The House met at 10 a.m.

The Reverend Michael Bentley, Pastor, First Baptist Church, Brevard, North Carolina, offered the following prayer:

Dear Heavenly Father, we praise You this morning for Your never ending mercies that are new to us every day. As we lift our hearts in prayer, I thank You for the diligence and faithfulness of the Members of Congress. I pray for God’s wisdom to guide them in the decisions they have to make today, for God’s discernment as they strive to bring out the truth in all the matters before them, and for God’s peace that passes all human understanding to be spread throughout our country and all of the world. I ask that You bless our country’s leaders with God’s love that has been given to us as an awesome gift. I thank You for the power of prayer and for what God can accomplish through public servants who place their faith and trust in Him.

In Your holy name I pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day’s proceedings and announces to the House the following:

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

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Texas (Mr. FROST) come forward and lead the House in the Pledge of Allegiance.

Mr. FROST 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 bills and a concurrent resolution of the House of the following titles:

H.R. 408. An act to provide for expansion of Sleeping Bear Dunes National Lakeshore.
H.R. 708. An act to require the conveyance of certain National Forest System lands in Mendocino National Forest, California, to provide for the use of the proceeds from such conveyance for National Forest purposes, and for other purposes.
H.R. 856. An act to authorize the Secretary of the Interior to revise a repayment contract with the Tom Green County Water Control and Improvement District No. 1, San Angelo project, Texas, and for other purposes.
H.R. 1598. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in projects within the San Diego Creek Watershed, California, and for other purposes.
H. Con. Res. 414. Concurrent resolution expressing the sense of the Congress that, as Congress recognizes the 50th anniversary of the Brown v. Board of Education decision, all Americans are encouraged to observe this anniversary with a commitment to continuing and building on the legacy of Brown.

The message also announced that the Senate has passed with an amendment bills and a concurrent resolution of the House of the following titles:

H.R. 417. An act to revoke a Public Land Order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California.
H.R. 1528. An act to amend the Internal Revenue Code of 1986 to protect taxpayers and ensure accountability of the Internal Revenue Service.

The message also announced that the Senate has passed bills of the following titles in which the concurrence of the House is requested:

S. 15. An act to amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States by giving the National Institutes of Health contracting flexibility, infrastructure improvements, and expediting the scientific peer review process, and streamlining the Food and Drug Administration approval process of countermeasures.
S. 213. An act to clear title to certain real property in New Mexico associated with the Middle Rio Grande Projects, and for other purposes.
S. 524. An act to expand the boundaries of the Fort Donelson National Battlefield to authorize the acquisition and interpretation of lands associated with the campaign that resulted in the capture of the fort in 1862, and for other purposes.
S. 945. An act to authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city’s water in the Kendrick Project, Wyoming.
S. 960. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize certain projects in the State of Hawaii and to amend the Hawaii Water Resources Act of 2000 to modify the water resources study.
S. 1197. An act to enhance the recreational fee demonstration program for the National Park Service, and for other purposes.
S. 1167. An act to resolve boundary conflicts in Barry and Stone Counties in the State of Missouri.
S. 1516. An act to further the purposes of the Reclamation Projects Authorization and Adjustment Act of 1992 by directing the Secretary of the Interior, acting through the Commissioner of Reclamation, to carry out an assessment and demonstration program to control salt cedar and Russian olive, and for other purposes.
S. 1576. An act to revise the boundary of Harpers Ferry National Historical Park, and for other purposes.
S. 1577. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of Wyoming.
S. 1948. An act to amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administrative Site in the State of Oregon.
S. 2178. An act to make technical corrections to laws relating to certain units of the National Park System and to National Park programs.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.
ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Requests for 1-minute speeches will be entertained later in the day.

RESIGNATION AS PARLIAMENTARIAN OF THE HOUSE OF REPRESENTATIVES

The SPEAKER laid before the House the following resignation as Parliamentarian of the House of Representatives:


Hon. J. Dennis Hastert, Speaker of the House of Representatives, Washington, D.C.

Dear Mr. Speaker: After forty years of service in the Office of Parliamentarian, I believe that the time is appropriate for me to submit my resignation in completion of a wonderfully satisfying career under seven Speakers. By this action, I shall with my permission remain available to fulfill the requirement in law to publish precedents accumulated during my tenure and that of my beloved predecessor, the late Wm. Holmes Brown.

This decision is made especially difficult by the loyal support and friendship you have shown to me, Mr. Speaker. You have enabled my office to serve the House and all its Members at a time of profound institutional change, by coping with new pressures and realities while mindful of the importance of continuity of the practices and precedents of the House and of the dignity and integrity of its proceedings. Speaker Foley, who appointed me to this position, other Speakers, and Minority Leaders, whose personal friendships I have also cherished, have likewise been particularly supportive of this office.

One need only refer to the prefaces of Hinds’, Cannon’s, and Deschler’s Precedents to gain a sense of the extent of the procedural evolution in the House for the first 190 years of the Republic, and then compare with that documented history the nature and pace of changes, to understand the enormity of contemporary developments. Along the way, important matters of Constitutional separation of powers and continuity of government have occupied high priority status requiring the attention of my office. Numerous incremental changes have considerably altered the procedural landscape over the years. Examples include increased turnover in Membership, committee seniority status, budgetary disciplines, appropriations practices, an ethics process, televised proceedings, multiplicity of committee jurisdictions, oversight and authorizing prerogatives, the impact of changing Senate processes, disposition of matters by unanimous consent, review of legislation, a tendency to refer, to postpone and cluster votes and consolidate amendments, an issue-specific super-majority vote requirement electronic capabilities, committee report availability, five-minute rule and other special rule variations, and the interaction between traditional spontaneity of the floor and its procedural rules and trends toward relative predictability of time constraints and issues presented.

I believe that the longstanding tradition of the role of the Chair in rendering impartial and proper decisions has been maintained and appreciated despite the switch in party majorities and despite occasional efforts to appeal to the public. It has been reassuring when bipartisan majorities understand and support the rulings of the Chair.

I offer a resolution (H. Res. 651) expressing the gratitude of the House of Representatives to its Parliamentarian, the Honorable Charles W. Johnson, and ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 651

Whereas Charles W. Johnson was appointed to the Office of the Parliamentarian of the House of Representatives in May 1964 and, over the ensuing 40 years has continuously served in that Office under successive Speakers, the past 10 years as Parliamentarian of the House of Representatives under the appointments of three successive Speakers:

Whereas Charles W. Johnson has unfailingly endeavored to apply pertinent precedent to every parliamentary question, in recognition of the principle that fidelity to precedent promotes procedural fairness and legitimacy; and

Whereas Charles W. Johnson has institutionalized in the Office of the Parliamentarian his demonstrated commitment to consistence in parliamentary analysis: Now, therefore, be it

Resolved, That the House of Representatives expresses its profound gratitude to the Honorable Charles W. Johnson for his unrivalled record of devoted service and steady, impartial guidance as its Parliamentarian.

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

There was no objection.

APPPOINTMENT AS PARLIAMENTARIAN OF THE HOUSE OF REPRESENTATIVES

The SPEAKER. Pursuant to section 287a of title 2, United States Code, the Chair appoints John V. Sullivan as Parliamentarian of the House of Representatives to succeed Charles W. Johnson, resigned.

Will the gentleman from Illinois (Mr. LaHood) kindly assume the Chair?

EXPRESSION OF GRATITUDE TO THE HONORABLE CHARLES W. JOHNSON

Mr. HASTERT. Mr. Speaker, I offer a resolution (H. Res. 651) expressing the
have to be exceedingly fair and judicious, and have to be seen as fair and judicious by both sides. And I know that is not always easy.

Charlie replaced Bill Brown as Parliamentarian. Bill started the process of developing precedents to follow his predecessor, Lew Deschler. That is a pretty good pedigree of institutional knowledge. Charlie has continued to make the Parliamentarian’s office more accessible and more open to Members and staff.

Charlie is a man of many talents. He is dedicated to education and talks endlessly about his beloved Camp Dudley, a place for kids to learn about the great outdoors. He is a baseball fanatic, a southpaw who pitches batting practice for the Los Angeles Dodgers. And he has an avid interest in the English House of Commons. In fact, he is writing a book with his counterpart in London comparing our procedures with those of the Parliament.

I ask Charles to get the chance to spend more time with his lovely wife Martha and his two boys, Charles and Drew, once he retires, but let us not kid ourselves. If I know Charlie Johnson, I know he will keep as active as he ever has with his many interests in many things.

I have asked John Sullivan to replace Charlie, and he has accepted the offer. John is well respected by both Republicans and Democrats and has served in the Parliamentarian’s office since 1987. John is a graduate from the Air Force Academy and got his law degree from Indiana School of Law. John is an avid college basketball fan whose allegiance is to the Indiana University of Indiana. John is an avid fan of Indiana University. John is a graduate from the University of Virginia Law School. John is well respected by both Republicans and Democrats and has served in the Office of Parliamentarian. Charlie has guided us carefully, but firmly, through turbulent floor debates; and he knows of what we speak here and has maintained the highest standards of non-partisanship, and so will our new Parliamentarian. Bill started the process with mixed emotions. We all know how difficult it is to change in how this body conducts its business. But through every change and difficult time, Charlie has always been able to count on the expert, honest, and fair advice of Charlie Johnson.

Charlie began his service in the House in 1964, as acknowledged by the Speaker, shortly after graduating from the University of Virginia. When he was appointed House Parliamentarian in 1994, he joined a distinguished line that includes Clarence Cannon, Lewis Deschler, and Bill Brown. Think of this, my colleagues: Charlie is just the third Parliamentarian since 1928.

Respected on both sides of the aisle, Charlie was first appointed by a Democratic Speaker, Speaker Tom Foley, and reappointed by Republican Speaker Newt Gingrich of Georgia. Charlie is the gentleman from Illinois (Mr. Hastert).

Charlie exemplifies the best of this House. With his unquestioned integrity and keen intellect, he has consistently maintained the highest standards of non-partisanship, and so will our new Parliamentarian. Charlie has served as a mentor to the outstanding Parliamentarians that serve under him, among them his respected successor, John Sullivan. And we are all pleased with the Speaker’s announcement that John Sullivan will be named the Parliamentarian; and that, of course, is the suggestion of Charlie Johnson. So respected is he that he can even suggest his own successor.

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

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

As a San Franciscan, and, Charlie, I am going to spill the beans on you. I am delighted that Charlie is also a devoted San Francisco Giants fan. But Charlie is not just a fan. When he leaves us, he will take up his true calling as a major league batting practice pitcher, beginning with a Dodgers-Expos game soon.

Perhaps, Mr. Speaker, we can use our collective influence to have this event covered by CSPAN. Maybe we could just do it right here on the floor and then it will be covered by CSPAN.

Although Charlie will relinquish his daily duties here, Charlie’s dedication to this House and Members and staff will remain. Charlie will continue the difficult, but essential, work on the precedents of the House of Representatives.

Earlier this week when the Speaker told me of the news of Charlie’s submission of his letter, which I agree should be tabled, I received the news with mixed emotions. We all know how great Charlie is as the Parliamentarian and what a great friend he is to many of us, but of course we want to see him go on after 40 years to fulfill himself personally in other ways. And so we know he will teach professionally at the University of Virginia Law School and he will collaborate on the Parliamentarian in the House of Commons of the U.K. on a book of parliamentary procedures that will surely be a great contribution on that important topic.

But I was delighted to hear Charlie talk about his own personal plans. Of course, he will have to share his wonderful family, and he is very lucky his grandchildren live in the region. In fact, we are lucky his grandchildren live in the region because hopefully that will mean that Charlie will visit us frequently.

As you leave us, Charlie, please go forth with the knowledge that anyone who values the work of this House of Representatives indeed values the work of democracy, is deeply in your debt, and goes well beyond those of us who have served here, with the knowledge that you will be deeply missed and with the hope for us that you will visit us often. Good luck to you. Congratulations. Thank you. Thank you. Thank you.

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

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

As a San Franciscan, and, Charlie, I am going to spill the beans on you. I am delighted that Charlie is also a devoted San Francisco Giants fan. But Charlie is not just a fan. When he leaves us, he will take up his true calling as a major league batting practice pitcher, beginning with a Dodgers-Expos game soon.

Perhaps, Mr. Speaker, we can use our collective influence to have this event covered by CSPAN. Maybe we could just do it right here on the floor and then it will be covered by CSPAN.

Although Charlie will relinquish his daily duties here, Charlie’s dedication to this House and Members and staff will remain. Charlie will continue the difficult, but essential, work on the precedents of the House of Representatives.

Earlier this week when the Speaker told me of the news of Charlie’s submission of his letter, which I agree should be tabled, I received the news with mixed emotions. We all know how great Charlie is as the Parliamentarian and what a great friend he is to many of us, but of course we want to see him go on after 40 years to fulfill himself personally in other ways. And so we know he will teach professionally at the University of Virginia Law School and he will collaborate on the Parliamentarian in the House of Commons of the U.K. on a book of parliamentary procedures that will surely be a great contribution on that important topic.

But I was delighted to hear Charlie talk about his own personal plans. Of course, he will have to share his wonderful family, and he is very lucky his grandchildren live in the region. In fact, we are lucky his grandchildren live in the region because hopefully that will mean that Charlie will visit us frequently.

As you leave us, Charlie, please go forth with the knowledge that anyone who values the work of this House of Representatives indeed values the work of democracy, is deeply in your debt, and goes well beyond those of us who have served here, with the knowledge that you will be deeply missed and with the hope for us that you will visit us often. Good luck to you. Congratulations. Thank you. Thank you. Thank you.

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

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

As a San Franciscan, and, Charlie, I am going to spill the beans on you. I am delighted that Charlie is also a devoted San Francisco Giants fan. But Charlie is not just a fan. When he leaves us, he will take up his true calling as a major league batting practice pitcher, beginning with a Dodgers-Expos game soon.

Perhaps, Mr. Speaker, we can use our collective influence to have this event covered by CSPAN. Maybe we could just do it right here on the floor and then it will be covered by CSPAN.

Although Charlie will relinquish his daily duties here, Charlie’s dedication to this House and Members and staff will remain. Charlie will continue the difficult, but essential, work on the precedents of the House of Representatives.

Earlier this week when the Speaker told me of the news of Charlie’s submission of his letter, which I agree should be tabled, I received the news with mixed emotions. We all know how great Charlie is as the Parliamentarian and what a great friend he is to many of us, but of course we want to see him go on after 40 years to fulfill himself personally in other ways. And so we know he will teach professionally at the University of Virginia Law School and he will collaborate on the Parliamentarian in the House of Commons of the U.K. on a book of parliamentary procedures that will surely be a great contribution on that important topic.

But I was delighted to hear Charlie talk about his own personal plans. Of course, he will have to share his wonderful family, and he is very lucky his grandchildren live in the region. In fact, we are lucky his grandchildren live in the region because hopefully that will mean that Charlie will visit us frequently.

As you leave us, Charlie, please go forth with the knowledge that anyone who values the work of this House of Representatives indeed values the work of democracy, is deeply in your debt, and goes well beyond those of us who have served here, with the knowledge that you will be deeply missed and with the hope for us that you will visit us often. Good luck to you. Congratulations. Thank you. Thank you. Thank you.

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

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

As a San Franciscan, and, Charlie, I am going to spill the beans on you. I am delighted that Charlie is also a devoted San Francisco Giants fan. But Charlie is not just a fan. When he leaves us, he will take up his true calling as a major league batting practice pitcher, beginning with a Dodgers-Expos game soon.

Perhaps, Mr. Speaker, we can use our collective influence to have this event covered by CSPAN. Maybe we could just do it right here on the floor and then it will be covered by CSPAN.

Although Charlie will relinquish his daily duties here, Charlie’s dedication to this House and Members and staff will remain. Charlie will continue the difficult, but essential, work on the precedents of the House of Representatives.

Earlier this week when the Speaker told me of the news of Charlie’s submission of his letter, which I agree should be tabled, I received the news with mixed emotions. We all know how great Charlie is as the Parliamentarian and what a great friend he is to many of us, but of course we want to see him go on after 40 years to fulfill himself personally in other ways. And so we know he will teach professionally at the University of Virginia Law School and he will collaborate on the Parliamentarian in the House of Commons of the U.K. on a book of parliamentary procedures that will surely be a great contribution on that important topic.

But I was delighted to hear Charlie talk about his own personal plans. Of course, he will have to share his wonderful family, and he is very lucky his grandchildren live in the region. In fact, we are lucky his grandchildren live in the region because hopefully that will mean that Charlie will visit us frequently.

As you leave us, Charlie, please go forth with the knowledge that anyone who values the work of this House of Representatives indeed values the work of democracy, is deeply in your debt, and goes well beyond those of us who have served here, with the knowledge that you will be deeply missed and with the hope for us that you will visit us often. Good luck to you. Congratulations. Thank you. Thank you. Thank you.

Mr. Speaker, I reserve the balance of my time.
Along with Charlie’s experience, we will also miss his undying support for the Amherst College Lord Jeffs, which, to those of you who follow the perennial NESCAC, the cellar-dwellers, know, is vocal, enthusiastic, and honestlytail.

Seriously, Mr. Speaker, the job of the Parliamentarian is a job of trust, of integrity, and of honor. These are the qualities without which no description of Charlie Johnson would be complete. The House has been honored by his service, and we have been honored by his presence.

Good luck, Charlie. God bless you and your family, and of course we always thank you for your exemplary and distinguished service to the House of Representatives and to this Nation.

Mr. Speaker, I yield the balance of my time to the gentleman from California (Mr. HOYER) and ask unanimous consent that he be allowed to control that time.

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

There was no objection.

Ms. PELOSI. Mr. Speaker, I yield the balance of my time to the very distinguished former Texas Ranger (Mr. FROST), ranking member on the Committee on Rules. He and the Committee on Rules and staff, as well as other Members, know full well the quality of the excellence of the work of Charlie Johnson, and I ask unanimous consent that he be allowed to control that time.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

Mr. FROST. Mr. Speaker, I yield 4 minutes to the gentleman from Maryland (Mr. HOYER), the Democratic whip.

Mr. HOYER. Mr. Speaker, I thank the distinguished gentleman from Texas, the ranking member of the Committee on Rules, for yielding me this time.

Those who will speak have been here for some years. Most of us who speak are known as institutions. We love this House. We believe this House plays a very unique role in this democracy. It is called the People’s house, a House to which one can be elected but not appointed. It is a House where the passion and wisdom of the people are joined in this crucible of decision-making process. It is a House that is composed of persons of different views, different regions, indeed different races and nationalities. It is a House where our Founding Fathers designed American democracy and I ask unanimous consent that he be allowed to control that time.

And in that context it is extraordinarily important to have a House that plays by the rules. Our Founding Fathers knew that if we were to have democracy, it would have to be governed by rules.

The gentleman from Missouri (Mr. GEPHARDT), my good friend, the former majority leader, is on the floor; and I have heard him say so often that democracy is a substitute for war.

In that context, it is sometimes confrontational; and we need a wise person helped by wise staff to, in effect, be the referee, to say to both sides that we are a democracy and we resolve questions in a way, perhaps animated, perhaps heated, but nevertheless in a way that seeks to realize the dream of our Founding Fathers, a dream which has been sustained now since 1789 because of people like Charlie Johnson, not just elected to serve but selected, by persons who themselves are elected and who know the value of this institution and the absolutely essential position that Charles Johnson III was called to serve in.

I am not objective. Those of us who speak will not be objective. We are his friends. We are his admirers. We are appreciative of the service that he has given to this House but, much more importantly, to this country. He is wise. He is also thoughtful. He is also caring of the institution, its staff and its Members but, most of all, of his country.

Mr. Speaker, I rise with my colleagues to thank Charlie Johnson for his service. Charlie’s service will be long remembered. He will write a book, and like his predecessors, that book will be used for generations to come to help manage this center of democracy, the people’s House, and sometimes lament the fact that Charlie is leaving and will be replaced by John Sullivan, not because John Sullivan is not a worthy successor but because I prefer Gary Williams to Bobby Knight, and Drew went to the University of Maryland and therefore leftened Charlie Johnson’s University of Virginia experience.

But, Charlie, as you leave, as we honor you, as we thank you, we wish you Godspeed and wish you many years of productivity and success that you have enjoyed here in this House. You have been and continue to be a great American in the tradition of your predecessors who ensured that the people’s House would be revered by its Members and respected by those it serves. Godspeed.

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

Mr. Speaker, this is a very challenging time for all of us, because Charlie has been such a great friend and enormous asset to this institution. Many of us are proud to be institutionalized, and I ask unanimous consent that he be allowed to control that time.

Charlie has helped this institution during some of the most trying times that our country has endured. He has been and continue to be an important part of this institution and this country.

Mr. Speaker, I rise with my colleagues to thank Charlie Johnson, III as he steps down from that important position. There are few people, including those Members who have been elected to serve, who have contributed more to this institution than Charlie Johnson.

In fact, Mr. Speaker, I believe that Charles W. Johnson, III is the greatest Parliamentarian to have served this House and our country. His dedication and service to this great institution is unparalleled in our history.

Oh, yes, great men have served before, as we have heard, but he has distinguished himself from them by his dedication and ability to put the Speaker and other presiding officers, but to reach out and teach Members and staff the rules of this institution.

Moreover, he has been an example as to how we should conduct ourselves in office and in life. He has always been a gentleman who has dealt with Members honestly and fairly worked with Members from both sides of the aisle evenhandedly and without prejudice. His advice and counsel have always been sound and thoughtful. He has been steady and consistent, even when there has been turmoil in the House and in the country at large.

Charlie has helped this institution during some of the most trying times that our country has endured. He has been and continue to be a great American in the tradition of your predecessors who ensured that the people’s House would be revered by its Members and respected by those it serves.

Mr. Speaker, this is a very challenging time for all of us, because Charlie has been such a great friend and enormous asset to this institution. Many of us are proud to be institutionalized, and I ask unanimous consent that he be allowed to control that time.

In fact, Mr. Speaker, I believe that Charles W. Johnson, III is the greatest Parliamentarian to have served this House and our country. His dedication and service to this great institution is unparalleled in our history.

Oh, yes, great men have served before, as we have heard, but he has distinguished himself from them by his dedication and ability to put the Speaker and other presiding officers, but to reach out and teach Members and staff the rules of this institution.

Moreover, he has been an example as to how we should conduct ourselves in office and in life. He has always been a gentleman who has dealt with Members honestly and fairly worked with Members from both sides of the aisle evenhandedly and without prejudice. His advice and counsel have always been sound and thoughtful. He has been steady and consistent, even when there has been turmoil in the House and in the country at large.

Charlie has helped this institution during some of the most trying times that our country has endured. He has been and continue to be a great American in the tradition of your predecessors who ensured that the people’s House would be revered by its Members and respected by those it serves. Godspeed.
Yesterday morning, not unusually, the House Committee on Rules convened at 7 a.m. to proceed with consideration of the Department of Defense authorization rule and the conference report on the budget. At the end of that meeting, I joined with the gentleman from Texas (Mr. Frost) then ranking minority member of the Committee on Rules, in asking for an agreement to be unanimous, and, thank heavens for you, Charlie, no one did call a vote, but we unanimously did pass a motion that had been crafted by our able Staff Director, Billy Pitts, who, as you know, is a great institutionalist and very committed to this body, and Kristi Walseth, who worked in fashioning the resolution.

I should say that we actually have many more staff people on the House floor, I think, than Members at this moment, because there are so many staff members with whom you have worked closely. I mentioned Billy Pitts many, many more staff people on the House floor, but I know that every single one of them would want us to express our appreciation to you for your efforts.

I would like to take just a moment to read the resolution, which we overnight have gotten on parchment, and I am going to personally present to you here. This was voted unanimously by the Committee on Rules at 7 o’clock, foggy, yesterday morning.

Whereas Charles W. Johnson, III has served the House of Representatives with dedication and devotion in the Office of the Parliamentarian since May 26, 1964; and

Whereas Charles W. Johnson, III learned the Rules, practices and precedents of the House under the tutelage of Lewis Deschler, who served as Parliamentarian from 1928 until 1974, and his good and great friend W. Holmes Brown, who served as the House Parliamentarian from 1974 until 1994; and

Whereas Charles W. Johnson, III has used those lessons to honorably serve as a universally respected Parliamentarian of the House from 1994 to today; and

Whereas Charles W. Johnson, III has, as a teacher of House rules, its practices and precedents, taught respect for the institution of the United States House of Representatives to countless Members of Congress and their staff; and

Whereas Charles W. Johnson, III has provided to the Committee on Rules countless hours of advice and counsel as well as assistance in its work as the traffic cop of the House; and

Whereas Charles W. Johnson, III has ensured that the Office the Parliamentarian will continue to operate with the high standards and in the manner that he and his predecessors have demanded by assembling a knowledgeable, skilled and experienced staff who serve as a vital part of the operation of the House; and

Whereas Charles W. Johnson, III, or “Charlie” as he is known in the House, will continue to serve the House as he continues the work of Lewis Deschler and Bill Brown by finessing the Precedents of the House; and

Whereas his good humor, kind smile and love of baseball will be missed by all of us who know him in the House of Representatives; and

Whereas Charles W. Johnson, III will officially retire from the United States House of Representatives on May 20, 2004, exactly 40 years after he first came to this body: Now, therefore be it:

Resolved, That the Members of the Committee on Rules express their deep and lasting appreciation for the service Charles W. Johnson, III has provided to the House of Representatives and the people of the United States of America.

I look forward to giving this to you personally, Charlie.

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

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

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

Mr. FROST. Mr. Speaker, I want to thank you and the Democratic leader for bringing this resolution to the floor today so that Members of the House may pay tribute to our friend Charles W. Johnson.

To say that Charlie is a creature of the House is an understatement. Charlie, in his position as Parliamentarian of the House today, exactly 40 years after he began as a young lawyer fresh out of law school in the Parliamentarian’s office, on his last day in the House it is only fitting that the Members of this body take the floor to pay tribute to him and express our gratitude and our friendship.

To say that Charlie is a creature of the House or a servant of this institution does him a disservice, for without him, many of us would never have learned the intricacies of the Rules of the House, its practices and its procedures. Without his sage advice and counsel, so many of us, as well as our staff, would be lost in the maze of legislative practices.

His office, just off this floor, is more than just an office; it has served as a focal point for discussions both pointed and prosaic, political and procedural, but always, always, non-partisan.

Quite frankly, Mr. Speaker, Charlie is the institution. During his 40 years as a Parliamentarian, he has served Democratic Speakers and Republican Speakers. He has shown fairness to all and malice to none. Not an easy task, but he did it with lightness and with a smile and with this voice of calm, deliberative reason, so is Charlie. Far too often we, as Members, fail to recognize the importance of those qualities in the people who ensure that the business of the House can proceed, regardless of which political party holds the majority. I know that it is often the case with regard to Charlie and the entire staff of the Office of the Parliamentarian.

Charlie is so good at what he does that he makes it look easy. But I, for one, know it is not. But his talents, his intellect and his love for this institution have made our job as legislators all the more easy, and I am grateful.

When I was first elected to the House 26 years ago, I became the second Democratic Member in the 20th century to take a seat on the Committee on Rules. Had it not been for Bill and Charlie, my acclimation to that difficult post would have been far more difficult. I know because of their patient tutelage, their willingness to just sit down and talk, their careful guidance, my knowledge of the Rules and how to use them now runs both deep and wide.

I just want to take just a moment, Mr. Speaker, to kind of talk about my personal experience with Charlie and his office.

From time to time, I, my staff, would go to see Charlie and we would ask very direct questions, questions that were vital to formulating strategy on our side of the aisle. What he would do would be to respond to every question and to answer every question truthfully. He did not go beyond that. He did not try to suggest what strategic steps we should take. He only answered what we asked. And I know he did that for the other side as well.

He was truly acting in the best, non-partisan position in helping us as partisans understand what we could and could not do. But he never went beyond that. He never said, “By the way, you know, you could do this also.” And that is the role of a Parliamentarian, to answer truthfully the questions of both sides of the aisle, and then let those Members on both sides of the aisle figure out where they go with the information.

I cannot tell you how important that is to the functioning of this body and how important it has been to me as a Member to know that I can go to someone and get an honest answer; who will answer my questions, but who will not necessarily go beyond that. And I respect that.

I know we will all miss Charlie, but I also know we all wish him well. He has earned the respect of hundreds of Members and more staff than he can count. He is a man of the House and a deep and true friend of the House. He has ensured that his office will continue to serve the House by assembling a talented staff.

I owe him so much, and there are not words to express my deep gratitude and affection. I can only wish you the best, Charlie. And while I know he has taken great pains to ensure the institution will go on without him, I know it will not be the same.

Mr. Speaker, I reserve the balance of my time.
Mr. DREIER. Mr. Speaker, at this
time, I am happy to yield 1 minute to
my friend, the gentleman from Sanibel,
Florida (Mr. Goss), the very distin-
guished vice chairman of the Commit-
tee on Rules.
Mr. GOSS. Mr. Speaker, I thank the
distinguished chairman for yielding me
time.
I too wish to associate myself with
the praise and gratitude for the man
and his service to our institution. I
would characterize Charlie as the true
north on the compass of this institu-
tion and the man who had the good
judgment to understand when mag-
netic declinations were in order. He
has had seasoned patience with seasoned
Members, and he has had extraordinary
patience with new Members, to try to
explain how things happen here. I
think many of us feel that his personal
judgments and his service to our institu-
tion. I have talked to parliamentarians,
as I am sure others will testify, who come
and wonder how this institution does work.
He has imparted that knowledge and wisdom and judgment
around the globe, and I have heard it
expressed many times from visitors
who come here.
He has added value. He has brought
credit to our institution. We are going
to miss you a lot, Charlie, and I wanted
to say thanks.
Mr. FROST. Mr. Speaker, I yield 3
minutes to the gentleman from Michi-
gan (Mr. DINGELL), the dean of the
House.
(Mr. DINGELL asked and was given
permission to revise and extend his
marks.)
Mr. DINGELL. Mr. Speaker, I rise
with great personal sadness about the
departure from this institution of a
great friend, wise counselor, mentor, and
superb public servant. I do speak,
however, with pride about the accom-
plishments of Charlie Johnson, who has served us, the House, and his country well.
He is in all particulars a great patri-
ott and a great American. He has
been wise counselor to us, mentor; he has
given us good advice; and he has
seen to it that we understood the his-
tory and the traditions of this institu-
tion.
He has served as in the great tradi-
tions of the late Lewis Desch
oler, Bill Brown, and now the fine work
which he has done. He is going to be
missed by this institution. He has
served as an example to all of us and
to those who will follow in his particular
task as Parliamentarian.
It has been his responsibility to see
it to the House function as it
should, in accord with the great tradi-
tions that we have here of respect, of
decency, and of love of this institution.
And for that and all of the other things
that we can say good about Charlie, we
have to recognize that we should say
thank you; that we should say well
done; that we should wish him well for
what it is that he has accomplished.

