President, because your administration has been so lax and deliberately cruel to the middle class, the corporations filled your coffers, thanks to the tax cuts and special initiatives that favor businesses over people, these same corporations now feel that they can be negligence toward their customers and employees. They demand more and pay less in every sector. They have cut back on benefits, and in some cases have eliminated benefits altogether. Yes, your lack of true caring toward the non-rich has engendered a sense that cruelty toward people is okay and acceptable, and that employers no longer have to promise their workers anything. And another thing, why have you not initiated a program that will assist the unemployed in keeping their homes. Legislative safeguards are necessary for companies to foreclose on unemployed Americans. The homeless rolls are growing under your administration. If you care, put a stop to it.”

TRIBUTE TO GARETT AUGUSTUS MORGAN

HON. STEPHANIE TURBS JONES
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mrs. JONES of Ohio. I rise today to pay tribute to a highly gifted and innovative African-American whose inventions play an integral role in public safety all across the world. I would like to take a few moments to recognize Garrett Augustus Morgan’s contributions that have improved public safety today, and forever.

Garrett A. Morgan was born in Paris, Kentucky on March 4, 1877. Although Morgan was born into poverty and attained only a fifth grade education, he aspired to be successful. In 1895, while he was a teenager, he moved to Cincinnati and then to Cleveland, Ohio to pursue his ambitions. Morgan started off working in a sewing factory later establishing his own sewing factory. Morgan was curious by nature and began to venture into other projects. In 1909, he discovered a substance that straightened hair and made African-American’s his target patrons. This product was sold to African-Americans through his own G.A. Morgan Hair Refining Co. He later achieved the financial security to pursue other ideas.

Morgan received national attention for using a gas mask he had invented to rescue several men trapped during a gas explosion in a tunnel that was being built to ease congestion under Lake Erie. Many fire departments became interested in these gas masks, because they filtered the air in the tunnel. These masks were later used in World War I, and Morgan received a patent for a Safety Hood and Smoke Protector in the following years. Among other awards he received for this invention were a gold medal at the International Exposition of Sanitation and Safety, and a gold medal from the International Association of Fire Chiefs.

In 1920, Morgan collaborated and established a newspaper for African-Americans, called the Cleveland Call, which is now known as the Call and Post. After first running a sewing firm, inventing the gas mask, and creating the Cleveland Call, Morgan gained a great reputation as a worker and entrepreneur. But it was Morgan’s invention of the traffic light that he is most remembered for. After observing an accident between a vehicle and horse carriage, Morgan was zealous to improve public safety. In the early 20th century, many accidents were common partly because animal transportation, pedestrians, and vehicles shared streets. Instead of being satisfied with his prior achievements, Garrett A. Morgan subsequently was granted a patent for the traffic signals. He later sold his rights to his traffic signal to the General Electric Corporation for $40,000.

Garrett A. Morgan died on August 27, 1963 at the age of 86. Due to his safety inventions, the world is much safer. I ask you all to take a moment to ponder on how many lives have been saved due to Garrett A. Morgan’s innovative inventions. I like to salute a Cleveland Legend, businessman, inventor, and hero. Mr. Speaker, I yield back the balance of my time.
Counseling Act of 2004." This legislation would permanently extend VA’s authority to offer services to women and men who experienced sexual harassment, abuse or assault while serving on active duty in the armed services.

Congress originally authorized VA to offer sexual trauma counseling in November 1992 in the wake of the Tailhook Scandal where U.S. naval aviators were found to have sexually abused 14 women officers and 12 civilians at a 1991 convention in Las Vegas. In the wake of another scandal at the Aberdeen Proving Ground in 1998, legislation resulting in the extension and expansion of authority for the sexual trauma counseling program was enacted. I want to commend my colleague on the VA Committee, Luis Gutierrez, for his hard work in support of this legislation.

As the number of women serving in the military continues to grow, the need for this program is sadly more evident. According to a VA report, more than half (55%) of all women in VA’s patient population said they had experienced sexual harassment while in the military, and another one-quarter claimed to have been sexually assaulted. Although the military is moving to address some of the long-standing problems it has had in managing sexism of all kinds in its increasingly integrated armed services workforce, we cannot expect the military’s culture to change overnight.

VA’s sexual trauma counseling programs are designed to create a secure and sensitive environment in which women who served in the military can deal with the emotional burden of being a victim of sexual abuse. Studies have shown that almost a third of all rape victims experience symptoms of post-traumatic stress disorder. Typically individuals who seek care may need other types of VA services including appropriate treatment for the psychological effects of trauma, in addition to medication and treatment for the substance use disorders that sometimes arise from victims’ attempts to “self-medicate” symptoms such as stress, impaired concentration and nightmares.

Since the program was authorized, VA has embraced the challenge of developing unique resources to serve women and men who suffered during their military service. The program does not limit its services to veterans and is authorized to provide services to members of the National Guard and Reserve and others who were on active duty, such as trainees, who may never attain veteran status.

To date, thousands of veterans have received VA sexual trauma services and a General Accounting Office study shows a general received VA sexual trauma services and a General Accounting Office study shows a general awareness of VA’s authority to offer services to veterans who were victimized while in the service of their country. Women of all ages and periods of service continue to seek assistance from VA for the physical and emotional aftermath of these traumatic events. The bipartisan support for this Committee is why hasn’t this become a permanent program of the VA?

The time is right to give this proven program the permanent authority it deserves. I urge this Congress to pass this bill so sexual trauma counseling services will be available to current and future generations of veterans.

RECOGNIZING THE FAIRFAX COUNTY CHAMBER OF COMMERCE 2004 Valor Award Recipients FROM THE FAIRFAX COUNTY FIRE AND RESCUE DEPARTMENT

HON. TOM DAVIS
OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. TOM DAVIS of Virginia. Mr. Speaker, Mr. MORAN, Mr. WOLF and I rise today to recognize an extraordinary group of men and women in Northern Virginia. Each year, the Fairfax County Chamber of Commerce recognizes individuals who have demonstrated selfless dedication to public safety. The hard work, dedication, and perseverance of the Fairfax County Fire and Rescue Department have earned several of its members the highest honor that Fairfax County bestows upon its public safety officials—The Valor Award.

There are several types of Valor Awards awarded to a public safety officer: The Life-saving Award, the Certificate of Valor, or the Gold, Silver, or Bronze Medal of Valor. During the 26th Annual Awards Ceremony, 53 men and women from the Office of the Sheriff, Fire and Rescue Department, and the Police Department received one of the aforementioned honors for their bravery and heroism.

It is with great honor that we enter into the RECORD the names of the recipients of the 2004 Valor Awards in the Fairfax County Fire and Rescue Department. Receiving the Life-saving Award: Technician Brent M. Schnupp; the Certificate of Valor: Master Technician John L. Capps, Master Technician Even J. Lewis, EMS Captain Gary D. Pemberton; the Silver Medal of Honor: Firefighter Michael V. Allen, Lieutenant Edward D. Bowman, HazMat Technician Thomas L. Flint, Captain Samuel L. Gray, Firefighter Richard D. Riley, Master Technician Timothy A. Sparrow, Lieutenant Daniel T. Young; the Bronze Medal of Honor: Master Technician Anthony E. Doran, Firefighter Clayton Thompson III.

Mr. Speaker, in closing, we would like to take this opportunity to thank all men and women who serve the Fairfax County Fire and Rescue Department. The events of September 11th serve as a reminder of the sacrifices our emergency service workers make for us each day. These individuals’ continuous efforts on behalf of Fairfax County citizens are paramount to preserving security, law, and order throughout our community. Their selfless acts of heroism truly merit our highest praise. We ask our colleagues to join us in applauding this group of remarkable citizens.

TRIBUTE TO AUNT EUNICE MERRELL

HON. ROBERT E. (BUD) CRAMER, JR.
OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. CRAMER. Mr. Speaker, it is with a heavy heart that I rise today to honor the memory of Eunice Merrell, known affectionately as Aunt Eunice to everyone that knew her. Aunt Eunice passed away last week at the age of 84.

Aunt Eunice was the proprietor and host at Eunice’s Country Kitchen. There you could find friendly faces and good down-home cooking. In addition to the best biscuits in North Alabama, Aunt Eunice never met a stranger. She said hello to every one that walked in and especially her community. Her restaurant was in business for over 50 years.

Mr. Speaker, there was no place like Eunice’s Country Kitchen. It was a part of local legend. At Eunice’s, people from all over the state of life at all stages of life, were welcomed.

I considered Aunt Eunice a close friend and trusted advisor. She was the type of person
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who would speak her mind and report what other people were saying about the issues, not what she thought you wanted to hear. She could always be counted on to give honest opinions on developments, controversies, and issues in the community. I believe that Aunt Eunice was part of the unique fabric that makes North Alabama such a wonderful place to live, work, and raise a family. She will be deeply missed.

Aunt Eunice was survived by her sisters Naomi Johnson and Elizabeth Lyon, brother John Jenkins, son Joseph, daughters Doris Elkins and Linda Sledge, six grandchildren, two great-grandchildren, as well as countless friends and admirers. My thoughts and prayers are with them all.

BILLY MCNEAL: NATIONAL SCHOOL SUPERINTENDENT OF THE YEAR

IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. PRICE of North Carolina. Mr. Speaker, I am pleased and proud to inform my colleagues that last Friday, the American Association of School Administrators selected Wake County Superintendent Bill McNeal as the 2004 National School Superintendent of the Year.

Bill has a career of service to Wake County that dates back to 1974, when he arrived to teach middle school social studies. He rose through the ranks to serve as an Assistant Principal, Principal, Assistant Superintendent and Associate Superintendent. He is a graduate of Merrick Moore High School in Durham, North Carolina and received his bachelor’s and master’s degrees from North Carolina Central University. Bill is the definition of a homegrown leader, and I couldn’t be more pleased that his outstanding commitment to education has been recognized on the national level.

As Associate Superintendent for Instructional Services, Bill played a key role in developing Wake County’s groundbreaking effort to take elementary education to a new level. Adopted by the Wake County Board of Education in 1998, Goal 2003 aimed to have 95 percent of the county’s third and eighth graders performing at or above grade level in 5 years. Upon assuming the position of superintendent in 2000, it was Bill’s challenge to implement strategies for achieving this goal. The tremendous academic improvement which has been achieved as a result is a testament to Bill’s leadership and to the power of pursuing a common endeavor on behalf of our children.

Today the Wake County Public School System serves more than 104,000 students from kindergarten through 12th grade in 79 elementary schools, 25 middle schools, 16 high schools, and 5 special/alternative schools. It is North Carolina’s fastest growing, highest-performing large urban school district. With a record-high average score of 1067 on the SATs, a low dropout rate, end-of-grade test scores higher than the state average for every ethnic group and income level, and continued academic achievement and advanced students alike, it’s evident that Bill’s emphasis on academic excellence for all children has had a tremendous impact.

As a former teacher himself, Bill has worked hard to make sure that the views of educators are valued and utilized in the school system’s planning efforts. He has convened the Superintendent’s Teacher Advisory Council to provide him ongoing feedback about teacher and classroom issues. Bill recognizes that the success of schools depends on teachers accepting increasingly complex roles and leadership responsibilities. The challenge is to create the conditions necessary for success and to structure the work of teaching to make it more attractive and rewarding.

Mr. Speaker, as I join in recognizing Bill McNeal for this tremendous honor, I also want to thank him for his service to the schools of North Carolina’s 4th District. Just this week, Forbes Magazine named the school system he leads third in the nation on its Top Ten List for the Best Education in the Biggest Cities. I know that Bill’s outstanding efforts in Wake County will continue to serve as a model for others across the country.

HONORING TOWNSHIP OF WEST CALDWELL

IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. FRELINGHUYSEN. Mr. Speaker, I rise today to honor the Township of West Caldwell, in Essex County, New Jersey a vibrant community I am proud to represent. Incorporated on February 16, 1904, the good citizens of West Caldwell are celebrating the Township's Centennial Anniversary with special events throughout the entire year.

In the very early history of our country, well before the American Revolution, the towns known today as Caldwell, West Caldwell, North Caldwell, Verona, Essex Falls, Roseland, Fairfield, Cedar Grove and Livingston were inhabited by the Leni Lenape Indians. As Europeans emigrated to the New World, however, property ownership changed hands; and soon the entire region was purchased by the newly formed Caldwell Township and had an economy supported by farms, a store, a tannery, and a distillery. By 1904, the population of Caldwell Township and had an economy supported by farms, a store, a tannery, and a distillery.

HON. RODNEY P. FREILINGHUYSEN
OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. FREILINGHUYSEN. Mr. Speaker, I rise today to honor the Township of West Caldwell, in Essex County, New Jersey a vibrant community I am proud to represent. Incorporated on February 16, 1904, the good citizens of West Caldwell are celebrating the Township’s Centennial Anniversary with special events throughout the entire year.

In the very early history of our country, well before the American Revolution, the towns known today as Caldwell, West Caldwell, North Caldwell, Verona, Essex Falls, Roseland, Fairfield, Cedar Grove and Livingston were inhabited by the Leni Lenape Indians. As Europeans emigrated to the New World, however, property ownership changed hands; and soon the entire region was purchased by the newly formed Caldwell Township and had an economy supported by farms, a store, a tannery, and a distillery. By 1904, the population of Caldwell Township and had an economy supported by farms, a store, a tannery, and a distillery.

In the early 1800s, Caldwell Township flourished throughout the 1800s. Prescribed by physicians as a “pure air” retreat for patients with all kinds of ailments, the quiet region was home to about 485 people (1800 census). Franklin and Westville, what would eventually become known as West Caldwell, began to grow as well. Westville, owned predominantly by the Crane and Harrison families, whose historical homes still exist, was the site of farming lands and the local sawmill. Franklin, on the other hand, was the principal business center of Caldwell Township and had an economy supported by firms, a store, a tannery, and a distillery.

By 1904, the population of Caldwell Township had grown and become so spread out that public renovations could never be approved by residents on both sides of town. To alleviate the problem, on February 16, 1904, West Caldwell was incorporated as an individual borough comprised of 3,175 acres and 410 people. Like every suburb of the metropolitan New York and Newark, New Jersey area, the 20th Century brought with it incredible growth and today West Caldwell boasts more than 11,000 proud residents who treasure the Township’s legacy of patriotism, its small town flavor and its strong sense of community.

Mr. Speaker, I urge you and my colleagues to join me in congratulating the residents of West Caldwell on the celebration of 100 years of a rich history and the building of one of New Jersey’s finest municipalities.

RECOGNIZING THE CONTRIBUTIONS OF NIKKI YAMASHIRO

IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Ms. SOLIS. Mr. Speaker, today I rise to recognize Nikki Yamashiro, a dedicated, thoughtful, and intelligent young woman who has been fortunate to have working on my staff for over two years.

Nikki first began working in my Washington office as an intern in the winter of 2001. We were pleased to have a resident of Monterey Park, a community I represent, and a graduate of the University of California at San Diego, in our office. Nikki quickly showed us the qualities that would make her a valuable contribution to our team—her intelligence, willingness to work hard, and commitment to the residents of California’s 32nd Congressional District.

Nikki gradually worked her way up from an intern to her current position of Legislative Assistant. Along the way, she spearheaded my office’s participation in the Congressional Arts—Competition and improved the efficiency of our constituent mail system. Last year, she played a key role in strengthening two bills I introduced—the Domestic Violence Courts Assistance Act and the Domestic Violence Prevention Education Act. Nikki is a true champion for women’s rights and has helped me build nationwide support for these bipartisan bills.