The House is a better institution
for his wonderful guidance. And I think
we are all of us here, as individual Members,
particularly those of us who have had
frequent occasion to consult with him
about the rules, about the traditions,
about how this institution does work
and how it should work have a very
special reason to be grateful to him and
to have a special burden of gratitude to
him for what he has done.
I am proud, indeed, that he has been
my friend. I am grateful to him as my
mentor. I am appreciative to him of his
attention given to each Member no
matter what party they may have rep-

resented, his principled advice and con-
duct, his love and respect for the House
and its traditions, and, most impor-
tantly, for his friendship.
Mr. FROST. Mr. Speaker I yield 3
minutes to the gentleman from Wiscon-
sin (Mr. PETRI).
(Mr. PETRI asked and was given per-
mission to revise and extend his
marks.)
Mr. PETRI. Mr. Speaker, it is with
a sense of real loss that I first heard the
news that Charlie Johnson was leaving
after so many years of dedicated serv-

ce to all of us in the House, and I want
to take this occasion to join with my
colleagues in paying tribute to him
today.
I personally take great comfort in
seeing Charlie each day at his post on the
Speaker's podium, monitoring our
proceedings, guiding the Member who
has an unagreed upon point over the
House, and making the determinations
and rulings needed to keep this House
running in a manner that respects the
rights and the privileges of all Mem-
bers. I know that we are in good hands.
A person who serves as Parliament-
arian influences the daily activities of
the House, and though not known by
many Americans, has had a great im-
pact on some of the most dramatic mo-
ments that have occurred in this Chamber. From his perch, he literally
has a front seat to history. I am sure at
times he found himself in situations he
never expected; but through it all, his
behavior was beyond reproach.
Perhaps what impressed me most as I
got to know Charlie over the years was
his commitment to and interest in parad-
liamentary procedure, not only here in
the U.S. but in other legislative bodies
as well. Charlie often traveled to con-
sult with others and has participated
in conferences and hearings explaining
our rules and procedures.
Speaking from my own experience,
he joined us on trips to London as part of
the British-American Parliament Group.

It has been his responsibility to see
it to the House function as it
should, in accord with the great tradi-
tions that we have here of respect, of
decency, and of love of this institution.
And for that and all of the other things
that we can say good about Charlie, we
have to recognize that we should say
thank you; that we should say well
done; that we should wish him well for
what it is that he has accomplished.
I am proud, indeed, that he has been
my friend. I am grateful to him as my
mentor. I am appreciative to him of his
attention given to each Member no
matter what party they may have rep-

represent...
that I usually have not had time to do, so I have been watching on television the early part of the proceedings here in the House, and I hear these rules being explained. I have tried to put myself in the shoes of an average citizen, and I have come to the conclusion that we do not understand what they are talking about. But that really is the magic of this place.

As the gentleman from Maryland (Mr. HOYER) said earlier, I am fond of saying that politics is a substitute for violence. It really is. And the only thing that allows us to resolve our differences peacefully is that we have a process. We have rules. We have laws. We have parliamentary procedure. And that process is what makes this place work and makes democracy work in our country.

The keeper of those rules has been our subject today, Charles Johnson. He has done it, in my view, as well as it can be done, because always being fair. No one questions his knowledge or his dedication to knowledge about the process.

Finally, his character, his human character, has been impressive to everybody who has come in contact with him. Whether it be as a friend, staff, or people visiting, everyone knows that this is a man of great character.

I guess the best story I can tell to kind of sum up my feelings about Charlie is a common friend someone that I went to Northwestern University with and was one of my best friends there, wound up at the University of Virginia Law School and became a friend of Charlie’s. So we, in that common friendship, got somewhat of a personal relationship; and we, unfortunately, saw our friend die of cancer some years back. But even with that personal relationship I had with Charlie, I never, ever felt that in anything I have done here was anything other than fair. Never prejudiced. Never giving in to human relationships. Always calling it the way he saw it and making judgments on the process, which is at the heart of our democratic experiment, fairly and with honesty and good character.

Charlie, we truly will miss you. We welcome the successor, who is going to do a great job; and we wish you the best of wishes in whatever you are going to do. Thank you.

Mr. DREIER. Mr. Speaker, I am very happy to yield 2 minutes to the gentleman from Nebraska (Mr. BEREUTER), a Member who has chosen to retire at the end of this term but has served extraordinarily well on both the Committee on International Relations and the Committee on Financial Services.

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

Mr. BEREUTER. Mr. Speaker, I thank the gentleman from California for yielding me this time and for his statement.

It is people that make an institution function, that make it great, that sustain and build respect for it; and Charles W. Johnson is certainly one of those people. He has helped the Congress respect and assert the best traditions and decorum of the House.

I said to him, Charlie, you cannot retire before I do. I will miss you too much. And yet I guess we were born in the same vintage year. Nevertheless, we have great respect for John Sullivan, and we look forward to his service here as Parliamentarian.

I think it was just a few minutes ago that the distinguished gentleman from Maryland (Mr. HOYER) said Charlie Johnson is not only a knowledgeable man but he is a wise man and a caring man, and that is certainly the case. I respect the contributions so much that he has made to help young people who have less advantages than most others.

Charlie Johnson is a tremendous and very positive impact on the U.S. House of Representatives during his service here, 40 years to the month in the Office of the Parliamentarian, and 10 years as our Parliamentarian. Tremendous service!

I remember a day back on January 21, 1997. I do not preside over the House that much, but it has been my lot to preside on some of the most difficult days, and I recall that difficult and historic day. And it was the strategy and advice of Charles Johnson that helped set the tone and the order and demeanor of the House that day, through me, which was so crucial. I thank him for that and for so many other occasions.

It has been my privilege to travel with Charlie as I led the House delegation to the NATO-Parliamentary Assembly, and not only going to Brussels but, as the gentleman from Wisconsin (Mr. FROST) pointed out, to the House of Commons where Charles Johnson is very well known. Charlie has lots of friends there and in the leadership of the House of Representatives.

If Charlie and this Member ever talk about nonessential things here, like sports, we have talked about college football. And I have never until yesterday really known how much of an interest Charlie Johnson had in baseball. But I think I am shortly going to join him as a fan of the San Francisco Giants. A couple of years ago, the Wall Street Journal ran a piece on the chronic shortage of left-handed batting practice pitchers in major league baseball. So shortly thereafter, Charlie’s ability to throw strikes from the port side was tested at better than auditioned and then he started pitching for the Los Angeles Dodgers when they came to Camden Yards to play the Orioles. Then he pitched for them in Philadelphia, helping the Dodgers, and soon they became better hitters of left-handed pitchers.

If it had not been for yesterday’s rework of the schedule because of rain, I understand he would have been doing the same thing for the Dodgers in the Phillies’ new stadium. So that is a remarkable side of Charlie that I did not know about at all.

Mr. Speaker, as he leaves here, our outgoing Parliamentarian is going to be working with the recently retired Clerk of the British House of Commons, William McKay, on an updated comparative book on Parliament and Congress. Charlie’s appreciation of the value of comparative studies through his work with counterparts in other countries, especially with that Mother of all Parliaments, has played an essential role in the development of programs of mutual exchange. You have heard that already referenced. People on every continent know Charlie Johnson because they have worked with him in their parliamentary efforts. So he is going to be working with Sir William in that respect.

Mr. Speaker, if it were consistent with American tradition, we would make you Sir Charles. But, nevertheless, we know that this is going to be another major contribution that has some impact here. As you leave the House, Charlie Johnson should feel good to know that the recently established Office of Interparliamentary Exchange reflects his interest in improving not only the conduct of activities here in this parliament but in parliaments around the world.

So Charlie Johnson, best wishes to you and your family. Thank you for your public service and your service to the U.S. House of Representatives. You will be greatly missed.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. Mr. Speaker, parliamentarian, in my country, is in contrast to the Speaker accepted Mr. JOHNSON’s resignation?

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman is correct.

Mr. OBEY. Mr. Speaker, I appeal the ruling of the chair.

Mr. Speaker, I often refer to Archie the cockroach. This is my political bible, and Archie has something for almost every occasion. One thing he said once was ‘‘Boss, I believe the millennium will come, but there is a long list of people who have to go first.’’ I think Charlie misunderstood. Charlie, Archie was not talking about you, and I hope you reconsider.

Mr. Speaker, for 40 years Charlie has been at the center of every effort of this institution to live up to the responsibility which it has to the oldest democracy in the world. Democracy may be at risk in this country in the minds of some of our citizens believe that there is at least one place, some forum to which they can go in order to make their case and to have their arguments heard. They do not have to win, but they have to know that there is a place where they will receive a fair hearing. When that happens, democracy thrives; and when it does not, democracy dies a little.
I think more than anyone in this institution, Charlie Johnson has dedicated himself to see to it that on this floor, democracy thrives. He has been dedicated to the proposition that the rules ought to be applied in a way that enabled the majority to meet their responsibilities to govern and at the same time to enable the minority to offer and be heard on its alternative views.

To the extent that the House has on occasion not been used that way, the fault does not lie on the shoulders of Charlie Johnson. Charlie Johnson, I think, has met his responsibility to the institution, to the country, to both political parties; and we are all the better for it.

I know people have said a lot of good things about him today, and I know that on occasions like this people often exaggerate. For instance, I understand that Charlie’s own wife was watching this on C-SPAN, and she said so many good things about him, that she rushed to the Chamber to see if we were talking about the same fellow. We are, Charlie. We are all talking about you. If Dick Bolling were here, who was my mentor in this place and who as a Member knew much about him, the rules than any other Member I ever knew, if Dick Bolling were here today, he would say, “Well done, thou good and faithful servant.”

Mr. DREIER. Mr. Speaker, I yield 2½ minutes to the gentleman from Savannah, Georgia (Mr. KINGSTON), the very distinguished vice chairman of the Republican Conference.

Mr. KINGSTON. Mr. Speaker, I want to say a few remarks about our great friend and departing parliamentarian. If Members think about the world we live in today and all the technology and all the feats of engineering, we take so much for granted. We get in our cars, and our cars are almost a mechanism now, and we never marvel, we never question. We just flip a switch, and we expect something to happen. We take it all for granted.

That is somehow how we are as we come down to the floor of the House. As 435 independent contractors, we come down here and we expect bills to be on the table, we expect to have a learned staff who can ask why a certain amendment was germane and why it was allowed and why it was not allowed. We expect to have some professionals who can keep their eyes on our distinguished brethren and sisters on the Committee on Rules, for example.

We need a neutral body as our moderator, and the Speaker has been an important role, but it is more than just the role he serves. He has embodied the person that all of us can look to as one who will judge fairly, a source of fairness, a bright spot no matter what the legislative agenda of the day was, and I am grateful for all of his hard work.

Mr. FROST. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Speaker, so much of this institution in recent years has been partisan, rancorous comments back and forth, difficult feelings among the Members; and this year, which is an election year, has exacerbated all of that. So it is important to note that Democrats and Republicans are joined together because what we are all experiencing is a significant loss for this institution, for the people’s House, the House of Representatives.

Charlie Johnson has served as an integral part of the legislative process, and I feel privileged to have had the opportunity to work with him over the years. We have been the beneficiaries of his intellect, thoughtfulness, and integrity time and time again. Several years ago, Charlie noted that his predecessor, William Brown, had set a standard of “intellectual vigor, sharing of information, and a sharing of responsibility with a grace that was accompanied by a total devotion to the House of Representatives.” Charlie has more than met that standard.

He deserves an important role, but it is more than just the role he serves. He has embodied the person that all of us can look to as one who will judge fairly, a source of fairness based on the rules, based on the idea that laws govern not just individuals, and that when he makes his determination on all of the precedents and the exact wording of the rules, we know that is the course that we all will agree to.

I came here from the California State legislature, and I think many legislatures are like this, the speaker has complete control. The speaker gets to appoint the Members to the committees and the chairmen, and assigns the members’ offices and staff, and the speaker can make the rulings, and it is the speaker’s authority alone to make the rulings.

When I came here, I was surprised to find out that the Speaker could not just make a decision that benefited those of us on a certain side of the issue. He had to go to Charlie Johnson to find out what the rules were, and he had to abide by that decision.

I have come to realize how important that is for an institution to be able to have someone with such integrity and knowledge that we can look to be the final say on what the rules are because we have to follow the rules in this institution and in a country that looks to the rule of law as essential.

I have come to recognize that as important, just as I have come over the years to recognize even the importance of having a soft spot in the heart for Charlie and more appreciate the longer I am here.

I want to say that I have not only benefited from Charlie’s wisdom and advice, but from his friendship. I have not had the opportunity to travel with Charlie; maybe now that Charlie is leaving, we will have to go on an Elder Hostel trip together because we are advancing in age. He has been a terrific friend to me, someone I have tremendous respect for, and it is shared by everyone in this institution. He is certainly going to be missed.

This is a change that many of us hoped we would not see, not only with Charlie’s absence but a change in his guidance for all of us; and I join all of my colleagues, Democrats and Republicans, liberals and conservatives, in supporting this resolution to thank him for a job well done.

Mr. DREIER. Mr. Speaker, I yield 1½ minutes to the gentleman from Buffalo, New York (Mr. QUINN), another Member who unfortunately has chosen to retire at the end of this term.

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

Mr. QUINN. Mr. Speaker, I want to join my colleagues this morning, mostly in leadership positions, who have come to the floor this morning, Charlie, to talk about your wisdom and fairness and work ethic; and I want to associate myself with their remarks, of course. But I am one of those dozens of the Speaker pro tempores. Charlie has made us all look good, both on C-SPAN and back home for our constituents, and for our colleagues here in the Chamber.

I was in the chair one day and some rule question came up. After I answered it, my mother called me on the phone and said, “How did you know all of those rules so quickly?”

I said, “It was easy, Charlie Johnson was there.”

She said, “Who is he?”

I said, “Well, he is the guy that does the trick. He talks into the microphone.
so you hear him, but so nobody else hears him, and he explains the rules.”

Charlie, on behalf of all of the Speaker pro tempos, some with a little more experience than others, who you have made look good across the country and in front of our colleagues, I want to take this time for thanking him for sharing those rules, for keeping this place a place of order when we are in the chair trying to keep order.

I guess the trick for you then and your staff is to be heard, but not to be heard when you do your job best. And I would submit to my colleagues here in the Chamber that we all can take a lesson from this gentleman as he leaves us. When we do our business, we should try to be heard, and maybe not be heard so loud during those times of emotion, during those times of debate, during those times of political arguments, to be heard, of course, but to not be heard. And Charlie, for that service to us as that group of people that chair these sessions, and on behalf of all of our constituents across the country, I want to say thanks for a job well done. We appreciate it. We will always remember you.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentleman from South Carolina (Mr. SPRATT).

Mr. SPRATT. Mr. Speaker, I have served in the House for more than half of the 40 years that Charlie Johnson has served as Parliamentarian. As a matter of fact, I had just become a Member of the House with no more than 3 weeks of experience when I wandered onto the floor one day, having mistaken the belfry and thought there was about to be a vote.

Before I could get off the floor and go back about my business, Charlie beckoned me to the chair; and the next thing I knew I was wielding the gavel, presiding over the House, never having done that before in my life. I was never more thankful ever since that Charlie had beckoned me to have someone who knew what he was doing sitting behind me whispering instructions, and I have been thankful ever since that Charlie Johnson was in that position.

For all those 22 years that I have known him, his chair behind the Speaker, his office across the hall have been sources of civility in a House that is often contentious, sometimes bitter and pugnacious and embattled. For all those years, the Parliamentarian has been an authority that everyone in this House, both sides of the aisle, have recognized and respected because his rulings have been fair and his judgment have always been based on precedent and on sound thinking.

His office made him powerful. Anyone who became the Parliamentarian of the House would be powerful inherently, but his knowledge, his ability and his inherent fairness, were what made him special. The House could not be the House that the Framers intended us to be, the people’s House, without some-

times passionate, hard-hitting debate; but the House could not operate in that mode, sometimes pushing the envelope of civility, without a referee that everybody trusted and respected. For a long, long time, Charlie has been such a referee.

My respect for Charlie Johnson on our side, the Democratic side of the aisle, was established over the years and well-founded, but his great ability, his inherent decent fairness, was recognized to his credit and theirs when our Republican colleagues moved into the majority and made him their Parliamentarian, too. He proved his fairness, his basic inherent fairness, by serving both parties without ever breaking stride. I do not think anyone in the years that I have served here has ever accused him of bending with partisan winds. Charlie Johnson has called them the way he saw them for the last 40 years.

The House of Representatives is losing. We should not fool ourselves, a huge amount of institutional memory with the loss and retirement of Charlie Johnson. Four decades in the Parliamentarian’s office, 10 years as Chief Parliamentarian, and during all those years he has embodied the qualities that we need most in a parliamentarian: erudition and evenhandedness, great authority and great good humor, too, and overall a keen understanding of this great institution of the Republic.

He has made the people’s House deserve its name. He has helped us make this complex system that we call democracy work and work well.

Though he is leaving, he leaves behind him a legacy that will inform the proceedings of this House for a long time to come, and he is leaving a well-trained staff of Parliamentarians.

The SPEAKER pro tempore (Mr. LAHOOD). The time of the gentleman from Texas (Mr. SPRATT) has expired, and the Chair recognizes the gentleman from Texas (Mr. LEWIS).

Mr. LEWIS of Texas. Mr. Speaker, I yield 1 minute to the gentleman from South Carolina (Mr. SPRATT).

Mr. SPRATT. Mr. Speaker, I yield 30 additional seconds to the gentleman from South Carolina (Mr. SPRATT).

Mr. SPRATT. Mr. Speaker, I have served in the House for more than half of the 40 years that Charlie Johnson has served as Parliamentarian. As a matter of fact, I had just become a Member of the House with no more than 3 weeks of experience when I wandered onto the floor one day, having mistaken the belfry and thought there was about to be a vote.

Before I could get off the floor and go back about my business, Charlie beckoned me to the chair; and the next thing I knew I was wielding the gavel, presiding over the House, never having done that before in my life. I was never more thankful ever since that Charlie had beckoned me to have someone who knew what he was doing sitting behind me whispering instructions, and I have been thankful ever since that Charlie Johnson was in that position.

For all those 22 years that I have known him, his chair behind the Speaker, his office across the hall have been sources of civility in a House that is often contentious, sometimes bitter and pugnacious and embattled. For all those years, the Parliamentarian has been an authority that everyone in this House, both sides of the aisle, have recognized and respected because his rulings have been fair and his judgment have always been based on precedent and on sound thinking.

His office made him powerful. Anyone who became the Parliamentarian of the House would be powerful inherently, but his knowledge, his ability and his inherent fairness, were what made him special. The House could not be the House that the Framers intended us to be, the people’s House, without some-

times passionate, hard-hitting debate; but the House could not operate in that mode, sometimes pushing the envelope of civility, without a referee that everybody trusted and respected. For a long, long time, Charlie has been such a referee.

My respect for Charlie Johnson on our side, the Democratic side of the aisle, was established over the years and well-founded, but his great ability, his inherent decent fairness, was recognized to his credit and theirs when our Republican colleagues moved into the majority and made him their Parliamentarian, too. He proved his fairness, his basic inherent fairness, by serving both parties without ever breaking stride. I do not think anyone in the years that I have served here has ever accused him of bending with partisan winds. Charlie Johnson has called them the way he saw them for the last 40 years.

The House of Representatives is losing. We should not fool ourselves, a huge amount of institutional memory with the loss and retirement of Charlie Johnson. Four decades in the Parliamentarian’s office, 10 years as Chief Parliamentarian, and during all those years he has embodied the qualities that we need most in a parliamentarian: erudition and evenhandedness, great authority and great good humor, too, and overall a keen understanding of this great institution of the Republic.

He has made the people’s House deserve its name. He has helped us make this complex system that we call democracy work and work well.

Though he is leaving, he leaves behind him a legacy that will inform the proceedings of this House for a long time to come, and he is leaving a well-trained staff of Parliamentarians.
The House is a better House, and the country is a better country because of Charles Johnson.

It is my belief that when historians pick up their pens and write the history of this House during the latter part of the 20th century and the beginning of the 21st century, they will have to write that a man called Charles Johnson made a lasting contribution to maintaining order and peace in this House.

But he did more than maintain order and peace with his talents, skills and ability. He helped guide this House through some of the most important and sometimes bitter debates and discussions. Charles Johnson has helped guide this House through the discussions and debate on voting rights, civil rights, Medicare, the Higher Education Act, war and peace.

I want to join my colleagues to thank Charles Johnson for all of his good work and for his contribution toward the strengthening of our democracy. Charles Johnson, Mr. Parliamentarian, we wish you well in the days and years to come.

Mr. DREIER. Mr. Speaker, I am very happy to yield 1 minute to the gentleman from California (Mr. LATOURETTE).

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

Mr. LATOURETTE. Mr. Speaker, when we are all here on the floor, there are often calls for regular order. The fellow who has kept regular order has been Charlie Johnson during my 10 years.

A lot of platitudes have been spoken and they are all well deserved. I want to extend my voice in saying thanks for giving me the guidance when I have had the honor of presiding over the House from time to time.

I do want to tell just one quick story in the minute that I have been given because my leadership made sort of a joke about the 3-hour vote on prescription drugs and some Members in the House, when they scream regular order, because we are all busy, we do not take time to read the rules, do not know that the votes are a minimum of 15 minutes and not a maximum of 15 minutes.

But I can recall during a rather contentious vote the Republicans were up 206-204 and time had expired. A rather excited Member from the West Coast, California, came running up, it was not the gentleman from California (Mr. DREIER), and said, "You've got to close this thing down. We have to win this vote. You need to shut it down."

We looked and saw that earlier in the day 420 Members had voted, we were about 10 Members short; it was late in the evening, everybody was out having dinner, coming back; it was raining in the Capitol. Charlie Johnson then said, "When you're in the minority, you understand the importance of not going to win a lot of votes here, and when you're in the majority you can and probably should win most votes, but what you can't do when you're in the majority is steal a vote. We need to keep this vote open to make sure that those 10 Members who voted just a half an hour ago have the opportunity to be here and cast their ballots."

We wound up winning and the Member on that occasion who was excited came up later and apologized for screaming. Charlie Johnson has been fair, fair to the Republicans, fair to the Democrats, and I shall miss him very much.

Mr. FROST. Mr. Speaker, I yield 1 minute to the gentleman from Maryland (Mr. CARDN). Mr. CARDIN. Mr. Speaker, I take this time to say thank you to Charlie Johnson for his public service. He has never been elected as a Member of this body, but he has had as much influence as anyone who has ever been elected to this House in preserving the traditions of this great democratic institution, and I thank him for that. His contributions to all of the Members of this body because what he has done in his service will be a lasting tradition in this body and will serve future generations.

He cannot duck a single tough issue, but he has ruled ever time on the basis of sound precedent without partisan considerations. He is a person of the highest integrity, an encyclopedic mind, a person who is totally committed to our country and this legislative body.

Mr. Speaker, I just wanted to take this 1 minute as one Member of this body to thank Charlie Johnson for what he has done to make this great institution a better place for the future.

I thank you, I thank you for your friendship, and I thank you for your commitment.

Mr. DREIER. Mr. Speaker, I am very pleased to yield 1 minute to my very good friend, the gentleman from Atlanta, Georgia (Mr. ISAKSON).

Mr. ISAKSON. Mr. Speaker, I, first of all, associate myself with all the kind remarks that have been made about Charlie, but I thought back to my first day here. I was elected on a special election, came in, I knew no one, and it was a hustle and bustle. Charlie Johnson was the guy who got me through that in what was a blur to me.

Secondly, I am reminded of how great this institution is, and I am reminded of three silent factors the public never sees. First is the scone of Moses that looks down upon the Speaker as an inanimate object, but as a constant reminder of the integrity we all need. Second is our Founding Father, George Washington, whose portrait hangs on this side of our Capitol to remind us of where we come from.

The third silent but very present, day in and day out, person that guides the integrity of this most important institution is the gentleman from Maryland, but effective leadership of Charlie Johnson. This institution has been blessed to have leaders of great capability from elected office, but from that seat next to the Speaker, we have been blessed to have a man who has the excellent commitment to fairness, integrity, responsibility and the preservation of this Republic, and that is Charlie Johnson.

Mr. FROST. Mr. Speaker, I yield 30 seconds to the gentleman from New York (Mr. MCNULTY).

Mr. MCNULTY. Mr. Speaker I am honored to stand here today and associate myself with the remarks of Speaker HASTERT and Leader PELOSI and all of the other Members in thanking Charlie Johnson for his 40 years of outstanding service to the House of Representatives and to the country.

When I first came to the Congress in the 1980s, I served on a regular basis as one of the Speaker pro tem. At that time I knew very little about parliamentary procedure and almost nothing about the House rules. I thank Charlie and my friend the late Bill Brown and John and Tom and Muftia and Gerry and all of the others who helped through the years to educate me about the House rules and to have that wonderful experience which, incidentally, I hope I have again someday.

Charlie, I would sum it up this way: You are the very distinction of outstanding public service. I wish you good health and happiness for many, many years to come.

Mr. FROST. Mr. Speaker, I yield 30 seconds to the gentleman from California?

There was no objection.

Mr. DREIER. Mr. Speaker, we have many, many Members who want to have the opportunity and the privilege of doing this and so, at this moment, I am going to ask unanimous consent that general leave be provided so that all Members may include statements in the RECORD upon Charlie Johnson's retirement.

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

There was no objection.

Mr. DREIER. Mr. Speaker, I am happy to yield 1 minute to my very, very good friend, the gentleman from Idaho (Mr. SIMPSON).

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

Charlie, we are certainly going to miss you. Sometimes that does not seem like enough, but all of the Members of this House and the fellow staff members here in the House are certainly going to miss you. Sometimes simple words are the best.

Parliamentary procedure, as has been stated here, the Rules of the House equally and uniformly applied to all, are what make this emotional and sometimes polarized debate about Charlie and I have sometimes disagreed about the interpretation of those rules and we have debated it a little bit.
Yielding to the superior wisdom of Charlie, I found out that you can end debate with a nondebatable motion here in the House, but if we were back in Idaho, you could not do that. We have had some very interesting debates here.

I always found, when I practiced dentistry, that when I was hiring a new chairside assistant, it was sometimes often easier to hire somebody that had no experience because then you did not have to retrain them before you retrained them. Sometimes I think Charlie’s toughest job here is to take some of us who have been presiding officers in State legislatures and untrain us of the rules that we learned in our State legislatures before he retrained us about the Rules of the House.

I know that you have done a fantastic job. We have all enjoyed working with you. Sometimes the measure of an individual’s performance is what those around him think about the job that he has done. As I have talked to other staff members here, I can tell you one of the things that was said yesterday, someone said, “If I had to think of one word to describe Charlie, it would be ‘integrity.’” That is not a bad legacy to leave.

Thank you, Charlie. We are going to miss you.

Mr. FROST. Mr. Speaker, I yield 30 seconds to the gentleman from New Jersey (Mr. PASCRELL).

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

Mr. PASCRELL. Charlie, you have served your country and you have served this wonderful House. At a time when we have lost something in terms of ritual and ceremony, you have always brought us back to reality.

I want to say one word about these people; and ultimately it is that human face that is going to provide the strength to make sure that the House follows through on the path that you have chartered so ably in the past 40 years. We greatly appreciate your contributions.

Mr. DREIER. Mr. Speaker, I yield 2 minutes to the gentleman from Peoria, Illinois (Mr. LAHOOD), who, as has been pointed out, time and time again so ably presides over this institution as Speaker pro tempore.

Mr. LAHOOD. Mr. Speaker, I think people watching this would find it kind of odd that I would have to step down off the podium in order to speak, but Charlie would never allow me to speak from up there because it is not according to the rules of the House.

And I think people would find it odd that Charlie cannot speak today. Charlie has spoken many, many times on this floor through those of us who have had the great opportunity and privilege to serve the House. But it turns out this is not according to the rules. And if it is not according to the rules, it does not happen. And if it is not according to the rules by Charlie Johnson, it does not happen.

I was quoted in CQ as saying that Charlie runs the House, and I hope our leadership does not take offense at that; but Charlie really has run the House for many years, and thank goodness for that.

I think many people do not realize that in 1994 not one of us in the majority presided. When we were sworn in in 1995, not one of us in the majority had ever presided over the House. And if it were not for the magnificent work of Charlie and his entire staff, think of the chaos that could be created when we turn over an entire House to a new majority of people who obviously maybe know a little bit about the rules but not much. And if it were not for the magnificent work of Charlie and his entire staff, think of the kind of chaos.

And we were dealing with some really important issues here. I know you do not like to hear about the Contract with America, but that was the agenda for 3 months, and that was major legislation. And we could not have done it, and those of us who had the privilege early on of presiding could have never done it. It would not have been possible for us if we had not really paid attention to Charlie Johnson and the people that work in his office, and they really are the ones that allow us to do the things that we were able to do throughout the 10 years that we have been in the majority.

When people say to me, How did you get so good at presiding? It is a very simple answer. I listened to Charlie Johnson. That is the answer. And when one listens to Charlie, they get good advice.

I want to say one word about these jobs that we have: we could not do without the kind of spouses that allow us to do them, and I want to say a word about Martha. Martha is here.

And, Martha, I want to say to you, thank you for giving us this extraordinary human being who has given us so much. We are in your debt for the kind of, I think, tolerance that you have lent to the job that Charlie has done, the long nights, the late nights, and the good work.

Charlie, job well done. God speed.

Mr. FROST. Mr. Speaker, I yield 30 seconds to the gentleman from Washington (Mr. BAIRD).

Mr. BAIRD. Mr. Speaker, on the night of September 11, I began to think about what might happen if this institution were to perish in an attack, and I asked, who should we talk to to learn the answer to that question? And the answer to that was Charlie Johnson.

Charlie, I want to thank you and your entire staff for your help on that issue but, more importantly, for how you help us every single day.

People around the country see us disagree and bicker all the time here, and people around the country say, People agree on what? I think many people do not realize that what you have done, the long nights, the late nights, the work behind the scenes, we all come to appreciate.

Thomas Jefferson, I am sure, would be very proud of you. Our laws and our rules are based upon what he wrote.

Mr. BLUMENAUER. Mr. Speaker, we have debated the contribution that our friend Charlie Johnson has made to the rules of the House, and that he has provided the context to understand the rules. But I think the thing that I have to appreciate is the human face that he puts on it. It is the dimension provided by the outstanding men and women who make this place work behind the scenes, that we all come to appreciate.
could be working so long for the other party in control, could that person be fair? And he convinced me over two meetings that his job was not to be fair or unfair, but to know the rules. He has proven that he does, with an even hand; and I join all my colleagues in thanking him for his service to his country in other ways when he retires from the House, the institution who work so closely with Charlie Johnson; all of those who are working for us here today and the Members of committee staffs and personal staffs who have worked so closely with him.

And I would like to close by sharing with our colleagues a note that was handed to me a few minutes ago. It says: “Dear Charlie, thanks for your 40 years of service to the House and our country. I wish you all the best. Keep your eye on the ball, never let your foot off the gas pedal and never let us catch you in from the bullpen.” This is a handwritten note from the President of the United States, George W. Bush, which I will give to you, Charlie, as soon as we have the resolution.

Mr. Speaker, it is with great pleasure that I rise today to congratulate Parliamentarian Charles Johnson on four decades of service to the U.S. House of Representatives, and to wish him the very best for a well-earned retirement.

As all Members are aware, the job of House Parliamentarian is an exceedingly difficult one. One must have a scholarly grasp of the rules governing this institution, the integrity to be an honest and fair judge, and an ability to work with both sides of the aisle in contentious moments. Throughout my twenty-five years of service in the House, I have seen Charlie exhibit these qualities with the highest distinction.

Charlie began his service in the Parliamentarian’s office in 1964, shortly after graduating from the Keepership of Virginia School at this. In 1994, he was appointed Parliamentarian by a Democratic Speaker, Tom Foley. In testament to his character, he was then reappointed by two Republican Speakers, Newt Gingrich and Dennis Hastert. All Members of this body have relied on Charlie’s keen intellect and sound judgment, day in and day out. He has served with the greatest integrity and will be missed. However, all Members welcome his respected successor John Sullivan, who Charlie has mentored.

Fittingly, Charlie continues to serve our country in other ways when he retires from this institution. In collaboration with the Parliamentarian of the House of Commons in the United Kingdom, he plans to produce a book on parliamentary procedure that will be a welcome addition to the field. In addition, after an activity that is dear to my heart, he will lend his talents to the San Francisco Giants as a batting practice pitcher.

I want to thank Charlie for his wisdom, his commitment to being a nonpartisan advisor, and above all his forty years of service to the United States House of Representatives. We thank him for sharing his life with us these many years, and wish him the very best in his endeavors to come.

Mr. RAHALL. Mr. Speaker, as many have already stated, and as many more Members are eager to express, Charlie Johnson’s departure will be a loss to this great institution we serve, and which Charlie has served so well for 22 years.

I am actually one of the few Members of the House who can say I was already here before Charlie was, although he arrived here within only a couple of short years after I did. Since that time, we’ve had the opportunity to grow older together.

Throughout his tenure, Charlie has been a wise counselor, a trusted confidant, and an impartial adjudicator who has served both parties without pride or prejudice.

For those who don’t readily grasp the significance of the role of Parliamentarian, it is the Parliamentarian who makes sure that we can continue to conduct the House’s business every hour of every day.

Those visiting, or watching at home on C-SPAN, may understand the importance of the House Parliamentarian as Members come and go from the Speaker’s Chair. When they see the Clerk making procedural decisions, they also see the Parliamentarian’s staff providing helpful advice on a timely basis.

For those of us who serve in the House, the Parliamentarian is an absolute lifeline. He’s also the occasional judge, father confessor, and constant in his knowledge of the House floor. As Members and parties seek to advance their own interests.

Although it seems that we increasingly can’t find ourselves in agreement on many things, too many things for that matter, one thing that has united is that Charlie has embodied the ideal of the civil servant who tirelessly has served the interests of the American people.

I, like so many others, am proud to have served with him.

Mr. SENSENBRENNER. Mr. Speaker, it is with both gratitude and sadness that I rise to honor the Parliamentarian of the House, Charles W. Johnson, on his upcoming retirement. Charlie has long served the House, and he has done so with distinction, integrity, and commitment to being a nonpartisan advisor, which has served both parties and the American people.

I, like so many others, am proud to have served with him.

Mr. OXLEY. Mr. Speaker, I rise today in support of the resolution, and to thank Mr. Charles Johnson, the Parliamentarian, for his service to this institution and its Members. Those of us who have the privilege to serve as committee chairmen know first hand the good work done by Charlie and his team of professionals. In many ways, the Parliamentarian and his deputies are the grease which makes our legislative machine work a little more smoothly.

Charlie’s dedication to this institution spans his 40-year career. Beginning his career fresh out of the University of Virginia law school in 1963, he guided members of both parties through the shoals of the legislative process. Charlie was particularly helpful to those of us who were newly elected committee and subcommittee chairmen in 1995 and beyond. His advice and counsel have served us all as we learned the sometimes difficult lessons of legislating in the 21st century.

As anyone who knows Charlie knows, his only greater love than this institution is his love of baseball. As he begins his retirement after 40 years of crouching behind home plate, we all hope he enjoys watching the rest of the game from the stands.

Mr. Speaker, I wish Mr. Johnson well in his retirement, and extend my heartfelt thanks for his service.

Mr. DREIER. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered. The resolution was agreed to. A motion to reconsider was laid on the table.

ARE WE WINNING THE WAR ON TERROR?

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

Mr. TURNER of Texas. Mr. Speaker, it has been almost 3 years since the September 11 attacks by a small, but deadly, network of terrorists; and America is asking, are we winning the war on terror? Are we better off today than we were 4 years ago?

To win the war on terror, we must succeed on three fronts simultaneously: we must attack the terrorists, we must protect the homeland, and we must prevent the rise of future terrorists.

Our protracted conflict in Iraq has overextended our military and limits our capacity to confront the emerging threats around the world. The terrorist threat is growing into an even larger network of loosely affiliated groups whose common thread is their hatred of America.

We have yet to pursue a strategy to strengthen the voices of moderation in the Muslim world that are our best hope for preventing the rise of future terrorists. Serious security gaps remain at our ports, in the air, on our trains, at our borders. Chemical, biological, nuclear, and conventional threats are increasing.

We are fighting the war on terror, but are we winning? To make Americans safer, we must move faster and be stronger than we are today.

WEAPONS OF MASS DESTRUCTION HAVE BEEN FOUND IN IRAQ

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

Mr. PENCE. Mr. Speaker, despite the national media’s best efforts to minimize the news, I am here to report, as the United States military confirmed in Iraq on Monday, weapons of mass destruction were found in Iraq in the form of two separate artillery shells containing sarin and mustard gas, shells that had been used by insurgents to create roadside bombs. A 155 millimeter shell found last week included nearly a gallon of a deadly gas, a drop of which would kill a human being. Not that we should be surprised. Saddam Hussein killed or injured over 70,000 Iraqi Kurds using sarin gas munitions in 1988.

Where are the WMDs? We have been asked again and again. Mr. Speaker, they are where they have always been, hidden in Iraq, within the reach of terrorists, a threat to the Iraqi people, U.S. soldiers, and the world.

THE HOUSE REPUBLICAN LEADERSHIP’S MISPLACED PRIORITIES

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

Mr. EDWARDS. Mr. Speaker, American military families will be disappointed to find out what the House Republican leadership is doing today. Unbelievably, during a time of war, they will pass this afternoon generous tax cuts for Members of Congress but put a freeze on military children’s education funding and a freeze on the most important military housing improvement program in American history.

It is shameful that the House Republican leadership is saying that we can afford to give Members of Congress and families making up to $250,000 a year a new $1,000 tax credit per child, but we must freeze education funding for our military kids and put a 1-year hold on important military housing improvements for 24,500 military families.

The House Republican leadership’s misplaced and self-serving priorities make a mockery of the principle of shared sacrifice during time of war. Military families, and Americans who respect their sacrifices, have a right to be outraged.

TRIBUTE TO AGUSTIN VELASCO

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

Ms. ROS-LEHTINEN. Mr. Speaker, I rise today to honor Mr. Agustin Velasco, a valued Member of our South Florida community. Agustin’s contributions to our community dates back over 4 decades, serving as a leader, entrepreneur, and an example of determination to succeed.

Agustin is currently the president and original founder of the Inter-American Bank, a bank with humble beginnings, now proudly celebrating its 25th anniversary of service to the people of South Florida.

After fleeing Communist Cuba in 1961, Agustin sought refuge in Miami and quickly became a dynamic and flourishing member of our community. Joining the ranks of thousands of very hard-working Americans, Agustin became the realization of the American dream.

A father of two and a grandfather of five beautiful girls, I invite my colleagues to join me in congratulating Mr. Agustin Velasco and wishing him continued success.

Felicidades, Agustin.

CHANGE AND A NEW DIRECTION NEEDED FOR AMERICA

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

Mr. EMANUEL. Mr. Speaker, last night the House passed a $2.3 trillion budget, leaving a $500 billion hole and deficit, and showing that it is impossible to finance three wars with three tax cuts and get a different result.

In the 2000 election, President Bush said he was against nation-building. Who knew it was America he was talking about?

Let us look at the results of their economic program. An additional 2.5 million Americans are now unemployed since he has taken office; 44 million Americans without health care; 2 million more middle-class families have entered the rolls of poverty from the middle-class; we have the worst and most anemic wage growth since World War II at this time; and nearly $1 trillion worth of corporate individual assets have been foreclosed on.

We have spent nearly $112 billion in Iraq at this point, and we will vote today on another $25 billion. With this budget, the administration is telling the American people they have two values, two principles, two sets of books; one for Iraq and one for the United States.

Mr. Speaker, we need a change, a new direction, to balance our values and our budget priorities for America’s future and our children.

WE WERE NOT AT WAR IN 2000?

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

Mr. PITTS. Mr. Speaker, one of the distressing things about this partisan year is our friends on the other side politicizing national security. One of my colleagues on the other side of the aisle said that we were not at war when President Clinton was in office, suggesting that it was President Bush’s fault that we are at war today.

I would like to ask, what would you call it then in the 1990s when terrorists attacked our country, not once, but four times? In 1993, they killed innocent Americans at the World Trade Center; in 1996, they killed Americans at the Khobar Towers; in 1998, they attacked two U.S. embassies in Africa; in 2000, they attacked a U.S. Naval vessel, the USS Cole, in Yemen. It was not Iraq.

Terrorists have been at war with us for years. We failed to admit it, despite the body bags.

Then in 2001, 9/11 happened.

We were at war long before President Bush came to Washington. All President Bush did was muster the courage and moral vision to admit it and fight back.

These political games only cloud the true issue that we are at war, and the more we hesitate to fight it, the more aggressive our enemies become.

CHALABI A CORRUPT ALLY

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

Mr. MCGOVERN. Mr. Speaker, this morning we learned U.S. military personnel and Iraqi police raided the home and party headquarters of Iraqi Governing Council member Ahmed Chalabi.

I am not surprised. Chalabi’s past is riddled with allegations and convictions for fraud and corruption. That he may now be under investigation in Iraq for corruption or other crimes is hardly unexpected. Chalabi has always been a favorite at the Pentagon, even though the State Department sees him as divisive and untrustworthy.

Under the Iraqi Liberation Act, the Pentagon has fed him a steady stream of money in return for information. It was Chalabi who was the principal source for the false intelligence about weapons of mass destruction in Iraq. When Saddam fell and the U.S. flew Chalabi and his cronies to Iraq to take up positions of power, it was he who championed the plan to rid Iraq of all Baath Party influence, including civil servants, a policy that angered many an Iraqi and deprived the coalition of the experience of experienced workers.

Mr. Speaker, it is time to distance ourselves from this man once and for all. Cut off his money. The taxpayers deserve a refund.

BENEFIT OF HEALTH SAVINGS ACCOUNTS AFTER JUST 6 MONTHS

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

Mr. BURGESS. Mr. Speaker, this weekend we are going to mark the 6-month anniversary where we in this House passed the conference report to modernize Medicare. Since that time, approximately 7 million people we are now on the threshold of having the Medicare prescription drug discount card, which will come to us June 1, and that will
make a user-friendly database available to seniors across the country. For the first time, seniors will be able to comparison shop for their prescription drugs, just like they do for cruises, shoes and other necessities.

Also, since the day we have seen the growth of Health Savings Accounts that were part of that legislation. There are some interesting figures about Health Savings Accounts. Almost half of the people signing up for Health Savings Accounts earn under $50,000 a year, hardly a program that just benefits the rich, but we hear that over and over again.

Fifty-six percent of the people that have signed up for Health Savings Accounts are under 40 years of age. Sixty-two percent are families, as opposed to just individuals, and there are comparable benefits after the deductibles are met.

The most important thing, though, Mr. Speaker, is this is money that patients own and they control. It is their accounts, not the government's.

HELPING HARD-PRESSED FAMILIES IS CRITICAL

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

Mr. BLUMENAUER. Mr. Speaker, helping hard-pressed families is a valuable activity here on the floor of the House. We have an opportunity to do it today. Yet my Republican friends are advancing a fundamentally flawed proposal.

For two families each with three children, one making minimum wage, the other over $300,000 a year, my Republican friends propose a new benefit that will show the same compassion for the family at minimum wage earning $10,300; no benefit for them.

Also, since that time, we have seen some interesting figures about Health Savings Accounts. Fifty-six percent of the people that have signed up for Health Savings Accounts are under 40 years of age. Sixty-two percent are families, as opposed to just individuals, and there are comparable benefits after the deductibles are met.

The most important thing, though, Mr. Speaker, is this is money that patients own and they control. It is their accounts, not the government's.

HELPING HARD-PRESSED FAMILIES IS CRITICAL

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

Mr. BLUMENAUER. Mr. Speaker, helping hard-pressed families is a valuable activity here on the floor of the House. We have an opportunity to do it today. Yet my Republican friends are advancing a fundamentally flawed proposal.

For two families each with three children, one making minimum wage, the other over $300,000 a year, my Republican friends propose a new benefit that will show the same compassion for the family at minimum wage earning $10,300; no benefit for them.

Also, since that time, we have seen some interesting figures about Health Savings Accounts. Fifty-six percent of the people that have signed up for Health Savings Accounts are under 40 years of age. Sixty-two percent are families, as opposed to just individuals, and there are comparable benefits after the deductibles are met.

The most important thing, though, Mr. Speaker, is this is money that patients own and they control. It is their accounts, not the government's.

HELPING HARD-PRESSED FAMILIES IS CRITICAL

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

Mr. BLUMENAUER. Mr. Speaker, helping hard-pressed families is a valuable activity here on the floor of the House. We have an opportunity to do it today. Yet my Republican friends are advancing a fundamentally flawed proposal.

For two families each with three children, one making minimum wage, the other over $300,000 a year, my Republican friends propose a new benefit that will show the same compassion for the family at minimum wage earning $10,300; no benefit for them.

Also, since that time, we have seen some interesting figures about Health Savings Accounts. Fifty-six percent of the people that have signed up for Health Savings Accounts are under 40 years of age. Sixty-two percent are families, as opposed to just individuals, and there are comparable benefits after the deductibles are met.

The most important thing, though, Mr. Speaker, is this is money that patients own and they control. It is their accounts, not the government's.

HELPING HARD-PRESSED FAMILIES IS CRITICAL

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

Mr. BLUMENAUER. Mr. Speaker, helping hard-pressed families is a valuable activity here on the floor of the House. We have an opportunity to do it today. Yet my Republican friends are advancing a fundamentally flawed proposal.

For two families each with three children, one making minimum wage, the other over $300,000 a year, my Republican friends propose a new benefit that will show the same compassion for the family at minimum wage earning $10,300; no benefit for them.

Also, since that time, we have seen some interesting figures about Health Savings Accounts. Fifty-six percent of the people that have signed up for Health Savings Accounts are under 40 years of age. Sixty-two percent are families, as opposed to just individuals, and there are comparable benefits after the deductibles are met.

The most important thing, though, Mr. Speaker, is this is money that patients own and they control. It is their accounts, not the government's.

HELPING HARD-PRESSED FAMILIES IS CRITICAL

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

Mr. BLUMENAUER. Mr. Speaker, helping hard-pressed families is a valuable activity here on the floor of the House. We have an opportunity to do it today. Yet my Republican friends are advancing a fundamentally flawed proposal.

For two families each with three children, one making minimum wage, the other over $300,000 a year, my Republican friends propose a new benefit that will show the same compassion for the family at minimum wage earning $10,300; no benefit for them.

Also, since that time, we have seen some interesting figures about Health Savings Accounts. Fifty-six percent of the people that have signed up for Health Savings Accounts are under 40 years of age. Sixty-two percent are families, as opposed to just individuals, and there are comparable benefits after the deductibles are met.

The most important thing, though, Mr. Speaker, is this is money that patients own and they control. It is their accounts, not the government's.
I know some of my colleagues on this floor are opposed to the BRAC process. They argue that now is not the time to conduct a round of base closures, not while the country is at war. I disagree. I believe that now is as important a time as ever.

The critical nature of our war on terrorism and our military actions in Iraq and Afghanistan demand we go forward with BRAC. Right now, we have a perfect opportunity to see what infrastructure the military really needs for our modern-day challenges. After all, it is not essential where our military is engaged in two countries simultaneously, in addition to all of our other responsibilities being undertaken by our men and women in uniform, when will it be needed?

But that is not just my opinion. The Chairman and Vice Chairman of the Joint Chiefs of Staff, along with the Army Chief of Staff, the Air Force Chief of Staff, the Chief of Naval Operations and the Commandant of the Marine Corps recently warned a delay in the BRAC amendment will seriously undermine our ability to fundamentally reconfigure our infrastructure to best support the transformation of our forces and our security challenges we face now and will continue to face for the foreseeable future.

For this reason, the administration has issued a statement of administration policy that says anything that delays, weakens or repeals the BRAC would trigger a veto.

Mr. Chairman, we cannot afford that risk. For those of my colleagues really concerned about BRAC, I would ask them to remember that the BRAC process works. Congress and the President each must act to accept or reject the recommendations of the BRAC Commission. They do not take effect until both Congress and the President accept the list. That means a vote for the Kennedy-Snyder amendment is not a vote for the current law; it is a vote for a process proven to work, free from political posturing, that puts the needs of the military and taxpayers ahead of parochial interests.

Mr. Chairman, the BRAC process is a significant innovation that relies upon shared oversight to strengthen our military and produce significant savings in the defense budget. We have had significant savings in the past BRAC rounds.

The CHAIRMAN pro tempore. Who seeks time in opposition?

Mr. HEFLEY. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN pro tempore. The gentleman is recognized for 10 minutes.

Mr. HEFLEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the 2-year delay that is in the bill is in direct response to widespread concern that the Department of Defense is experiencing too many changes to make effective base closure decisions by May of 2005. Our Nation cannot afford to close a base in the 2005 BRAC round only to discover in 2010 that the assets at that base were both irreplaceable and now lost forever.

We have had this happen in the past, at Cecil Field in Florida, and we also lost port space down in Charleston Harbor today.

The press reports that I have heard from the gentleman from Minnesota, seems to be that he is mostly concerned about the saving of money. I would like to share with the gentleman from Minnesota (Mr. KENNEDY) the figures that we get by serving on the committee.

The DOD’s claim that BRAC will result in a savings of $3 billion are only half the story. It is like looking at a financial sheet and just seeing the assets and not the deficits. In truth, 3 years after the next BRAC round, we can expect DOD to have spent approximately $5 billion more than they have saved.

In other words, DOD will have realized a cumulative savings of $4 billion, but they will have spent at least $9 billion in the process. Even 6 years after the BRAC rounds, we can expect DOD BRAC costs to exceed their subsequent savings by more than $100 million.

These figures are real. These are not my figures. They are based on GAO’s reports on cost savings from the past two BRAC rounds.

Let me repeat. DOD will actually need increased budgets to implement base closures, and by 2011, DOD will actually have spent more than it has saved from base closure actions.

Mr. HEFLEY. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. MURTHA).

Mr. MURTHA. Mr. Chairman, it is hard to add anything to what the chairman said, but I have found over the years that it has cost us many more dollars to close these bases than we have saved. But in this particular case, I think we have got a different problem. About a year ago, General Jones of NATO and the Supreme Allied Commander said to me, we will realign the troops in Europe. Secretary Rumsfeld not long ago spent some time talking to me about the realignment in Europe and in the United States. For us to start to look at base closing before they get the realignment done would be incredibly amateurish. I think it would be counterproductive.

In the first place, we do not know when these troops come back. We are the Army Audit Agency have all concluded that prior rounds have indeed saved substantial sums of money and more savings are expected. But just as important is the realignment, the R in the BRAC. Our forces are currently going through readjustments as they come back from fighting a war. We need to give the authority to go ahead and do this process to enable more jointness and more effectiveness in crossing service lines.

We also have to remember that both former President Clinton and President Bush have supported moving ahead with another line of base closures. This is a bipartisan effort from both administrations.

I also hear the argument that this is a difficult time to do this, that we are at war, that the military is under stress. But the world is not going to take a time-out for 3 or 4 years while we to this. That is not how the world works. It is time to move ahead with the process. There is not going to be a perfect time to do it.

I have great concerns about communities, as we all do. I do not see how another delay of 2 years, forcing these communities to be apprehensive about who may change from lobbying, to be involved in this process for an additional 2 years, a prolongation of this process, how that helps communities. They probably are in as good shape now as they are ever going to be.

The most important point I want to make is that this is a bipartisan effort that has gone on through multiple Secretaries of Defense from both Republican and Democratic administrations, from both President Clinton and President Bush. Now is not the time to delay another round of base closures.

The gentleman from Colorado (Mr. HEFLEY) in his amendment before the Committee on Armed Services wanted six additional reports. The language in the Kennedy amendment retains those six reports. If his amendment passes, that would be added to the current base closure process.

I encourage a vote of yes on the Kennedy amendment.

Mr. HEFLEY. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. MURTHA).

Mr. MURTHA. Mr. Chairman, it is hard to add anything to what the chairman said, but I have found over the years that it has cost us many more dollars to close these bases than we have saved. But in this particular case, I think we have got a different problem. About a year ago, General Jones of NATO and the Supreme Allied Commander said to me, we will realign the troops in Europe. Secretary Rumsfeld not long ago spent some time talking to me about the realignment in Europe and in the United States. For us to start to look at base closing before they get the realignment done would be incredibly amateurish. I think it would be counterproductive.

In the first place, we do not know when these troops come back. We are
going to increase the size of the forces. We have already increased the Army by 30,000. They want to increase the brigades by about 25 percent. All those things have to be stationed somewhere. Until they get the global strategy, the global footprints set up, I do not think there is an issue. I should make a decision like this.

When it comes to savings, we spent in the Presidio, they talk about how much money we will save when we close the base. We spent $100 million in cleaning up that base afterwards. In Southern California, we spent almost $100 million cleaning up the base.

We have ammunition depots, ammunition targets where we spend. The Navy Yard in Philadelphia, they figure to clean it up it would cost $3 billion. So it leaves a hole in Philadelphia where if you do not clean it up, you lose the jobs; and in addition to that you spend an awful lot of extra money. I think as all the chiefs say in the letter, in December 2004, it is not the time to do a BRAC. Naturalization of our domestic infrastructure as conducted by BRAC must closely follow the global posture review. I agree with that. I would urge Members to vote against amendment.

Mr. KENNEDY of Minnesota. Mr. Chairman, I yield 1 minute to the gentleman from North Carolina (Mr. JONES).

Mr. JONES of North Carolina. Mr. Chairman, I want to thank the chairman, and I want to say that this debate is always very interesting; and I want to raise in strong opposition to the Kennedy-Snyder amendment. I want to say as a member of the Committee on Armed Services that this was debated and discussed in the committee, and I do not remember anyone raising any opposition in the committee about this language that is in the bill today.

I want to disagree and disagree with the gentleman that just spoke that actually what this one year will do, this 1-year extension will make the process less political and make it more of a streamlined business process where the Congress can really analyze all the needs overseas, in the military, the needs of our defenses. Because this world we live in is very unsafe, and I can say that we will not know until we analyze the needs overseas, the needs here in this country as to what we should do that will be the right decision for the American people and the future defense of America.

Mr. Chairman, again I am in opposition to this amendment, and I hope that we can defeat it at the proper time.

Mr. KIRK. Mr. Chairman, a base in my district was the poster child for the first base closings bill. People back home demanded that the base be saved, but it was closed and our civilian economy took off. Over $300 million was invested in that community by the new housing and activity at the closed base.

We lost another base in the second base closings bill. New investment there was not $300 million; it was $300 million in new investment. Over 20,000 soldiers are needed for the war on terror, but instead soldiers guard bases we do not need. We are at war, and it is time for the Congress to treat the military budget as a defense bill and not a jobs bill. Base closings save the taxpayer $3 billion and the next round will save $3 billion more.

This amendment supports the policy of President Bush, Secretary Rumsfeld, and Joint Chiefs Head General Myers. We need more beans and bullets for the U.S. Navy.

Mr. ORTIZ. Mr. Chairman, a base in my district was the poster child for the first base closings bill. People back home demanded that the base be saved, but it was closed and our civilian economy took off. Over $300 million was invested in that community by the new housing and activity at the closed base.

We lost another base in the second base closings bill. New investment there was not $300 million; it was $300 million in new investment. Over 20,000 soldiers are needed for the war on terror, but instead soldiers guard bases we do not need. We are at war, and it is time for the Congress to treat the military budget as a defense bill and not a jobs bill. Base closings save the taxpayer $3 billion and the next round will save $3 billion more.

This amendment supports the policy of President Bush, Secretary Rumsfeld, and Joint Chiefs Head General Myers. We need more beans and bullets for Americans in uniform, not pointless guard duty outside an empty building at a base that died long ago.

Mr. HEPLEY. Mr. Chairman, I yield 1 minute to the gentleman from Texas (Mr. ORTIZ), the ranking member on the Subcommittee on Military Readiness which oversees base closures.

Mr. ORTIZ. Mr. Chairman, this is a decision like this. Ultimately, we will have to pay the cost for the military clean-up. Delaying another round of BRAC is not going to save money; it is going to cost money. It is going to delay returning that land to productive use, and it is going to have us engage in politics that will be unseemly and very difficult.

Mr. HEPLEY. Mr. Chairman, I yield 1 minute to the gentleman from North Carolina (Mr. JONES).

Mr. JONES of North Carolina. Mr. Chairman, I want to thank the chairman, and I want to say that this debate is always very interesting; and I want to rise in strong opposition to the Kennedy-Snyder amendment. I want to say them. Which base do you want to close? They have yet to name one base.

Mr. HEFLEY. Mr. Chairman, I yield 1 minute to the gentleman from Virginia (Mrs. Jo Ann DAVIS).

Mrs. JO ANN DAVIS of Virginia. Mr. Chairman, as a member of the House Committee on Armed Services, I stand today in support of the military provision in the committee report, and I oppose the Kennedy amendment because it is the wrong time. It sends the wrong message to our men and women in uniform to close bases at a time when we are at war. When this round of BRAC was signed, Congress had no idea that we would be fighting a war against terrorism, and our Armed Forces need our support now more than ever.

My colleagues who offered this amendment have said we need it to save money. But the estimated cost to implement BRAC is somewhere between 10 and $20 billion, and any savings would not be seen until after 2011. We are at war right now. Our men and women need the money now. And we are not even sure what those savings would be.

The GAO report completed on Monday on the need for a BRAC found that while the potential exists for substantial savings from the upcoming round, it is difficult to project the expected magnitude of the savings because there are too many unknowns at this time.
I urge my colleagues to do the right thing and to support our men and women in uniform today. Vote “no” on the Kennedy amendment.

Mr. KENNEDY of Minnesota. Mr. Chairman, I yield 1 minute to the gentleman from New Hampshire (Mr. BRADLEY), the very distinguished member and chairman of the Subcommittee on Foreign Operations, Export Financing and Related Programs of the Committee on Appropriations, former Navy Reservist and Vietnam veteran.

Mr. BRADLEY. Mr. Chairman, I rise in support of the Kennedy amendment to delete the provision that would delay the BRAC process for 2 years.

Some people say if you are for that you must not have any military bases in your district. Nothing could be further from the truth. I have Davis-Monthan Air Force Base, Fort Huachuca, the 162nd Fighter Wing of the Arizona Air National Guard which is the largest air guard unit in the United States, the Western Army Aviation Training Site near Marana. But I support the BRAC process in 2005 because I think the BRAC is good public policy.

A delay in BRAC postpones a savings that would be gained from shuttering unneeded facilities. Clearly, we are wasting money on unneeded capacity. BRAC rounds conducted in 1988, 1991, and 1993, and 1995 closed 97 major installations, reducing DOD infrastructure by 21 percent. But we have reduced the size of the military by 36 percent and DOD maintains it still has more than 23 percent excess infrastructure.

Maintaining excess bases is very expensive. Closing unneeded bases produces long term savings. Previous BRAC rounds generated net savings—that is, savings after accounting for the cost of closure—of about $167 billion through fiscal year 2001 and about $6.6 billion in annual recurring savings expected thereafter. Failure to close unneeded facilities wastes taxpayer dollars and impedes DoD’s efforts to allocate resources in the most effective manner. BRAC is a key component of transformation and is essential to reshape the military to respond to new global missions.

BRAC is good public policy. I encourage my colleagues to support this amendment and to vote in favor of the underlying bill.

I oppose any delay to the Base Realignment and Closure (BRAC) process and support the amendment offered by Representative Mark Kennedy of Minnesota.

H.R. 4200 is an excellent bill. I commend Chairman Hunter, Ranking Member Skelton, the Members of the committee and the staff on both sides of the aisle. I am, however, opposed to the provision in H.R. 4200 that delays the BRAC process for two years. We should reject H.R. 4200 to a possible Administration veto by retaining this provision.

Some people may think I must not have any bases in my district if I support BRAC. Nothing could be further from the truth. My district is home to Davis-Monthan Air Force Base; Fort Huachuca; the 162nd Fighter Wing of the Arizona Air National Guard at Tucson Airport (the Nation’s largest Air National Guard unit); and the Western Army Aviation Training Site near Marana. These bases are operationally interdependent with other Arizona bases, including Luke AFB, Yuma Proving Grounds, Marine Corps Air Station Yuma, and the Army’s M. Goldwater Range. Arizona bases provide over 83,000 jobs and contribute over $5.6 billion annually to the State’s economy. Yet, I support the BRAC process in 2005 because BRAC is good public policy.