I am very proud of her work, but I am most proud of the work Nikki did to shepherd into law a bill important to our community—the Francisco A. Martinez Flores Post Office Act (Public Law 108-116). Lance Corporal Martinez Flores was a courageous Marine from
Duarte, CA, who lost his life while serving in Operation Iraqi Freedom. Nikki and I worked together to get all 53 Members of the California delegation on board as co-sponsors of a bill to rename a local post office after Francisco. Nikki would not rest until we achieved our goal—and I am proud to say the post office will be officially renamed on February 28, 2004.

Although I am proud that Nikki is choosing to pursue graduate education, I know that our office will not be the same without her. Nikki is very much loved and respected by everyone she works with, and I wish Nikki the best of luck in all her future endeavors. I have no doubt she can achieve anything she sets her mind to.

HONORING THE OCEANSIDE ROTARY CLUB ON THE OCCASION OF THEIR 80TH ANNIVERSARY

HON. DARRELL E. ISSA
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. ISSA. Mr. Speaker, I rise today to recognize the good works of the Oceanside Rotary Club on the occasion of their 80th Anniversary. The Oceanside Rotary Club was founded in 1924 and during the past 80 years it has undertaken numerous philanthropic projects in its community, the nation and around the World.

The Oceanside Rotary Club has a proud motto of “Service Above Self.” The club has contributed in renovation of historic structures and provides books for Marines on deployment. Oceanside Rotarians have sponsored an orphanage and senior center in Baja, Mexico and provided wheel chairs for seriously injured people in the country of Malawi.

Five years ago, Oceanside Rotary raised more than $35,000 to buy and donate automatic external defibrillators to the City of Oceanside.

In 2002 the Oceanside Rotary Club began providing musical instruments for Oceanside Unified elementary and middle school students.

This year the Oceanside Rotary Club raised money to feed 200 needy families during the holiday season.

The Oceanside Rotary Club continues to support Rotary International’s “Polio Plus” program, which is on track to eradicate this disease world-wide by the year 2005.

It gives me great pleasure to recognize the Oceanside Rotary Club for over 80 years of noteworthy service. It is these types of organizations that make our country strong. We are proud of their service to our community.

CELEBRATING THE 50TH ANNIVERSARY OF BROWN VS. TOPEKA BOARD OF EDUCATION

HON. DANNY K. DAVIS
OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. DAVIS of Illinois. Mr. Speaker, I rise today to recognize and celebrate the 50th Anniversary of Brown vs. Board of Education.

This case has been acknowledged as the commencement of other milestones from the civil rights struggle. As we take the time to embrace and celebrate, Brown vs. Board of Education has truly become ground zero of the civil rights movements. This movement has affected African Americans tremendously; we are grateful for all the doors that African Americans some have remained closed. It is unfortunate that our society has not truly integrated.

Brown vs. Board of Education’s primary focus was to integrate schools; however it did not pertain to anything occurring outside of schools. Several schools had been integrated, but as time persists we are continuing to revert back to a time of segregation within the schools.

Fifty years ago the U.S. Supreme Court realized the truth that, “separate educational facilities are inherently unequal.” Consequently, educational integration is an essential prerequisite to achieving a just, democratic fair society, which was finally acknowledged by the high court. If the U.S. Supreme Court had not recognized this ongoing dilemma that continuously occurred I may not be standing before you all today. There would not have been as many African American’s pursuing or fulfilling their dreams and providing a better lifestyle for themselves and their family.

Although Brown opened many doors and we have experienced same success, nevertheless much remains to come, such as the problems surrounding housing, poverty, inadequate education for minority children, and increasing the enrollment for post-graduate studies. Yet today, 50 years after this landmark decision, more African American, Latino, and Native American children attend segregated and unequal schools than ever before.

Currently, Black communities in every part of the country, including schools, are experiencing an increase in segregation; although it does not surpass the stream of the pre-civil rights of the South.

Despite the fact, in my state, Illinois is one of the nation’s most segregated metropolitan communities; and has been consistently among the nation’s most segregated in terms of its schools. The National Center for Educational Statistics conducted a study on African American males ages 16–24 are more than twice as likely as white males to be both out of school and out of work.

Children of today are continuing to experience segregation within educational institutions. For instance, a study conducted by Harvard University in 2001–2002 stated, in Illinois, 18 percent of African American students attended white schools, while 61 percent of African American students attended minority schools. Some African American children are forced to attend school in dilapidated buildings; many do not receive an adequate education, and several are displaced into special education frequently because the teacher cannot manage their behavior.

The school dropout rate is much higher for African Americans than for whites. According to the Chicago Reporter, 2 out of 3 African American male students who entered high school did not graduate from high school within 5 years. While high school graduates are much more likely to go on to college than African Americans. The problem also persists throughout post graduate degrees. For instance, of the 17,000 dental students enrolled in U.S. dental schools in 1998–1999, less than 1,000 were African Americans, according to the American Dental Association (ADA). The Journal of Dental Education states that, African Americans instead have a higher percentage in jobs with lower skills and lower pay, such as a Dental Assistant rather than a Dental Hygienist. This clearly demonstrates the inequalities in education for African Americans.

The Supreme Court was supposed to create and continue the legacy of “separate but equal,” however our Nation is truly experiencing desegregation in public schools.

African American students nationwide are unbelievably disproportionately placed in special educational classes. These individuals who have been overly classified as special education students are confronted with the denial of equal opportunity. When compared to white children, African American children were three times as likely to be labeled “mentally retarded” or “emotionally disturbed,” while minority students are usually misclassified, inad- terly receiving low quality services, or segregated from white students according to a study by Harvard University.

Currently, education is perhaps the most important function of the state and local governments. Education is a principal instrument in awakening children to their cultural values, in preparing them for later professional training, and in helping them to adjust normally to their environment. If we take away a valued education, how can we expect any child to succeed in life? Education in not an opportunity, how can we expect any child to succeed in life? Education in not an opportunity, but as time recedes, the condition of receiving a quality education worsens daily for African Americans. Although Martin Luther King, Jr. had a dream he also had a nightmare, which has been forgotten. He predicted and was concerned that the promise of Brown and the civil rights law would deceive those who dedicated their lives and souls for the struggle of justice. As his last book, he wrote, "from here? Chaos or Community," he stated.

For twelve years I, and others like me, had held out radiant promises of progress. I had preached to them about my dream. I had lectured to them about the not too distant day when we would have freedom, "all, here and now." I had urged them to have faith in America and in white society. Their hopes had soared. They were now booing... because we had urged them to have faith in people who had too often proved to be unfaithful. They were hostile because they were watching the dream that they had so readily accepted turn into a frustrating nightmare.

Now it is our duty to realize the promise of Brown and to long deferred and still necessary for progress to occur within our Nation. I would like to leave you with one more quote by Dr. King back in 1959. He said, "As I stand here and look out upon the thousands of negro faces, and the thousands of white faces, intermingled like the waters of a river, I see only one face—the face of the future." So, too, must we. Even though we may not be here to see all the fruits of our labor, we plant these seeds for that child being born. We plant them for the young people of our future.

"Separate can never be equal!"
TRIBUTE TO JESSE OWENS

HON. STEPHANIE TUBBS JONES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 26, 2004

Mrs. JONES of Ohio. Mr. Speaker, I rise today to pay tribute to a very special person, athlete, and role model in African-American history: Jesse Owens. Born “James Cleveland,” Jesse Owens was the son of a sharecropper and the grandson of a slave. He was born into a modest household in Alabama, and moved to Cleveland, Ohio, with his family at the age of nine in hopes of finding better employment for his father. During his first day in Cleveland, Ohio, he stopped in a shoe store and remarked his name to be “Jesse”; and that nickname stayed with him for the rest of his life.

Jesse went on to attend East Technical High School in Cleveland, where his natural talent for running was immediately recognized by his track coach. He committed himself to attend after-school track practices because of the numerous jobs he held on the side, including delivering groceries, loading freight cars, and working in a shoe repair shop. Realizing Jesse’s abilities, the track coach agreed to meet with Jesse before school. With the refining of his natural talent, Jesse was able to set world records in high school for the 100-yard dash, 220-yard dash, and broad jump.

After being aggressively recruited by top universities, Jesse chose to attend the Ohio State University to continue his athletic and academic career. As Ohio State did not give out scholarships for black track athletes, Jesse continued to work several part-time jobs to provide for his education, himself, and his wife, Ruth. He juggled his employment with his studies and an intense practice and competition schedule. Jesse continued to excel in track and field, despite the discrimination and segregation he faced on a daily basis. He was forced to live off-campus in housing designated for African-American athletes, and he was not allowed to eat with the rest of his teammates when they were on the road and ate at “whites only” restaurants.

Overcoming all of these obstacles, Jesse continued his record-setting career in his first year in college, as he set world records for the 220-yard dash, the 220-yard low hurdles, and the broad jump and tied the world record for the 100-yard dash. Prior to his record-breaking broad jump, Jesse had been a handkerchief at the height of the previous world record and then confidently jumped an entire six inches above it.

Wanting to take his competitive skills to the next level, Jesse entered the 1936 Olympics, which were to be held in Berlin, Germany during the reign of Adolf Hitler. Jesse was used to the discrimination he felt at home and was determined to show Hitler’s Germany, and the world, that there was no such thing as a “dominant race.” He did just that. Jesse swept the competition by winning the 100-meter dash, the 200-meter dash, and the broad jump. He was also a member of the gold medal-winning 400-meter relay team and set three world records during the competition. His performance placed him permanently in the history books as the first American to win four track and field gold medals in a single Olympics. Perhaps more importantly, Jesse’s unprecedented performance caused many people around the world to reconsider their notions of race and capabilities.

Unfortunately, when Jesse arrived home to the United States, the racial barriers that he had left behind were still in place. Jesse had decided to shake hands with Hitler, but I wasn’t invited to the White House to shake hands with the President, either,” he said. Showing his grace and class, Jesse did not turn bitter, but rather
went on to become a public speaker and advocate for youth sports programs in disadvantaged neighborhoods. His humanitarian efforts were not carried out in vain, as he was awarded the Medal of Freedom from President Gerald Ford in 1976, the highest honor a U.S. citizen may receive.

On March 31, 1980, Jesse Owens passed away after a battle with lung cancer. He left behind his wife and three daughters, numerous world records, and a legendary performance in Germany that reshaped the world’s notions of race. He gave America hope during a time when America gave him a seat in the “blacks only” restaurant and a place to stand on the bus. During this month in which we honor Black History and the significant achievements of African Americans, it is proper and fitting that we recognize Jesse Owens as a champion of track and field and, more importantly, humanity.

HIGHLIGHTING THE IMPACT OF THE US-VISIT PROGRAM ON SOUTH TEXAS COMMUNITIES

HON. CIRO D. RODRIGUEZ
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES

Thursday, February 26, 2004

Mr. RODRIGUEZ. Mr. Speaker, I rise today to highlight an issue of great importance to the communities of South Texas—the United States Visitor and Immigration Status Indicator Technology (US-VISIT) program. I would like to thank the gentleman from Texas, Congressman Jim Turner, for his leadership on homeland security issues. He is a great advocate for improving our national security infrastructure at all levels.

We face many challenges in the homeland security area, from the need to improve our intelligence capabilities to providing more resources for local first responders. Without question, we need to continue efforts to improve our national security. But, we must do so in a way that does not undermine our economy. Security and commerce must go hand in hand.

Without a doubt, one of the goals of the September 11th terrorists was to damage our economy. We should not let them win by imposing security measures without the proper infrastructure and preparation needed to make them work smoothly. Texas is the gateway for trade between the United States and Mexico, one of our largest trading partners. Our ports along the border, from El Paso to Brownsville, handle the majority of land-based trade with Mexico. These ports are the two largest ports of entry and six out of the top 10 ports are in Texas.

I recently had the opportunity to visit the Port of Laredo with the Ranking Member, Mr. Turner, to hear first hand about the impact of US-VISIT on our border communities. We visited the World Trade Bridge which, along with a sister bridge, accounts for roughly 40 percent of all overland trade between the United States and Mexico. The US-VISIT program, as currently designed, poses a great threat to our border and national economies. We clearly lack the infrastructure to handle these requirements. Even without US-VISIT, our border infrastructure is inadequate to meet the current demands and future potential. We need to improve our roads, build new bridges, and update our technology. With implementation of the US-VISIT program, we face the likelihood of greater delays, confusion, and a decrease in legitimate trade and tourist travel. We must not tolerate any decrease in border trade. Our goal must be to expand it while improving our security. To do so, requires more investment. To do so requires the development of new technologies that will protect us while allowing more people and goods to cross our borders.

We need to better understand how US-VISIT will impact us. For that reason, I have requested, through Ranking Member Turner, that the GAO study the economic impact of US-VISIT on our land ports and to report on what infrastructure and technology we need in order to avoid an economic disaster. Once we have that information, and only then, can we decide how to properly carry out our border security measures.

And it’s not just communities directly on the border that will suffer. Cities like San Antonio, a major trade gateway, will suffer similarly as trade becomes snarled at our ports and as trade literally moves elsewhere.

We must also address the unfairness of the existing border visa program. Currently, Mexican citizens can obtain a border laser visa, a secure document that allows them to enter the United States for 72 hours and travel no more than 25 miles from the port of entry. Obtaining a laser visa requires extensive background and security checks. Applicants are screened and checked. For that reason, we should also insist that holders of laser visas not be required to go through any duplicative requirements of US-VISIT such as photographing and fingerprinting. Moreover, the 72-hour limit is unfair and if strictly enforced would devastate many border economies. We should allow laser visa holders to stay in the United States for up to six months.

These laser visa holders are an important part of our economy. Many of them have businesses, homes and family members in the United States. We must protect our security, but we must value our visitors who do not come to harm us, but rather to visit our country and contribute to our economy.

RECOGNIZING THE FAIRFAX COUNTY CHAMBER OF COMMERCE 2004 VALOR AWARD RECIPIENTS FROM THE FAIRFAX COUNTY POLICE DEPARTMENT

HON. TOM DAVIS
OF VIRGINIA
IN THE HOUSE OF REPRESENTATIVES

Thursday, February 26, 2004

Mr. TOM DAVIS of Virginia. Mr. Speaker, Mr. Moran, Mr. Wolf, and I rise today to recognize an extraordinary group of men and women who serve their community. Each year, the Fairfax County Chamber of Commerce recognizes individuals who courageously have demonstrated selfless dedication to public safety. The hard work, dedication, and perseverance of the Fairfax County Police Department have earned several of its members the highest honor that Fairfax County bestows upon its public safety officials—The Valor Award.

There are several types of Valor Awards awarded to a public safety officer: The Life-saving Award, the Certificate of Valor, or the Gold, Silver, or Bronze Medal of Valor. During the 26th Annual Awards Ceremony, 53 men and women from the Office of the Sheriff, Fire and Rescue Department, and the Police Department received one of the aforementioned honors for their bravery and heroism.

It is with grateful honor that we enter into the record the names of the recipients of the 2004 Valor Awards in the Fairfax County Police Department. Receiving the Lifesaving Award: PSCC Assistant Supervisor Jackie A. Ahrens, Police Officer First Class Garrett G. Broderick, Police Safety Community Greg Gibson, Police Officer First Class Daniel V. Johnson, Detective Thomas P. Lawn, Sergeant Shawn C. Martin, Police Officer First Class Weiss Rasool, Officer Stacy L. Sassano, Police Officer First Class Donna E. Shaw, and Detective James N. Sparks, III, the Certicate of Valor: Police Officer First Class William G. Brett, Senior Police Officer Robert A. Galpin Jr., Detective Matthew G. Payne, Detective Steven T. Pihonak, and Detective Gene M. Taltano; the Silver Medal of Honor: Police Officer First Class Kathy W. Cook; the Bronze Medal of Honor: Master Police Officer Bryan K. Cooke, Second Lieutenant Scott C. Durham, Master Police Officer Charles M. Haugan, Second Lieutenant Daniel P. Janickey, Police Officer First Class Ryan W. Morgan, Senior Sergeant John W. Orpin, Private First-Class David B. Patterson, Officer Randolph G. Philip, and Officer Frederick W. Von Meister.

Mr. Speaker, in closing, we would like to take this opportunity to thank all men and women who serve the Fairfax County Police Department. The events of September 11th serve as a reminder that our police and emergency service workers make for us each day. These individuals’ continuous efforts on behalf of Fairfax County citizens are paramount to preserving security, law, and order throughout our community. Their selfless acts of heroism truly merit our highest praise. We ask our colleagues to join us in applauding this group of remarkable citizens.

IN RECOGNITION OF ASBAREZ, ARMENIAN DAILY NEWSPAPER’S 95TH ANNIVERSARY OF ESTABLISHMENT IN CALIFORNIA

HON. ADAM B. SCHIFF
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES

Thursday, February 26, 2004

Mr. SCHIFF. Mr. Speaker, I rise today to honor the bilingual daily newspaper, Asbarez, as it celebrates its 95th anniversary of establishment in California. Asbarez, which means ‘arena’ in English, was founded in August of 1908 in Fresno, California. At that time those who had come from Armenia looked to Armenia and Armenians for guidance, and the community’s desire to preserve its heritage and identity, created Asbarez, with the hope of bringing the community and the homeland together.

Asbarez was born through the sacrifice of all those involved. In the words of Edward Manoogian, who worked at Asbarez from 1956–1963, “Asbarez became a community effort and became a community effort and there was a great sense of honor that the Armenian community and individuals felt that this was their paper and their lives are described in this
The program serves 40,000 people with disabilities nationwide. Last year, it generated approximately $280 million in wages earned and nearly $1.5 billion in products sold. In Georgia alone, some 972 people with disabilities earned nearly $3 million in wages last year as a result of the Javits-Wagner-O’Day program.

The Bobby Dodd Institute (BDI), a community rehabilitation facility in my district, has found particular success with JWOD contracts. Bobby Dodd Institute trainees operate the Veterans Administration Hospital switchboard in Murfreesboro, Tennessee.

As a result of these JWOD contracts, the Bobby Dodd Institute has been able to provide employment opportunities to numerous individuals with disabilities and has helped them to become independent, self-sufficient citizens. I am pleased that these JWOD contracts have had such a positive impact and hope that this is only the beginning. With support from my esteemed colleagues, Javits-Wagner-O’Day contracts can increase, and our whole society will benefit.

This is a program that truly makes a difference in the nation, and in Georgia. I am proud to support it.

**JAVITS-WAGNER-O’DAY NATIONAL DISABILITIES DAY**

**HON. JOHN LEWIS**

**OF GEORGIA**

**IN THE HOUSE OF REPRESENTATIVES**

Thursday, February 26, 2004

Mr. LEWIS of Georgia. Mr. Speaker, I would like to remind my colleagues of the many barriers people with disabilities face. They confront barriers to employment, transportation, and mobility issues, environmental obstacles, as well as fears, prejudices and misconceptions about their ability to offer valuable services to business, to our communities, and to our nation.

People with disabilities battle a 50 percent nationwide unemployment rate, and those with severe disabilities struggle with a debilitating 70 percent rate of unemployment. I regret that ten years after this Congress passed the Americans with Disabilities Act, it is still necessary to affirm that people with disabilities can work and want to work. They can enrich the workplace with meaningful skills and talents. And they, like any other Americans, want to contribute their talents to our society.

The key to changing these shocking labor statistics is to encourage employers to focus on the abilities of an individual, rather than an individual’s disabilities. Hiring a deserving, qualified individual with a disability is a win-win situation for business and the community.

When a person with a disability is employed, the positive benefits reverberate in the community reducing welfare dependency and generating self-sufficiency, independence, stable families, and an increased tax base. Employing people with disabilities helps businesses as well. They have extremely high retention rates, higher than most employees, and there is even evidence of the positive benefits reverberate in the community. They have extremely high retention rates, higher than most employees, and there is even evidence of the positive benefits reverberate in the community.

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The key to changing these shocking labor statistics is to encourage employers to focus on the abilities of an individual, rather than an individual’s disabilities. Hiring a deserving, qualified individual with a disability is a win-win situation for business and the community.
During this month, we acknowledge the many national African-American trailblazers such as, W.E.B. Dubois, Harriet Tubman, Rosa Parks, Martin Luther King Jr., Frederick Douglas, Malcolm X, and Hiram Revels and Shirley Chisholm, the first African-Americans elected to the U.S. Congress. Through these individuals and individual work the issues of countless others we, as Americans, are more tolerant, patient and accepting of others. We benefit from their legacies not in February alone, but every day.

It is important that minority groups work collectively to ensure that all rights are sustained and each person is treated with the respect and dignity they deserve, regardless of the color of their skin or ethnic background. It is my goal to build strong alliances and coalitions among all minority communities to work collectively toward reaching true equality.

I am very proud to have the opportunity to stand on the floor of the United States House of Representatives to help celebrate Black History Month. This is the time when we must commemorate and celebrate the lives of the many African-Americans that have made historic contributions in the areas of academics, politics, science/technology, and social justice. Their struggles and their triumphs are engrafted in our everyday life and it is essential that we celebrate all of their accomplishments.

REGARDING THE TRAGIC EVENTS TAKING PLACE IN HAITI AND INTRODUCING LEGISLATION WITH RESPECT TO ERADICATION OF CHOLERA

HON. ALCEE L. HASTINGS
OF FLORIDA
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. HASTINGS of Florida. Mr. Speaker, the situation in Haiti continues to get worse. The attacks on towns and cities are ongoing and more frequent. There are reports of widespread looting and roundups. Haiti is now threatened with chaos.

The ongoing political crisis in Haiti has destabilized the country's economy, social fabric, and the livelihoods of its people, leaving Haitians with a ruined economy and barely functioning physical infrastructure, few resources or the basic necessities to maintain life, and an insolvent government.

The path we tread is a difficult one. On the one hand, the disappointing Aristide presidency has reached an impasse, and has not yet shaken off the questions of constitutional legality, stability, and the democratic and constitutional principles are the foundations to a free society that we must always treasure. But the issue is not whether or not to support President Aristide. Rather, finding a solution that will bring stability while strengthening the democratic process in Haiti.

To achieve this, a political solution is needed to bring together all those that refuse to make things worse. The rebels are degrading the democratic institutions. For that reason, sacking an elected leader is a recipe for illegitimacy and more bloodshed.

The Haitian government and other parties should work together for a peaceful transition from the current regime. And in addition to the political transition, immediate formation of a United Nations peacekeeping force is needed to help stabilize Haiti.

I implore my colleagues to support this resolution.

IN HONOR OF DON RAY

HON. CHARLES W. "CHIP" PICKERING
OF MISSISSIPPI
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. PICKERING. Mr. Speaker, next month, Don Ray, a great servant in Mississippi will be leaving his home and work in my district to serve a higher calling. We will miss him in the South, but the Lord has called him to a church in Michigan, and we are proud and excited he will be responding to this, the highest of callings.

Jeanie Ray and Jeannie Ray have reared a wonderful and loving family: son Craig; daughter Jene with her husband Michael Barranco and their children Mia Julia and Michael; daughter Jerri with her husband Ralph Ross and their children Jennings and Graeme; daughter Julie; and son Kyle with his wife Hilmari and their children Baylor and Carly Marie. Five children and six grandchildren are fitting legacy for Don Ray, a great servant in Mississippi.
IN RECOGNITION OF SAMUEL ALVIN “SAMMY” BRASHER  
HON. MIKE ROGERS  
OF ALABAMA  
IN THE HOUSE OF REPRESENTATIVES  
Thursday, February 26, 2004

Mr. ROGERS of Alabama. Mr. Speaker, I rise today to pay tribute to Samuel Alvin “Sammy” Brasher—known to many of us as the man with the harmonica. Sammy Brasher was an inspiration to us all. Born in 1959 in Greenville, South Carolina, Sammy was not expected to live a full life. When he was born doctors told his parents he would only have 3 years on Earth. He lived to be 44. Mr. Speaker, Sammy Brasher is a shining example to us all. Never one to give up easily, Sammy lived his life as a testament to what we all can be, and what we all can achieve. He never let his health slow him down, and kept us smiling with his ever-present musical companion, his harmonica. Sammy Brasher’s memory will always be with us, and we will remember him in our hearts, and in our prayers. His smile, his harmonica, and his honesty touched us all. At this difficult time we grieve for his family and remember them in our hearts, and in our prayers.

IN THE HOUSE OF REPRESENTATIVES  
HON. FORTNEY PETE STARK  
OF CALIFORNIA  
Thursday, February 26, 2004

Mr. STARK. Mr. Speaker, I rise today in introduction of the Prescription Drug Safety and Affordability Act. For far too long, the pharmaceutical industry has jeopardized patient safety and inflated prescription drug prices by using tax-deductible dollars to underwrite their marketing efforts. The Prescription Drug Safety and Affordability Act would root out this unethical and potentially dangerous behavior by denying tax deductions to pharmaceutical companies for the gifts they lavish on physicians. Recently, Congress passed a new Medicare prescription drug benefit that fails far short of giving seniors the relief they need from the high prices of prescription drugs. In fact, the average senior will still pay $1,500 out of pocket per year under the new drug benefit, and a total of $2,080 out of pocket when premiums are included. Unfortunately, the new drug bill does nothing to lower prescription drug prices. In fact, it specifically prevents the government from using the bargaining power of 40 million beneficiaries to negotiate lower drug prices. At the same time, it continues to prohibit seniors from shopping for a better price on the global market, despite broad bipartisan support for allowing them to do so.

Relief is all the more urgent because prescription drug prices are rising for seniors, who now pay an average of $2,322 for their drugs. Between 1998 and 2003, of the 50 drugs most commonly prescribed to seniors, nearly three-quarters of them increased in price by at least one and one-half times the rate of inflation, and more than half increased by at least three times the rate of inflation. We must do all that we can to lower the price of prescription drugs and to spend our healthcare dollars wisely. Yet, drug companies are spending billions of dollars on promotions to entice doctors to prescribe their products, and these dollars are tax deductible. An April 2002 survey by the Kaiser Family Foundation found that pharmaceutical companies spent $13 billion in incentives for doctors, or more than $15,000 per doctor. Sixty-one percent of physicians surveyed said they had received gifts from the industry. Drug companies often give free meals, tickets to the theater, concerts, or sporting events, gifts such as watches and jewelry, free meals at conferences, and pay for vacations for doctors and physicians’ travel to symposiums or conferences.

These gifts are often attempts by the pharmaceutical industry to induce doctors to prescribe their products even when it is not in the patient’s best interest. For example, recently disclosed court documents have revealed that Warner-Lambert encouraged hundreds of doctors to prescribe Neurontin for unapproved uses by inviting them to dinners, weekend trips to resorts, and free tickets to the 1996 Summer Olympics in Atlanta. Just a few months ago, the U.S. Attorney’s office filed court papers accusing the company of implementing a “marketing scheme that is rife with false statements and fraudulent conduct.” The U.S. Attorney concluded that the public interest can only be served when drug promotion is “free of the insidious effects of kickbacks and related financial conflicts of interest,” which artificially inflate sales and prices. These gift-giving campaigns contribute to preference and rapid prescribing of new drugs, and decreased prescribing of generics. In other words, tax-deductible dollars contribute to the rising prices of prescription drugs.

These campaigns and inflated prices are particularly outrageous, given the level of profit the drug companies make at the expense of patients. The pharmaceutical industry is consistently the most profitable industry in America, with profit margins in 2001 more than five times the median for Fortune 500 companies. Spending on prescription drugs has increased by 20% each year between 1997 and 2001. Between January 1997 and January 2002, the average price of the most commonly used prescription drugs for seniors rose by 27.6%, more than twice the rate of inflation. The Pharmaceutical Research and Manufacturers of America (PhRMA) pretended to discourage these improper marketing ploys by issuing conflict-of-interest guidelines in April 2002. After announcing the guidelines with fanfare, they then paid the American Medical Association to “educate” their members on these guidelines—that is, they gave doctors financial incentives to promote ethical guidelines that called for an end to financial incentives! It is obvious that PhRMA is not serious about ending the practice of giving financial incentives to doctors. This bill would create an incentive for drug companies to abide by their own code of conduct.

Not only are these incentives unethical, but they could even be illegal. The HHS Inspector General issued final guidance to pharmaceutical manufacturers saying that many of these gifts to doctors could be considered illegal and may be subject to fines. For these gifts, current tax law actually encourages this potentially illegal practice. This bill seeks to redress this perverse incentive.
TRIBUTE TO THE ST. FRANCIS HIGH SCHOOL VARSITY FOOTBALL TEAM 2003-04 MICHIGAN DIVISION 7 STATE CHAMPIONS

HON. DAVE CAMP
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. CAMP. Mr. Speaker, I rise today to pay tribute to the St. Francis High School Varsity Football Team, who recently won the 2003–04 Michigan Division 7 state title. In their heart-stopping championship game played at the Pontiac Silverdome, located in Detroit, Michigan, the St. Francis Gladiators defeated Hudson 28–14.

Led by Head Coach Josh Sellers and assistant coaches Jim Carroll, Pat Cleland, Joe Forlenza, Steve Curtis, Greg Sherwin, Craig Bauer, Scott Doriot, and Mark DeSantis, the 2003–04 Gladiators include seniors Garrett Petterson (Captain, 2), Travis Sivek (Captain, 3), Tyler Schell (5), Sean Currie (6), Kevin Curtis (Captain, 10), Nathan Dunham (20), Brett Milliman (30), Ryan Asam (32), Jacob Preston (Captain, 51), Ken Underwood (61), John Bailey (62), Devin Tremp (65), Caleb Bauer, Scott Doriot, and Mark DeSantis, the assistant coaches Jim Carroll, Pat Cleland, Joe Forlenza, Steve Curtis, Greg Sherwin, Craig Bauer, Scott Doriot, and Mark DeSantis, the assistant coaches Jim Carroll, Pat Cleland, Joe Forlenza, Steve Curtis, Greg Sherwin, Craig Bauer, Scott Doriot, and Mark DeSantis. The dedication that these players put forth throughout the entire season is one of which the entire district can be proud. Their victory not only brought the team together in great spirit, but their family, friends and community as well.

Once again, on behalf of the House of Representatives of the State of Michigan, I wish the team the best in their future season.
Beah Richards pioneered a trail for African Americans in the film community. She was one of the original foot soldiers in the fight for African Americans and women in film and for this she deserves recognition.