A delay in BRAC postpones the savings to be gained from shuttering unneeded facilities. The Department of Defense (DoD) estimates that the 2005 BRAC round will yield net savings of over $3 billion and about $3.6 billion annually thereafter. A GAO study of BRAC dated just three days ago states, “We believe the potential for significant savings exist,” and “We found no bases to question the [Defense] Secretary’s certification of the need for an additional BRAC round. . . .” These bases are for example, increasing soldiers’ pay, improving health care for military families, modernizing equipment, or fixing buildings on the bases that are not closed.

Clearly, DoD is wasting money on unneeded capacity. BRAC rounds conducted in 1988, 1991, 1993, and 1995 closed 97 major installations, reducing DoD infrastructure by 21 percent. At the same time, however, the size of our military has declined by 36 percent. DoD maintains it still has approximately 23 percent excess infrastructure.

Maintaining these excess bases is very expensive. We criticize DoD constantly for not being as efficient as a private sector corporation, but delaying BRAC would not allow the department of perform the most essential business management function of shedding unnecessary infrastructure.

Closing unneeded bases produces long term savings. Previous BRAC rounds generated net savings—that is, savings after accounting for the cost of closure—of about $167 billion through fiscal year 2001 and about $6.6 billion in annual recurring savings expected thereafter. Failure to close unneeded facilities wastes taxpayer dollars and impedes DoD’s efforts to allocate resources in the most effective manner. BRAC is a key component of transformation and is essential to reshape the military to respond to new global missions. BRAC helps realize significant savings by cutting excess infrastructure and enables the armed forces to maximize opportunities to train, deploy and fight jointly. Yesterday I received a copy of a letter supporting the 2005 BRAC round signed by the chairman and each of the joint chiefs of the military services.

Some people argue we should not close bases while we are fighting a war and while we are uncertain of future force structure changes. I disagree. Excess bases are not needed for the war on terrorism; in fact, they waste scarce dollars needed for our battle against terrorists. Furthermore, the BRAC process will fully consider potential force structure growth, “surge” capacity, and reprioritization of forces stationed overseas.

In closing, I want to express upon my colleagues that delaying BRAC is not good public policy. I encourage my colleagues to support this amendment and to vote in favor of the underlying bill.

Mr. HEFLEY. Mr. Chairman, I yield 1 minute to the gentleman from New Hampshire (Mr. BRADLEY).

Mr. BRADLEY of New Hampshire. Mr. Chairman, I rise to support the committee and to support the 2-year delay in the BRAC process and oppose the Kennedy amendment.

Why? Number one, BRAC’s estimated costs are $15 billion and savings are not expected to be realized until at least 2011. These funds can be better used to equip our Humvess or pay hazard duty pay for members of our military or any other function today in winning the war on terror.

Furthermore, the dynamics of the 2005 BRAC process are very different from previous rounds. There will not be a requisite force structure reduction as before. Our military will have to do the same or more in the future on a smaller footprint, with a smaller industrial base and with fewer critical assets. These assets cannot be reconstituted. BRAC will result in the permanent loss and knowledge of skills and industrial capacity.

I urge my colleagues to support the committee and oppose the amendment.

Mr. KENNEDY of Minnesota. Mr. Chairman, I yield the final minute to the distinguished gentleman from Georgia (Mr. KINGSTON).

Mr. KINGSTON. Mr. Chairman, I thank the gentleman for yielding the time, and I rise in support of the Kennedy amendment, and not easily.

I think it is a very important amendment. This is a very important debate, but as we look at BRAC as we go into it, and I want to say also I have five military installations in my district. I think I have more military than any other Member of the House, I am not certain about that, but I am there; we have got to let the Pentagon, we have got to let the Defense Department run the military.

We cannot do it in Congress. This is not our job. We get involved in it. It is very, very important to support their efforts and work with them, but we also have other issues, Medicare, education, Social Security, taxes, that we have to delve into, and right now, we have a lot of Members delving into the military.

If BRAC was set up to be nonpolitical, to be fair. In our office, we work on military issues at our bases, not during BRAC years, but every single year. We work on issues of the cost return on the bases, environmental issues, encroachment issues, military construction issues, community support. We work with our military all the time.

If Members of Congress want to help the bases in their districts, they need to be doing it year around, not just during an election year and on the eve of BRAC.

Mr. HEFLEY. Mr. Chairman, I yield 1 minute to the gentleman from Mississippi (Mr. PICKERING).

Mr. PICKERING. Mr. Chairman, I rise in opposition to the Kennedy amendment and in support of the common-sense and consensus and bipartisan committee mark that wisely and reasonably and with common sense postpones the next round of BRAC for 2 years.

This week, I went to Walter Reed Hospital, and I met with Mississippians who have been the victims of IEDs as they drove their Humvess, as they...
served their country, and I asked this question: Do we want to spend $5 billion more over the next 5 years to close bases or do we want to give the young men and women who are serving in Afghanistan and Iraq today the body armor and the gear they need to protect themselves so that their legs and their ability to walk and to go through rehab will be avoided for other men and women? It is a clear choice of priorities.

The world has changed since 9/11. BRAC was called for before 9/11. We are now at war; we need all resources for that effort. We need to wisely wait for the realignment internationally before we choose how to go forward with the transformation domestically. This is a wise course, a reasonable course for a 2-year delay.

Mr. HEFLEY. Mr. Chairman, let me just point out very quickly that the committee that works with this issue and struggles with it every day overwhelmingly supports the defeat of the Kennedy amendment.

Mr. Chairman, I yield the remainder of the time to the gentleman from Mississippi, Mr. Taylor, a very fine member of our committee.

Mr. TAYLOR of Mississippi. Mr. Chairman, the Constitution of the United States gives the elected Members of Congress the responsibility to provide for an Army and a Navy. Every person in this body was elected to fulfill those requirements.

I did not come here to delegate my responsibility to some bureaucrat to decide whether or when bases should be closed. If Members want to give away their responsibilities, they should not seek this job.

For that reason, I encourage my colleagues to vote against the Kennedy amendment, to keep that responsibility here in Congress and to do our jobs.

Ms. CORRINE BROWN of Florida. Mr. Chairman, what a horrifying message to send to our troops from South Korea to augment the U.S. forces in Iraq.

The world has changed since 9/11. For all of these reasons, I believe it would be prudent for Congress to postpone the next round of BRAC to allow for a study of the structure that will be needed in the future.

Finally, Mr. Chairman, I am concerned about the disproportionate contribution California has already made to the streamlining of the military’s base infrastructure. Obviously, no state wants to have bases closed. Bases mean jobs and increased income for states and local municipalities. In the past BRAC has funded the entire impact of base closures, including the closure of Ft. Ord—the largest closure in history. This is a factor that should be considered in the next round of closures.

By moving forward before resolving major infrastructure issues, a 2005 BRAC decision would increase a significant level of risk that DOD will close a base only to discover that it needs that same base just a few years later. Once a base is closed, it’s gone forever.

The language of the amendment should not eliminate BRAC. Rather, it reflects widespread bipartisan concern that DOD should close no bases until several issues affecting base infrastructure requirements have been resolved and reviewed by Congress.

Mr. Chairman, during my time in Congress I have been focused on preparing Louisiana for BRAC, and have helped secure more than $76 million for Belle Chasse in New Orleans. As a member of the Military Construction Appropriations Subcommittee I vigorously worked to secure $160 million more for infrastructure improvement to protect both Fort Polk and Barksdale Air Force Base.

I cannot underscore the importance of delaying the next round of BRAC. A 2-year delay will greatly reduce the risk of making an irreversible decision in the BRAC process.

Mr. Chairman, I strongly support a “no” vote on the Kennedy Amendment to H.R. 4200.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I must rise to oppose this amendment. We are now increasing the number of troops because the U.S. military is stretched too thin to meet its commitments. In recognition of this fact, H.R. 4200 authorizes the DOD to increase military end-strength by 39,000. In addition, the DOD recently announced that it is considering rotating 3,800 troops from South Korea to augment the U.S. forces in Iraq.

DOD’s estimate of the level of excess capacity that exists in military infrastructure was determined in 1998 by then Defense Secretary Bill Cohen. Many significant events that have occurred since 1998, i.e. September 11, 2001, the global war on terrorism, and military operations in Afghanistan, Iraq and Haiti. In pursuing the 2005 BRAC, the DOD fails to recognize the profound impact that these events are having upon the United States military’s ability to fulfill its national security obligations.

Under Secretary of Defense for Installations and Facilities Raymond DuBois has stated that the 2005 BRAC will cost the taxpayers between $10 billion to $20 billion over next 7 years. Savings, if any, are not expected until 2011. Those funds could be used now for the equipment needed by our military personnel. Important decisions affecting military force structure and infrastructure should not be left to an unelected commission. Article 1, section 8 of the U.S. Constitution entrusts Congress with the responsibility to make these decisions.

It is for these reasons that I oppose this amendment.

Ms. HARMAN. Mr. Chairman, after careful consideration I have decided to support a 2-year delay in the BRAC process. Let me be clear that I remain a supporter of BRAC and my vote against this amendment is not a vote against base closures. BRAC plays a vital role in ensuring that we have a modern military that is prepared to fight the next war, not re-fight the last war. It is critically important that the tooth-to-tail ratio of the armed services be reduced, with necessary facilities eliminated and resources redirected to where they will be most effective in fighting the war on terror. However, I believe there are several reasons why a stay in the process would be the most sensible course at this time.

First, our military forces are currently stretched to the limit as they fight the war on terror on more than one front. We have asked our forces to fight a global war and they have risen to the occasion admirably. But as they fight the global war on terrorism, they are encountering uncertain circumstances and unforeseen obstacles. The real-time lessons that we are learning in the war on terror will help the BRAC determine what our military priorities should be in the future.

The BRAC law was adopted before September 11, 2001. The terrorists attacks on this country significantly altered U.S. national security priorities. Our armed forces are responding to these new demands, but I am afraid that if BRAC moves forward with the next round of base closures as planned, it will be during a period when the U.S. military is undergoing critical changes in tactics and organization. As a result, any reduction will be done without knowing what kind of base structure will be needed in the future.

Second, I am extremely concerned by the way this Administration is funding the war in Iraq and the global war on terror. This President has funded the entire Iraq supplemental and, by all accounts, he plans to continue funding in this manner in the future. The funding-by-supplemental-only process prevents Congress from determining the exact costs of the war. It also makes it impossible for Congress to determine, by proper oversight, whether the President’s priorities are the right priorities for our military to win the war on terror.

If Congress has difficulty determining what our armed forces’ needs and requirements are, the next round of BRAC commissioners will find it even more difficult to decide which facilities are vital to winning the war on terror.

I am also concerned that the current BRAC guidelines do not accurately reflect the military’s priorities for fighting the next war. For instance, the BRAC guidelines should include recognition of the value of intellectual capital and the synergy between the skilled civilian workers in various communities. Especially the critically important roles and missions the civilian workers support at military bases.

In the post-9/11 environment, I would like to see the BRAC guidelines broaden the concept of joint operations to include base functions and installations currently or potentially critical to the Department of Homeland Security. BRAC should also consider the costs of base closures as they relate to finding new sources for supplies and professional expertise at military bases.

Finally, Mr. Chairman, I am concerned about the disproportionate contribution California has already made to the streamlining of the military’s base infrastructure. Obviously, no state wants to have bases closed. Bases mean jobs and increased income for states and local municipalities. In the past BRAC has funded this entire impact of base closures, including the closure of Ft. Ord—the largest closure in history. This is a factor that should be considered in the next round of closures.
The CHAIRMAN pro tempore (Mr. LAHOOD). All time has expired.

The question is on the amendment offered by the gentleman from Minnesota (Mr. KENNEDY).

The question is on the amendment offered by the gentleman from Minnesota (Mr. KENNEDY). as the designee of the gentleman from New York (Ms. SLAUGHTER).

The vote was taken by electronic device, and there were—ayes 162, noes 259, not voting 12, as follows: (Roll No. 200)

AYES—162

Bilirakis
Bishop (GA)
Bishop (NY)
Boehlert
Bomilla
Bono
Boucher
Boyce
Bradley (NY)
Bradley (PA)
Brown (OH)
Burns
Burr
Burr (IN)
Buono
Calvert
Canino
Capps
Cardona
Carson (IN)
Cardoza
Chandler
Clay
Clyburn
Conyers
Costello
Crenshaw
Crowley
Cubin
Culberson
Culbertson
Danner
DeFazio
DeGette
DeLaney
DeLauro
Diaz-Balart, L.
Diaz-Balart, M.
Dinello
Dingell
Dolezal
Dolezal
Doolittle
Dreier
Duncan
Dunn

tortured and executed in the Abu Ghraib prison in Iraq was one of the most notorious prisons.

The CHAIRMAN pro tempore (Mr. LAHOOD) (during the vote). There are 2 minutes remaining in this vote.

NOT VOTING—12

Balassai
Beaulieu
Bederman
Bell
Bereuter

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. LAHOOD) (during the vote). There are 2 minutes remaining in this vote.

NOT VOTING—12

Balassai
Beaulieu
Bederman
Bell
Bereuter

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. LAHOOD) (during the vote). There are 2 minutes remaining in this vote.

PERSONAL EXPLANATION

Ms. CORRINE BROWN of Florida. Mr. Chairman, on rollcall vote number 200, the Kennedy Amendment, I inadvertently voted “yes” when I meant to vote “no.” I ask for unanimous consent that the RECORD reflect my intentions to have voted “no” and that I can place a statement in the RECORD at the appropriate place.

AMENDMENT NO. 4 OFFERED BY MR. WELDON OF PENNSYLVANIA

The CHAIRMAN pro tempore (Mr. LAHOOD). The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Pennsylvania (Mr. WELDON) on H.R. 4200, the Department of Defense Authorization bill, which I inadvertently voted “yea,” but intended to vote “nay.” I ask for unanimous consent that the RECORD reflect my intentions to have voted “nay” and that I can place a statement in the RECORD at the appropriate place.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. WELDON of Pennsylvania.

At the end of title II of title XII (page 424, after line 12), insert the following new section:

SEC. 12. SENSE OF CONGRESS ON DESTRUCTION OF ABU GHRAIB PRISON IN IRAQ.

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

(1) Under the regime of Saddam Hussein, the Abu Ghraib prison in Iraq was one of the world’s most notorious prisons.

(2) Under that regime, as many as 50,000 men and women were tortured and executed in the Abu Ghraib prison.

(3) Under that regime, many people were tortured and executed in the Abu Ghraib prison.

(4) Recent activities have further Highlighted the horrible memories that Abu Ghraib stands for.
(b) SENSE OF CONGRESS.—It is the sense of the Congress that the Secretary of Defense should assist the Iraqi Government, with the Congress that the Secretary of Defense shall develop a comprehensive policy for the Department of Defense on the prevention of and response to sexual assaults involving members of the Armed Forces.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were ayes 308, noes 114, not voting 11, as follows: [Roll No. 201]

AYES—308

Abercrombie
Dreier
Doyle
Diaz-Balart, M.
Diaz-Balart, L.
DeMint
DeLauro
DeGette
DeFazio
Davis, Tom
Davis, Jo Ann
Davis (CA)
Davis (AL)
Davis (TN)
Culberson
Crane
Cramer
Culverhouse
Cplane
Crenshaw
Crowley
Cubin
Davids (FL)
Davids (CA)
Davids (IL)
Davids (TN)
Davids, Jo Ann
Davis, Tom
DeFazio
DeGette
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Dolezal
Dreier
Reyes
Reynolds
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Rousselot
Rush
Ryan (OH)
Ryan (WI)
Ryan (KS)
Sánchez, Linda T.
Sander
Santini
Schakowsky
Schiff
Schrock
Scott (CA)
Scott (VA)
Serrano
Shadegg
Anderl
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Beauprez
Bell
Berenstein
Berkley
Bernstein
Berry
Biggert
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blumenauer
Boehlert
Blumenauer
Boucher
Boozman
Bonilla
Blunt
Blackburn
Bono
Brown
Brown (CA)
Brown
Brown (OH)
Brown (SC)
Brown, Corrine
Burrett
Burns
Burton (IN)
Butler
Burton
Burton
Bush
Caldwell
Calsbeek
Calderón
Calderón
Cantor
Carter
Casey
Chabot
Coble
Coffman
Collins
Conger
Cory
Cosby
Cox
Cramer
Crean
Crenshaw
Crowley
Cubin
Davids (FL)
Davids (CA)
Davids (IL)
Davids (TN)
Davids, Jo Ann
Davis, Tom
DeFazio
DeGette
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Dolezal
Dreier

Not voting 11, as follows:

—

AYES—308

Abercrombie
Dreier
Doyle
Diaz-Balart, M.
Diaz-Balart, L.
DeMint
DeLauro
DeGette
DeFazio
Davis, Tom
Davis, Jo Ann
Davis (CA)
Davis (AL)
Davis (TN)
Culberson
Crane
Cramer
Culverhouse
Cplane
Crenshaw
Crowley
Cubin
Davids (FL)
Davids (CA)
Davids (IL)
Davids (TN)
Davids, Jo Ann
Davis, Tom
DeFazio
DeGette
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Dolezal
Dreier

Not voting 11, as follows:

—

AYES—308

Abercrombie
Dreier
Doyle
Diaz-Balart, M.
Diaz-Balart, L.
DeMint
DeLauro
DeGette
DeFazio
Davis, Tom
Davis, Jo Ann
Davis (CA)
Davis (AL)
Davis (TN)
Culberson
Crane
Cramer
Culverhouse
Cplane
Crenshaw
Crowley
Cubin
Davids (FL)
Davids (CA)
Davids (IL)
Davids (TN)
Davids, Jo Ann
Davis, Tom
DeFazio
DeGette
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Dolezal
Dreier

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (during the vote). Members are advised 2 minutes remain in this vote.

[1257]

MESSRS. GINGREY, CONYERS, DOOLITTLE, FOSSELLA, MS. WATERS. Mrs. BONO, and Ms. GRANGER changed their vote from ‘aye’ to ‘no.’ So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 14 OFFERED BY MR. SKELETON

The CHAIRMAN pro tempore. The unfinished business is to consider the amendment offered by the gentleman from Missouri (Mr. SKELETON) on which further proceedings were postponed and on which the ayes prevailed by voice vote. The Clerk will redesignate the amendment.

The text of the amendment is as follows:

Amendment No. 14 offered by Mr. SKELTON: At the end of title V (page 200, after line 24), insert the following new section:

SEC. 598. DEPARTMENT OF DEFENSE POLICY AND PROCEDURES ON PREVENTION AND RESPONSE TO SEXUAL ASSAULTS INVOLVING MEMBERS OF THE ARMED FORCES.

(a) COMPREHENSIVE POLICY ON PREVENTION AND RESPONSE TO SEXUAL ASSAULTS.—(1) Not later than January 1, 2005, the Secretary of Defense shall develop a comprehensive policy for the Department of Defense on the prevention of and response to sexual assaults involving members of the Armed Forces.

(b) ELEMENTS OF COMPREHENSIVE POLICY.—The policy developed under subsection (a) shall address the following matters:

(1) Prevention measures.

(2) Education and training on prevention.

(3) Investigation of complaints by command and law enforcement personnel.

(4) Medical treatment of victims.

(5) Confidential reporting of incidents.

(6) Victim advocacy and intervention.

(7) Oversight by commanders of administrative and disciplinary actions in response to substantiated incidents of sexual assault.

(8) Disposition of victims of sexual assault, including review by appropriate authority of administrative separation actions involving victims of sexual assault.

(9) Disposition of members of the Armed Forces accused of sexual assault.

(10) Liaison and collaboration with civilian agencies on the provision of services to victims of sexual assault.

(11) Uniform collection of data on the incidence of sexual assaults and on disciplinary actions taken in substantiated cases of sexual assault.

(b) REPORT ON IMPROVEMENT OF CAPABILITY TO RESPOND TO SEXUAL VIOLENCE.—Not later than March 1, 2005, the Secretary of Defense shall submit to Congress a proposal for such legislation as the Secretary considers necessary to enhance the Department of Defense’s ability to address matters relating to sexual assaults involving members of the Armed Forces.

(d) APPLICATION OF COMPREHENSIVE POLICY TO MILITARY DEPARTMENTS.—The Secretary shall ensure that, to the maximum extent practicable, the policy developed under subsection (a) is implemented uniformly by the military departments.

(e) POLICIES AND PROCEDURES OF MILITARY DEPARTMENTS.—Not later than March 1, 2005, the Secretary of Defense shall seek to submit to Congress a proposal for such legislation as the Secretary considers necessary to enhance the Department of Defense’s ability to address matters relating to sexual assaults involving members of the Armed Forces.

(d) APPLICATION OF COMPREHENSIVE POLICY TO MILITARY DEPARTMENTS.—The Secretary shall ensure that, to the maximum extent practicable, the policy developed under subsection (a) is implemented uniformly by the military departments.

(e) POLICIES AND PROCEDURES OF MILITARY DEPARTMENTS.—Not later than March 1, 2005, the Secretary of Defense shall seek to submit to Congress a proposal for such legislation as the Secretary considers necessary to enhance the Department of Defense’s ability to address matters relating to sexual assaults involving members of the Armed Forces.

(d) APPLICATION OF COMPREHENSIVE POLICY TO MILITARY DEPARTMENTS.—The Secretary shall ensure that, to the maximum extent practicable, the policy developed under subsection (a) is implemented uniformly by the military departments.

(e) POLICIES AND PROCEDURES OF MILITARY DEPARTMENTS.—Not later than March 1, 2005, the Secretary of Defense shall seek to submit to Congress a proposal for such legislation as the Secretary considers necessary to enhance the Department of Defense’s ability to address matters relating to sexual assaults involving members of the Armed Forces.

(d) APPLICATION OF COMPREHENSIVE POLICY TO MILITARY DEPARTMENTS.—The Secretary shall ensure that, to the maximum extent practicable, the policy developed under subsection (a) is implemented uniformly by the military departments.

(e) POLICIES AND PROCEDURES OF MILITARY DEPARTMENTS.—Not later than March 1, 2005, the Secretary ofDefense shall seek to submit to Congress a proposal for such legislation as the Secretary considers necessary to enhance the Department of Defense’s ability to address matters relating to sexual assaults involving members of the Armed Forces.

(d) APPLICATION OF COMPREHENSIVE POLICY TO MILITARY DEPARTMENTS.—The Secretary shall ensure that, to the maximum extent practicable, the policy developed under subsection (a) is implemented uniformly by the military departments.

(e) POLICIES AND PROCEDURES OF MILITARY DEPARTMENTS.—Not later than March 1, 2005, the Secretary ofDefense shall seek to submit to Congress a proposal for such legislation as the Secretary considers necessary to enhance the Department of Defense’s ability to address matters relating to sexual assaults involving members of the Armed Forces.
(B) A program to provide victim advocacy and intervention for members of the Armed Force concerned who are victims of sexual assault, which program shall be available, at home stations and in deployed locations, to train advocates who are readily available to intervene on behalf of such victims.

(C) Procedures for members of the Armed Force concerned to follow in the case of an incident of sexual assault involving a member of such Armed Force, including:

(i) specification of the person or persons to whom the alleged offense should be reported;
(ii) specification of any other person whom the victim should contact;
(iii) procedures for the preservation of evidence; and
(iv) procedures for confidential reporting and for contacting victim advocates.

(D) Procedures for disciplinary action in cases of sexual assault by members of the Armed Force concerned.

(E) Other sanctions authorized to be imposed in substantiated cases of sexual assault, whether forcible or nonforcible, by members of the Armed Force concerned.

(F) Training on the policies and procedures for all members of the Armed Force concerned, including specific training for members of the Armed Force concerned with respect to the prevention and response to sexual assaults involving members of the Armed Force concerned in order to determine the effectiveness of such policies and procedures during such fiscal year in providing an appropriate response to such sexual assaults.

(g) ANNUAL REPORTS.—(1) Not later than January 15, 2006, and each year thereafter, each Secretary of a military department shall submit to the Committee on Armed Services of the Senate and the Committee on Appropriations of the House of Representatives an annual report on sexual assaults involving members of the Armed Forces concerned during the preceding fiscal year, together with the comments of the Secretaries on such reports.

(B) NOT VOTING.—23

The CHAIRMAN pro tempore. The result of the vote was announced. This vote will be a 5-minute vote.

The vote was taken by electronic device, and there were—aye 410, no 0, not voting 23, as follows:

Aye—410

Abraham
Ackerman
Ackerley
Aderholt
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Bennet
Berkeley
Berman
B才是真正
Biggar
Biunik
Bilirakis
Boehner
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bono
Boucher
Boozman
Boswell
Boucher
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Capito
Capuano
Cardin
Carson (MN)
Carson (IN)
Case
Caso
Chabot
Chandler
Chapman
Clark
Clay

Not aye—23

Barrasso
Bartlett
Barrett (SC)
Barrett (NY)
Bilirakis
Boswell
Boucher
Boozman
Boswell
Boucher
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Capito
Capuano
Cardin
Carson (MN)
Carson (IN)
Case
Caso
Chabot
Chandler
Chapman
Clark
Clay

Announcement by the Chairman Pro Tempore

The CHAIRMAN pro tempore. The result of the vote was announced above and recorded.

So the amendment was agreed to.
Mr. COLE. Mr. Chairman, on May 20, 2004, for rollcall vote 202, I was unavoidably detained. If I had been present, on rollcall vote No. 202, I would have voted “aye.”

PERSONAL EXPLANATION

Mr. STUPAK. Mr. Chairman, earlier today I was unavoidably detained and missed rollcall vote 202. Had I been present, I would have voted “aye.”

PERSONAL EXPLANATION

Mr. BROWN of Ohio. Mr. Chairman, I was unavoidably detained and missed rollcall vote 202. Had I been present, I would have voted “aye.”

PERSONAL EXPLANATION

Mr. CARSON of Oklahoma. Mr. Chairman, on Thursday, May 20, 2004, I regret that I was unable to cast my floor vote on rollcall Nos. 200, 201, and 202. The votes I missed include rollcall vote 200 to eliminate the 2-year Base Reallignment and Closure (BRAC) delay contained in H.R. 4200; rollcall vote 201 expressing the sense of Congress that the Secretary of Defense should assist the Iraqi Government in destroying the Abu Ghraib prison and repositioning it with a modern detention facility; and rollcall vote 202 requiring the Secretary of Defense to develop a comprehensive policy to prevent and respond to sexual assaults involving members of the Armed Forces.

Had I been present, I would have voted “nay” on rollcall vote 200; I would have voted “aye” on rollcall vote 201; and I would have voted “aye” on rollcall vote 202.

Mr. HUNTER. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. SIMPSON) having assumed the chair, Mr. LAHOOD, Chairman pro tempore of the Committee of the Whole on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4200) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2005, and for other purposes, had come to no resolution thereon.

MOment OF SIlenCE IN HonOR OF MEMORIAL DAY AND OUR FALLEN HEROES

The SPEAKER pro tempore. The Chair would ask the House to observe a moment of silence in honor of Memorial Day and our fallen heroes.

GENERAL LEAVE

Mr. WALSH. Mr. Speaker, I ask unanimous consent to take from the Speaker’s table the bill (H.R. 1047) to amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate thereon.

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

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 1047. MISCELLANEOUS TRADE AND TECHNICAL CORRECTIONS ACT OF 2003

Mr. CRANE. Mr. Speaker, I ask unanimous consent to take from the Speaker’s table the bill (H.R. 1047) to amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois? The Chair hears none, and without objection, appoints the following conferees:

From the Committee on Ways and Means, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

Messrs. THOMAS, CRANE, SHAW, RANGEL, and LEVIN.

There was no objection.

REPUBLICANS WIN GREAT CONGRESSIONAL SHOOTOUT

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

Mr. HAYES. Mr. Speaker, believe it or not, this House works together on a bipartisan basis on a number of things. This past Monday my colleague and cochair of the Sportsmen’s Caucus, the gentleman from California (Mr. THOMPSON), and I got together and enjoyed a wonderful day afield. The Sportsmen’s Caucus is the largest group of a bipartisan nature on the Hill for anyone who enjoys the out-of-doors.

In this particular instance, it was the Great Congressional Shootout. Fortunately, the Republicans won, but our Democratic friends, including the gentleman from Minnesota (Mr. PETERSON) who was top gun for the Democrats and the gentleman from California (Mr. CUNNINGHAM), top gun for our side, did a great job.

Mr. Speaker, I yield to my colleague and cochairman the gentleman from California (Mr. THOMPSON).

Mr. THOMPSON of California. Mr. Speaker, I thank my friend from North Carolina for yielding.

I too want to express appreciation to everyone in the Sportsmen’s Caucus who came out, put aside the partisan battles and entered into some good fun and sportsmanship in advance of the shooting sports and to congratulate everyone who participated.

This year we had a record turnout, 13 Democrats, 13 Republicans. Most important, a whole group of new Members who came out had never participated in the event in the past. Next year, I would only ask that you not spray the Democrats’ targets with the bulletproof spray paint so we have at least a chance.

Mr. HAYES. I thank my colleague and I thank everyone who participated. Our cochairs, also, the gentleman from Iowa (Mr. BOSWELL) for the Democrats and the gentleman from Nevada (Mr. GIBBONS) on our side.

PERMISSION FOR COMMITTEE ON ARMED SERVICES TO FILE SUPPLEMENTAL REPORT ON H.R. 4200, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

Mr. EVERETT. Mr. Speaker, I ask unanimous consent to file a supplemental report on H.R. 4200, the National Defense Authorization Act for Fiscal Year 2005 for the purpose of providing the Ramseyer Report as prepared by the House Office of Legislative Counsel.

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

There was no objection.

GENERAL LEAVE

Mr. EVERETT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on H.R. 4200.

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

There was no objection.

PERMISSION TO INCLUDE EXCHANGE OF LETTERS BETWEEN COMMITTEE ON WAYS AND MEANS AND COMMITTEE ON ARMED SERVICES ON H.R. 4200, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

Mr. EVERETT. Mr. Speaker, I ask unanimous consent to include in the RECORD a letter from the chairman of the Committee on Ways and Means, the gentleman from California (Mr. THOMAS), regarding section 585 of H.R. 4200, the National Defense Authorization Act for Fiscal Year 2005, and my response, and ask that it be printed as part of the debate on H.R. 4200.