HON. JAMES R. LANGEVIN
OF RHODE ISLAND
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. LANGEVIN. Mr. Speaker, I rise today to congratulate the students of Cranston High School West for their incredible devotion to combating hunger in the State of Rhode Island. The Student Council decided this school year to once again participate in “The Feinstein Youth Hunger Brigade Program.” This State-wide program encourages school-children to collect non-perishable food items, distribute them to a local agency, and raise awareness of the problem of hunger in their community.

The students of Cranston High School West have decided to collect food items for the Comprehensive Community Action Program for the second consecutive year. This worthy endeavor to bring the truly magical, truly American legacy of jazz to the 21st Century.

HONORING MARJORIE MURPHY ON BEING NAMED THE COHASSET MARINER’S CITIZEN OF THE YEAR

HON. WILLIAM D. DELAHUNT
OF MASSACHUSETTS
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. DELAHUNT. Mr. Speaker, I rise today to pay tribute to Marjorie Murphy, who has recently been named Citizen of the Year by the Cohasset Mariner, a respected newspaper on the South Shore of Boston, MA. Marjorie, as she is affectionately known, has made a positive impact on the lives of families throughout the area for 30 years. Originally a first grade teacher, she soon realized her true passion through her roughly 25 years as school librarian at Deer Hill Elementary School in Cohasset.

With her lifetime of public service in mind, Mr. Speaker, I submit to my colleagues this Cohasset Mariner tribute:

As editor of the Cohasset Mariner, it is my pleasure to announce that Marjorie Murphy is the Citizen of the Year. The mother of three and grandmother of two has touched countless lives through her roughly 25 years as school librarian at Deer Hill.

With eyes that twinkle and an infectious smile, Mrs. Murphy—fondly known as Marjie—can make even the oldest readers among as decide to pick up a children’s book, perhaps for the first time in many years.

Mrs. Murphy did not start out as a librarian. She taught the first grade and wasn’t sure being in the library was the right place for her—until she tried it, and then she didn’t look back.

She doesn’t forget any of the hundreds of children that have passed through the doors to her warm, welcoming library complete with sofas to curl up and read upon.

While nominating someone for the annual award—detailing his or her contributions to help make this town we all love a better place.

The selection panel consisting of Judy Volony of Forest Avenue, Betsy Connolly of Lily Pond Lane and Roger Hill of Highland Avenue joined myself, editor Mary Ford, on Sunday to pore over the heartfelt letters and nominations.

Barb Mullin wrote, “With Marjie, children always come first. She’s never too busy to help a child select that ‘perfect’ book or listen to their stories. It’s a pleasure to watch former students drop by— and they frequently do! She never seems to forget a face or a name. Ask any one of them about a teacher who positively influenced them and Marjie’s name always pops up.”

Claire Cahill said Mrs. Murphy deserved the award for her many acts of dedication to the children of Cohasset.

“Her smile, her sparks of enthusiasm, and her unending quest to interest every child in her love of reading has made her a very likeable candidate for Citizen of the Year,” wrote Karen Murphy.

Dot and Lee Cisneros stated, “Marjie is a giver. She has given to others without the desire for anything in return but the intrinsic reward of helping to make Cohasset a better place.”

Mr. Speaker, those people who dedicate their lives to the protection of the environment are very special and deserve full recognition of their devotion, which is why I was so pleased to be able to congratulate Ken Smith for being awarded the American Shore and Beach Preservation Association’s Lifetime Achievement Award for 2004.

Mr. JIM SAXTON
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. SAXTON. Mr. Speaker, those people who dedicate their lives to the protection of the environment are very special and deserve full recognition of their devotion, which is why I was so pleased to be able to congratulate Ken Smith for being awarded the American Shore and Beach Preservation Association’s Lifetime Achievement Award for 2004.

Ken has been a tireless, devoted advocate for not only New Jersey beaches but for beaches throughout the United States. Ken has spent twenty-five years as the “Coastal Advocate,” has spent more than seven years as a Vice President and as a Director of the American Shore and Beach Preservation; and is a co-founder of the Alliance for a Living Ocean, formed in response to the awful sum-

While nominating someone for the annual award—detailing his or her contributions to help make this town we all love a better place.
last but not least, Ken won the American Shore and Beach Preservation Association’s Morrogh P. O’Brien Award in 1999.

Ken has led by example for many years, bringing an awareness to so many people about the importance of working together to preserve not only our beaches and oceans, but the environment and our natural resources as a whole. He has been tireless in his dedication to not only protecting the beaches but educating people on the importance of preservation. Even as he is fighting his own battle with cancer, his amazing drive and devotion to our shores has not wavered in the least.

Congratulations Ken, I look forward to working with you for many more years to come.

RECOGNIZING COMMUNITY BLOOD SERVICES

HON. SCOTT GARRETT
OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 26, 2004

Mr. GARRETT of New Jersey, Mr. Speaker, I rise today to bring both attention and admiration to a program that truly has had lifesaving results.

The Community Blood Services, located in Paramus, NJ, within my fifth Congressional District, has working partnerships with many hospitals in the New York metropolitan area to supply cord blood. This cord blood is used in the treatment of leukemia, breast cancer, lymphoma, Hodgkin’s Disease, Aplastic Anemia, various other cancers, blood diseases, hereditary/genetic conditions and immune system disorders.

The Elie Katz Umbilical Cord Blood Program at Community Blood Services recently and generously announced it will donate one of its umbilical cord units to St. Joseph’s Regional Medical Center in Paterson, NJ, to assist an uninsured patient in need of a lifesaving transplant.

The patient is suffering from Burkitt’s Lymphoma, a non-Hodgkin’s disease which is rare in most of the world, but is the most common childhood cancer in Central Africa.

The Elie Katz Umbilical Cord Blood Program was inaugurated in 1997. Since then, it has accepted more than 1600 donated cord blood units. To date, 24 of those units have been used for transplants in children throughout the world. The unit being donated to St. Joseph’s will be the twenty-fifth.

Stem cells obtained from placenta and umbilical cords, have been proven to successfully aid in the treatment of many life-threatening diseases. Researchers have found that umbilical cords especially are a rich source of stem cells. This discovery could make the use of embryonic stem cells unnecessary. The cells are easily attainable and can be expanded in vitro, maintained in culture, and induced to differentiate into neural cells. They are a potential source of multipotent stem cells that may serve many therapeutic and biotechnological roles.

In order to identify possible genetic diseases or past illnesses that could jeopardize the patient, when collecting donated cord blood there is a very thorough parental history considered. Once the parents agree to the donation, a technician working closely with the delivery team collects the residual blood from the umbilical cord after it has been detached from the baby, ensuring no risk to the mother or child. The cord blood unit is then transferred to the processing laboratory at Community Blood Services, where the red blood cells are removed and the remaining stem cells are frozen in liquid nitrogen for long-term storage.

Let me take a moment to recognize just how proud I am that such a worthwhile organization is located within my community. It is an honor for me today to bring attention to Community Blood Services on the floor of the House. We thank you for everything that you do.

RECOGNIZING PUTNAM COUNTY, NEW YORK

HON. SUE W. KELLY
OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 26, 2004

Mrs. KELLY. Mr. Speaker, as the Member of Congress who represents all of Putnam County, NY, I rise today to recognize Putnam County leaders, groups, and residents for their remarkable achievement in being recognized nationwide as one of eight Preserve America communities.

The new Preserve America initiative was developed in cooperation with the Advisory Council on Historic Preservation, as well as the U.S. Departments of Interior and Commerce. Putnam County recently received a Preserve America Award at a White House ceremony hosted by First Lady Laura Bush.

Located along the Hudson River, many of Putnam County’s towns and villages were instrumental to trade and commerce throughout our nation’s history. Putnam County has further demonstrated its ability to make history by becoming one of the first communities in our country to apply for and receive this special designation as a Preserve America Community. Putnam County’s proactive spirit has been duly rewarded with this prestigious recognition.

County government has partnered with local municipalities, historic societies, and non-profit organizations to develop initiatives and plans to protect historic property for economic development and community revitalization. These efforts have helped Putnam County emerge as a national leader in the preservation of cultural and natural heritage.

I rise to commend Putnam County legislator Vincent Tamagna and natural heritage. Putnam County legislature; Putnam County Executive Robert Bondi; the Putnam County Commission and its Office of the County Historian; and the Putnam County legislature; Putnam County Executive Robert Bondi; the Putnam County Historical Society; Putnam County Tourist Promotion Agency; Foundry School Museum; and the county’s Historic Advisory Preservation Commission and its Office of the County Historian and County Archives.

Mr. Speaker, I am extremely proud and honored to represent the people of Putnam County. They deserve this special designation for their steadfast commitment to preserving a uniquely historic past while planning for a bright and promising future.

ONE MORE CHEER FOR THE CAT IN THE HAT

HON. BOB FILNER
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 26, 2004

Mr. FILNER. Mr. Speaker:

I rise today as many have before, To honor Theodor Seuss Guisel for his contributions galore!

The literary world will never be the same, After being introduced to Dr. Seuss’ name
We remember the dreamer, the artist, the man,
Who taught us about life, green eggs and ham
For 60 years he captivated us with stories for all to know,
And left a legacy of cherished books about the places we’d go
He may not have been a real doctor—but boredom he cured,
With rhythm and rhyme and colorful words,
When our troops needed morale during World War II,
He was too old to serve but did what he could do,
With satire and imagery he inspired platoons
With silly and potent political cartoons!
We celebrate today, a man who dreamed,
And created for all an unending stream
Of insights and poems, books and tales,
Of red fish, blue fish and others with scales
He gave us the Lorax to speak for the trees,
A little creature to save saplings from corporate greed
And we cannot forget the Grinch with a heart so cold,
Or the innocence of a child, “Who,” touched his soul
His 46 books weren’t meant to be silly,
Barbaloots were for grown-ups and leaders of cities,
Ahhh—So many stories, yet so little time,
To commend this man for his gift of rhyme
So when the sun does not shine,
When it is too wet to play,
When you are sitting in your house,
On a cold, cold, wet day
Always remember in December or September,
The spell of wonder
Dr. Seuss put us under.

INTRODUCTION OF ELECTION ASSISTANCE COMMISSION BOARD OF ADVISORS APPOINTMENTS

HON. JOHN B. LARSON
OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 26, 2004

Mr. LARSON of Connecticut. Mr. Speaker, today I rise to recognize two outstanding individuals who have dedicated their lives to encouraging all Americans to participate in our government through the voting process. Under the authority granted to me by the Help America Vote Act of 2002 (HAVA), I have appointed two election experts, Joseph F. Crangle of Buffalo, NY and Hilary O. Shelton of Washington, DC, to serve as national voting procedure advisors to continue improving the election process in the wake of the 2000 elections.

HAVA established a four-person body called the Election Assistance Commission (EAC). I
am appointing Mr. Crangle and Mr. Shelton to the Board of Advisors, which will serve essentially as the EAC’s board of directors. The board consists of 37 members representing a range of groups involved in elections.

I am very confident that with their decades of election experience and dedication to the voting process, Joseph Crangle and Hilary Shelton will have a tremendous impact on the EAC. It is my hope that they and the other 35 members of the board will examine the many issues involved in administering fair and accurate elections in this country, including the concerns that have been raised regarding the security and reliability of electronic voting systems.

I am grateful for the advice of my colleague from New York, Representative Charlie Rangel, who informed me about Mr. Crangle’s decades of experience and dedication to the election process. It is truly an honor for me to appoint him for this position.

Joseph Crangle served as chairman of the Erie County Democratic Party from 1965 to 1988; as chair of the New York State Democratic Party from 1971 to 1974; as a delegate to every Democratic National Committee from 1968 to 1992; and as a member of the Democratic National Committee’s Executive Committee from 1972 to 1988. Mr. Crangle is regarded as one of the leading experts in the country on voter registration and “get-out-the-vote” programs. He is an attorney for the law firm of Colucci and Gallaher, P.C. in Buffalo, NY.

Hilary Shelton’s commitment to improving our election system was evident during the development of the Help America Vote Act. He worked tirelessly during the entire legislative process to ensure that this bill became law.

Mr. Shelton is the Director of the Washington Bureau of the National Association for the Advancement of Colored People (NAACP). Prior to working for the NAACP, he was the Federal Liaison Assistant Director of the Government Affairs Department of The United Negro College Fund. In addition, he worked for the 9.5 million member United Methodist Church advocating on numerous public policy issues including civil rights, access to higher education, and voting rights. He serves on the national boards of directors for the Center for Democratic Renewal, the Leadership Conference on Civil Rights, and the U.S. Census Advisory Board.

Members of the Board of Advisors serve a 2-year term in a strictly advisory capacity; they have no rule-making authority. Once all the terms have been accomplished in EAC, it is my hope that they and the other 35 members of the board will examine the many issues involved in administering fair and accurate elections in this country, including the concerns that have been raised regarding the security and reliability of electronic voting systems.

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Members of the Board of Advisors serve a 2-year term in a strictly advisory capacity; they have no rule-making authority. Once all the appointments have been made and the EAC is fully functional, the board will begin its duties.

Mr. Speaker, I urge my colleagues to join me in supporting Mr. Crangle and Mr. Shelton as they begin their positions on the Board of Advisors. They are truly two of the best advocates in the country for our election process.

I am confident that future generations of voters will be inspired to make their voices heard, because of the contributions of these two remarkable Americans.

HONORING EAT CAPTAIN ERIC GENOTTE
HON. LYNN C. WOOLESEY
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004
Ms. WOOLESEY. Mr. Speaker, I rise today to honor European Air Transport (EAT) Captain Eric Gennotte, a civilian volunteer pilot, for his remarkable heroism while flying in Iraq. Captain Gennotte demonstrated incredible valor on Saturday, November 22, 2003, when he landed his Airbus 300 after it was hit by multiple surface-to-air rockets upon take off from Baghdad Airport.

At the time of the incident, Captain Gennotte was returning to a DHL Global Delivery mail distribution center in Europe after delivering mail to U.S. soldiers in Baghdad. Shortly after taking off on November 22, Captain Gennotte’s cargo and crew were struck by hostile rocket fire causing the complete loss of hydraulic power to the aircraft. Losing “slick control” of the aircraft, Captain Gennotte regained control of the aircraft using the plane’s engines as rudders to stabilize and turn the weakened vessel. In order to turn right, Captain Gennotte fired the left engine; to turn left he fired the right engine. After dodging continued missile attacks with failed equipment, Captain Gennotte successfully landed the burning plane with nothing but the two engines, completing a feat that had never before been accomplished in EAT piloting history.

Captain Gennotte is already in line to receive a safety award from the Secretary General of the Belgian Cockpit Association. Because of Captain Gennotte’s deft skill, his cargo and the crew, which included a British flight engineer and another Belgian pilot, lived through the assault. As peacekeepers continue to come under attack, it is particularly uplifting to hear tales of bravery like that of Captain Gennotte. Heroic stories like this one are prime examples that the best way to combat cowardly acts of terror is to share our own heroic responses to it.

Mr. Speaker, I ask my colleagues to join me in paying special tribute to EAT Captain Eric Gennotte. Honorable and gallant allies like him risk their lives to help others. I wish him and his family all the best as we pay tribute to one of our Nation’s fearless friends.

HONORING MR. J. JOHN SMITH
HON. MICHAEL R. TURNER
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004
Mr. TURNER of Ohio. Mr. Speaker, I am pleased to have the opportunity to express my appreciation to John R. Smith for his service to the Dayton community and his commitment to the Ohio Postal Workers Union.

John R. Smith is being honored by the Ohio Postal Workers Union, AFL–CIO for a lifetime of service to his home community of Dayton, Ohio as well as the entire American Postal Workers Union, AFL–CIO.

Mr. Smith has held numerous local, state, and national positions in the American Postal Workers Union and its predecessor unions since he began to work for the U. S. Postal Service in 1950. Mr. Smith currently serves as the National APWU Retirees Director, a position he has held since his appointment in 1993. He served as the President of the Dayton Local APWU Board, Dayton Catholic Elementary School Board, First Dayton Little League Board and the United Way at Work Committee. He is also a Deacon at Corinthian Baptist Church, a member of the Board of Christian Education, and a Sunday school teacher.

Mr. Smith is a devoted family man, having been married to his wife Ida for over 50 years. They have three children, nine grandchildren and four great grandchildren.

The local union office in Dayton, Ohio was renamed the John R. Smith APWU office, and the states of Ohio, Indiana, and Kentucky have named their annual training school the John R. Smith Leadership School in honor of Mr. Smith’s dedication to the American Postal Workers Union.

I join the Ohio Postal Workers Union and the Dayton community in thanking Mr. Smith for his service.

IN RECOGNITION OF BLACK HISTORY MONTH
HON. BRAD MILLER
OF NORTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004
Mr. MILLER of North Carolina. Mr. Speaker, I rise today in honor of Black History Month and to take this opportunity to honor the African American citizens whom I represent. Our state is home to a rich tradition of African American leaders whose educational, economic and political achievements have enriched North Carolina and our Nation. Hard work and perseverance are traditions of the African American community. During a time when hatred and bigotry triumphed over our Nation’s loving and generous spirit, African American leaders worked diligently to ensure and enhance the quality of life for future generations of both blacks and whites.

Particularly important to our quality of life in North Carolina has been the African American community’s persistent commitment to education. This is demonstrated in the work of acclaimed educator Dr. Charlotte Hawkins Brown who founded the Alice Freeman Palmer Memorial Institute. Founded in 1902, the Institute served as an African American preparatory school in Guilford County until 1973.

This commitment remains strong among those who are seated at the helm of Historically Black Colleges and Universities in the 13th and neighboring Congressional Districts. Dr. Dianne Boardley Suber of St. Augustine’s College and Dr. Myron J. Board of North Carolina A&T State University are leaders of thriving higher education institutions. Both serve on the President’s Board of Advisors on HBCUs. These leaders, along with Dr.

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Johnnetta B. Cole of Bennett College for Women are extraordinary examples of those who continue the legacy of producing young scholars who will contribute to the progress of our state and nation.

Evidence of this progress is apparent in the accomplishments of two graduates from NC A&T, former Chief Justice Henry Frye, the first African American appointed to the Supreme Court of North Carolina, as well as Dr. Ronald Erwin McNair, Physicist and Astronaut who lost his life in the Space Shuttle Challenger disaster in January 1986.

The contributions of the African American community in North Carolina are also demonstrated in the unique furniture designs and skills of artisan Thomas Day of Caswell County whose work continues to influence the industry.

Recently a good friend of mine, John Wesley Winters, Sr. passed away. Mr. Winters was a leader in North Carolina, his contributions as a businessman, civil rights leader and political leader leaves a powerful legacy. Many African American families own their own homes in Raleigh because of his work.

My District includes the Civil Rights Museum in Greensboro, North Carolina. Four brave young men, Joseph McNeil, Franklin McCain, David L. Richmond and Ezell Blair Jr. (now known as Jibreel Khazan) took a firm stand by sitting down at a "white only" Woolworth lunch counter. This new museum helps us reflect every day on how their strength and determination, even in the face of threats, jolted a burgeoning civil rights movement that forever changed the American cultural landscape. We are a better Nation, we are a better human being because of this courageous group.

Black History Month reminds us of these and other achievements. We will never forget the important contributions that African Americans have made and will continue to our Nation.

TRIBUTE TO MR. AUBREY BOOZER, J.R.

HON. JAMES E. CLYBURN
OF SOUTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. CLYBURN. Mr. Speaker, I would like to insert into the RECORD, two tributes to Mr. Aubrey Boozer, Jr., of Austin, Texas, who passed on December 23, 2003. While I did not personally know Mr. Boozer, his son, Lyndon K. Boozer, has been a great friend since I arrived in Washington almost twelve years ago. Lyndon often spoke of his father and the profound impact on his life. This new museum helps us reflect every day on how their strength and determination, even in the face of threats, jolted a burgeoning civil rights movement that forever changed the American cultural landscape. We are a better Nation, we are a better human being because of this courageous group.

My Dad
(By Lyndon K. Boozer, December 30, 2003.)

"As you know, my Dad recently moved to DC. About a month ago, he was over for Thanksgiving Dinner. After getting everyone's attention—he commandeered it— he told this story he had heard from LBJ Ranch foreman Dale Malechek about a preacher at a Bar B Que.

Now I won't tell this story as well as Dad because he was a master storyteller—one of the best. But it seems the Reverend was thanking the Lord for the Blessings and went on and on and on. Finally, after about 30 minutes, Dale turns over to Dad and says: 'You reckon on the Bar B Que ain't done yet?'

That was the last story I remember him tell, and I'm sure he would have remembered Dad liked to keep things simple. And short. So we won't keep you from your Bar B Que today, but I just wanted to share a few of my favorite things about Dad because he had 78 full years of life.

He liked Westerns, Cowboys and old War movies, maybe because it reminded him of his days in the U.S. Navy. He used to call it, the only "good" war.

He loved to cook—and he was a master in the kitchen. Laura and I used to wake up on Sunday mornings to the wafting aroma of bacon and eggs, biscuits and cream gravy. For most of his adult life, we remember him as a big, authoritative man. He was strong willed and stubborn which meant it was ‘his way or the hightway.' His way was usually right.

Even though his body gave out this year, his mind and spirit were still tough as nails. He organized his move to Washington like he did everything else, with precision and fortitude. He didn't have it easy. His goodbyes were short. I suspect it was because he knew he'd be back soon.

Beneath his tough exterior and grumpy ways was a kind heart that overshadowed his modest outward appearance. He didn't care about much except his family and his close friends whom he tested on a regular basis. He loved his dogs whom he entrusted to Laura. They are alive and well.

He loved my Mother deeply, and she was his axis of life. A close relative said, "Well, I know what he's going to do before Christmas! He wanted to spend it with your Mom." There's some truth to that...

They were so different but were there for each other through it all—Houston where they met, New York City where they loved, Washington, DC where they grew, Mexico City where they enjoyed and finally Austin, Texas where they settled down and raised a family.

And after Mom died in 1998, he visited this very grave site every week until his health was too poor. Our friends here at Cook Walden remember, especially Evelyn Williams.

He never stopped wanting the best for Laura and me. And he was proud of us I'm told. He wouldn't say so to us but we knew it because everyone always said so.

He was truly a Classic, a stand up guy, funny and honest and a straight shooter. Independent. And a proud Democrat. He didn't mince words and in this day of political correctness, he was a refreshing opinion. His values were ones to live by, and we will. We miss you Dad, and will think of you every day. While we cannot cheat father time, we can keep the fire that was Austin, Texas, for the Monterey House Mexican Foods, Inc. He was also Vice President of Operations for the company in Houston, Texas.

He was preceded in death by his wife, Yo-landa, Administration and two children, Jordon and Kyle. He is also survived by cousins, JoAnn Harris, Charles Hale, Alec Hale Reid, and Amy; and nieces, Diane VanHootegem, Christine Rayburn and Rosalind Johnson, all of whom he cared for very much.

Mr. Speaker, thank you for this opportunity to honor the life of Mr. Aubrey Boozer. I ask that my colleagues join me in expressing condolences to this fine family.

INTRODUCTION OF THE "EXTENDED DEPLOYMENT PAY INCREASE ACT OF 2004"

HON. ROBERT C. SCOTT
OF VIRGINIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. SCOTT of Virginia. Mr. Speaker, I rise to introduce the "Extended Deployment Pay Increase Act of 2004." I believe this legislation provides critical financial support to our men and women in uniform.

All of us are familiar with the change in policy that is requiring tens of thousands of National Guard, Reservists, and active duty troops in Iraq and surrounding countries to extend their active duty to 12 months.

These longer deployments cause additional financial and emotional stresses on our military, and their families. For example, it has been reported that more than one-third of the Reservists and National Guard members suffer cuts in pay when called to active duty. So they may be reasonably members of the National Guard and Reserves to forgo peacetime salaries for six months to serve on active duty thousands of miles away from home, or to expect private employers to continue to pay part of their salaries for a few months, these stopgap measures are limited. The financial strain is especially acute for those who are self-employed—especially those who are called up on short notice and those who have made business arrangements
for a six month absence, only to be notified later that their deployment will be extended for a full year.

There are similar stresses on career military personnel that are required to serve extended deployments of 12 months on active duty. While 6 months might be manageable for a family to make temporary arrangements regarding covering day care and usual family responsibilities, deployments of 12 months require a more permanent solution. At a minimum, the normal family life is disrupted. Parents are forced to be away from their children for prolonged periods of time, and the parent that is left behind must fill the role of both parents. As a result, additional social services, or additional day care services, are often needed—at additional financial expense.

This bill would increase individual pay by $1000 per month for active duty military, Reservists, and National Guard members who are deployed away from home for more than 6 months. The increase would apply to each month of active duty in excess of 6 months. Most of these individuals and their families will be suffering hardship well in excess of $1000 per month. The least we can do is attempt to offset the financial hardship imposed on these families. If one third of 150,000 troops in Iraq are eligible for extended deployment pay in any month, the cost would be $50 million a month or $600 million per year. This amounts to less than one-half of one percent of the total cost of the war to date.

Mr. Speaker, I urge my colleagues to support this effort to aid the military men and women who are honorably serving our country.

CELEBRATING BLACK HISTORY MONTH

HON. JUANITA MILLENDER-McDONALD
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Ms. MILLENDER-McDONALD. Mr. Speaker, each February our Nation celebrates Black History Month. African-Americans have a rich and diverse history and many individuals should be recognized. This year marks the 50th anniversary of the landmark Supreme Court decision of Brown versus the Board of Education, and it is my pleasure to speak about a very special woman who blazed a trail in completing her education.

While the Supreme Court decision allowed for equal access and opportunity to education for African-Americans, long before this decision was handed down, Mary Eliza Mahoney, was the first African-American registered nurse, graduating from the New England Hospital for Women and Children Training School for Nurses in 1879.

Mary Eliza Mahoney was born in Dorchester, Massachusetts in 1845. At the age of 33, Ms. Mahoney was admitted as a student into the hospital's nursing program, which had been established by Dr. Marie Zakrewska, notably, one of the first women doctors in the United States.

Ms. Mahoney completed a strenuous and rigorous 16-month program, becoming one of only three people to actually complete the program.

In 1896, Mr. Speaker, Ms. Mahoney became one of the first African-American members of the American Nurses Association (ANA). In 1908, she co-founded the National Association of Colored Graduate Nurses, an organization working toward complete integration of Black Nurses in the ANA. Additionally, Mahoney participated in the campaign for woman suffrage and in 1921, was one of the first women in line to vote after the ratification of the nineteenth amendment.

Ms. Mahoney spent her life caring for the sick until her death on January 4, 1926. In 1993, Ms. Mahoney was inducted into the Women's Hall of Fame.

The indomitable courage of this African-American woman has set an example for equality, dignity and respect for African-Americans in nursing, as well as women's rights. I urge all of my colleagues to reflect on all the great African-American individuals who helped shape this great Nation during Black History Month.

MOURNING THE UNTIMELY DEATH OF PRESIDENT BORIS TRAJKOVSKI OF THE REPUBLIC OF MACEDONIA

HON. MARK E. SOUDER
OF INDIANA
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. SOUDER. Mr. Speaker, I rise today with a heavy heart to mourn the untimely death of President Boris Trajkovski of the Republic of Macedonia. As many of my colleagues have heard, President Trajkovski was killed this morning in a plane crash while traveling to Mostar, Bosnia-Herzegovina.

Mr. Trajkovski was born in Strumica, Macedonia on June 25, 1956. He graduated with a degree in law from the University of St. Cyril and Methodius in 1980. He was an ordained Methodist minister and President of the Church Council of the United Methodist Church.

In 1998, he was appointed to the post of Deputy-Minister of Foreign Affairs. During his time as Deputy-Minister, he predicted the rise of ethnic tensions in Macedonia due to the crisis in Kosovo. He was right to criticize NATO's lack of help in that crisis. During much of the fighting in the Balkans, Macedonia allowed NATO to use Macedonian territory. During Macedonia's ethnic crisis, NATO was sorely lacking in assistance.

In 1999 he was inaugurated as President of the Republic of Macedonia. During his term as president, he faced near-civil war in his country. Ethnic divisions threatened to tear his country apart. President Trajkovski, however, worked with all ethnic groups to forge a solution. Despite criticism that he was too lenient on minority groups, he pressed for peace and facilitated a peace deal.

In addition to forging peace in his country, Mr. Trajkovski worked to improve Macedonia's standing on the world stage. Under his leadership, Macedonia was one of the first countries to publicly support Operation Iraqi Freedom and to commit troops to the effort. Mr. Trajkovski was a tireless advocate for religious tolerance, religious freedom, and conflict resolution.

Mr. Trajkovski's work also focused on improving the lives of all Macedonians. A strong believer in free markets and the importance of international economic co-operation, Mr. Trajkovski died while on his way to an international investors meeting that would undoubtedly have helped the development and future prosperity of Macedonia.

The death of President Trajkovski is a tragedy. Macedonia has lost a true leader. The international community has lost a strong voice for peace and co-operation. On the passing of President Trajkovski, Kerri Hous- ton, Vice President of Policy for Frontiers of Freedom noted, “President Trajkovski was a courageous leader who sought security, economic progress, and a common national iden- tity for the Macedonian people.” A truer statement was never uttered.

Mr. Trajkovski leaves behind a wife, Vilma, and two children Sara and Stefan. I offer my sympathies to his family and the families of the other victims of this terrible accident.

RECOGNITION OF SUSAN B. ANTHONY'S BIRTHDAY

HON. JO ANN EMERSON
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mrs. EMERSON. Mr. Speaker, Susan B. Anthony campaigned endlessly for women's rights to equality and freedom. Her protecting legacy has taught many American women how to fight injustice, and this lesson includes the unborn. For Anthony, the rights of women and the rights of unborn children are the same. Susan B. Anthony is best known for her leading role in the women's suffrage movement, but few realize that she was also a strong pro-life activist. February marks the 184th year following her birth, and there could hardly be a more fitting commemoration than the passage of the Unborn Victims of Violence Act. This Act would hold individuals accountable for harming a life when, in the act of committing a federal crime, an unborn child is killed or injured. Murder must not go unrecognized and unpunished. The law should recognize two victims and two distinct tragedies.

After a brutal beating, a New York mother delivered two stillborn twins. The law saw one assault victim, but was blind to the two lives lost. This horrible crime and numerous others are going unpunished; Congress must act to stop this injustice.