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

There was no objection.
PERMISSION TO INCLUDE LETTER FROM CHAIRMAN OF COMMITTEE ON INTERNATIONAL RELATIONS ON H.R. 4200, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

Mr. EVERETT. Mr. Speaker, I ask unanimous consent to include in the RECORD a letter from the chairman of the Committee on International Relations, the gentleman from Illinois (Mr. Hyde), regarding H.R. 4200, the National Defense Authorization Act for Fiscal Year 2005, and ask that it be printed as part of the debate on that bill.

Mr. LAHOOD (Chairman pro tempore). Is there objection to the request of the gentleman from Alabama?

There was no objection.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

The SPEAKER pro tempore. The gentleman from South Carolina (Mr. SKELTON), the gentleman from Missouri (Mr. SKELTON), the gentleman from South Carolina (Mr. SPRATT) the gentleman from Washington (Mr. DICKS) and the gentleman from Maine (Mr. ALLEN) transfers funds for the Robust Nuclear Earth Penetrator and advanced concepts to, instead, improve conventional capabilities and intelligence required to defeat hardened targets.

The President called for international cooperation to control the proliferation of weapons of mass destruction in a February speech at the National Defense University, but his vision is directly undermined by the contents of this defense bill. By calling for new, more usable nuclear weapons, the United States sends a message to the world that nuclear weapons are legitimate weapons that should be acquired. Resorting to nuclear weapons to destroy hardened targets is a disproportionate response with too many negative ramifications and little benefit.

There are several reasons not to consider new nuclear bunker busters. Here are a few:

First of all, the military has not asked for them. Second, they will produce massive collateral damage and expose our own troops to massive doses of radiation. Third, a nuclear strike against a WMD stockpile could release deadly agents into the atmosphere. Fourth, the most powerful nuclear weapons cannot destroy bunkers over a certain depth, and rogue regimes will just dig deeper to avoid them.

Fifth, an RNEP will cause mass casualties miles away from the targeted bunker and potentially harm our allies. And sixth and furthermore, developing new nuclear bunker busters would undermine decades of United States leadership aimed at preventing nuclear states and nuclear weapons and encouraging nuclear states to reduce their stockpiles. They are also unnecessary because the United States already has conventional programs to defeat hardened targets.

My amendment strengthens these conventional programs and improves intelligence needed to get at hardened targets. The costs of missing the target with a conventional weapon is bad enough, but missing it with a nuclear warhead is far worse. Even the hawkish Defense Science Board that advises the Pentagon recently stated that U.S. interests are best served by preserving into the future the half-century-plus nonuse of nuclear weapons.

I urge my colleagues to support this amendment.

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

Mr. EVERETT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in strong opposition to the amendment offered by the gentlewoman from California. The $27.6 million included in the bill by the House Committee on Armed Services for RNEP would support the Air Force-led study concerning the feasibility of modifying an existing nuclear weapon to destroy what are known as hardened and deeply buried targets. It has long been recognized that these hardened targets are increasingly being used by potential adversaries to conceal and protect leadership, command and control, weapons of mass destruction and ballistic missiles. I believe it is imperative that we finish the review as a part of a larger effort to ensure that we further our technological edge.

I would like to take this opportunity to remind my colleagues that this funding does not authorize the production of any weapons. In fact, as a result of the compromise reached in last year's defense bill, any effort beyond a study is prohibited unless the President approves it and the necessary funds are authorized and appropriated by Congress. Some say that the military does not have a requirement for this weapon. I would have to disagree with that.

Just yesterday, I spoke with the commander of STRATCOM, Admiral James Ellis, who assured me that a military requirement does exist for the RNEP study. Specifically, a military requirement for this study can be traced back 10 years to the Clinton administration when STRATCOM and the Air Combat Command both issued a letter identifying a robust nuclear earth penetrator as the only method to defeat these hardened and buried targets. Since then, the Quadrennial Defense Review, the Nuclear Posture...
Mr. CHAIRMAN, I urge my colleagues to defeat this amendment.

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

Mrs. TAUSCHER. Mr. Chairman, I yield 30 seconds to the gentleman from Missouri (Mr. SKELETON), the ranking member of the full committee.

Mr. SKELETON. Mr. Chairman, I strongly support the Tauscher amendment. Let us talk common sense on this issue. The key to neutralizing hard and deeply buried bunkers is solid and accurate intelligence. So let us remember. Remember the political fallout when we accidentally bombed the Chinese embassy in Belgrade? We should remember that. Imagine the fallout literally and figuratively to use a nuclear weapon to take out a bunker and we got the location wrong. No President would authorize the use of a nuclear weapon on a bunker without having solid rock intelligence on it. We need to have strong intelligence, and this should not go forward.

Mr. EVERETT. Mr. Chairman, I yield 3 minutes to the gentlewoman from New Mexico (Mrs. WILSON), who is both knowledgeable on this subject and a valued member of our subcommittee as well as the full House Committee on Armed Services.

Mrs. WILSON of New Mexico. Mr. Chairman, there is a fundamental question here, and that is what is the role of nuclear weapons in America’s national defense?

Nuclear weapons have been an important part of deterrence over the last 40 years, and the key to their effectiveness is that we need to be able to hold at risk the things that people most value, particularly the leaders of countries whose interests and whose values are very different from our own. And the reality is that those countries are burrowing in their command and control facilities, their chemical weapons, their missiles; and we must continue to hold those at risk.

Over 10 years ago under the Clinton administration, they identified the need for capability to use a weapon and they had begun the process of studying it. But let us be very clear. This is not a new nuclear weapon. In fact, under the Clinton administration, they looked at using an existing nuclear bomb called a B-61 and hardening it. This is an extension of that. But it had hardened even further so that it could penetrate further and hold those targets at risk.

Bipartisan majorities of the Congress and two Presidents from two different parties have seen this need and the need to study whether this can be done. But the military has as well. In 1994 the Strategic Command came out with a Memorandum stating that since that is how they have to develop new ways to hold these targets at risk. The Air Force has requested this study, and the Nuclear Weapons Council, dominated by the Defense Department, has approved that request. Therefore, both the military and the President over a long period of time have recognized the importance of this work.

In addition, I think we need to understand what the other program. Advanced Concepts, is for. We used to do a lot of studying of nuclear weapons, their effects, the robustness and safety and security of our own weapons, but we stopped doing that a while ago; and we need to restart that because other countries, particularly Russia, are continuing to develop new nuclear weapons, and the United States must maintain its understanding of nuclear weapons, how they work, how they function over time so that we can understand and advise our own leadership about those capabilities. We can never be in a position to lose that expertise when other countries are continuing to develop it.

I would urge my colleagues to oppose this amendment. It has been opposed in the full committee and both the RNEP program and Advanced Concepts have received long-time support from this Congress.

Mrs. TAUSCHER. Mr. Chairman, I yield 1½ minutes to the gentleman from the State of Washington (Mr. DICKS).

Mr. DICKS. Mr. Chairman, I rise in support of the Tauscher amendment for two reasons. Conventional precision-guided munitions are a better technical solution to the NATO problem than a nuclear Earth Penetrator for hardened and deeply buried targets; and because the fallout, both figurative and literal, from the use of nuclear weapons will make the Robust Nuclear Earth Penetrator an extensive showpiece rather than a usable weapon.

We have the B-2. We have the means of delivering a JDAM missile, a 5,000-pound bunker buster, and the EGBU-38. All of these are a better approach than a nuclear option. Henry Kissinger, former Secretary of State, says that we do not need nuclear weapons for deterrence, that we are not entering an era of nuclear war-fighting; and so if we are going to have to use something, then we want to make sure it is a conventional weapon to go after these deep underground targets.

We have seen the fallout from what has happened in Iraq. Did the United States use tactics that were questionable? Think of what the fallout politically would be if we were using nuclear weapons in a war-fighting context. Conventional weapons are a much better choice. Let us approve the Tauscher amendment. Let us improve our intelligence. Let us use the conventional capabilities. Why? Because they are usable. Nuclear weapons are not usable; conventional weapons are.

Mr. EVERETT. Mr. Chairman, I yield 3 minutes to the gentlewoman from Colorado (Mrs. THORNBERY), another great member of our subcommittee and the House Committee on Armed Services, who is very knowledgeable also on this subject.

Mr. THORNBERY. Mr. Chairman, this amendment tries to eliminate a research program designed to explore whether or not we can threaten deeply buried targets with an existing nuclear warhead. As the chairman of the subcommittee just said, to build an actual weapon requires Congress to confirm. That is not what this amendment is about. This amendment is about whether we want to know what our options may be. And to stick our head in the sand and pretend that we are somehow safer if we do not know or to pretend we are somehow more limited our options seems to me not only foolish but actually dangerous.

I agree with the gentleman from Washington, it is about deterrence. But we do not deter anybody if we do not know what we are doing. They have to have a realistic expectation that we might in order to discourage them to do something.

Clearly, there is a trend toward burying things. It may be a leadership bunker. It may be a weapon-production facility. It may be weapons themselves. And today we are very limited in our ability to threaten things which are buried. The more limited we are, and especially the more we limit ourselves, the more it encourages potential adversaries to go underground.

We have heard all these conclusions giving reasons why we should not use such a weapon. The problem is these are conclusions not based on scientific study and scientific fact, and they come with a political agenda. We ought to step back from political agendas and objectively study what the pros and cons of this approach are and then collectively make a judgment call on whether it is a good idea or not, that we are not anywhere close to that at this point.

I am for putting all the money we need into research into conventional weapons that can accomplish the same goal; and if more money is needed to effectively and productively take advantage of those programs this year, then I am all for it. But this is so important that to limit our options at this time, to not even explore what the options are and what may be available to us, is truly shortsighted. Therefore, I urge Members to again this year, as we did last year, reject this amendment and vote "no."
The CHAIRMAN pro tempore (Mr. LAHOOD). The gentleman from California (Mrs. TAUSCHER) has 6 minutes remaining. The gentleman from Alabama (Mr. EVERETT) has 2 minutes remaining.

Mrs. TAUSCHER. Mr. Chairman, I yield 1 minute to the gentleman from Utah (Mr. MATHESON).

Mr. MATHESON. Mr. Chairman, I rise in support of this amendment for a number of reasons. First, there are serious concerns within the scientific community about whether the so-called bunker busters will actually be able to destroy deeply buried targets. Second, why would we even want to use a first-strike nuclear weapon? The RNEP would result in high levels of radioactive fallout and would put civilians and U.S. troops in harm’s way. And, finally, if we decide to develop new tactical nuclear weapons, that means resuming testing at the Nevada test site; and for those of us who live downwind, those are fighting words.

Supporters of these weapons say that they do not necessarily lead to testing. But if we are going to spend a half billion dollars over the next 5 years on a new weapons program, we are going to have to test it at some point or, quite frankly, we are just throwing away taxpayer dollars that should go to other weapons programs that actually stand a chance of defending Americans.

I close with a comment from an editorial in The New York Times: “If the strategic foolishness of the project were not enough to condemn it, the waste of money should be. At a time when we have so many genuine national security needs, every dime pickled away on Cold War technology not only fails to save lives, it actually endangers them.”

I thank the gentleman from California (Mrs. TAUSCHER) for her leadership on this issue.

Mr. EVERETT. Mr. Chairman, I reserve the balance of my time.

Mrs. TAUSCHER. Mr. Chairman, I yield 1 minute to the gentleman from Maine (Mr. ALLEN).

Mr. ALLEN. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in support of the Tauscher amendment, which I am pleased to cosponsor. The amendment improves the military’s ability to penetrate hardened targets. And, by directing funds from nuclear options that will never be used to conventional methods that could be.

For too long, the debate over the Robust Nuclear Earth Penetrator has focused on the utility of the weapon and not its consequences. In the real world, no President or operational commander is going to be launching a nuclear device to strike a deep bunker. The fallout would render the target and off limits to reconnaissance for too long. The harm to any local population would be devastating. The geopolitical reaction would be severe.

The Tauscher amendment invests $25 million in conventional penetrating technologies, which represent a much more realistic alternative to meeting the requirement.

Why on Earth should we spend millions of dollars to produce a weapon we will never use? It is a definition of wasteful government spending. Vote for the Tauscher amendment.

Mr. EVERETT. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. HUNTER), our distinguished chairman of the full Committee on Armed Services.

Mr. HUNTER. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, this is about the most basic part of our military strategy. The gentleman who just spoke said if we do not use these weapons, they are a total waste, and people used to say why do we have all these nuclear weapons that could kill the Russians 100 times over? The answer is this weapons program was so we would never have to kill a single Russian because we would have a deterrent.

Whom do we have to deter? Do we deter a private in a barrack? Do we deter a housewife in her home in the land of our adversary? Do we deter children in a school or people in a hospital?

The answer is no. The very best deterrent target is the people who pull the trigger and that is the leadership of the adversarial nation, that is, the people who make the decision to attack the United States. Those are the people who like to go deep.

Hitler had a bunker. Saddam Hussein had a bunker. The people in Korea have bunkers. We have to have bunkers in this bill to continuing those programs that do so. But we also recognize that there are limitations to what we can do with those conventional weapons and what we can hold at risk.

Nuclear weapons are useful because they are unusable. That is the core of deterrence.

Mrs. TAUSCHER. Mr. Chairman, I yield 1 minute to the gentleman from South Carolina (Mr. SPRATT), another cosponsor of the amendment.

Mr. SPRATT. Mr. Chairman, let me just pick up on where we left off. We have got thousands of nuclear weapons in order to achieve deterrence. This weapon is not necessary; it is unnecessary; it is counterproductive at a time when we are trying to get countries like Iran and North Korea and countless other want-to-be nuclear countries to give up their nuclear ambition.

And it raises a fundamental question: How long can we move the world in one direction while we move in another direction, and do we want to backtrack into an era that we finally emerged from where we had a nuclear weapon for every tactical mission?

They are not practical, they are not necessary, and this weapon will not come close to destroying or hardening up the hardened, deep geological targets for which they are reputedly available. To the extent that we want to go after a target like that, we have bombs for that effect, and you can dial a yield. In addition, we have conventional weapons that serve this purpose.

This is not necessary. And anyone who thinks this is a minor item, the justification indicates that $480 million needs to be spent for this particular program over the next 5 years. This is a major item in the defense budget.

This amendment should be adopted. Mrs. TAUSCHER. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. MARKEY. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, the gentlewoman and I have been making this amendment for 3 years. $500 million on a program for a weapon which is unusable. Can you imagine on the first day of Shock and Awe if we had dropped a nuclear bunker buster of Baghdad to get Saddam Hussein, and he was not in the command bunker, he was not there all at? The catastrophe for our
country across the whole world would have been disastrous. We found him in a spider hole, 5 feet deep.

You cannot drop a nuclear bomb in the middle of a city. It is an unusable weapon.

Our threat is that Iran and North Korea and other terrorist groups are trying to get a nuclear weapon. We cannot preach temperance from a bar stool; you cannot tell a kid not to smoke while holding a Camel cigarette in your hand.

If we want other countries to disarm the desire to develop nuclear weapons, we cannot be developing new usable nuclear weapons, which is what the Republican majority, the Bush administration, wants to do. We must use our political and our moral high ground to convince every other country in the world to disavow that interest.

This is the worst public policy decision that the Bush administration is making. We started a war in Iraq because, with Iran having nuclear weapons. We are sending a signal to Iran, to North Korea, to Syria, to Egypt, to every other country in the world, that nuclear weapons are usable and we will use them. Well, they will develop them as well, Mr. Chairman, and the next generations of Americans will be less secure, not more secure.

Vote for the Tauscher amendment if you care about the security of the children and the grandchildren in our country. It is the only way in which we can convince this military-industrial complex that they could not have won in Iraq if they had used nuclear weapons. They would have destroyed our capacity for evermore to be a political and moral force in the world.

The CHAIRMAN pro tempore. The gentleman from Alabama (Mr. EVERETT) has 30 seconds remaining.

Mr. EVERETT. Mr. Chairman, I yield myself the balance of my time.

Mr. EVERETT. Mr. Chairman, I just simply say that we are not spending half a billion dollars to develop a new weapon. First of all, this is a modification of an old weapon, and everyone very well knows that.

Secondly, the study period is only $122 billion.

Thirdly, the proponents of this amendment are saying, let us just stick our heads in the sand and not study this.

Mr. Chairman, I urge the defeat of this amendment. This amendment is not worthy of passing this House.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I wholeheartedly support the Amendment being offered by a number of my distinguished colleagues including Ranking Members SKELETON and SPRATF, both of whom played large roles in crafting the Defense Authorization Act. This Amendment would take the responsible course of action by transferring $36.6 million for studying the feasibility of developing new nuclear weapons, including the Robust Nuclear Earth Interactive and directed it instead towards increasing both intelligence capabilities to get at heard and deeply buried targets and providing improved conventional bunker-bust-
section 201(2) for research development, test and evaluation, Navy, is hereby increased by $5,000,000, to be available for Nano-composite hard-coat for aircraft canopies in Program Element 0205633N.

(b) COMMAND-AND-CONTROL SERVICE LEVEL MANAGEMENT.—The amount provided in section 201(3) for research development, test and evaluation, Air Force, is hereby increased by $5,000,000, to be available for command-and-control service level management in Program Element 0207443F for best-commercial practices and enterprise wide architectures for military command-and-control applications.

At the end of the section, insert the following new section:

SEC. 3. REDUCTION IN AUTHORIZATION FOR AIR FORCE OPERATIONS AND MAINTENANCE.

The amount authorized to be appropriated in section 301(4) is hereby reduced by $10,000,000, to be derived from the transportation working capital fund.

Strike section 215 (page 36, lines 1 through 9).

Strike section 218 (page 514, lines 1 through 16) and insert the following new section:

SEC. 218. REPORT ON FEASIBILITY OF VETERANS MEMORIAL AT MARINE CORPS AIR STATION, EL TORO, CALIFORNIA.

Not later than 180 days after the date of the enactment of this Act, the Secretary of the Navy shall submit to Congress a report on whether the City of Irvine, the County of Orange, the State of California, or the United States shall be required to fund the construction of a veterans memorial at Marine Corps Air Station, El Toro, California.

AMENDMENT NO. 16 OFFERED BY MR. CHABOT

The text of the amendment is as follows:

At the end of title VIII, insert the following new section:

SEC. 825. REQUIREMENT TO TREAT SURFEITS IN SAME MANNER AS FINANCING INSTITUTIONS WHEN CONTRACTORS DEFECT.

(a) AMENDMENT TO TITLE 31.—Section 327(c) of title 31, United States Code, is amended by inserting “surety on a bond provided in connection with a contract or other Federal financing” after “or other financing institution.”

(b) AMENDMENT TO REVISED STATUTES.—Section 327(b) of the Revised Statutes (41 U.S.C. 15) is amended in the first sentence by inserting “surety on a bond provided in connection with a contract,” before “or other financing institution.”

AMENDMENT NO. 17 OFFERED BY MR. MANZULLO

The text of the amendment is as follows:

At the end of title VIII (page 337, after line 15), insert the following new section:

SEC. 825. PROVISIONS RELATING TO CREATION OF JOBS IN THE UNITED STATES BY DEFENSE CONTRACTORS.

(a) AUTHORITY TO EXCLUDE CERTAIN SOURCES ON BASIS OF CREATION OF JOBS IN UNITED STATES.—Section 2304(b)(1) of title 10, United States Code, is amended—

(1) by striking “or” at the end of sub-paragraph (E); and

(2) by striking the period at the end of paragraph (E) and inserting “; or”;

and

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

“(G) would create jobs in the United States.”

(b) REQUIREMENT TO INCLUDE CREATION OF JOBS IN UNITED STATES AS EVALUATION FACTOR.—(1) In paragraph (2), subject to subparagraph (B) and paragraph (4), the Secretary of Defense shall ensure that the evaluation factor of whether a contractor was capable of performing the work in the United States as an evaluation factor.

(2) The text of the amendment is as follows:

At the end of title XIII (page 10, United States Code, is amended—

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

(2) by striking the period at the end of paragraph (f) and inserting “; or”;

and

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

“(G) subject to subparagraph (B), in the case of a contract entered into after the date of the enactment of this Act, the evaluation factor whether the United States is capable of the work at issue;”

AMENDMENT NO. 18 OFFERED BY MR. DAVIN OF ILLINOIS

The text of the amendment is as follows:

At the end of title XII, insert the following new title:

TITLE XXXVI—SMALL BUSINESS ADMINISTRATION

SEC. 5601. ADDITION OF LANDSCAPING AND PEST CONTROL SERVICES TO LIST OF DESIGNATED INDUSTRY GROUPS PARTICIPATING IN THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.

(a) IN GENERAL.—Subsection (a) of section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) is amended—

(1) in paragraph (3), by striking “and” at the end;

(2) in paragraph (4), by striking the period at the end and inserting “; and”;

and

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

“(5) landscaping and pest control services.”

(b) LANDSCAPING AND PEST CONTROL SERVICES.—Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) is amended—

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

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

“(e) LANDSCAPING AND PEST CONTROL SERVICES.—Landscaping and pest control services shall include contracted to North American Industrial Classification Code 561710 (relating to exterminating and pest control services) or 561730 (relating to landscape architects) for the Department of Defense.”

AMENDMENT NO. 19 OFFERED BY MR. WELDON OF PENNSYLVANIA

The text of the amendment is as follows:

At the end of title X (page 409, after line 13), insert the following new section:

SEC. . TRANSFER OF EXCESS DEPARTMENT OF DEFENSE PERSONAL PROPERTY SUITABLE FOR FIRE-FIGHTING USE TO SUPPORT FEDERAL EXCESS PERSONAL PROPERTY PROGRAM.

(a) IN GENERAL.—Section 2576b of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by striking “Subject” and inserting “Notwithstanding any other provision of law and subject;” and

(B) by striking “a firefighting agency in a State” and inserting “the United States Forest Service;”

(2) in subsections (b)(2) and (c), by striking “recipient firefighting agency” and inserting “Forest Service;” and

(3) by striking subsection (d) and inserting the following new subsections:

“(d) PRIORITY FOR RURAL FIRE-FIGHTING AGENCIES.—(1) Subject to paragraph (2), the Secretary of Defense shall enter into an agreement with the Secretary of Agriculture to use the existing property disposal program of the Forest Service, known as the Excess Excess Personal Property Program, to facilitate the reutilization of Department of Defense personal property described in subsection (a) by firefighting agencies in rural areas.

“(2) An agreement under paragraph (1) shall not provide for the reutilization of Department of Defense aircraft by the Forest Service until the end of the fiscal year period beginning on the date on which the Secretary of Agriculture submits a report to the Committee on Appropriations and the Committee on Armed Services of the House of Representative the Committee on Agriculture, Nutrition, and Forestry and the Committee on Armed Services of the Senate measuring the extent and reutilization of Personal Property Program in response to National Transportation Safety Board Recommendations A-04-29 through A-04-33.”

(b) The transfer of Department of Defense personal property described in subsection (a) to the Forest Service for reutilization by firefighting agencies in rural areas shall be afforded a property disposal priority at least equal to the priority given the military departments and other entities within the Department of Defense.

“(e) DEFINITION OF STATE.—The term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, and any territory or possession of the United States.”

(b) CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows—

“2576b. Excess personal property: reutilization to assist firefighting agencies.”

(2) The table of sections at the beginning of the title of such title shall be amended by striking the item relating to section 2576b and inserting the following new item:
H3420

CONGRESSIONAL RECORD — HOUSE

May 20, 2004

“2576b. Excess personal property: reutilization to assist firefighting agencies.”

AMENDMENT NO. 20 OFFERED BY MR. BROWN OF SOUTH CAROLINA

The text of the amendment is as follows:

At the end of title X, insert the following new section:

SEC. 138. EXPANSION OF DEPARTMENT OF DEFENSE EXCESS PERSONAL PROPERTY DISPOSAL PROGRAM TO INCLUDE HEALTH AGENCIES.

(a) INCLUSION OF HEALTH AGENCIES.—Section 2576b of title 10, United States Code, is amended by adding at the end the following new subsection:

“(b) TRANSFER TO STATE HEALTH AGENCIES.—The Secretary of Defense may expand the program authorized by this section to include the transfer to State health agencies of personal property in the personal property of the Department of Defense that the Secretary determines—

“(1) excess to the needs of the Department of Defense; and

“(2) suitable for use in responding to health or environmental emergencies.”.

(b) CEREMONIAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

“§ 2576b. Excess personal property: reutilization to assist firefighting agencies and health agencies.”

(2) The table of sections at the beginning of chapter 133 of this title is amended by striking the item relating to section 2576b and inserting the following new item:

“§ 2576b. Excess personal property: reutilization to assist firefighting agencies and health agencies.”.

AMENDMENT NO. 2 OFFERED BY MR. BROWN OF SOUTH CAROLINA

The text of the amendment is as follows:

At the end of subtitle A of title XXVIII, insert the following new section:

SEC. 28. CONSIDERATION OF COMBINATION OF MILITARY MEDICAL TREATMENT FACILITIES AND HEALTH CARE FACILITIES OF DEPARTMENT OF VETERANS AFFAIRS.

(a) DEPARTMENT OF DEFENSE CONSIDERATION OF JOINT CONSTRUCTION.—(1) Subchapter I of chapter 169 of title 10, United States Code, is amended by adding at the end the following new section:

“(a) DEPARTMENT OF DEFENSE CONSIDERATION OF JOINT CONSTRUCTION.—(1) Subchapter I of chapter 169 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 2816. Consideration of joint construction and use of military medical treatment facilities and health care facilities of the Department of Veterans Affairs.

“In the case of the budget submitted under section 1105 of title 31 for any fiscal year, the Secretary of Defense shall include in the budget justification materials submitted to Congress in support of the budget a certification that, in evaluating for inclusion in the budget for that fiscal year any military construction project for construction in the United States (or a territory or possession of the United States) of a new military medical treatment facility, the Secretary, after consulting with the Secretary of Veterans Affairs, evaluated the feasibility of carrying out the project so as to establish with the Department of Veterans Affairs a joint medical facility that—

“(1) could serve as a facility for health resources sharing between the Department of Defense and the Department of Veterans Affairs; and

“(2) would be no more costly to each Department to construct and operate than separate facilities for each Department.”

(b) DEPARTMENT OF VETERANS AFFAIRS CONSIDERATION OF JOINT CONSTRUCTION.—Section 810(h)(b) of title 38, United States Code, is amended by adding at the end the following new paragraph:

“(9) In the case of a prospectus proposing the construction of a new or replacement medical treatment facility, the Secretary of Veterans Affairs shall include in the budget for that fiscal year any military construction projects (for construction of a new or replacement medical treatment facility) a certification that the Secretary, after consulting with the Secretary of Defense, evaluated the feasibility of carrying out the project so as to establish with a Department of Defense a joint medical facility that—

“(A) could serve as a facility for health resources sharing between the Department of Defense and the Department of Veterans Affairs; and

“(B) would be no more costly to each Department to construct and operate than separate facilities for each Department.”.

AMENDMENT NO. 22 OFFERED BY MR. JOHNSON OF ILLINOIS

The text of the amendment is as follows:

At the end of title V (page 200, after line 24), insert the following new section:

SEC. 598. AUTHORITY FOR REMOVAL OF REMAINS OF CERTAIN PERSONS INTERRED IN UNITED STATES OVERSEAS MILITARY CEMETERIES OTHER THAN those ADMINISTERED BY THE AMERICAN BATTLE MONUMENTS COMMISSION.

(a) REMOVAL AND TRANSPORTATION OF REMAINS.—(1) Upon receipt of a request for reinterment or other disposition in the United States overseas military cemetery, the Secretary of Defense may, upon approval of such application, provide for—

“(1) the removal of the remains of that person from the cemetery in which interred; and

“(2) transportation of such remains to a location in the United States selected by such qualifying survivor.

(b) REQUIREMENT FOR APPROVAL OF APPLICATIONS.—(1) An application under this section may be approved only if the application presents sufficient evidence that, at the time of the initial disposition decision (as defined in paragraph (2)), there was a misunderstanding or error related to that disposition decision that the Secretary finds warrants approval.

“(2) In paragraph (1), the term ‘initial disposition decision’ means the decision by a family member (or other designated person) as to the disposition (in accordance with laws and regulations in effect at the time) of the remains of the person with respect to whom the application is submitted, such decision being to have the remains interred in a United States overseas military cemetery (rather than to have those remains transported to the United States for interment or other disposition in the United States).

(c) A HMC ASSISTANCE.—The American Battle Monuments Commission shall provide the Secretary of Defense with such assistance as the Secretary may require in carrying out this section with respect to cemeteries under the jurisdiction of the Commission.

(d) THE PAYMENT.—A request for a reimbursement under subsection (a) must be submitted to the Secretary of Defense not later than the end of the fiscal year period beginning on the date of the enactment of this Act.

(e) EXPENDITURE OF FEDERAL FUNDS.—No costs associated with the removal and transportation of remains provided for under subsection (a) may be paid by the United States.

(f) DEFINITIONS.—For purposes of this section:

(1) UNITED STATES OVERSEAS MILITARY CEMETERIES.—The term ‘United States overseas military cemetery’ means a cemetery located in a foreign country that is administered by the Secretary of a military department or the American Battle Monuments Commission.

(2) QUALIFYING SURVIVORS.—The term ‘qualifying survivor’ means the following, in the order specified:

(A) The surviving spouse.

(B) All surviving children (including adoptive children), acting concurrently.

(C) A birth parent or, if both survive, both parents, acting concurrently.

(D) The surviving brother or sister, acting concurrently.

(E) The surviving stepchild, acting concurrently.

(F) The stepbrother or stepsister, acting concurrently.

(3) PERSONS OF:{}

(A) the active Armed Forces; and

(B) the Reserve components of the Armed Forces.

(4) The term ‘cede’ has the meaning given such term in section 2576b of title 10, United States Code, or, if both parents are deceased, the following:

(A) The surviving spouse.

(B) All surviving children (including adoptive children), acting concurrently.

(C) A birth parent or, if both survive, both parents, acting concurrently.

(D) The surviving brother or sister, acting concurrently.

(E) The surviving stepchild, acting concurrently.

(F) The stepbrother or stepsister, acting concurrently.

(5) No costs associated with the removal and transportation of remains provided for under subsection (a) may be paid by the United States.

(6) No costs associated with the removal and transportation of remains provided for under subsection (a) may be paid by the United States.

(7) The text of the amendment is as follows:

At the end of title VII (page 206, after line 15), insert the following new section:

SEC. 725. STUDY OF MENTAL HEALTH SERVICES.

(a) STUDY REQUIRED.—The Secretary of Defense shall conduct a study of mental health services available to members of the Armed Forces.

(b) PERSONS COVERED.—The study shall evaluate the availability and effectiveness of existing mental health treatment and screening resources.

(1) for members of the Armed Forces during a deployment to a combat theater;

(2) for members of the Armed Forces returning from a deployment to a combat theater, both—

(A) in the short-term, post-deployment period; and

(B) in the long-term, following the post-deployment period;

(3) for the families of members of the Armed Forces who have been deployed to a combat theater during the time of the deployment;

(4) for the families of members of the Armed Forces who have been deployed to a combat theater after the member has returned from the deployment; and

(5) for members of the Armed Forces and their families described in this subsection who are members of Reserve components.

(c) ASSESSMENT OF OBSTACLES.—The study shall provide an assessment of existing obstacles that prevent Armed Forces and military families in need of mental health services from obtaining these services, including—

(1) the extent to which existing confidentiality regulations, or lack thereof, inhibit members of the Armed Forces from seeking mental health treatment;

(2) the implications that a decision to seek mental health services can have on a military career;

(3) the extent to which a social stigma exists within the Armed Forces that prevents members of the Armed Forces and military families from seeking mental health treatment within the Department of Defense and the individual Armed Forces;

(4) the extent to which logistical obstacles, particularly with respect to members of the Armed Forces and families residing in rural areas, deter members in need of mental health services from obtaining them; and

(5) the extent to which members of the Armed Forces and their families are prevented from obtaining mental health treatment due to the cost of such services.

(d) REPORT.—The Secretary of Defense shall submit to Congress a report on the...
study conducted under this section not later than 90 days after the date of the enactment of this Act. The report shall contain the results of the study and make specific recommendations to the States:

(1) for improving the effectiveness and accessibility of mental health services provided by Department of Defense to the persons described in subsection (b), including recommendations to ensure appropriate referrals and a seamless transition to the care of the Department of Veterans Affairs following separation from the Armed Forces;

(2) for removing or mitigating any obstacles identified under subsection (c); and

(3) for steps that can be taken by the Department of Defense or Congress to bring parity to mental health services available to members of Reserve components and members of the Armed Forces on active duty.

AMENDMENT NO. 26 OFFERED BY MR. HEFLEY

"The text of the amendment is as follows:

At the end of subtitle F of title V, insert the following new section:

SEC. 560. BOARD OF VISITORS OF UNITED STATES MILITARY ACADEMY.

Section 9355 of title 10, United States Code, is amended to read as follows:

"§ 9355. Board of Visitors

"(a) A Board of Visitors to the Academy is constituted annually. The Board consists of the following members:

(1) Six persons designated by the President.

(2) Four persons designated by the Speaker of the House of Representatives, three of whom shall be members of the House of Representatives and the fourth of whom may not be a member of the House of Representaives.

(3) Three persons designated by the Vice President or the President pro tempore of the Senate, two of whom shall be members of the Senate and the third of whom may not be a member of the Senate.

(4) The chairman of the Committee on Armed Services of the House of Representatives, or his designee.

(5) The chairman of the Committee on Armed Services of the Senate, or his designee.

"(b)(1) The persons designated by the President serve for three years each except that any member whose term of office has expired prior to his successor's designation will serve until his successor is designated. The President shall designate persons each year to succeed the members designated by the President whose terms expire that year.

(2) At least two of the members designated by the President shall be graduates of the Academy.

"(c)(1) If a member of the Board dies or resigns or is terminated as a member of the Board under paragraph (2), a successor shall be designated for the unexpired portion of the term by the official who designated the member.

(2) If a member of the Board fails to attend two successive Board meetings, except in a case in which an absence is approved in advance, for good cause, by the Board chairman, such failure shall be grounds for termination from membership on the Board. A person designated for membership on the Board shall be provided notice of the provisions of this paragraph at the time of such designation.

"(d) The Board should meet at least four times a year, with at least two of those meetings at the Academy. The Board or its members may make other visits to the Academy with the duties assigned to the Board. Board meetings shall last at least one full day. Board members shall have access to the Academy grounds and the cadets, faculty, staff, and other personnel of the Academy for the purposes of the duties of the Board.

"(e)(1) The Board shall inquiere into the morale, discipline, and social climate, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

(2) The Secretary of the Air Force and the Superintendent of the Academy shall provide the Board candid and complete information on all problems that are consistent with applicable laws concerning disclosure of information, of all institutional problems.

(3) The Board shall recommend appropriate action.

(4) Within 30 days after any meeting of the Board, the Board shall submit a written report to the Secretary of Defense, through the Secretary of the Air Force, and to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives with its views and recommendations pertaining to the Academy.

(5) Upon appointment, the Secretary, the Board may call on advisers for consultation.

(6) While performing duties as a member of the Board, each member of the Board and each adviser shall be reimbursed under Government travel regulations for travel expenses."

AMENDMENT NO. 27 OFFERED BY MR. SHIMkus

"The text of the amendment is as follows:

At the end of subtitle G of title V, insert the following new section:

SEC. 3757. Korean defense service ribbon.

(a) REQUIREMENT.—The Secretary of the Army shall establish a combat recognition ribbon to recognize participation by members of the Army in combat. The Secretary shall award the combat recognition ribbon to each member of the Army who meets the criteria for that ribbon based upon service performed after August 1, 1990.

(b) CRITERIA FOR AWARD.—The Secretary shall establish the criteria for award of the combat recognition ribbon. To the maximum extent practicable, the criteria for the award of such ribbon shall be based upon, and be similar to, the criteria for award of the Navy Combat Action Ribbon, including any special criteria for service during a particular period of conflict or in a specific geographic area.

"(c) LIMITATION.—The combat recognition ribbon may not be awarded to a member of the Army with respect to the same period of service as service for which the member was awarded the Combat Infantryman Badge or the Combat Medic Badge.

"(d) IMPLEMENTATION FOR SERVICE BEFORE DATE OF ENACTMENT.—The Secretary of the Army shall establish procedures to provide for the implementation of section 3757 of title 10, United States Code, as added by subsection (a), with respect to service in the Republic of Korea during the period between July 28, 1953, and the date of the enactment of this Act and the furnishing of such information to the Secretary as the Secretary may specify.

AMENDMENT NO. 28 OFFERED BY MR. SMITH OF WASHINGTON

"The text of the amendment is as follows:

At the end of part I of subtitle D of title XXVIII (page 535, after line 7), insert the following new section:

SEC. 28. MODIFICATION OF LAND EXCHANGE AND CONSOLIDATION, FORT LEWIS, WASHINGTON.

(a) PROPERTY TO BE TRANSFERRED TO SECRETARY OF THE INTERIOR IN TRUST.—Subsection (a)(1) of section 3237 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1315) is amended—
(by striking “may convey to” and inserting “may transfer to the Secretary of the Interior, in trust for”; and
(2) by striking “Washington, in all that follows through the period and inserting “Washington. The Secretary of the Army may make the transfer under the preceding sentence, and the Secretary of the Interior may accept by transfer vested in the Tribe for the Nisqually Tribe under the preceding sentence, only in conjunction with the conveyance described in subsection (b)(2));
(b) REORGANIZATION TO BE TRANSFERRED.—Such subsection is further amended by striking “138 acres” and inserting “168 acres”;
(c) QUALIFICATION ON PROPERTY TO BE TRANSFERRED.—Subsection (c)(2) of such section is amended—
(1) by striking “conveyance” and inserting “transfer”; and
(2) by striking “or the right of way described in subsection (c)” and inserting “located the real property transferred under that paragraph”.
(d) CONSIDERATION.—Subsection (b) of such section is amended—
(1) In the matter preceding paragraph (1), by striking “conveyance” and inserting “transfer”;
(2) by striking paragraph (2), by striking “fee title over the acquired property to the Secretary” and inserting “to the United States fee title to the property acquired under paragraph (1), free from any encumbrance or other interests other than those, if any, acceptable to the Secretary of the Army.”;
(e) TREATMENT OF EXISTING PERMIT RIGHTS; GRANT OF EASEMENT.—Such section is further amended—
(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and
(2) by inserting after subsection (c) the following new subsection:
“(d) TREATMENT OF EXISTING PERMIT RIGHTS BY GRANT OF EASEMENT.—(1) The transferee under subsection (a) recognizes and preserves to the Bonneville Power Administration, in perpetuity and without the right of revocation except as provided in paragraph (2), rights in existence at the time of the conveyance under the permit dated February 4, 1949, as amended January 4, 1952, between the Department of the Army and the Bonneville Power Administration with respect to any portion of the property transferred under subsection (a) upon which the Bonneville Power Administration retains transmission facilities. The rights recognized and preserved include the right to upgrade those transmission facilities.
“(2) The permit rights recognized and preserved under paragraph (1) shall terminate only upon the Bonneville Power Administration’s relocation of the transmission facilities referred to in paragraph (1), and then only with respect to that portion of those transmission facilities that are relocated.
“(3) The Secretary of the Interior, as trustee for the Nisqually Tribe, shall grant to the Bonneville Power Administration, without consideration, in trust in connection to the right of way recognized and preserved in paragraph (1), such additional easements across the property transferred under subsection (a) as the Bonneville Power Administration may consider necessary to accommodate the relocation or reconnection of Bonneville Power Administration transmission facilities from property owned by the Nisqually Tribe and held by the Secretary of the Interior in trust for the Tribe.

(1) CONFORMING AMENDMENTS.—(1) Subsection (c) of such section is amended by inserting “of the Army” after “Secretary”; and
(2) Subsection (e) of such section (as redesignated by section (f)(1)) is amended—
(A) by striking “conveyed” and inserting “transferred”;
(B) by inserting “of the Army” after “Secretary”;
(C) by striking “the recipient of the property being conveyed” and inserting “the Tribe in the case of the transfer under subsection (a), and the Secretary of the Army, in the case of the acquisition under subsection (b)”; and
(D) Subsection (f) of such section (as redesignated by subsection (e)(1)) is amended—
(A) by inserting “of the Army” after “Secretary” both place it appears; and
(B) by striking “by subsection this section” inserting “transfer under subsection (a) and conveyances under subsections (b)(2) and (c)”.

AMENDMENT NO. 29 OFFERED BY MR. CUNNINGHAM

The text of the amendment is as follows:

At the end of title X (page 409, after line 13), insert the following new section:

SEC. 1077. PLACEMENT OF MEMORIAL IN ARLING- TON NATIONAL CEMETERY HONORING NONCITIZENS KILLED IN THE LINE OF DUTY WHILE SERVING IN THE ARMED FORCES OF THE UNITED STATES.

(a) IN GENERAL.—The Secretary of the Army shall place in Arlington National Cemetery a memorial marker honoring the service and sacrifice of noncitizens killed in the line of duty while serving in the Armed Forces of the United States.

(b) APPROVAL OF DESIGN AND SITE.—The Secretary of the Army may accept donations of services, money, and property (including personal, tangible, or intangible property) for the design and construction of a memorial marker for under subsection (a).

(c) USE OF FEDERAL FUNDS.—Federal funds shall not be required or permitted to be used for the design and construction of the memorial marker provided for under subsection (a).

(d) AUTHORITY TO ACCEPT DONATIONS.—(1) The Secretary of the Army may accept gifts and donations of services, money, and property (including personal, tangible, or intangible property) for the design and construction of a memorial marker for under subsection (a).

(2) The authority of the Secretary of the Army to accept gifts and donations under paragraph (1) shall terminate five years after the date of the enactment of this Act.

AMENDMENT NO. 30 OFFERED BY MR. SKELTON

The text of the amendment is as follows:

Page 479, in the table following line 9—
(1) in the item for Robins Air Force Base, strike “$15,000,000” and insert “$21,570,000”; and
(2) in the total at the bottom of the table, strike “$368,714,000” and insert “$405,284,000”.

Page 483, line 2, strike “$2,493,679,000” and insert “$2,500,249,000”.

Page 483, line 5, strike “$388,714,000” and insert “$405,284,000”.

Page 492, line 1, strike “$114,090,000” and insert “$107,520,000”.

AMENDMENT NO. 31 OFFERED BY MR. ISRAEL

The text of the amendment is as follows:

At the end of title I (page 27, after line 10), insert the following new section:

SEC. 101. TRANSFER OF CERTAIN ARMY PRO- CUREMENT FUNDS.

(a) INCREASE FOR CERTAIN HELICOPTER ITEMS.

The amount provided in section 101 of this Act for procurement of aircraft for the Army is hereby increased by $4,000,000, of which—
(1) $2,000,000 shall be available for procurement of the Aircraft Wireless Intercom System; and
(2) $2,000,000 shall be available for procurement of blade fold kits for Apache Helicopters.

(b) OFFSET.—The amount provided in section 101(A) for Other Procurement, Army, is hereby reduced by $4,000,000, to be derived from amounts for Information Systems.

AMENDMENT NO. 32 OFFERED BY MR. HOBSON

The text of the amendment is as follows:

At the end of subtitle F of title V (page 172, after line 9), insert the following new section:

SEC. 5. ELIMINATION OF COLLISION PREV- ENITION SYSTEMS.

(a) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, the Secretary concerned may, in recognition of the unique position of the District of Columbia in the Federal system, provide financial assistance to eligible members of the National Guard of the District of Columbia for expenses of such a member while enrolled in an approved institution of higher education in a degree, certificate, or other program (including a program of study abroad approved for credit by the institution) leading to a recognized educational credential at the institution of higher education. Any such assistance may be provided only during the program eligibility period specified in subsection (i).

(b) AUTHORITY SUBJECT TO AVAILABILITY OF APPROPRIATIONS.—The amount provided in subsection (a) is subject to the availability of appropriations for that purpose.

(c) ELIGIBILITY.—To be eligible for financial assistance under this section, a member of the National Guard of the District of Columbia must—
(1) be a member of the National Guard of the District of Columbia who has not less than the 12 consecutive months preceding the commencement of the tuition assistance and continue to be such a member while receiving such assistance;
(2) agree to serve one year in the National Guard of the District of Columbia for each academic year of assistance provided;
(3) be enrolled or accepted for enrollment in a program of education referred to in subsection (a) at an institution of higher education; and

(f) COVERED EXPENSES.—Expenses for which financial assistance may be provided under this section are the following:
(1) Tuition and fees charged by an approved institution of higher education involved.
(2) The cost of books.
(3) Laboratory fees.

(e) AMOUNT.—(1) The amount of financial assistance provided to a member of the National Guard of the District of Columbia under this section shall be paid to the Secretary concerned, but may not exceed $2,500 for any academic year. The Secretary concerned shall prorate assistance under this section for members who use a program of education less than a full-time basis.

(2) A member may not receive more than $2,500 under this section.

(f) CONSTRUCTION.—Nothing in this section shall be construed to require an institution of higher education to alter the institution’s enrollment policies or standards in any manner to enable a member of the National Guard of the District of Columbia to enroll in the institution.

(g) DEFINITIONS.—In this section:
(1) The term “approved institution of higher education” means an institution of higher education...
York (Mr. ISRAEL), the gentleman from Ohio (Mr. HOBSON) and by the gentle-
woman from the District of Columbia (Ms. NORTON).

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

Mr. SKELTON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I happen to agree with the en bloc amendments put forward by
the chairman. We have examined them thoroughly and discussed them thor-
oughly. I think they are certainly worthy of passage.

However, if I may comment on other amendments, much has been said, Mr. 
Chairman, about the contractor situa-
tion in Iraq and Afghanistan. I would
like at this moment to make reference
to two amendments that were adopted
in the committee that were passed out
onto the floor. And I would like to
make reference to them now, two out-
standing amendments.

The gentleman from Tennessee (Mr.
COOPER) had an amendment that re-
quires the chairman or ranking mem-
ber of the Committee on Armed Serv-
ces, the Secretary of Defense to pro-
vide copies of contract documents
within 14 days to the committee, and it
also allows greater transparency in the
contracting system, particularly when
we have been having so many problems
in Iraq and elsewhere. This is critical
to our oversight responsibility, and I
compliment the gentleman from Ten-
nessee (Mr. COOPER).

There was another amendment that
was adopted in the committee that we
should make reference to today offered
by the gentleman from Hawaii (Mr.
ABERCROMBIE), which requires guidance
by the GAO on how to manage contractors that
support deployed forces.

It requires report and contractor
oversight, rules of engagement in Iraq,
and requires better information gath-
ering on how many security contra-
tors are in Iraq. It directly responds
to concerns raised in a letter that I sent
to the Secretary of Defense on April 2.

We are on top, I think, as a result of
these two amendments by the gen-
tleman from Tennessee (Mr. COOPER)
and the gentleman from Hawaii (Mr.
ABERCROMBIE), to make sure that we
are tending to the deep concern we
have about the contractor use and the
contractor hiring in those two coun-
tries.

I do agree with the chairman on the
en bloc amendments.

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

Mr. HUNTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I just want to take this
time, because I always have to fol-
low the leadership of the gentleman
from Missouri (Mr. SKELTON) in this
area, to just thank all the staff that
have been working this armed services
bill. The committee staff has been tire-
lessly working this bill, putting it to-
gether in the subcommittees, full com-
mittee and now on the floor, and I
want to thank everyone who has been
part of this product.

Mr. Chairman, I yield such time as he
may consume to the gentleman from
Texas (Mr. REYES).

Mr. REYES. Mr. Chairman, I under-
standing that Mr. ORTIZ offered an amendment at
full committee markup on May 12, 2004,
and that the amendment was passed by the
committee within a manager’s amendment. Unfortunately, however,
the amendment offered by the gen-
tleman from Texas (Mr. ORTIZ) was not
printed in the committee report 108-
491.

Mr. HUNTER. Mr. Chairman, will the
gentleman yield?

Mr. REYES. I yield to the gentleman
from California.

Mr. HUNTER. Mr. Chairman, that is
correct. It is an unfortunate error that
the amendment was not printed in the
report. The Ortiz amendment was
adopted by the full committee.

Mr. REYES. Mr. Chairman, in light of
that, I ask unanimous consent that a
copy of the amendment accepted at
full committee be made part of the
record.

Mr. HUNTER. Mr. Chairman, I sup-
port that request.

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

There was no objection.

Mr. SKELTON. Mr. Chairman, I
yield to the gentleman from Texas?

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

Mr. HUNTER. Mr. Chairman, I rise
in favor of the en bloc amend-
ment, and especially my amendment
dealing with the Comp Demo.

Mr. Chairman, I appreciate the opportu-
ity to briefly review my proposed amend-
to S.2269.

My amendment is a simple, highly targeted,
and non-controversial effort to better balance the
way that small business set aside, SBPA,
goals are met by Federal agencies, including
the Department of Defense. Presently, these
goals are unevenly distributed with some prod-
uct and service sectors experiencing a dis-
proportionate rate of small business set aside
while other small businesses in other product
or service sectors see little in small business
set-aside contracts come their way, despite the
fact that there are capable small busi-
nesses involved in those industries. This can
obviously work to deny a large number of
small businesses the benefits of the small
business set aside program that Congress has
long supported.

My amendment would address this problem
through a small, targeted improvement of an
existing Federal law called the Competitive-
ness Demonstration Program (P.L. 100–656),
also known as the "Comp Demo" law.

The legislative history of Comp Demo
shows that it was enacted to prevent dis-
proportionate assignment of small business
set aside goals into a small, unrepresentative
number of NAICS codes. It began when Con-
gress took major steps to enhance competition
and diversity in small business procurement opportunities by enacting section 921 of P.L. 99–661, which requires that small businesses receive a “fair proportion” of Government contracts in each industry.

That effort later led to the enactment of the Comp Demo law. Additionally, Comp Demo recognized that in certain NAICS codes, work being disproportionately set aside, even though overall small business participation in the open market-place in these industries was high. While these industries had too much work for more industries than the current Comp Demo law allows. It does not change or reduce the size of agency small business aside goals.

My amendment would build on the existing Comp Demo law by adding the NAICS codes for landscaping services and exterminating & pest control services to the existing Comp Demo list. These two NAICS codes would be added to the existing Comp Demo list which presently includes the NAICS codes for: (1) construction, (2) repair system of institutional services, (3) structural and engineering services, and (4) non-nuclear ship repair.

Under the Comp Demo law, Federal agencies may not set aside procurements for small businesses in these designated NAICS codes, providing that procurement otherwise would have won 40 percent of all prime contract awards in that NAICS code. This means that small businesses are required to win a minimum of 40 percent of the prime contract awards. If they do not win that minimum amount, small business set-asides for that NAICS code would be automatically reimposed.

The effective result of both the current Comp Demo law and my amendment is to assure that small business set-aside awards are more evenly distributed among small businesses, and benefit the greatest number of small businesses in the largest number of product and service sectors possible.

Indeed, the existing Comp Demo law has shown that small businesses in the four NAICS codes on the current Comp Demo list compete for, and win, large numbers of contracts, though on an unrestricted basis. The intent of the Comp Demo program is to ensure that each agency balances its procurement needs so that set aside contracting opportunities for small businesses are as widely distributed as possible across as many industries as possible.

Also important is the fact that the Comp Demo amendment does not affect (a) or (b) before the Comp Demo law is amended. The program to include landscape services and exterminating and pest control services will not increase the federal deficit.

In sum, Mr. Chairman, the existing Comp Demo program and my amendment to it will require that landscape and pest control businesses sit alongside a number of NAICS codes. It does not change or reduce the size of agency small business aside goals; it just makes the programs benefits additional to a greater number of small businesses across a larger number of industries.

Mr. HUNTER. Mr. Chairman, I yield 3 minutes to the gentleman from Washington (Mr. DICKS).

Mr. DICKS. Mr. Chairman, I want to compliment the gentleman from California (Chairman HUNTER) and the ranking member, the gentleman from Missouri (Mr. SKELTON) and their outstanding staffs on both sides for working with this reaffirm amendment.

One of the things that I am convinced of, and I am even more convinced today, is we need to start a program of tanker replacement. Every single airplane that bombed in Afghanistan and Iraq had to be refueled multiple times.

One of the reasons we are a superpower is because we have got these tankers. All of the original planes were built between 1957 and 1963. I have been to Tinker Air Force Base, I have seen the condition of these planes. The corrosion is significant and the cost of maintenance is going right through the roof. It is time to move out on this program.

The people who made mistakes in the contracting are being disciplined in the process, in the criminal process, and we should look at this on the merits. The chairman’s amendment lays out a process where we look at that.

If the chairman wants to explain it, I would be glad to yield to him. But basically we are going to have an analysis of alternatives, then we are going to have a negotiation session on the contract, then we are going to have a panel review with the Secretary of Defense; and we hope that by March 1, we will be able to finalize this and enter into an agreement to go forward with the 767s.

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. DICKS. I yield to the gentleman from California.

Mr. HUNTER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I think the gentleman has analyzed it correctly. We call this “Fresh Start.” It is based on the premise that the tanker fleet is the keystone to our American air power. Even our tactical air, coming off of carriers in Afghanistan, for example, had to drink four or five times from tankers going to target and coming back. Of course, the long-range stuff, all of our deep-strike capability hinges on tankers.

So our idea was, we take the mess, that is, all the personal, all of the charges and countercharges, and we move that all aside; and we say, we are going to start from the beginning thing we should be addressing, which is the requirement for our country.

We are going to take the requirement, and we are going to have a “Fresh Start” on tankers and use a blue ribbon panel of people with good judgment, and they are going to pass judgment on the business deal.

Mr. DICKS. Mr. Chairman, reclaiming my time, the key thing here is, we are buying an off-the-shelf aircraft. That means no development costs whatsoever.

I asked the chairman of the Boeing Company today what it would cost if we had to develop a new airplane, just in development before we got into production. He said $15 billion to $18 billion, and it would take a number of years to do that. So that option is not good.

Do not believe this House wants to buy this airplane from AirBus, so therefore before the 767 line goes down next year, we have got to enter into this agreement, militarize that line, and use it for tankers, which are so critical to our national security.

Mr. HUNTER. Mr. Chairman, if the gentleman will yield further, let me just say to the gentleman, I think it would be a massive mistake for the United States to buy foreign in this very important part of our national security.

Mr. DICKS. Mr. Chairman, this is a point we want to make. If we can get this done, we can do this for a lot less money than any of our options, and we can do it with an American airplane; and we have blocked obsolescence before in the C-141s. If we had that problem, we will undermine our military capabilities. So this amendment in this en bloc is very important for us to move forward. And I commend the chairman and ranking member for their leadership on this issue.

Mr. HUNTER. Mr. Chairman, I yield for the purpose of making a unanimous consent request to the gentlewoman from New Mexico (Mrs. WILSON).

(Mrs. WILSON of New Mexico asked and was given permission to revise and extend her remarks.)

Mrs. WILSON of New Mexico. Mr. Chairman, I am supporting the en bloc amendments. I do have some reservations about one of the amendments included in it.

I oppose the amendment offered by my friend and colleague from Washington State. DOE does not have the authority to reclassify, on its own, high level waste as low level waste. Yet, they proposed to do just that so that they could send some of this waste to WIPP. The $350 million DOE requested for the “high level waste proposal, cleanup projects included funds for activities that a Federal court has ruled violated the Nuclear Waste Policy Act.

To address this, we did two things: (1) We required an external scientific study (the National Academy of Sciences) to reevaluate any laws regarding high level waste are rewritten; (2) We removed $100 million for activities clouded by litigation, but allowed for the possibility of reprogramming if additional funds are needed, and asked DOE to provide the House and Senate committees with a list of projects it feels it can proceed with and why.

While my colleague’s amendment retains the external scientific study, it restores DOE’s high level waste cleanup funds to $300 million by transferring $50 million from the transportation capital fund for Air Force operations and maintenance.

I continue to oppose this amendment. First, because this could have a negative effect on
a number of bases, including those in New Mexico, and, second, to the extent that this softens the message we sent to DOE that we do not want them reclassifying waste on their own.

Mr. SKELTON. Mr. Chairman, I yield 1 minute to the gentleman from Washington (Mr. BAIRD).

Mr. BAIRD. Mr. Chairman, I thank the distinguished ranking member and the chairman for including in this en bloc amendment an amendment drafted by the gentleman from Rhode Island (Mr. KENNEDY) and me.

In essence, what our amendment does is ask the Department of Defense to study the availability of mental health services for our returning soldiers and their families. I have been to Walter Reed on many occasions, and we are providing outstanding physical health care and mental health care for those folks. But when people come back to their small towns, we need to make sure if they are suffering the emotional after-effects from the things they have seen and experienced, that they get the help they need, so they can return to their families, return to their work and not suffer lasting impacts.

For 23 years before serving in Congress, I worked as a psychologist, often with veterans and in VA hospitals; and I know we can provide care that will help our warriors return home. We need to do that.

I thank the chairman and ranking member for making sure this will happen and look forward to working with them when the report is returned from the DOE.

Mr. HUNTER. Mr. Chairman, I reserve the balance of my time.

Mr. SKELTON. Mr. Chairman, I yield 1 minute to the gentleman from South Carolina (Mr. SPRATT), a member of the Committee on Armed Services and ranking member of the Committee on the Budget.

Mr. SPRATT. Mr. Chairman, among the amendments included in the en bloc amendment known as the Hastings amendment.

The Department of Energy requested $350 million for accelerated clean-up of defense sites, old nuclear weapons production sites, where some of the world’s most radioactive nuclear waste is stored.

The chairman’s mark authorizes 250 of the $350 million that DOE asks for. I am glad to see us go close to at least 300. I would have gone to 350. But the amendment before us does leave out the fence or the conditions or the limitations that DOE would have imposed.

Both of these provisions, both the addition of money taking us to $300 million and the lack of any fence of conditions are steps in the right direction, and I commend the gentleman for his amendment and urge everyone to support it.

Mr. SKELTON. Mr. Chairman, I reserve the balance of my time.

Mr. HUNTER. Mr. Chairman, we have no further requests for time.

Mr. SKELTON. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mrs. MALONEY).

Mrs. MALONEY. Mr. Chairman, I thank the gentleman from California (Mr. HUNTER) and the gentleman from Missouri (Mr. SKELTON) for including my amendment in the en bloc amendments.

My amendment directs the Secretary of Defense to eliminate the backlog in rape and sexual assault evidence collection kits, reviving the processing time of those kits, and provide an adequate supply of those kits at all domestic and overseas military installations and military academies.

This amendment is similar to legislation this House passed earlier with the gentleman from Wisconsin (Mr. SENSBRENNER), the gentleman from Michigan (Mr. CONYERS), and the gentleman from New York (Ms. SLAUGHTER) and the gentlemanwoman from Ohio (Ms. PAYCE) that uses DNA technology to really convict rapists and to put them behind bars.

We know from the Department of Defense report that there are many kits that are gathering dust, that are not being processed. We know that rapists will still strike according to the FBI. They rate it the second worst crime preceded only by murder. And it is unconscionable that these are not being processed.

This merely helps convictions and helps protect men and women in the military. I thank very much the gentleman from Missouri (Mr. SKELTON) for working to have this included.

Mr. HASTINGS of Washington. Mr. Chairman, my amendment will restore $50 million cut by the House Armed Services Committee from the Department of Energy’s proposed nuclear waste cleanup budget.

It is important that the Federal government meet its legal and contractual cleanup obligations.

By returning $50 million to the Defense Site Acceleration Completion account, this amendment helps make certain that funds are available to ensure the Federal government continues the progress being made at cleaning up our Nation’s nuclear waste sites.

Although the Committee decreased the portion of the nuclear waste cleanup budget related to high-level liquid waste, the remainder of the cleanup budget was fully authorized by the Committee. I am grateful for the support shown for cleanup by Armed Services Committee Chairman Chairman and Subcommitte Chairman EVERETT. However, I offered this amendment because I believe Congress ought to make certain that the funds deemed necessary for cleanup next year by the Department of Energy, and included in the President’s budget, are made available.

The Committee’s action to cut funding for high-level liquid waste cleanup comes after a Federal district court ruling on high-level waste. While agreement on this matter has not yet been realized between the Department of Energy and the States in which affected waste sites are located, I believe it is important for the Congress to make available the funding so that planned cleanup activity does not have to be postponed due to unavailability of funds.

By adding back $50 million, my amendment helps advance cleanup progress next year.

The Federal government has a responsibility—a responsibility under the law...a contractual responsibility with the affected States...and a moral responsibility—to cleanup its nuclear waste sites.

At the Hanford cleanup site in my Washington state congressional district, there are 177 underground tanks containing more than 50 million gallons of liquid waste that are accelerating this funding.

For many, those figures may be difficult to imagine—but for the people I represent in Washington State, the more than 50 million gallons of radioactive, nuclear waste is very real.