The key to understanding abortion lies in the recognition of a human life wherever it exists. We must follow Susan B. Anthony's example and recognize the lives of unborn children. I encourage all Members of Congress to support our unborn children and pass the Unborn Victims of Violence Act.

REMEMBERING THE LIFE OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA BORIS TRAJKOVSKI

HON. ALCEE L. HASTINGS
OF FLORIDA
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. HASTINGS of Florida. Mr. Speaker, I rise today to offer my condolences upon hearing the news of the death of Boris Trajkovski,
the President of the Former Yugoslav Republic of Macedonia. President Trajkovski lost his life in a plane crash this morning in the mountainous region of southern Bosnia. I would like to offer my most sincere condolences to the wife, son, and daughter of President Trajkovski for their tragic and untimely loss as well as to all of the families and friends of the two pilots and six aides on board the flight who also perished in the crash. Furthermore, I wish to extend my deepest condolences to the people of Macedonia who have today lost a truly forward-looking and unifying leader.

President Trajkovski, who served as President of Macedonia since 1999, will be remembered in the international community for his role as a peacemaker and a moderate in a region troubled by ethnic tensions and conflicts. These tensions and conflicts have at times been so severe as to threaten the stability and unity of Macedonia. President Trajkovski's accomplishments as a peacemaker are many and pre- mised on his will to work together with all ethnic groups. Included among his accomplishments to this end is his role in a NATO-brokered peace agreement in 2001 that ended months of armed clashes between Macedonia’s Slavic-speaking Orthodox Christians and ethnic Albanian minority. This agreement played an integral role in warding off a full-scale civil war in the country.

Since gaining its independence, Macedonia has been a member of the Organization for Security and Cooperation in Europe, the Parliamentary Assembly of which I am proud to serve as Vice President. Thus, I have followed closely the developments in Macedonia and have observed first-hand the efforts made by Macedonia under the leadership of President Trajkovski to secure a peaceful nation and to move the country forward to a bright future. Just this past Wednesday, President Trajkovski signed Macedonia’s formal application to join the European Union, a move that would further benefit the people of Macedonia in their attempts to cement democracy and prosperity in their nation.

It is my hope that the loss of President Trajkovski does not signify a loss in any degree of the strong unifying efforts in which he so strongly believed and for which he fought. As well as offering my condolences to the people of Macedonia in their time of grief, I also want to take this opportunity to wish them every success in overcoming this tragedy and continuing on the path of peace and prosperity.

It is my hope that the greatest legacy left by the loss of President Trajkovski is the ongoing effort to see across ethnic divisions and to secure a peaceful and unified Macedonia in an equally peaceful and unified Europe.

IN HONOR OF RAUL VARGAS
HON. XAVIER BECERRA
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. BECERRA. Mr. Speaker, it is with the utmost pleasure and privilege that I rise today to recognize and pay tribute to a friend and an educator. Mr. Raul Vargas was born on May 21, 1939, in Lordsburg, New Mexico. Raul lost his father at the tender age of four and when his mother married Alfredo Mejia, the family moved to Miami, Arizona. Growing up in this small mining town, Raul and his siblings Felipa, Alfredo, Alfonso, Elvia, and Elisa learned a strong work ethic and core values from their parents.

Raul is a proud alumnus of Miami High School and Arizona State University, where he earned a Bachelor of Science degree in Business Administration in 1961. That same year, Raul enlisted in the United States Army where he served until 1964.

Raul’s service to his country evolved into a lifetime of service in the classroom. After completing his teaching credential at Arizona State University in 1966, Raul went on to teach Spanish in the Ontario School District in California. After five years of teaching, he resumed his studies at California State University, Los Angeles as a student in the Master’s in Administration program. From there he continued his doctoral work in public policy at the University of Southern California. In January 1972, Raul joined the USC family as Executive Director of the Office for Mexican American Programs at the University of Southern California.

Raul has always been a hard worker and driven to succeed. Fortunately, he had the good sense to pause for a moment and recognize that the best thing in his life stood before him: Marcia Wyse. Raul and Marcia married in December of 1966. Together they have become an indivisible and indispensable team, blessed with both friendship and love. Raul and Marcia are now the proud parents of two children, Tracie and Cesar, and one grandchild, Alexandra. And Marcia, in her own right, is one of our country’s preeminent and forceful voices advocating for America’s English-language learners and the value of bilingual education.

Raul’s career has always combined his passion for students with his commitment to innovation in an administrative role. So it was that in 1974, Raul and eight USC alumni founded the USC Mexican American Association (MAAA) with a bold, but untested vision to build a mighty anchor and support for Latino college enrollment at the University. Their success has surpassed all expectations. Raul and the MAAA recently completed the association’s Endowment Fund Campaign which increased its endowment to over $1 million to assist future generations of Latino college students. Marcia will tell you that Raul takes great pride and honor in making a prestigious university like USC more accessible to Latino students.

Vargas has served as family, friends and colleagues to generations of students. Raul’s many accomplishments, it is with great admiration and pride that I ask my colleagues to join me today in saluting this exceptional man and brother to many. America, the University of Southern California, and America’s future leaders have certainly gained the better end of the bargain when the doors of education and public service opened to Raul Vargas. Fight on, my friend!

INTRODUCTION OF THE RESIDUAL RADIOACTIVE CONTAMINATION ACT

HON. LOUISE McINTOSH SLAUGHTER
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Ms. SLAUGHTER. Mr. Speaker, I rise to introduce important legislation that seeks to undo—in some small measure—an injustice done to thousands of American workers in the years following the Manhattan Project.

Beginning in the 1940s, throughout the United States, the government secretly contracted with hundreds of private-sector factories and laboratories to develop, test, and produce atomic weapons. For well over a decade, many of these facilities processed enormous amounts of radioactive materials such as thorium, uranium and radium. Yet, when these facilities were decommissioned in the 1950s, few of these facilities were properly decontaminated.

In 2000, Congress saw fit to establish a reparation program for workers who developed diseases because of their work on our nation’s atomic weapons program. Under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), workers could receive a one-time payment of $150,000 and medical coverage for expenses associated with the treatment of diseases contracted due to this exposure. One major shortcoming of the program is its failure to compensate individuals made sick from their work in former atomic weapons plants—where the walls and floors were permeated with radioactive residue—for decades following the end of Cold War era production.

In fact, the National Institute of Occupational Safety and Health released a report in the fall that found “significant” residual radioactive contamination existed in many of the former contractor sites well into the 1970s, 80s and beyond. Today, we see the legacy of this failure to properly decontaminate, employees who, unbeknownst to them, worked in facilities with significant residual contamination, have contracted or succumbed to radiation-related cancers or disease.

The enactment of the EEOICPA was recognized that the federal government bore a responsibility to workers who were made sick and even died because of the work they did on the nation’s atomic program. It is long past the time for our government to take responsibility for its role in allowing these Cold War era facilities to remain dangerously contaminated and place workers needlessly at risk.

Mr. Speaker, the bill I am introducing today with my colleague, Mr. Quinn, the Residual Radioactive Contamination Compensation Act (RRCCA) would extend eligibility for the EEOICP to more facilities where NIOSH has found potential for significant radioactive contamination. For instance, of the fourteen facilities in and around
my congressional district, NIOSH found that five of the sites had potential for significant contamination well into the 1990s and beyond. At the same time, NIOSH reported that it could not make a determination at three of the sites without additional information. For this reason, the bill I am introducing would require NIOSH to update its report on an annual basis to include new information when it becomes available.

Mr. Speaker, the RRCCA seeks to open the door of eligibility for valid claims. At the same time, passage of this bill will mean very little if the chronic problems that have plagued this program are not addressed. As you may know, the implementation of this important program has been plagued by bureaucratic red tape. For far too many claimants, it’s a waiting game. I know of dozens of constituents whose work and health history leave no doubt about eligibility but are still waiting to have their records reviewed. In those rare instances where the National Institute of Occupational Safety and Health (NIOSH) has managed to evaluate claims, the approval rate has been abysmal.

Moreover, the Department of Health and Human Services has failed to issue one of the key regulations required by the law nearly 3 1/2 years since the law was signed. The “Special Exposure Cohort” regulation is needed to address situations where the records needed to estimate radiation dose are not available, where the workers were not monitored, or the monitoring data is unreliable or altered. We note, for example, that NIOSH was unable to produce individual monitoring records for workers at Bethlehem Steel plant in Lackawanna, New York, where uranium billets were rolled into rods used as fuel in the government’s plutonium reactors during the years 1949–1952. Just this week, a group of 25 Bethlehem Steel workers boarded a bus for Northeast Regional Headquarters of the Department of Labor to petition the agency to take action. At the same time, NIOSH reported that it could not make a determination at three of the sites without additional information. For this reason, the bill I am introducing would require NIOSH to update its report on an annual basis to include new information when it becomes available.

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As I have said, over and over again, this is an aging and ill population. Time is of the essence. Congress must act to ensure that the Energy Employee Occupational Illness Compensation Act is properly administered.

Mr. Speaker, I look forward to working with my colleagues to pass the Residual Radioactive Contamination Compensation Act to help our constituents.

SURFACE TRANSPORTATION EXTENSION ACT OF 2004

SPEECH OF
HON. GENE GREEN
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 11, 2004

Mr. GREEN of Texas. Mr. Speaker, on February 11, 2004, I supported H.R. 3783, legislation to provide an extension of the Transportation Equity Act of the 21st Century (TEA–21). The fact that Congress had to approve yet another temporary extension of the Highway Trust Fund programs clearly shows the leadership of this Congress has misplaced priorities.

I am a cosponsor of H.R. 3550, the Transportation Equity Act, a Legacy for Users (TEA–LU), legislation which is the product of the hard and tireless work of two well respected members of the House, Transportation and Infrastructure Chairman DON YOUNG of Alaska, and Ranking Member OBERTSTAR. I call on my colleagues to enact this legislation at the full authorized level of $375 billion through 2009.

Their legislation is being held hostage by ideological interests in the White House and House leadership who are apparently blind to the number one issue in my community of Houston, Texas: mobility.

While transportation reauthorization is stalled in Congress, residents in my community are idling away an average of 37 hours and 60 gallons of gas this year in congested traffic. We lose $2.1 billion, every year, in productivity and fuel, and congestion has been getting worse. These figures are according to the Texas Transportation Institute’s 2003 Urban Mobility Report.

Texas mobility is also impacted severely by the fact that 10 cents of every dollar we pay in gasoline taxes goes to other states. I strongly believe that Texans deserve, at least 95 percent of Texas gas tax revenue for Texas transportation projects and have co-sponsored legislation, H.R. 2208, to that effect. But it will be much, much easier to increase our slice of the pie and get to that 95 percent level, if we fully fund H.R. 3550 and have a larger, total pie.

The gasoline tax funds our public highways by tapping revenue from those who benefit from them—motorists and truckers. Every cent we pay at the pump to the federal government goes to transportation. How else should we pay for our unavoidable road, bridge, and transit construction? The current gasoline user fee method is simpler than having to stop every 5 miles or so and dig around for change in our car seats to pay the gasoline toll.

Unless we can fully fund H.R. 3550, our constituents will be stopping to pay a lot more tolls in the future. The amount of funding generated by the static $0.18 per gallon federal gasoline tax has significantly eroded over the last several years due to inflation. To allow for necessary highway construction the federal gas tax should be indexed to inflation, as proposed by my respected colleagues Chairman DON YOUNG and Ranking Member OBERTSTAR.

It is frustrating to be confined by inadequate transportation funding during tough economic times because infrastructure investment brings major employment and development benefits. Each billion spent on infrastructure creates 47,500 American jobs, with 3.5 million jobs to be generated and sustained through 2009 under H.R. 3550, including over 200,000 jobs in Texas.

Inadequate transportation investment leads to lost hours spent in traffic, lost job opportunities, and lost lives from unsafe road conditions. I call on my colleagues to fully fund H.R. 3550 at the bipartisan level of $375 billion.
Until the 19th century, children were confined and punished according to the standards established by criminal courts—adults and juveniles, men and women, sane and insane criminals were treated the same. CFWC fought to establish a system that would consider that children may have less than fully developed cognitive capacities. The CFWC’s umbrella organization, the General Foundation for Women’s Clubs established 75 percent of the nation’s libraries and was the national model for juvenile courts upon which California’s system is based.

The California Federation of Women’s Clubs, chartered in 1900, sought legislation to create a separate court system for juveniles based on the understanding that children are inherently different from adults and that the state has a certain responsibility to protect and rehabilitate young offenders. Juvenile courts provide rehabilitation and benevolent supervision based on the concept of parens patriae (the State as Parent), allowing the state to intervene in the interest of protecting the child. The focus of the juvenile court was on the offender, not on the offense, on rehabilitation, not punishment.

Because of the actions of the CFWC, criminal cases involving individuals under the age of eighteen began to be adjudicated in a juvenile court. The CFWC also funded the courts until the courts were included in the State budget. This system allowed courts to provide a standard procedure for processing the crimes committed by juvenile offenders while paying additional attention to the special needs and circumstances of children. Over the years juvenile courts have evolved to more closely resemble the criminal justice system.

Today the CFWC continues to work for adequate programs of probation and rehabilitative services in humane facilities for children. In addition to creating the Juvenile Courts of California, CFWC members strive to promote education, literacy, healthy lifestyles, preservation of natural resources, crime prevention, art appreciation and increased international understanding. The organization contributes an average of 4 million volunteer hours and $3 million on 25,000 projects annually.

The California Federation of Women’s Clubs is a non-profit, charitable organization that was organized in January 1900, becoming the thirty-seventh state to join the General Federation of Women’s Clubs—which is one of the largest and oldest volunteer organizations in the world. “Strength United is Stronger” was chosen as the motto and still holds true today as the Clubs working together make a difference throughout the world.

HONORING REV. DR. ISAIAH SCIPIO

HON. DALE E. KILDEE OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. KILDEE. Mr. Speaker, I rise before you today on behalf of the membership and friends of the Itinerant Ministry of the Christian Methodist Episcopal Church to honor my friend Rev. Dr. Isaiah Scipio, Jr. for fifty years of spiritual leadership within the Christian Methodist community. On Saturday, February 28, 2004 the friends of Rev. Dr. Isaiah Scipio, Jr. will honor him during a retirement luncheon celebration to be held at the Savvis Conference Center in my hometown of Flint, Michigan.

Rev. Isaiah Scipio, Jr. was born in Darlington, South Carolina on July 11, 1923 to Isaiah Sr. and Margaret Scipio. He graduated from Mayo High School. He was drafted into the U.S. Air Corps December of 1942, where he served honorably as a Technical Sergeant until August of 1946. After his tour of duty he enrolled at the University of Southern California where he received his Bachelor of Business Arts degree in 1959. In 1947 Rev. Scipio received his license to preach, and two years later in 1949 he was ordained Deacon and Elder. He earned his Master of Theology from the University of Southern California School of Religion. In 1947 a year after receiving his, receiving his Theology Doctorate, he was assigned interim pastor of the New Era C.M.E. Church of South Los Angeles, California. Rev. Scipio from this point forward would be known as the traveling preacher. He has had the honor of spreading the word to congregations in California, Michigan, New York, Richmond, Virginia, Indiana and Ohio. From 1959–1962 Rev. Scipio served under Rev. Dr. Martin L. King Jr. as President of the Western Christian Leadership Conference. He served two years as the President of the Flint Council of Church. In 1970 he was elected General Secretary of the board of Missions, supervising work in Liberia, Ghana, Nigeria, West Africa, Haiti and Jamaica. In 1993 he transferred to Flint, Michigan and was assigned to his current position as pastor of Dozier Memorial C.M.E. Church. As the passage of 2 Cor 9:13–14 reads “While, through the proof of this ministry, they glorify God for the obedience of your confession to the gospel of Christ, and for your liberal sharing with them and all men. And by their prayer for you, who long for you because of the exceeding grace of God in you.” Rev. Scipio, you have championed for Christ for fifty-five years and the community thanks you.