The citizens of Washington State did not invite this waste into our State—in the 1940s as part of the Manhattan Project, the Federal government moved farmers from their land and uprooted several small communities from a 586 square mile area along the Columbia River to make room for the current situation that ultimately helped lead to an end of the Second World War, and over the decades that followed, to victory in the Cold War. The legacy of this nuclear production is the more than 50 million gallons of liquid waste at the Department of Energy’s obligation to cleanup these wastes—and I will hold the Department responsible for getting this work done. I pushed this amendment to restore $50 million to the cleanup budget because it is essential that the funds be available to keep cleanup on track. I also firmly believe that the State of Washington must be involved in these decisions. I have opposed and will oppose any effort to force a solution on Washington State. Department of Energy officials have expressed their commitment not to pursue a change in the law that does not have the support of the affected states—and that commitment is constructive to resolving this matter.

It has been my consistent view that the Department of Energy and States have a shared responsibility to recognize the current situation—and I want to strongly reiterate that for the sake of cleaning up this massive volume of waste, reducing its potential threat to health and the environment, and to make certain cleanup progress is not jeopardized, that the shared commitment is necessary. I believe we know the Department of Energy and States are committed to cleaning up these wastes and continued disagreement only makes that shared goal more difficult. I will keep pushing for a resolution and I will continue working to see that certain funds are available for cleanup work.

I also want to express my great respect and appreciation to Mr. SIMPSON of Idaho and Mr. BARRETT of South Carolina for the assistance and support they provided for this amendment and for success in adding $50 million to the cleanup budget.

Mr. BARRETT of South Carolina. Mr. Chairman, I rise in support of the amendment offered by my esteemed colleague, Representative BARRETT of South Carolina for the assistance and support they provided for this amendment and for success in adding $50 million to the cleanup budget.
posed by such waste. However, we all bear this responsibility because this waste represents a security created on behalf of all Americans. As a result, this Congress has the duty to reduce the environmental risk posed by this waste in a safe, expeditious, and cost-effective manner.

A vote in favor of the Hastings amendment fulfills this obligation because it maintains the current accelerated cleanup schedules and saves the American taxpayers billions of dollars across our Nation’s nuclear complexes. The problem of nuclear waste will not solve itself. The less priority we give to cleaning up our nuclear waste today, the greater costs we impose on the public tomorrow. The Hastings amendment responsibly places our country in a better position to fulfill this duty of expediting environmental cleanup to save costs in the long run.

I urge my colleagues to support the American taxpayer by voting in favor of the Hastings amendment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I am pleased to add my voice in support of the Baird-Kennedy amendment that will ensure that mental health services are available to our troops. Just as it would be crazy to send troops into a prolonged battle without medics and surgeons to tend to their physical wounds, it would also be inappropriate to send soldiers to the battlefield without support from professionals capable of dealing with their mental health issues. Poor mental health can hamper a soldier’s ability to do his or her job, and can thus jeopardize the safety of comrades, and the success of the mission. Moreover, mental health issues can persist even after the soldier comes home, affecting their families, their workplace, our VA hospitals, and our society. Our troops deserve top-quality mental health services, for their own sake and for the sake of the Nation.

Such support and resources must include adequate and appropriate mental health care to minimize the impact that the trauma of combat, separation from one’s family, and other stresses associated with deployment have on the health of our troops. We also owe it to those who sacrifice for the country to give them every opportunity to return to their families intact, mentally as well as physically.

In pursuit of these goals, this amendment to the House’s National Defense Authorization Act for FY2005 would require the Pentagon to conduct a comprehensive study of the availability, accessibility, cost and effectiveness of the mental health services available to U.S. military personnel deployed to combat theaters. In addition, it requires the Secretary to examine procurement mental and other screening procedures used for soldiers returning from combat theaters, as well as treatment availability for families of deployed servicemembers.

This is a sensible approach to an important problem. We have seen in Abu Ghraib, and in recent reports of sexual promiscuity and abuse in our military—that the stresses of war can bring about behaviors and emotional responses that are fundamentally incompatible with American values and our mission overseas. We need to prevent these problems whenever possible through mental health interventions, and treat victims when others go astray. First we need to find out the need for and availability of care.

I commend my colleague from the Science Committee, Congressman BAIRD, for his leadership on this issue.

Mr. JOHNSON of Illinois. Mr. Chairman, today is a significant day for families throughout the United States. Not just because the House Armed Services Committee is appropriating the National Defense Authorization Act for Fiscal Year 2005, but also because 3½ years of perseverence are beginning to pay off. Thanks to Chairman DUNCAN HUNTER of the House Armed Services Committee, Chairman Christopher SMITH of the House Veterans’ Affairs Committee, Chairman DAVID DRIER of the Rules Committee, their staffs, and mine, family members of those who are buried in an overseas United States military cemetery will finally have an avenue into the Department of Defense to present evidence that the decision to leave the remains of their loved ones overseas was based on a misunderstanding or error.

My amendment is simple and straightforward. It gives families who loved ones buried in an overseas military cemetery a way to present to the Department of Defense that they should be allowed to bring the remains of their family member home and, if ultimately approved, to do so at no cost to the United States. Therefore, this provision is set to become effective 4 years after the date of enactment of this bill for application. I believe that amount of time is sufficient and fair. In the coming weeks as this bill moves into conference, I will be commenting on my amendment and what I believe a "misunderstanding" or "error related to the disposition decision" means. I merely wanted to take this opportunity to thank the respective chairmen and my colleagues for supporting my amendment.

Mr. CUNNINGHAM. Mr. Chairman, first, I want to thank the Committee Chairman and Ranking Member for allowing this amendment to be considered. I have had great bipartisan support in raising this issue, most notably my colleague from California, Ms. HARMAN. My amendment directs placement of a memorial in Arlington National Cemetery honoring noncitizen service members killed in the line of duty while serving in the United States Armed Forces. The amendment designates the Secretary of the Army to coordinate and direct this effort. In addition, the amendment allows for the collection of private donations for design and construction, while restricting the use of Federal funds. It is no cost to the taxpayers and has no budgetary implications for the DoD bill. Finally, authority for accepting donations and pursuing the memorial expires 5 years after the date of enactment.

Honoring our service members is a process that begins on the battlefield through ensuring that our troops have the best equipment and other essentials. It continues as we welcome them home upon returning from war, when we fly the POW–MIA flag, when we care for them and their families and, ultimately, when we lay them to rest with appropriate remembrance and tribute. Many American military heroes, past and present, were born outside of the United States. From the thousands of noncitizens who fought for our independence as a Nation, to those who fought for the Union Army during the Civil War, to the more than 15,000 noncitizen members of today’s Armed Forces, these men and women have sacrificed for our country and the preservation of our precious freedom.

Our country is united in its support for our service men and women who are prepared to make the ultimate sacrifice to defend our freedom. As of the end of March, we have lost 24 noncitizen service members in Operation Iraqi Freedom, including a member of my district, Lance Corporal Jesus Suarez Del Solar.

It is time that we appropriately recognize their bravery, valor, and patriotism. Arlington, the Nation’s premier military cemetery and shrine honoring the men and women who served in the Armed Forces, is a particularly fitting place for this tribute. I encourage you to support this bipartisan effort.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise to give bipartisan support to the gentleman from Illinois, Mr. MANZULLO, on his amendment to H.R. 4200, the Defense authorization bill. This proposal would allow for procurement officials within the Department of Defense to include the creation of jobs in the United States as an evaluation factor.

The House Armed Services Committee and Chairman HUNTER’s office have reviewed this proposal and has found it to be acceptable.

Mr. MANZULLO of Illinois. Mr. Chairman, procurement officials don’t have the ability to consider whether procurement will add jobs or take away jobs from U.S. shores. They can’t consider it in a Best Value determination and analysis of the impact on U.S. jobs is not part of acquisition planning schemes. The premise behind this proposal is to help our procurement agents to help the American job market and our workers by using taxpayer dollars to support them.

The amendment is included as an evaluation factor and doesn’t require vendors to create jobs here. It does, however, give an incentive to companies—foreign and domestic—to foster job creation here. It supports insourcing and gives the job-creators an edge in the evaluation process.

For example, if there are multiple firms that are competing for a contract, companies that create jobs here in the United States get extra consideration versus those that don’t. It becomes a competitive advantage. You can also have a solicitation where no firm creates jobs. The amendment is supported by the provision.

Finally, a foreign firm could be in the final selection process with a domestic firm, where the foreign company wins the contract because they pledge to create jobs in the United States while the domestic company plans not to add any new jobs. Enforcement would be done by past performance evaluations.

With this amendment, we would demonstrate that this Congress is committed to creating more jobs in the United States and providing the necessary environment to entice business to stay here.

I am particularly concerned with the huge disparity that exists in the awarding of procurement contracts to minority and women-owned businesses—or M/WBEs here in the United States. Mr. MANZULLO’s amendment, if passed, would yield positive benefits that would work to repair this disparity by a significant margin.

I offer as a snapshot of the disparity that exists on a nationwide scale a study of one State.

A primary complaint heard from the business owners interviewed in connection with the study released in 2001 was that large firms tended to be favored for selection as
contractors because of their experience, size, certain bidding practices and selection procedures. Nonminority male firms were seen as the recipients of State contracts because a large percent of them had been in business longer, had more resources, and generated significantly greater revenues than M/WBEs. Some key examples are listed below:

Discrepancies existed between the numbers of employees of M/WBEs compared to nonminority firms. Nine percent of M/WBEs had more than 50 employees, whereas nonminority male firms had a more even distribution among the staff size categories, with 16 percent of nonminority male firms having more than 50 employees.

Thirty-eight percent of the businesses earned $1 million or less in gross revenues for the year 2000. Twenty-three percent of nonminority male firms earned greater than $10 million, while 12 percent of nonminority women firms and 10 percent African American firms earned more than $10 million in 2000. A very small number of Native American firms were surveyed, thereby creating unreliable data. Nonetheless, of the 7 Native American firms surveyed, 2 (40 percent) of these firms had gross revenues greater than $10 million. African American firms had the highest percentage of applicants of any ethnicity for a business start-up loan. However, only 25 percent of the African American applications were approved at least once, while nonminority male firms had a success rate of 75 percent.

Generally, M/WBEs were more likely to bid as subcontractors than were nonminority male firms. For example, 69 percent of African American firms reported bidding as a subcontractor, or more times since 1995. Even greater percentages were found for Hispanic American firms (100 percent), Native American firms (100 percent), Asian American firms (80 percent), and nonminority women-owned firms (78 percent). In contrast, fewer firms owned by nonminority males reported bidding as subcontractors during the study period (60 percent).

Fifty-one percent of African American firms reported that it is commonplace for a prime contract to subcontract minority subcontractor on a bid to meet the “good faith effort” requirement, and then drop the minority subcontractor after winning the award. Only 21 percent of nonminority women firms agreed with this statement. Nonminority male firms disagreed with this statement, and Hispanic, Asian, and Native American respondents collectively (54 percent or 13 out of 24).

If we extrapolate the above data nationwide, the data suggest clear need for the MANZULLO amendment. Mr. Chairman, I support his amendment and urge my colleagues to join me.

Mr. SKELTON. Mr. Chairman, we have no further requests for time, and I yield back the balance of my time.

Mr. HUNTER. Mr. Chairman, we have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendments en bloc offered by the gentleman from California (Mr. HUNTER).

The amendments en bloc were agreed to.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 11 offered by Mr. WAMP.

Mr. WAMP. Mr. Chairman, I offer an amendment.

The Chairman pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 11 offered by Mr. WAMP. At the end of title XXXI of the bill (page 556, after line 10), add the following new section:

SECTION 3134. IMPROVEMENTS TO ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM. (a) STATE AGREEMENTS. —Section 3661 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7856) is amended:

(1) in subsection (b) by striking “Pursuant to agreements under subsection (a), the” and inserting “The”;

(2) in subsection (c) by striking “provided in an agreement under subsection (a), and” and “if”; and

(3) in subsection (e) by striking “If provided in an agreement under subsection (a)” and inserting “If a panel reports a determination under subsection (d)(5)”;

(b) SELECTION OF PANEL MEMBERS. —Section 3661 of that Act (42 U.S.C. 7856a) is further amended in subsection (d) by amending paragraph (2) to read as follows:

“(2) The Secretary of Health and Human Services shall seek bids to serve as panel members based on experience and competency in diagnosing occupational illnesses. For each individual so selected, the Secretary shall appoint that individual as a panel member or obtain by contract the services of that individual as a panel member.”;

The CHAIRMAN pro tempore. Pursuant to House Resolution 648, the gentleman from Tennessee (Mr. WAMP) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Tennessee (Mr. WAMP).

Mr. WAMP. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the Defense Authorization Act of 2001, which was actually signed into law in the fall of 2000 by President Clinton, included the Energy Employees Occupational Illness Compensation Program Act, EEOICPA, which we wrote and passed to compensate workers who became ill as a result of their work in the Department of Energy facilities across the country. There are nine major sites affected, and I represent Oak Ridge, Tennessee, which handles the largest number of affected workers in the country.

This is a critical issue for many of us, and we have been very involved for a number of years. The Department of Energy has had definite problems administering the program, and some of those programs are brought about by statutory issues that need to be remedied.

Part B of this program is actually administered by the Department of Labor, and people affected qualify for $150,000 lump-sum payments. That has gone relatively smooth. But part D of this program is the DOE portion, and we have had numerous problems identified under subtitle B relative to the claims process, a lack of communication long delays, et cetera.

Now, the GAO, which we need to listen to in this case, has made recommendations for changes to the Department of Energy. The Department of Energy has made rules changes, but we now need statutory changes. And this amendment actually addresses three issues that cannot be done by rules. They need to be done by statute here in an amendment, and we will have the full support of the Department of Energy, and the administration is telling us that these three changes be adopted.

Number one, this amendment eliminates the pay cap for physicians and lets the market set the rate. One of our problems today is that the statute sets physicians, and they sit at $69 an hour. Indeed, occupational medicine physicians are paid in the market $130 to $150 an hour. We do not have enough physicians to meet this caseload; and, therefore, we have a backlog. This will help alleviate the backlog.

Number two, this amendment eliminates restrictions on hiring authority. Today, the Department of Energy can only hire temporary or intermittent physicians. When, indeed, we need Federal and contract employees full time on the job to move this program forward. This has severely impaired DOE’s ability to staff this necessary program and to move it smoothly.

Thirdly, this amendment will eliminate the requirements that an application for a benefit can go forward if, indeed, the State has an agreement in place. Not all States do. Based on the feedback for the advocates of the program and they sit at $69 at the local level. DOE is moving away from this requirement, and we need to statutorily change the legislation. This will affect 80 percent of the workers.

With all due respect to a few people in this body that may be opposed to this, I know it does not do everything; but we shopped these issues around to the committees of jurisdiction, and this is all we could get. I would like to do more.

There were amendments offered to the Committee on Rules that I said I would be happy to support. They were not ruled in order, and you do have some committees of jurisdiction weighing in.

This is what we can do. And I hope that even though people will express their discontent today on the floor with the Department of Energy which we have worked very hard to have this be a very frustrating, very complicated program and there was great bipartisan cooperation in bringing it about, I hope that they can support this amendment in the final analysis because this clearly will help immediately many workers who are waiting in line. That is the bottom line.

While it does not get to everyone, there are States that do not have agreements in place. They may not have a willing payer in their State, or whatever the issue is. Eighty percent of the workers affected will be expedited if this amendment is adopted and
allows DOE to move forward, getting the physicians, hitting the panels on time, and making this program more effective. It is very complicated, but we need to make these changes today.

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

Mrs. TAUSCHER. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN pro tempore. The gentleman from California (Mrs. Tauscher) is recognized for 5 minutes.

Mrs. TAUSCHER. Mr. Chairman, I rise in opposition to the amendment.

Mr. STRICKLAND. Mr. Chairman, I rise in support of the amendment offered by my colleague Representative WAMP, to modify the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). The modifications offered in this amendment will address current obstacles in addressing the backlog of cases needing review by physician panels under this program. The report for this bill notes, with bipartisan support, that such remedies were needed to allow timely physician review panel determinations. This amendment is a step forward in assuring that workers receive the speedy assistance and, where found appropriate, compensation that we in Congress intended, therefore, I strongly support it.

Yet I have to observe that this vote, while an important and positive step, is not by itself enough. I have had the fortune of knowing some of these workers personally and have become familiar with their frustration at the glacial pace of processing of their claims through the Department of Energy. One was Raymond Ruiz, a former worker at Los Alamos, who was paid through March of 2004. His case was finally taken up by a physician panel, but he did not live long enough to receive compensation for his asbestos-related disease. Before his death his colleagues in the State legislature passed a joint memorial requesting reforms in this program. Other New Mexicans have applied under Part D of EEOICPA and most have been backlogged.

In addition to this amendment we need to address three things in the implementation on this part of EEOICPA. First, we need to ensure that the management of the program is sound and effective. The Department of Energy has not created an acceptable track record. It is now working to improve its practices, but it is possible we may need to consider moving the program out of DOE, if that will speedup the appropriate resolution of claims. Second, we need to assure that medical determinations are speedy as well as proper. This amendment is a step in that direction. DOE has made to its procedures, but we may need to make other improvements to eliminate the backlog in a timely way. Third, we will need to address solutions to the cases in which "willing payers" are not available. I urge my colleagues to support this amendment.

But we still have work to do to ensure EEOICPA provides the help we in Congress intended for these workers. I look forward to considering additional ideas, including insights from the General Accounting Office report currently in preparation, and ideas that may be discussed in the other body.

Mr. WAMP. Mr. Chairman, will the gentlewoman yield?

Mrs. WILSON of New Mexico. I yield to the gentleman from Tennessee.

Mr. WAMP. Mr. Chairman, this issue is not about moving the program to the Department of Labor. That is another issue for another day. That may come up at a later time. This is about making the program as it is currently written work much better. That is why I really hope that everybody that has a dog in this hunt will help us do this today. It is just one step forward, but it needs to be made short of sweeping reforms, which I know are pending before the Senate, but that is a whole different issue, and a lot of people have to get back in line and start over if that doesn't happen.

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

Mrs. TAUSCHER. Mr. Chairman, I yield the balance of my time to the gentleman from Tennessee (Mr. STRICKLAND), the author of the amendment that I wish I could have supported.

STRICKLAND. Mr. Chairman, why do we not just do the right thing when it comes to this issue, just do the right thing, help all the workers who need help? I appreciate the effort of the gentleman from Tennessee (Mr. WAMP) to improve this program, but I cannot support his amendment.

Unfortunately, DOE's management of this program has been a miserable failure. After spending millions of dollars, they can only point to one claim being paid through March of 2004. Not only is DOE's claims processing moving at a snail's pace, but by the Department's own admission, as many as 50 percent of the claimants may not have a willing payer. This means that regardless of how quickly DOE procures claims, many sick workers will get nothing but an IOU.

The gentleman from Tennessee's (Mr. WAMP) amendment does nothing to address this larger problem of a willing payer, which affects my constituents in Ohio and other nuclear workers in Alaska, Colorado, Idaho, Iowa, Kentucky, Missouri, Nevada, and New Mexico, and we do not fully understand the
magnitude of this problem as GAO acknowledges that it is not possible to effectively audit DOE’s databases.

Meanwhile, I have a June 7, 2002, DOE letter saying that the Department is compiling a list of sites which would not have a willing payer. Nearly 2 years later, DOE’s Under Secretary testified in the Senate, and I am quoting, “DOE has proposed a study by the National Academies that would commence when sufficient cases have been through the State program to provide meaningful data regarding the finding of willing payers.”

How long can DOE study this obvious problem? Enough is enough. If DOE will not face the problem, then it is our responsibility to take action because DOE apparently thinks that conducting a study is going to help sick workers.

The Senate has been noted as working on an amendment in a bipartisan fashion. I went to the Committee on Rules where the amendment that would have made significant progress in resolving the willing payer issue. My amendment was not made in order. Processing claims more quickly falls short of addressing the glaring flaw in this program.

The intent of this program is to compensate our Cold War veterans based on geography. We should be paying comprehensive reform of this program so that all meritorious claims can be paid in a timely manner.

Mr. UDALL of New Mexico. Mr. Chairman, my colleague from Tennessee who is proposing this amendment has been very involved in Energy Employees Compensation issues and I thank him for that. Surely, in proposing this amendment, he has good intentions.

However, because the amendment fails to accomplish real reform of the Energy Employees Occupational Illness Compensation Program, I must rise in opposition to the amendment.

It has been almost 3½ years since Congress passed the Energy Employees Occupational Illness Compensation Program Act. This bill was passed in an attempt to bring justice to the thousands of energy workers who incurred illnesses—in many cases deadly—as a result of their work at Department of Energy facilities. In my state of New Mexico, there are over 1,200 workers who have filed such claims.

Yet after 3½ years, less than 3 percent of the claims filed with the Department of Energy have been processed. This means that the vast majority of the men and women who have filed claims through this program—many of whom will die before they ever see a compensation check—are being denied justice.

Conversely, the Department of Labor has processed 95 percent of the claims in its area of responsibility. DOE recognizes that it has failed yet now it wants more money. Surely I am not the only member on this floor who shudders at the prospect of throwing millions more at a department that has failed this program and these people for almost 4 years.

Unfortunately, this amendment does not include crucial components that are necessary for real reform. By real reform, I mean identifying a willing payer for all claims submitted by energy employees, taking a hard look at how DOE has spent money on the program so far with so few results, and addressing the reasons for the stark difference in progress on claims between the Department of Energy and the Department of Labor.

If this amendment were part of a larger reform package, I may have looked upon it more favorably. I joined Representatives STRICKLAND of Ohio, UDALL of Colorado, TAUSCHER of California, and COPPER of Tennessee in submitting an amendment to the Rules Committee that would have called upon the President to send legislation to Congress proposing a willing payer. Unfortunately, the Rules Committee did not make this amendment in order.

Because this amendment fails so far short to real reform, I cannot vote for it. Passing this amendment without other crucial reform components rewards the Department of Energy for its failure. The 1,200 people in New Mexico who have filed claims simply cannot afford the status quo.

I recommend a “no” vote on the amendment.

Mr. WHITFIELD. Mr. Chairman, I support efforts to streamline the claims process for DOE workers seeking compensation for illnesses resulting from exposure to toxic substances and other hazardous materials, and I will vote in favor of the amendment.

The changes the amendment will not insure payments to claimants in states like Kentucky where there is no willing payer to cover compensation costs. DOE lacks the authority to direct the DOE contractors or their insurers who employed these workers at the Paducah Gaseous Diffusion Plant to pay compensation claims even if the claims are approved by DOE physicians panels. More important, the Paducah uranium enrichment plant is no longer a DOE-run facility. Plant operations were privatized in 1998 and DOE cannot direct that private operator, USEC, to pay claims approved by DOE physicians panels. Only the current DOE contractor employees at Paducah will have a willing payer. So, depending on what state you live in, even if you prove that your illness is work-related, you may never receive a dime in compensation.

Of the 23,000 claims filed with DOE, 2,874 were filed by my constituents because of illnesses they contracted while working at the Paducah Gaseous Diffusion Plant. Those workers and their families like them across the country deserve more.

I do support the amendment because if Congress takes no other action this session repairing this program, this will at least help expedite the DOE claims process. But I think all former and current workers in the DOE complex would be much better served if we fixed the willing payer problem once and for all and moved the administration of the entire DOE program to the Department of Labor. That is still my goal as we look to the future.

The CHAIRMAN pro tempore (Mr. UPTON). All time has expired.

The question is on the amendment offered by the gentleman from Tennessee (Mr. UDALL).

The amendment was agreed to.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 25 offered by Mr. RYUN of Kansas.

At the end of title XII (page 432, after line 16), insert the following new section:

SEC. 12. MILITARY EDUCATIONAL EXCHANGES BETWEEN OFFICERS AND OFFICIALS OF THE UNITED STATES AND TAIWAN.

(a) DEFENSE EXCHANGES.—The Secretary of Defense shall undertake a program of senior military officer and senior official exchanges with Taiwan designed to improve Taiwan’s defenses against the People’s Liberation Army of the People’s Republic of China.

(b) EXCHANGES DESCRIBED.—For the purposes of this section, the term “exchange” means an activity, exercise, event, or observation opportunity between Armed Forces personnel or Department of Defense officials of the United States and armed forces personnel and officials of Taiwan.

(c) FOCUS OF EXCHANGES.—The senior military officer and senior official exchanges undertaken pursuant to subsection (a) shall include exchanges focused on the following, except as they relate to defending Taiwan against potential submarine attack and potential missile attack:

(1) Threat analysis.

(2) Military doctrine.

(3) Force planning.

(4) Logistic support.

(5) Intelligence collection and analysis.

(6) Operational tactics, techniques, and procedures.

(d) CIVIL-MILITARY AFFAIRS.—The senior military officer and senior official exchanges undertaken pursuant to subsection (a) shall include activities and exercises focused on civil-military relations, including parliamentary relations.

(e) LOCATION OF EXCHANGES.—The senior military officer and senior official exchanges undertaken pursuant to subsection (a) shall be conducted in both the United States and Taiwan.

(f) DEFINITIONS.—For purposes of this section:

(1) The term “senior military officer” means a general or flag officer of the Armed Forces on active duty.

(2) The term “senior official” means a chief of a military department or a military department official.

The CHAIRMAN pro tempore, pursuant to House resolution 648, the gentleman from Kansas (Mr. RYUN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Kansas (Mr. RYUN).

Mr. RYUN of Kansas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, first of all, I want to thank my colleague the gentlewoman from Guam (Ms. BORDALLO) for her help in cosponsoring this amendment and her continuing efforts to seek a peaceful solution and status in the Pacific Rim. I also want to thank the DOD for their support of this amendment.

Taiwan is facing a very difficult situation. With a clear and rapidly modernizing threat across the straits, I am concerned that Taiwan is increasingly unable to provide a credible deterrent. Unfortunately, this is due, in part, to current U.S. policy.
Although Taiwan has access to U.S. military hardware, it faces two substantial hurdles in being defensively self-sufficient. Taiwan has difficulties integrating these new systems into its current forces, and Taiwan has difficulties prioritizing its own defense needs. Senior officer/official educational exchanges would help fix both problems.

This amendment would require the Secretary of Defense to initiate these senior officer/official educational exchanges. To be held both in the United States and Taiwan, these programs would focus on antiship warfare, ballistic missile defense and C4ISR improvements, the three fields the U.S. Department of Defense says Taiwan needs the most assistance. At the same time, this amendment would provide the Secretary discretion on whom to send to Taiwan and under what circumstances.

Currently, the Department of Defense has selected from sending to Taiwan general officers and DOD officials at the deputy assistant level or above. I understand that this is a unique restriction placed only on Taiwan. This restriction is even more surprising, given that Taiwan is one of our democratic allies.

Our commitment to ensuring a peaceful resolution between China and Taiwan must not be just talk. By allowing senior military officials/educational exchanges, we will be encouraging greater Taiwanese self-sufficiency and provide for greater political stability across the Straits.

I ask support for Taiwan through the support of the Ryun-Bordallo amendment.

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

The CHAIRMAN pro tempore. Does any Member rise in opposition to the amendment?

Mr. TURNER of Texas. Yes, I am in opposition, Mr. Chairman.

The CHAIRMAN pro tempore. The gentleman from Texas (Mr. TURNER) has 2 minutes remaining.

Mr. TURNER. Mr. Chairman, I yield the remaining time to the gentleman from Kansas (Mr. RYUN) in offering an amendment to improve military education exchanges between Taiwan and the United States. Given our commitment to ensure the peaceful settlement of differences between Taiwan and mainland China, it only makes sense that we remind the Chinese at every possible opportunity that war is not an option. By hosting Taiwanese military officers and by sending our own military leadership to Taiwan, we reinforce the bonds of friendship and defense.

The opportunity for dialogue between military planners provided in this amendment will help the Taiwanese Government to have a good net assessment of the strategic situation in the Taiwan Strait. It is my fervent hope that these military exchanges will also provide a boost to civil-military relations between our two nations. Our model of civilian control of the military within a democratic society is one that Taiwan has truly adopted as its own. Other nations in the region could benefit from the stability of such a system.

Given Guam’s proximity to Taiwan, it is a logical place to host these military exchanges. Andersen Air Force Base and the Command Naval Headquarters Marianas have excellent conference and training facilities. The Department of Defense has identified knowledge of submarine operations as a key improvement area for the Taiwanese military. Given that forces from Guam, including our home-ported submarines, would be involved in any joint operations with Taiwan, it only makes sense that we work closely together.

So I urge my colleagues to support this amendment, which is an expression of our friendship with the people of Taiwan.

Mr. ORTIZ of Texas. Mr. Chairman, I yield 1 minute to the gentleman from Texas (Mr. ORTIZ).

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

Mr. ORTIZ. Mr. Chairman, I have the utmost respect for my two colleagues, the gentleman from Kansas (Mr. RYUN) and the gentlewoman from Guam (Ms. BORDALLO), but we have a great stake in impartial diplomacy when it comes to Taiwan and China at every level.

I think that I am one of the Members who has been to Taiwan more than anybody else, at least 40 times because of the business we do with them, and I love the people of Taiwan. I have traveled extensively in the Far East on military trade missions and love the people of both China and Taiwan.

Taiwan is still working through a very divisive presidential election which has only further strained the relationship with China, and of course, the people of the United States.

This amendment would require the Secretary of Defense to revise and extend his requirement for a senior official/officer educational program to include educational exchanges focused on the following, especially as they relate to defending Taiwan against potential submarine attack and potential missile attack, threat analysis, military doctrine, force planning, logistical support, intelligence collection and analysis, operational tactics, techniques and procedures.

My goodness, we are inviting a conflict. I think, very, very well. We are making a severe step in that direction. I oppose the amendment.

Mr. RYUN of Kansas. Mr. Chairman, first of all, I would say DOD strongly supports this amendment.

Mr. RYUN. Mr. Chairman, I yield 2 minutes to the gentlewoman from Guam (Ms. BORDALLO).

Ms. BORDALLO. Mr. Chairman, I rise today to join my colleagues from Kansas (Mr. RYUN) in offering an amendment to improve military education exchanges between Taiwan and the United States. Given our commitment to ensure the peaceful settlement of differences between Taiwan and mainland China, it only makes sense that we remind the Chinese at every possible opportunity that war is not an option. By hosting Taiwanese military officers and by sending our own military leadership to Taiwan, we reinforce the bonds of friendship and defense.