Rev. Scipio is also an outstanding father, grandfather and husband. He is married to Marion and they have two lovely daughters, Brenda and Deborah and three lovely granddaughters: Stephanie, Donya and Shonna. Mr. Speaker, as a Member of Congress, I ask my colleagues in the 108th Congress to join me in honoring my constituent and friend Rev. Dr. Isaiah Scipio for his outstanding service to the Christian community.

COMMEMORATING THE PRESIDENT OF TUNISIA’S RECENT VISIT TO WASHINGTON, DC

HON. MAURICE D. HINCHEY OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2004

Mr. HINCHEY. Mr. Speaker, I rise today to commemorate the recent visit to Washington, DC by the President of the Republic of Tunisia, His Excellency Zine El Abidine Ben Ali. President Ben Ali met with President Bush on Wednesday, February 18, 2004. During the meeting President Bush praised the social and economic progress made by Mr. Ben Ali as a partner in the fight against terrorism.

The United States and Tunisia have maintained a strong relationship throughout both our histories. Tunisia has been a crucial partner in the Mediterranean region through first the Cold War and, more recently, in our current efforts to fight terrorism. Our relationship has grown even stronger in the last few years. In December 2003, Tunisia was chosen as the regional center for the Middle East Partnership Initiative’s Near Eastern affairs program to promote democracy and political reform in the region. This is a welcome development because Tunisia plays a crucial role in stabilizing Middle East politics.

President Bush rightly praised the government in Tunisia for working with the United States in fighting terrorism, for a “modern and viable” education system and for giving equal rights to women. Tunisia can help the Middle East achieve greater reform and freedom, something that is necessary for peace for the long term.

As a friend of Tunisia, I again commemorate the recent visit by His Excellency President Ben Ali. This meeting was an opportunity to highlight the longstanding relations between our two countries and the support given by our two peoples. It was also an occasion to strengthen our joint efforts on the international scene for the causes of peace, security, human dignity and development.
2003, in which he denied bond release to a Haitian on the ground that giving bond to undocumented refugees who come to the United States by sea would cause adverse consequences for national security and sound immigration policy.

This legislation would permit the adjustment of status for Haitians who meet the following categories:

1. The individual would have to be a native or citizen of Haiti;
2. The individual would have to have been inspected and admitted or paroled into the United States; and
3. The individual would have to have been physically present in the United States for at least one year.

It will be critical for BICE to have a system in place that will process these individuals but not illegally and excessively detain them or otherwise violate their civil liberties.

The United States Visitor and Immigrant Status Indicator Technology program's (US-VISIT) first phase is deployed at 115 airports and 14 seaports. US VISIT was designed to expedite the arrival and departure of legitimate travelers, while making it more difficult for those intending to do us harm to enter our nation.

The budget for FY 2005 provides $340 million in 2005, an increase of $12 million over the FY 2004 funding to continue expansion of the US VISIT system. In his testimony in the Full Committee hearing held on February 12, 2004, Secretary Ridge indicated that "over $1 billion will be used to support [US-VISIT]." Unfortunately, he failed to adequately address how the budgetary plan will address the following issues:

That US-VISIT will not be effective for border security.
That it will impede U.S.-Mexican trade.
That it will discourage legitimate international travel and hinder South Texas retail.
That it essentially amounts to an anti-immigration policy under the guise of homeland security.

Harm to efficiency—Without a way to separate travelers, lines during high-volume times will be staggering, regardless of how fast the machines may operate.

Of the estimated 3 million people whom US–VISIT would process annually, 360 million would go through land ports of entry—five times more than go through airports and seaports. And unlike air and sea travelers, most land travelers do not file itineraries, carry passport information or go through personal screening.

Legitimate travelers—truckers who haul goods to warehouses just north of the border; people who live in Mexico and work in Texas rail shops or factories; Mexicans who own goods to warehouses just north of the border; truckers who haul goods to warehouses just north of the border; and 14 seaports. US VISIT was designed to expedite the arrival and departure of legitimate travelers, and requested that he respond with a letter to Secretary Ridge highlighting this problem and training, and a lack of oversight make our nation extremely vulnerable to terrorist attacks. We must move faster to strengthen our front line defense against the terrorists threatening the safety of our skies and our communities.

Overall, $890 million is provided for aviation security, a nearly 20 percent increase, including funds to improve integration of explosive detection system (EDS) equipment into individual airports' baggage processing to increase security effectiveness and promote greater efficiency.

On February 24, 2004, Fox News aired a segment on airline security that is simply shocking. It showed a video shot by a passenger on an international flight bound for the United States. While there weren't many open seats on the Air Tahiti Nui passenger jet, the cockpit door remained open. The passenger who shot the film said, "As we were rolling down the runway, the door kept slamming against the back wall." This passenger taped the open cockpit door from his first class seat on a trip from Auckland, New Zealand to Los Angeles, California with a stop-over in Tahiti. He reported that the door remained open most of the time on both legs of the flight and was closed just before the plane's decent into Los Angeles.

This incident shows the severe gaps that we have in our airline security. I have written a letter to Secretary Ridge highlighting this problem and requested that he respond with a specific plan to address it.

Poor data collection, data sharing, equipment, training, and a lack of oversight make our nation extremely vulnerable to terrorist attacks. We must act quickly to address these weaknesses in order to protect our families.

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PRESIDENT BUSH'S FY 2005 NATIONAL BUDGET

HON. SHEILA JACKSON-LEE OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 26, 2004

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today. funded at the FY 2004 level, jeopardizing programs and services for children of military families. The Bush budget freezes all Impact Aid funding at the FY 2004 level, jeopardizing programs and services for children of military families.

President Bush breaks his NCLB promise on afterschool programs. The Bush budget freezes funding for afterschool programs. As a result, nearly 1.3 million children will be shut out of afterschool programs.
President Bush makes certain that full funding of special education will never happen. The Bush budget proposes a $1 billion increase for the Individuals with Disabilities Education Act (IDEA). This marks the 4th year in a row President Bush has proposed this exact level of increase, placing disabled students at an even greater disadvantage. At this rate of increase, we will never reach full funding of IDEA.

President Bush cuts $316 million from vocational education and community colleges—again. The Bush Budget would cut $316 million, or nearly 25 percent, from vocational education. On top of this, President Bush has cut more than $1.5 billion out of job training and vocational education programs since he took office. In addition, the budget proposes to turn this program into a block grant to states, eliminating accountability and targeting of resources to disadvantaged students and programs.

We all know that education is one of the most important priorities for our great nation. Our children’s success or failure will be the true indicator of our effectiveness in this body. The generation of African American leaders who preceded us spent their lives making sure that all children would be able to get educated who preceded us spent their lives making sure that all children would be able to get educated who preceded us spent their lives making sure that all children would be able to get educated who preceded us spent their lives making sure that all children would be able to get educated.

The generation of African American leaders who preceded us spent their lives making sure that all children would be able to get educated who preceded us spent their lives making sure that all children would be able to get educated. We as a body of the people can not allow this flawed budget proposal to stand. Our children’s future and in turn the future prosperity of this nation is at stake. Veterans: Our brave American veterans are another group who will have to suffer if this Bush budget is allowed to be put into effect. Funding for America’s veterans will be cut by $13.5 billion over the next five years. The Secretary of Veterans Affairs himself has testified that the Veterans Affairs (VA) budget just for 2005 is $1.2 billion below the amount that the VA requested from the White House, and that the funding levels for 2006 through 2009 in the President’s budget may not be realistic. What other proof needs to be shown that this President and his Administration are simply not in touch with reality when it comes to the needs of our nation. I want to stress that funding for our veterans is not a luxury or an option, it’s a requirement. When our veterans went off into service for America and risked their lives they didn’t give a half-hearted commitment, sadly this President cannot say the same for his commitment to our veterans.

I have talked to a number of veterans groups from my district and they are all screaming for better health care for themselves and their families. They have a right to be angry, they gave a sacrifice to this nation that no other group can claim and the treatment they receive in this President’s budget is unacceptable. I stand in solidarity with our brave veterans and everyone else in this body who would like to say the same must be against this President’s budget. His proposal does nothing to increase health care coverage for our veterans and their families. I am asking this President, that without proper medical coverage how can any proposal for funding of Veterans Affairs ever be worthwhile?

Education and Veterans Affairs make up only two areas where this President’s budget fails Americans. The truth is there are many other programs and services vital to our nation that are at risk because of this Administration. At this point, an average American may be asking why this President finds it necessary to cut so many fundamental programs. The answer is simple, yet disturbing; this President is cutting important programs in order to finance his irresponsible tax cuts. He will continue to make the argument that tax cuts provide stimulus for our economy, but millions of unemployed Americans will tell you otherwise. In fact the Congressional Budget Office itself said “tax legislation will probably have a net negative effect on saving, investment, and capital accumulation over the next 10 years.” Yet, this President continues to push forward his failing policies, as he does he falls farther and farther away from the reality faced by average Americans. This body was made to stand for the will of all Americans; if we allow this budget proposal to take effect we will fail America.

I for one will not stand by silently; I have a duty to my constituents and indeed to all Americans to work for their well being and I will continue to honor that duty.
HIGHLIGHTS

Senate

Chamber Action
Routine Proceedings, pages S1611–S1851

Measures Introduced: Twelve bills and two resolutions were introduced, as follows: S. 2130–2141, and S. Con. Res. 93–94.

Measures Reported:
S. 2136, to extend the final report date and termination date of the National Commission on Terrorist Attacks Upon the United States, to provide additional funding for the Commission.

Measures Passed:
Permitting the Use of the Rotunda: Senate agreed to S. Con. Res. 93, authorizing the use of the rotunda of the Capitol by the Joint Congressional Committee on Inaugural Ceremonies.

Establishing a Joint Congressional Committee: Senate agreed to S. Con. Res. 94, establishing the Joint Congressional Committee on Inaugural Ceremonies.

Protection of Lawful Commerce in Arms Act: Senate agreed to the motion to proceed to consideration of S. 1805, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others, and then began consideration of the bill, taking action on the following amendments proposed thereto:

Adopted:
Daschle Amendment No. 2621, to clarify the definition of qualified civil liability action.

Kohl Amendment No. 2622 (to Amendment No. 2620), to amend chapter 44 of title 18, United States Code, to require the provision of a child safety lock in connection with the transfer of a handgun.

By 70 yeas to 27 nays (Vote No. 17), Boxer Amendment No. 2620, to amend chapter 44 of title 18, United States Code, to require the provision of a child safety device in connection with the transfer of a handgun and to provide safety standards for child safety devices.

By 59 yeas to 37 nays (Vote No. 19), Craig (for Frist/Craig) Amendment No. 2628, to exempt any lawsuit involving a shooting victim of John Allen Muhammad or John Lee Malvo from the definition of qualified civil liability action that meets certain requirements.

By 60 yeas to 34 nays (Vote No. 21), Craig (for Frist/Craig) Amendment No. 2630, to protect the rights of law enforcement officers who are victimized by crime to secure compensation from those who participate in the arming of criminals.

Rejected:
By 40 yeas to 56 nays (Vote No. 20), Mikulski Amendment No. 2627, to exempt lawsuits involving a shooting victim of John Allen Muhammad or Lee Boyd Malvo from the definition of qualified civil liability action.

By 38 yeas to 56 nays (Vote No. 22), Corzine Amendment No. 2629, to protect the rights of law enforcement officers who are victimized by crime to secure compensation from those who participate in the arming of criminals.

Withdrawn:
Frist/McConnell Amendment No. 2626, to make the provisions of the Voting Rights Act of 1965 permanent.

Pending:
Hatch (for Campbell) Amendment No. 2623, to amend title 18, United States Code, to exempt
qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

Kennedy Amendment No. 2619, to expand the definition of armor piercing ammunition and to require the Attorney General to promulgate standards for the uniform testing of projectiles against body armor.

Craig (for Frist/Craig) Amendment No. 2625, to regulate the sale and possession of armor piercing ammunition.

During consideration of this measure today, the Senate also took the following action:

By 58 yeas to 39 nays (Vote No. 18), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate rejected the motion to waive section 302(f) of the Congressional Budget Act of 1974, with respect to Cantwell Amendment No. 2617, to extend and expand the Temporary Extended Unemployment Compensation Act of 2002. Subsequently, the point of order that the amendment was in violation of section 302(f) of the Congressional Budget Act of 1974, was sustained, and the amendment thus falls.

A unanimous-consent agreement reached providing for further consideration of the bill at 9:30 a.m., on Friday, February 27, 2004.

Safe Transportation Equity Act—Correction Agreement: A unanimous-consent agreement was reached providing that, in the engrossment of S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, the Secretary of the Senate be authorized to strike pages 43 through 83, and pages 105 and 106, of Amendment No. 2616; further, that the bill be printed as passed.

Messages From the President: Senate received the following messages from the President of the United States:

Transmitting, pursuant to law, a report relative to expanding the scope of the national emergency and invocation of emergency authority relating to the regulation of the anchorage and movement of vessels into Cuban territorial waters; to the Committee on Banking, Housing, and Urban Affairs. (PM–64)

Transmitting, pursuant to law, a report relative to efforts to obtain the fullest possible accounting of captured or missing United States personnel from past military conflicts or Cold War incidents; to the Committee on Foreign Relations. (PM–65)

Transmitting, pursuant to law, a report relative to the inclusion of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia in NATO; to the Committee on Foreign Relations. (PM–66)

Nominations Received: Senate received the following nominations:

Theodore William Kassinger, of Maryland, to be Deputy Secretary of Commerce.

John J. Danilovich, of California, to be Ambassador to the Federative Republic of Brazil.

Michael Christian Polt, of Tennessee, to be Ambassador to Serbia and Montenegro.

Neil McPhie, of Virginia, to be Chairman of the Merit Systems Protection Board.

Edward R. McPherson, of Texas, to be Under Secretary of Education.

Mark B. McClellen, of the District of Columbia, to be Administrator of the Centers for Medicare and Medicaid Services.

Routine lists in the Air Force, Army.

Nominations Withdrawn: Senate received notification of withdrawal of the following nominations:

Susanne T. Marshall, of Virginia, to be Chairman of the Merit System Protection Board, (Beth Susan Slavet), which was sent to the Senate on January 26, 2004.

John Joseph Grossenbacher, of Illinois, to be a Member of the Nuclear Regulatory Commission for the remainder of the term expiring June 30, 2004, (vice Richard A. Meserve), which was sent to the Senate on July 25, 2003.

John Joseph Grossenbacher, of Illinois, to be a Member of the Nuclear Regulatory Commission for a term expiring June 30, 2009. (Reappointment), which was sent to the Senate on July 25, 2003.

Messages From the House:

Measures Referred:

Measures Read First Time:

Executive Communications:

Executive Reports of Committees:

Additional Cosponsors:

Statements on Introduced Bills/Resolutions:

Additional Statements:

Amendments Submitted:

Notices of Hearings/Meetings:

Authority for Committees to Meet:

Privilege of the Floor:

Record Votes: Six record votes were taken today. (Total–22)
Adjournment: Senate convened at 9:30 a.m., and adjourned at 8:55 p.m., until 9:30 a.m., on Friday, February 27, 2004. (For Senate’s program, see the remarks of the Acting Majority Leader in today’s Record on page S 1848.)

Committee Meetings

(Committees not listed did not meet)

APPROPRIATIONS: EMERGENCY PREPAREDNESS AND RESPONSE


APPROPRIATIONS: NATIONAL SCIENCE FOUNDATION/OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Committee on Appropriations: Subcommittee on VA, HUD, and Independent Agencies concluded a hearing to examine proposed budget estimates for fiscal year 2005 for the National Science Foundation and the Office of Science and Technology Policy, after receiving testimony from Arden L. Bement, Jr., Acting Director, National Science Foundation; Warren M. Washington, Chair, National Science Board; and John H. Marburger III, Director, Office of Science and Technology Policy.

Nominations:

Committee on Armed Services: Committee ordered favorably reported the nomination of Kiron Kanina Skinner, of Pennsylvania, to be a Member of the National Security Education Board, and 2,235 nominations in the Army, Marine Corps and Air Force.

Nominations:

Committee on Banking, Housing, and Urban Affairs: Committee concluded a hearing to examine the nominations of Alphonso R. Jackson, of Texas, to be Secretary of Housing and Urban Development, who was introduced by Senators Bond, Hutchison, and Cornyn, Linda Mysliwy Conlin, of New Jersey, to be a Member of the Board of Directors of the Export-Import Bank of the United States, and Rhonda Keenum, of Mississippi, to be Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Services, who was introduced by Senator Cochran and Representative Wicker, after each nominee testified and answered questions in their own behalf.

MUTUAL FUND INDUSTRY

Committee on Banking, Housing, and Urban Affairs: Committee concluded a hearing to examine current investigations and regulatory actions regarding the mutual fund industry, focusing on fund operations and governance, focusing on corporate governance reforms, a proposed mutual fund oversight board, the practices of late trading and market timing, and prospectus disclosures, after receiving testimony from David S. Ruder, Northwestern University School of Law, former Chairman, Securities and Exchange Commission, and Mellody Hobson, Ariel Capital Management, both of Chicago, Illinois; David S. Pottruck, Charles Schwab Corporation, San Francisco, California; and John C. Bogle, Vanguard Group, Valley Forge, Pennsylvania.

INTERNATIONAL AFFAIRS BUDGET

Committee on the Budget: Committee concluded a hearing to examine the President’s proposed budget request for fiscal year 2005 for international affairs of the Department of State, after receiving testimony from Colin L. Powell, Secretary of State.

NOMINATION

Committee on Energy and Natural Resources: Committee concluded a hearing to examine the nomination of Susan Johnson Grant, of Virginia, to be Chief Financial Officer, Department of Energy, after the nominee testified and answered questions in her own behalf.

PUBLIC DIPLOMACY: INTERNATIONAL FREE PRESS

Committee on Foreign Relations: Committee concluded a hearing to examine American public diplomacy and the development of an independent media in emerging democracies, and a related measure S. 2096, to promote a free press and open media through the National Endowment for Democracy funding for the National Endowment for Democracy (NED), after receiving testimony from Margaret DeB. Tutwiler, Under Secretary of State for Public Diplomacy and Public Affairs; Gene P. Mater, Freedom Forum, Arlington, Virginia; Adam Clayton Powell III, University of Southern California Center on Public Diplomacy, Los Angeles, California; and Kurt A. Wimmer, Covington and Burling, Washington, D.C.

U.S.-LIBYA RELATIONS

Committee on Foreign Relations: Committee concluded a hearing to examine next steps in U.S. relations regarding Libya, focusing on Administration efforts to halt state-sponsored support for international terrorism and proliferation of weapons of mass destruction, after receiving testimony from William J.
Burns, Assistant Secretary of State for Near Eastern Affairs; and Paula A. DeSutter, Assistant Secretary of State for Verification and Compliance.

HIGHER EDUCATION ACCREDITATION

BUSINESS MEETING
Committee on the Judiciary: Committee met to discuss certain committee business, made no announcements, and recessed subject to the call.

INTELLIGENCE
Select Committee on Intelligence: Committee held closed hearings on intelligence matters, receiving testimony from officials of the intelligence community.

Committee recessed subject to call.

House of Representatives

Chamber Action


Pages H698–700

Additional Cosponsors:

Pages H700–01

Reports Filed: No reports were filed today.


Rejected:

Lofgren amendment in the nature of a substitute that sought to make it a federal crime to assault a pregnant woman and establish penalties for causing a prenatal injury or termination of the pregnancy, in addition to the penalties imposed for the assault to the mother (rejected by a yea-and-nay vote of 186 yeas to 229 nays. Roll No. 30).

Pages H637–68

H. Res. 529, the rule providing for consideration of the bill was agreed to on Wednesday, February 25.

Meeting Hour: Agreed that when the House adjourns today, it adjourn to meet at noon on Monday, March 1, 2004; and further that when it adjourns on that day, it adjourn to meet at 12:30 p.m. on Tuesday, March 2 for morning hour debate.

Pages H669

Calendar Wednesday: Agreed to dispense with the Calendar Wednesday business of Wednesday, March 3.

Pages H669

Committee Chairman Resignation: Read a letter from Representative Tauzin wherein he resigned as Chairman of the Committee on Energy & Commerce.

Pages H669

Committee Chairman Election: The House agreed to H. Res. 539, electing Representative Barton as the Chairman of the Committee on Energy & Commerce.

Pages H669

Committee Resignation: Read a letter from Representative Barton wherein he resigned from the Committee on Science.

Pages H670

Recess: The House recessed at 5:20 p.m. and reconvened at 8:05 p.m.

Pages H687


The bill was considered by unanimous consent after being discharged from the Committee on Transportation and Infrastructure by unanimous consent.

Pages H687–92

Speaker Pro Tempore: Read a letter from the Speaker wherein he appointed Representative Wolf to sign enrolled bills and joint resolutions through March 1.

Pages H687

Presidential Messages: Read a message from the President wherein he certified that the governments of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia are cooperating fully with United
States efforts to obtain the fullest possible accounting of captured or missing U.S. personnel from past military conflicts or Cold War incidents—referred to the Committee on International Relations and ordered printed (H. Doc. 108–164).

Read a message from the President wherein he notified Congress of the continuation and expansion of the national emergency with respect to Cuba—referred to the Committee on International Relations and ordered printed (H. Doc. 108–165).

Senate Message: Message received from the Senate today appears on page H635.

Senate Referral: S. Con. Res. 92 was referred to the Committee on Government Reform.

Quorum Calls—Votes: Two yea-and-nay votes developed during the proceedings today. There were no quorum calls.

Adjournment: The House met at 10 a.m. and adjourned at 8:10 p.m.

Committee Meetings

AGRICULTURE, RURAL DEVELOPMENT, FDA AND RELATED AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies held a hearing on Natural Resources and Environment. Testimony was heard from the following officials of the USDA: Mark E. Rey, Under Secretary, Natural Resources and Environment; Bruce I. Knight, Chief, Natural Resources Conservation Service; Wade Daniel Runnels, Director, Budget Planning and Analysis Division, Natural Resources Conservation; and Stephen B. Dewhurst, Budget Officer.

COMMERCE, JUSTICE, STATE, JUDICIARY AND RELATED AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Commerce, Justice, State, Judiciary and Related Agencies began fiscal year 2005 appropriation hearings. Testimony was heard from Donald L. Evans, Secretary of Commerce.

INTERIOR AND RELATED AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Interior and Related Agencies continued appropriation hearings. Testimony was heard from Spencer Abraham, Secretary of Energy.

LABOR, HHS, EDUCATION AND RELATED AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Labor, Health and Human Services, Education and Related Agencies held a hearing on Worker Protection Agencies. Testimony was heard from the following officials of the Department of Labor: Arnold Levine, Deputy Under Secretary, International Labor Affairs; Ann Combs, Assistant Secretary, Employee Benefits Security Administration; Victoria Lipnic, Assistant Secretary, Employment Standards Administration; David Lauriski, Assistant Secretary, Mine Safety and Health Administration; and John Henshaw, Assistant Secretary, OSHA.

TRANSPORTATION, TREASURY AND INDEPENDENT AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Transportation, Treasury and Independent Agencies held a hearing on the U.S. Postal Service. Testimony was heard from John E. Potter, Postmaster General and CEO, U.S. Postal Service.

NATIONAL DEFENSE AUTHORIZATION BUDGET REQUEST—AIR FORCE

Committee on Armed Services: Held a hearing on the Fiscal Year 2005 National Defense Authorization budget request for the Department of the Air Force. Testimony was heard from the following officials of the Department of the Air Force: James G. Roche, Secretary; and Gen. John P. Jumper, USAF, Chief of Staff.

NATIONAL DEFENSE AUTHORIZATION BUDGET REQUEST


DOD TRANSFORMATION

Committee on Armed Services: Subcommittee on Terrorism, Unconventional Threats and Capabilities

DEPARTMENT OF HEALTH AND HUMAN SERVICES BUDGET PRIORITIES

Committee on the Budget: Held a hearing on the Department of Health and Human Services Budget Priorities Fiscal Year 2005. Testimony was heard from Tommy G. Thompson, Secretary of Health and Human Services; and a public witness.

BROADCAST DEENCY ENFORCEMENT ACT

Committee on Energy and Commerce: Subcommittee on Telecommunications and the Internet continued hearings on H.R. 3717, Broadcast Decency Enforcement Act of 2004. Testimony was heard from public witnesses.

MISCELLANEOUS MEASURES; BUDGET VIEWS AND ESTIMATES

Committee on Government Reform: Ordered reported the following measures: H.R. 3733, to designate the facility of the United States Postal Service located at 410 Huston Street in Altamont, Kansas, as the "Myron C. George Post Office;" H.R. 3797, 2004 District of Columbia Omnibus Authorization Act; H.J. Res. 87, Honoring the life and legacy of President Franklin Delano Roosevelt and recognizing his contributions on the anniversary of the date of his birth; H. Con. Res. 328, Recognizing and honoring the United States Armed Forces and supporting the designation of a National Military Appreciation Month; H. Res. 433, Honoring the life and legacy of Luis A. Ferre; and H. Res. 475, Congratulating the San Jose Earthquakes for winning the 2003 Major League Soccer Cup.

The Committee also approved Committee's Budget Views and Estimates for Fiscal Year 2005 for submission to the Committee on the Budget.

CENTRALIZED GOVERNMENT TELECOM PLAN

Committee on Government Reform: Held a hearing entitled "Will 'Network' Work? A Review of Whether a Centralized Government Telecom Plan Jibes with an Ever-Evolving Market." Testimony was heard from the following officials of the GSA: Stephen Perry, Administrator; and Sandra Bates, Commissioner, Federal Technology Service; Linda Koontz, Director, Information Management Issues, GAO; Drew Ladner, Chief Information Officer, Department of the Treasury; Melvin J. Bryson, Director, Information Technology, Administrative Office of the U.S. Courts; and public witnesses.

AFGHANISTAN—EFFORTS TO STEM FLOW OF HEROIN

Committee on Government Reform: Subcommittee on Criminal Justice, Drug Policy and Human Resources held a hearing entitled "Afghanistan: Law Enforcement Interdiction Efforts in Transshipment Countries to Stem the Flow of Heroin." Testimony was heard from Robert Charles, Assistant Secretary, International Narcotics and Law Enforcement Affairs, Department of State; and Karen Tandy, Administrator, DEA, Department of Justice.

U.S. FOREIGN ASSISTANCE AFTER SEPTEMBER 11TH

Committee on International Relations: Held a hearing on U.S. Foreign Assistance After September 11th: Major Changes, Competing Purposes and Different Standards—Is There an Overall Strategy? Testimony was heard from public witnesses.

HARMFUL ALGAL BLOOM AND HYPOXIA RESEARCH AND AMENDMENTS ACT

Committee on Resources: Subcommittee on Fisheries Conservation, Wildlife and Oceans held a hearing on H.R. 1856, Harmful Algal Bloom and Hypoxia Research and Amendments Act of 2003. Testimony was heard from Representatives Ehlers; Richard W. Spinrad, Assistant Administrator, National Ocean Service, NOAA, Department of Commerce; and public witnesses.

OVERSIGHT—BUDGET FOR NATIONAL PARK SERVICE AND BUREAU OF LAND MANAGEMENT

Committee on Resources: Subcommittee on National Parks, Recreation and Public Lands held an oversight hearing to examine the Fiscal Year 2005 Budget for the National Park Service and Bureau of Land Management and Ongoing Efforts to Reduce Maintenance Backlogs. Testimony was heard from the following officials of the Department of the Interior: Fran Mainella, Director, National Park Service; and
Kathleen Clarke, Director, Bureau of Land Management.

“UNION SALTING OF SMALL BUSINESS WORKSITES”

Committee on Small Business: Subcommittee on Workforce, Empowerment and Government Programs held a hearing entitled “Union Salting of Small Business Worksites.” Testimony was heard from Representative DeMint; and public witnesses.

AGENCY BUDGETS AND PRIORITIES

Committee on Transportation and Infrastructure: Subcommittee on Water Resources and Environment held a hearing on Agency Budgets and Priorities for Fiscal Year 2005. Testimony was heard from the following officials of the Department of the Army: John Paul Woodley, Jr., Assistant Secretary (Civil Works); and LTG. Robert B. Flowers, USA, Chief of Engineers, Corps of Engineers; the following officials of the EPA: Marianne Lamont Horinko, Assistant Administrator, Solid Waste and Emergency Response; and Benjamin H. Grumbles, Acting Assistant Administrator, Water; Glenn L. McCullough, Jr., Chairman TVA; Arturo Q. Duran, Commissioner, International Boundary and Water Commission; Albert S. Jacquez, Administrator, Saint Lawrence Seaway Development Corporation; Thomas A. Weber, Associate Chief, Natural Resources Conservation Service, USDA; and Richard Spinrad, Assistant Administrator, National Ocean Service, NOAA, Department of Commerce.

SOCIAL SECURITY DELIVERY PLAN FOR 2005

Committee on Ways and Means: Subcommittee on Social Security held a hearing on the Social Security Service Delivery Plan for 2005. Testimony was heard from Joanne B. Barnhart, Commissioner, SSA.

BRIEFING—GLOBAL INTELLIGENCE UPDATE

Permanent Select Committee on Intelligence: Subcommittee on Intelligence Policy and National Security met in executive session to receive a briefing on Global Intelligence Update. The Subcommittee was briefed by departmental witnesses.

IC LANGUAGE CAPABILITIES

Permanent Select Committee on Intelligence: Subcommittee on Intelligence Policy and National Security met in executive session to hold a hearing on IC Language Capabilities. Testimony was heard from departmental witnesses.

COMMITTEE MEETINGS FOR FRIDAY, FEBRUARY 27, 2004

(Committee meetings are open unless otherwise indicated)

Senate
No meetings/hearings scheduled.

House
No committee meetings are scheduled.
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