The opportunity for dialogue between military planners provided in this amendment will help the Taiwanese Government to have a good net assessment of the strategic situation in the Taiwan Strait. It is my fervent hope that these military exchanges will also provide a boost to civil-military relations between our two nations. Our model of civilian control of the military within a democratic society is one that Taiwan has truly adopted as its own. Other nations in the region could benefit from the stability of such a system.

Given Guam’s proximity to Taiwan, it is a logical place to host these military exchanges. Andersen Air Force Base and the Command Naval Headquarters Marianas have excellent conference and training facilities. The Department of Defense has identified knowledge of submarine operations as a key improvement area for the Taiwanese military. Given that forces from Guam, including our home-ported submarines, would be involved in any joint operations with Taiwan, it only makes sense that we work closely together.

So I urge my colleagues to support this amendment, which is an expression of our friendship with the people of Taiwan.

Mr. TURNER of Texas. Mr. Chairman, I yield 1 minute to the gentleman from Texas (Mr. ORTIZ).

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

Mr. ORTIZ. Mr. Chairman, I have the utmost respect for my two colleagues, the gentleman from Kansas (Mr. RYUN) and the gentlewoman from Guam (Ms. BORDALLO), but we have a great stake in impartial diplomacy when it comes to Taiwan and China at every level.

I think that I am one of the Members who has been to Taiwan more than anybody else, at least 40 times because of the business we do with them, and I love the people of Taiwan. I have traveled extensively in the Far East on military trade missions and love the people of both China and Taiwan.

Taiwan is still working through a very divisive presidential election which has only further strained the relationship with China, and of course, the people of the United States.

This amendment would require the Secretary of Defense to revise and extend his requirement for a senior official/officer educational program to include educational exchanges focused on the following, especially as they relate to defending Taiwan against potential submarine attack and potential missile attack, threat analysis, military doctrine, force planning, logistical support, intelligence collection and analysis, operational tactics, techniques and procedures.

My goodness, we are inviting a conflict. I think, very, very well. We are making a severe step in that direction. I oppose the amendment.

Mr. RYUN of Kansas. Mr. Chairman, first of all, I would say DOD strongly supports this amendment.

Mr. RYUN. Mr. Chairman, I yield 2 minutes to the gentlewoman from Guam (Ms. BORDALLO).

Ms. BORDALLO. Mr. Chairman, I rise today to join my colleagues from Kansas (Mr. RYUN) in offering an amendment to improve military education exchanges between Taiwan and the United States. Given our commitment to ensure the peaceful settlement of differences between Taiwan and mainland China, it only makes sense that we remind the Chinese at every possible opportunity that war is not an option. By hosting Taiwanese military officers and by sending our own military leadership to Taiwan, we reinforce the bonds of friendship and defense.

The opportunity for dialogue between military planners provided in this amendment will help the Taiwanese Government to have a good net assessment of the strategic situation in the Taiwan Strait. It is my fervent hope that these military exchanges will also provide a boost to civil-military relations between our two nations. Our model of civilian control of the military within a democratic society is one that Taiwan has truly adopted as its own. Other nations in the region could benefit from the stability of such a system.

Given Guam’s proximity to Taiwan, it is a logical place to host these military exchanges. Andersen Air Force Base and the Command Naval Headquarters Marianas have excellent conference and training facilities. The Department of Defense has identified knowledge of submarine operations as a key improvement area for the Taiwanese military. Given that forces from Guam, including our home-ported submarines, would be involved in any joint operations with Taiwan, it only makes sense that we work closely together.

So I urge my colleagues to support this amendment, which is an expression of our friendship with the people of Taiwan.
of it being acquired with their vast surplus of trade cash. It is absolutely appropriate that we maintain this friendship with Taiwan and in that friendship engage our military leadership, and I would support the amendment.

Mr. TURNER of Texas. Mr. Chairman, I yield myself such time as I may consider necessary for the better part of a century. The passage of the Department of Defense Appropriations Act of 2004 has authorized the development of a military alliance between the United States and Taiwan.

I urge Members to leave this matter in the hands of our President, to allow him to do this. Never have we required anything of this sort. High-level military personnel and high-level civilians have been provided with the necessary resources.

Mr. OBERSTAR. Mr. Chairman, I rise today in opposition to the Ryun/Bordello amendment.

Mr. TURNER of Texas. Mr. Chairman, Mr. Chairman, and I hope that in the next 1 hour of debate in the House equally divided and controlled by the chair and ranking minority member of the Committee on Rules, I have the opportunity to address the amendment.

Mr. HUNTER. Mr. Chairman, I move that the Committee do now rise.

The question was taken; and the Chair pro tempore announced that the ayes appeared to have it. Mr. TURNER of Texas. Mr. Chairman, I demand a recorded vote.

The Chair pro tempore. The Speaker pro tempore (Mr. BARNETT of South Carolina) having assumed the chair, Mr. UPTON, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4200) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2005, and for other purposes, had come to no resolution thereon.

PROVIDING FOR CONSIDERATION OF H.R. 4359, CHILD CREDIT PRESERVATION AND EXPANSION ACT OF 2004

Ms. PRYCE of Ohio. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 644 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 644
Resolved. That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 4359) to amend the Internal Revenue Code of 1986 to increase the child tax credit. The bill shall be considered as read for amendment. The previous question shall be considered as ordered on the bill to final passage without intervening motion except: (1) one hour of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means; (2) the amendment in the nature of a substitute offered by Representative Rangel of New York or his designee, which shall be in order without intervention of any point of order; shall be considered as read, and shall be separately debateable for one hour equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Ohio (Ms. PRYCE) is recognized for 1 hour.

Ms. PRYCE of Ohio. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to my colleague and friend, the gentleman from Massachusetts (Mr. MCGOVERN), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, H. Res. 644 provides for 1 hour of debate in the House equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means.

Mr. Speaker, H. Res. 644 provides for 1 hour of debate in the House equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means.

The resolution was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. BARNETT) having assumed the chair, Mr. UPTON, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4200) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2005, and for other purposes, had come to no resolution thereon.
It also provides for consideration of the amendment in the nature of a substitute printed in the Committee on Rules report accompanying the resolution, if offered by the gentleman from New York (Mr. RANGEL) or his designee, which will be considered as read and shall be separately debatable for 1 hour equally divided and controlled by the proponent and an opponent.

Finally, the resolution waives all points of order against the amendment printed in the report, and provides the motion to recommit with or without instructions.

Mr. Speaker, in 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act, which put $1 trillion back into the pockets of the American people and led to the strong economic recovery we are witnessing today. Without that package, the beating that our economy took as a result of September 11 would have been even more disastrous.

This relief plan expanded the child tax credit initially enacted as part of the Tax Relief Act of 1997, increasing it from $400 to $1,000 over 10 years. The jobs and growth package of 2003 accelerated the credit to $1,000 in 2003 and 2004.

Today’s bill, sponsored by my friend, the gentleman from Nevada (Mr. PORTER), increases the child tax credit to $1,100, which is set to snap back to $700 in 2005 if we do not act today. In addition, the bill makes the child tax credit permanent and raises the eligibility limits on those who can claim the credit to include more parents.

Finally, the bill accelerates the refundability of the child tax credit this year to make it available to more of the Americans who need it, low-income families.

Mr. Speaker, tax relief stimulates economic growth. In 1997, unemployment was at 4.9 percent, and the Republican-led Congress passed the Balanced Budget Act. Unemployment fell to 4.2 percent in 1998, 4.2 percent in 1999, and back down to 4 percent in the year 2000.

In 2001, we passed the Taxpayer Relief Act, putting nearly $1 trillion back into the hands of American families. And given the economic history I will continue with shortly, I am convinced that we would have seen unemployment rates fall even further. But then September 11 hit, one of the most tragic days in American history. A horrendous act of violence, a terrible act of terrorism; an act that cost our country trillions.

Unemployment jumped to 5.8 percent in 2002 as millions of Americans lost jobs connected to tourism, services, construction, and the list goes on and on. But we knew what to do. We knew how to respond. We knew that simply increasing spending would not lead to long-term viability and sustained recovery. Instead, we had to find a way to put money into the hands of consumers and businesses so they could make smart economic decisions that would begin to rebuild our economy.

So we enacted tax relief. We passed the Jobs and Growth Act to spur spending by American businesses. And after unemployment hit 6 percent in 2003, we saw the positive effects of these cumulative tax cuts begin to take effect. Beginning last November, unemployment started to fall because we passed more tax cuts to speed up the process. And you know what happened? Unemployment continued to fall, all the way to 5.5 percent.

Now, some people say that is not good enough. They say that in the so-called tech boom, unemployment was as low as 4 percent. Well, you know what? I agree with them, we must do better. We should always strive to do better. One person unemployed is too many. And today’s bill will do exactly that. It will put $200 billion directly into the hands of American families, families who also happen to be consumers. And every dollar they spend, whether on a package of diapers, a tank of gas, or a car payment, they will be supporting America’s jobs.

At the end of the day, that is what this debate is all about, American jobs. It is all about the cumulative effect of a Republican revolution that started in 1994 and led to strong and steady growth in spite of the horrors of September 11.

Beginning 3 weeks ago, we continued our commitment to strengthening the economy by preventing job-destroying tax hikes, deferring extensions of the new 10 percent tax bracket, wiping out the punitive marriage penalty, and relieving many families of the burdensome and unfair Alternative Minimum Tax.

Today’s bill will do exactly that. It will put $200 billion directly into the hands of American families, families who do not need it? Are we going to give yet another tax break to people who do not need it? Are we going to add to the mounting Federal debt, or add to the mounting Federal debt, or add to the mounting Federal debt or add to the mounting Federal debt? And give yet another tax break to people who do not need it?

Today, we are considering a measure to make permanent child tax credits. The question is not whether hard-working parents should have tax credits for each of their children. We all agree that they should. The question is whether we are going to do it in a responsible way. Are we going to target tax relief to the middle-class families who need it most, or are we going to extend tax cuts for the wealthy without paying for them.

As the gentleman from Texas (Mr. EDWARDS) pointed out earlier today, the price of permanent leadership is giving tax breaks to Members of Congress on the same day that they are freezing education funding for military children and freezing the most important military housing improvement program in American history. It is outrageous. Today’s vote is a vote to cut funding for education for military children.

The Republican scheme would charge the entire $228 billion cost to the country’s maxed-out credit card to be paid for by the very children the Republicans claim they want to help. By contrast, the Democratic alternative pays for the entire cost of the child tax credit by reducing the tax rate on middle-class Americans.

The House of Representatives passed a budget with a deficit of $367 billion. Let me repeat that: a deficit of $367 billion. The hole we are in keeps getting deeper and deeper.

Today, we are considering a measure to make permanent child tax credits. The question is not whether hard-working parents should have tax credits for each of their children. We all agree that they should. The question is whether we are going to do it in a responsible way. Are we going to target tax relief to the middle-class families who need it most, or are we going to give yet another tax break to people who do not need it? Are we going to add to the mounting Federal debt, or add to the mounting Federal debt, or add to the mounting Federal debt, or add to the mounting Federal debt?
Mr. Speaker, more should be done to help the children and families who are struggling to get by. H.R. 4359 does not focus the help where it is needed most. The lowest-income families, earning less than $10,750, are not helped by this bill at all. In fact, about 70 percent of the tax cuts in this bill go to tax filers in the top 20 percent of income earners.

This means that a family with a parent working full time for minimum wage, and that is $10,750 a year, would get zero benefit from this bill. But two-child families earning up to $250,000 would get an extra $20,000 in tax breaks over the next 10 years.

Advocates for children and fiscal responsibility alike have expressed their outrage that H.R. 4359 gives the majority of the benefit to wealthier families and adds $228 billion to the national debt that children will have to pay for. The Washington Post called this bill "bad social policy, bad tax policy and bad for the country."

Mr. Speaker, I urge my colleagues to reject the Republican bill and support the Rangel substitute so working families get the help they need and so their children will not be the ones stuck with the bill.

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

Ms. PRYCE of Ohio. Mr. Speaker, I yield 4 minutes to the gentleman from Georgia (Mr. LINDER), my good friend from the Committee on Ways and Means.

Mr. LINDER. Mr. Speaker, I thank the gentlewoman from Ohio (Ms. PRYCE) for yielding me this time in support of H. Res. 641, the rule providing for the consideration of H.R. 4359, the Child Credit Preservation and Expansion Act of 2004.

Mr. Speaker, this is a modified closed rule which provides that the majority will be able to bring an amendment in the nature of a substitute to the House floor and then, on its consideration by the House. In this respect, H. Res. 641 is in line with the recent history and tradition of the House when debating tax legislation on the floor.

I urge the House to approve this rule in order to give the House the opportunity to consider the merits of the underlying legislation.

With this in mind, I want to commend the gentleman from Nevada (Mr. PORTER) for bringing H.R. 4359 to the floor. Mr. PORTER's bill permanently extends the full $1,000 child tax credit that the Congress and the Bush administration were able to enact in 2001 and 2003.

Failure to get this proposal signed into law means that in 2005 an estimated 34 million families, with approximately 59 million more children, face higher taxes, as the credit is lowered to $700, and eventually sinks to $500 in 2011.

Moving this bill into law will make crystal clear to the American people that President Bush and the Republican Congress are committed to protecting the tax relief that we were able to enact in 2001 and 2003. Nothing less than that represents a tax hike. And clearly, based on recent economic reports, a tax hike is exactly what our economy does not need as it continues to grow.

In fact, as Treasury Secretary Snow stated this week, effective monetary and fiscal policies, "of which the President's tax cuts are a part," are enabling the economy to perform very well. This President and the Congress understood that by reducing the tax burden and improving economic incentives, we can boost economic growth and increase the flow of resources into production. That is what has occurred by following the Republican tax relief plan. By removing the heavy burden of government from the backs of small businesses and families, we are creating more economic activity which means more jobs for all Americans and ultimately more revenues to the Treasury.

We need to permanently extend this tax credit for American families, and I hope my colleagues on both sides of the aisle will join me in supporting this bill's passage and enactment into law. Mr. Speaker, I urge my colleagues to join me in supporting this rule so we may proceed to consider the underlying legislation.

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

Ms. PRYCE of Ohio. Mr. Speaker, I yield 1 minute to the gentlewoman from West Virginia (Mrs. CAPITO), a champion of this cause.

Mrs. CAPITO. Mr. Speaker, I rise today as a proud co-sponsor of H.R. 4359. Last year, this House increased the child tax credit by $400 per child. This increase from $600 to $1,000 per child has benefited families across the country.

Under current law, however, the child tax credit is scheduled to descend to $800 in 2009, return to $1,000 in 2010, and fall to $500 in 2011.

Mr. Speaker, if parents are to take advantage of this tax credit to purchase new clothes, school supplies, or a new computer for their child, or to invest in their child's future, they need to know that these tax cuts are not here today and gone tomorrow.

This legislation corrects the problem in existing law and makes the $1,000 child tax credit permanent. When the underlying legislation we are considering today becomes law, parents will know from year to year the amount of money they have for their children.

The President's jobs and growth plan has helped to get our economy back on track. Over 500,000 jobs have been created in just the last 2 months. We must continue the tax cuts we passed last year to benefit working families and the American economy.

This bill is another step forward. I urge my colleagues to join me in supporting this rule and in supporting the underlying legislation.

Ms. PRYCE of Ohio. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. FERGUSON).

Mr. FERGUSON. Mr. Speaker, we are here today in the name of American families, to support our children and to support our children's future educational opportunities. I am not only a father, but a former teacher. This is about more than a tax credit. This is about providing children with the opportunity to a greater number of families and to make sure those families who already benefit from the child tax credit continue to be able to do so and are not forced to face a tax increase next year.

In my home State of New Jersey, 1.4 million children benefit from the child tax credit; 1.4 million children in New Jersey benefit from the child tax credit, and over 100,000 of those children live in the congressional district I have the privilege of representing.

I want to be able to look their parents in the eye and tell them I am doing everything in my power to help them save for their children's future, their children's college fund. I want to tell them that even they will benefit in the upcoming years. I want to be able to, in good faith, promise them that no matter what, we will help the American family in the best and worst times of the economy.

This bill will allow all of us to do just that. The Child Credit Preservation and Expansion Act of 2004 makes the child tax credit permanent at $1,000 a child. If Democrats had their way, this credit would decline and then expire on the year 2010. Let that happen. This bill allows a greater number of families to benefit nationwide. In addition to the 1 million families already receiving relief in New Jersey, additional families will become eligible for the credit. A greater number of joint filers and single parents will be able to use this money to save for their children's education and build for their future.

Mr. Speaker, it is important to know what is possible into the hands of American parents to be able to provide for their kids. Every dollar we allow them to save is a dollar toward a better life for their kids. A vote today to help American children is what we need to do. Vote today to make the child tax credit permanent.

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

Mr. Speaker, I would like to say to the previous speaker that we do not want to get this wrong. We want to support and we have been a champion of the child tax credit. What we have a problem with is the fact that they do not want to pay for it. What we have a problem with is the other side of the aisle is adding $226 billion to the debt that is being passed on to our kids.

Mr. Speaker, how does the other side go home and say I am helping children and families of our country when essentially they are just adding to the national debt? That is irresponsible.

This is the most fiscally irresponsible Congress, this is the most fiscally irresponsible President in the history of our country. It is great to get up and
talk about tax relief, it is great to get
up and do all of these wonderful press
releases, but when it is not paid for, it
is just added to the debt. That is
wrong.
Mr. Speaker, I yield 3 minutes to the
gentlewoman from Texas (Ms. Jack-
son-Lee).
(Ms. JACKSON-LEE of Texas asked and
was given permission to revise and
extend her remarks.)
Ms. JACKSON-LEE of Texas. Mr. Speaker,
I thank the gentleman for yielding me this
time.
I wish we would have an opportunity
to work together on issues that impact
all of our families across the Nation.
Mr. Speaker, whenever I am in my con-
gressional district in Houston, young
mothers come up to me about their
children. They put their children in
care, meaning it should be paid for.
We are in need of care.
In fact, we could estimate the num-
ber of young mothers, single parents
and of course families who are in need
of child care is probably growing expo-
nentially on a continuum. Our children
are in need of care.
It is unfortunate that we would ex-
tend this child tax credit and make it
permanent and add $228 billion as part
of the increasing deficit, and we do
nothing to expand the actual resources
that go into child care.
I am a proponent of a tax credit; but I
believe it should be paid for, and it
also has to be reasonable, given to
those who can utilize it because they
have not other resources. While we are
spending $228 billion by putting us fur-
ther in debt, we are actually not cre-
ating child care facilities that can help
the thousands upon thousands and mil-
lions of parents around the Nation who
in fact do not have the ability to take
their children home; but need the
actual facilities which are in fact de-
creasing by the day because they do
not have the resources.
So if my message is anything today
it is that, one, child care should be bi-
 partisan; and the tax credit should work,
meaning it should be paid for.
The income level should not be ex-
tended; low-income parents should be
included and embraced. And then we
need to answer the question when these
parents come up to us in our congres-
sional district, where can they go to
take their children? Where are the
child care facilities and where are the
resources to support the child care fa-
cilities, and those that are both li-
censed and good and careful and caring
for the children, and provide edu-
cational resources? Where are the dol-
lars for Head Start that is a form of
child care as we have seen the number
of grown people who are products of
Head Start? We are decreasing Head
Start. Yet we go $228 billion in debt
rather than provide a tax credit that
the Rangel substitute provides that an-
swers all of our concerns.
I am disappointed this is not a biap-
artisan effort because I want the message
from the United States Congress to be
that we have concerns about child care
and the needs that parents have in this
particular credit.
In particular, as a woman who faced
that question on a daily basis in rais-
ing her own children, and I know men
have as well, it is a disappointment
that we cannot be unified around this
particular question. I ask my col-
leagues to support the Rangel sub-
stitute, I ask that we not go into debt,
and I state that our number one ques-
tion is to provide child care facilities,
in urban and rural areas, where fami-
lies can actually take advantage of
them. Our job is not yet finished on
that need!

**NOTICE**

Incomplete record of House proceedings. Except for concluding business which follows,
today’s House proceedings will be continued in the next issue of the Record.

**LEAVE OF ABSENCE**

By unanimous consent, leave of ab-
sence was granted to:
Mr. BALANCE (at the request of Ms. PELOSI) for today on account of pe-
sonal reasons.
Ms. LOPCHEN (at the request of Ms. PELOSI) for today after 6:00 p.m. on ac-
count of a family commitment.
Mr. McINTYRE (at the request of Ms. PELOSI) for today after 5:00 p.m. on ac-
count of family medical reasons.

**SPECIAL ORDERS GRANTED**

By unanimous consent, permission to
address the House, following the legis-
lative program and any special orders
heretofore entered, was granted to:
(Mr. Gentleman from Texas (Ms. Jack-
son-Lee).
(Senate Bills Referred)

Bills of the Senate of the following
titles were taken from the Speaker’s
table and, under the rule, referred as
follows:
S. 960. An act to amend the Reclamation
Bill of the Senate of the following
poses.

S. 2178. An act to make technical correc-
tions to laws relating to certain units of the
National Park System and to National Park
programs, to the Committee on

S. 1187. An act to enhance the Recreatonal
Bill of the Senate of the following
poses.

S. 1576. An act to revest the boundary of
Harpers Ferry National Historical Park, and
for other purposes, to the Committee on

S. 1577. An act to extend the deadline for
commencement of construction of a hydro-
electric project in the State of Wyoming, to
the Committee on Education and the Work-
force.
S. 2378. An act to make technical correc-
tions to laws relating to certain units of the
National Park System and to National Park
programs, to the Committee on

S. 2378. An act to make technical correc-
tions to laws relating to certain units of the
National Park System and to National Park
programs, to the Committee on

S. 2378. An act to make technical correc-
tions to laws relating to certain units of the
National Park System and to National Park
programs, to the Committee on

H.R. 408. An act to provide for expansion of
Sleeping Bear Dunes National Lakeshore.
H.R. 708. An act to require the conveyance
of certain National Forest System lands in
Mendocino National Forest, California, to
provide for the use of the proceeds from such
conveyance for National Forest purposes,
and for other purposes.
H.R. 856. An act to authorize the Secretary of the Interior to revise a repayment con-
tract with the Tom Green County Water
Control and Improvement District No. 1, San
Angelo project, Texas, and for other pur-
poses.
BILLS PRESENTED TO THE PRESIDENT

Jeff Trandahl, Clerk of the House, reports that on May 20, 2004, he presented to the President of the United States, for his approval, the following bills:

H.R. 923. To amend the Small Business Investment Act of 1958 to allow certain pre-miitary service members to elect to maintain an alternative loss reserve.

H.R. 3104. An Act to provide for the establishment of separate campaign medals to be awarded to members of the uniformed services who participate in Operation Enduring Freedom and to members of the uniformed services who participate in Operation Iraqi Freedom.

ADJOURNMENT

Mr. TIAHRT. Mr. Speaker, pursuant to House Concurrent Resolution 432, 108th Congress, I move that the House do now adjourn.

The motion was agreed to. There was a 15-minute period of the House in order.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

8230. A letter from the Congressional Review Coordinator, APHIS, Department of Agriculture, transmitting the Department's final rule—Karnal Bunt; Commodity Inspection Services, Northern Texas (Docket No. 03-652-1) received May 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8231. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Isoxadifen-ethyl; Pesticide Tolerance (OPP-2003-0055; FRL-7657-2) received May 18, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8232. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Indoxacarb; Time-Limited Pesticide Tolerance (Docket No. 04-281-1) received May 18, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8233. A letter from the Secretary, Department of State, transmitting the 2003 Annual Report on United Nations voting practices, pursuant to 22 U.S.C. 2414a; to the Committee on Appropriations.

8234. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule—Benzene; State Implementation Plans, Texas (Docket No. 03-660-1; FRL-7665-2) received May 18, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

8235. A letter from the Secretary, Department of State, transmitting the Department's annual report to the President of the United States, pursuant to 31 U.S.C. 351(a); to the Committee on Committee on Appropriations.


8242. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification that effective April 18, 2004, the 15% Danger Pay Allowance for Sierra Leone was terminated based on improved security conditions and the fact that warfare conditions have ceased, pursuant to 5 U.S.C. 5928; to the Committee on International Relations.

8243. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report concerning Cuban emigration policies, pursuant to Public Law 105-277, section 2245; to the Committee on International Relations.

8244. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report concerning Cuban emigration policies, pursuant to Public Law 103-236, the Secretary's determination suspending prohibitions on certain sales and leases under the Anti-Economic Discrimination Act of 1994 and the accompanying Memorandum of Justification; to the Committee on International Relations.

8245. A letter from the Associate Director, Christopher Columbus Foundation, transmitting a report concerning the Oil Spill in the Gulf of Mexico, pursuant to the Accountability of Tax Dollars Act, the Foundation's financial report for fiscal year 2003, the final audit of the U.S. General Services Administration; to the Committee on Government Reform.

8246. A letter from the Attorney General, Department of Homeland Security, transmitting a report concerning the Justice Department's financial statement of operations for the year ending September 30, 2003; to the Committee on Government Reform.

8247. A letter from the Attorney General, Department of Homeland Security, transmitting notification that in compliance with the Accountability of Tax Dollars Act, the Office of Inspector General has initiated the audit of the Department of Homeland Security's contractor and subcontractor financial statements as of September 30, 2003; to the Committee on Government Reform.

8248. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report concerning the Army's annual Financial Statement for FY 2003; to the Committee on Government Reform.
3252. A letter from the Secretary, Department of Homeland Security, transmitting the Department’s final rule—Drawbridge Operation Regulation; Lehigh River, Easton, PA. (CGD07-04-025) (RIN: 1625-AA09) received May 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

3253. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department’s final rule—Drawbridge Operation Regulations: Elbe River, Hamburg, Germany. (CGD07-04-024) received May 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

3254. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department’s final rule—Drawbridge Operation Regulations: Drawbridge Operating Structure. (CGD07-04-023) received May 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.


3256. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department’s final rule—Drawbridge Operation Regulations: Charleston Harbor, Charleston, SC. (CGD07-04-021) received May 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

3257. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department’s final rule—Drawbridge Operation Regulations: Galveston, TX. (CGD07-04-020) received May 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

3258. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department’s final rule—Drawbridge Operation Regulations: Houston Ship Channel, Houston, TX. (CGD07-04-019) received May 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

3259. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department’s final rule—Drawbridge Operation Regulations: Drawbridge Operating Structure. (CGD07-04-018) received May 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.


3261. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department’s final rule—Drawbridge Operation Regulations: Snake River, Burbank, WA. (CGD07-04-016) received May 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

the Department of the Interior, and to respond to the impacts of the public use of the Federal lands administered by these agencies, and for other purposes; with an amendment (Rept. 109-8 Pt. 1) referred to the Committee on Resources of the House of Representatives.

Mr. POMBO: Committee on Resources. H.R. 3494. 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; with an amendment (Rept. 108-500 Pt. 1). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 3504. A bill to amend the Indian Self-Determination and Education Assistance Act to redesignate the American Indian Education Foundation as the National Fund for Excellence in American Indian Education (Rept. 108-510 Pt. 1). Ordered to be printed.

Mr. POMBO: Committee on Resources. H.R. 3567. A bill to convey for public purposes certain Federal lands in Riverside County, California, that have been identified as management areas, administered by the National Park Service, the Bureau of Land Management, the United States Fish and Wildlife Service, and the Forest Service where there is a historical tradition of such use, and for other purposes; with an amendment (Rept. 108-514). Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 3589. A bill to preserve the use and access of the Indians and Indio stock animals on public lands, including wilderness areas, national monuments, and other specifically designated areas, administered by the National Park Service, the Bureau of Land Management, the United States Fish and Wildlife Service, or the Forest Service where there is a historical tradition of such use, and for other purposes; with an amendment (Rept. 108-513 Pt. 1). Ordered to be printed.

DISCHARGE OF COMMITTEE
Pursuant to clause 2 of rule XII the Committee on Agriculture discharged from further consideration of H.R. 3247.

REPORTED BILL SEQUENTIALLY REFERRED
Under clause 2 of rule XII, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. POMBO: Committee on Resources. H.R. 3247. A bill to provide consistent enforcement authority to the Bureau of Land Management, the National Park Service, the United States Fish and Wildlife Service, or the Forest Service to respond to violations of regulations regarding the management, use, and protection of public lands under the jurisdiction of these agencies, the clarifying the purposes for which collected fines may be used, and for other purposes; with an amendment; referred to the Committee on the Judiciary for a period ending not later than June 30, 2004, for consideration of such provisions as fall within the jurisdiction of that committee pursuant to clause 1(b), rule X. (Rept. 108-511, Pt. 1). Ordered to be printed.

TIME LIMITATION OF REFERRED BILL
Pursuant to clause 2 of rule XII the following action was taken by the Speaker:

H.R. 2966. Referral to the Committee on Agriculture extended for a period ending not later than June 30, 2004.

H.R. 3494. Referral to the Committee on Agriculture extended for a period ending not later than May 20, 2004.

PUBLIC BILLS AND RESOLUTIONS
Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. GINGRICH (for himself, Mr. BOEHNER, Mr. MCKEON, Mr. ISAISON, Mr. TIBERI, and Mr. WILSON of South Carolina).

H.R. 4409. A bill to reauthorize title II of the Higher Education Act of 1965; to the Committee on Education and the Workforce.

By Mr. WILSON of South Carolina (for himself, Mr. BOEHNER, Mr. MCKEON, Mr. ISAISON, Mr. GREENWOOD, Mr. KELLER, Mr. COLE, Mr. PORTER, Mr. BAKER, Mr. BRADLEY of New Hampshire, Mr. GINNY BROWN-WATTE of Florida, Mr. FATTI, Mr. GARRETT of New Jersey, Mr. GRAVES, Mr. HOUSE, Mr. JENKINS, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KOLBE, Mr. NUNES, Mr. SHUMKUS, Mr. SIMMONS, Mr. SOUDER, and Mrs. WILSON of New Mexico).

H.R. 404. A bill to increase the amount of student loans that may be forgiven for highly qualified teachers in mathematics, science, and special education and for reading specialists; to the Committee on Education and the Workforce.

By Mr. BURNS (for himself, Mr. BOEHNER, Mr. MCKEON, Mr. ISAISON, Mr. WILSON of South Carolina, and Mr. COLE).

H.R. 411. A bill to amend title VII of the Higher Education Act of 1965 to ensure graduate opportunities in postsecondary education, and for other purposes; to the Committee on Education and the Workforce.

By Mr. SENSIBRENNER (for himself and Mr. CONVERS).

H.R. 412. A bill to amend the Clayton Act to clarify the application of the antitrust laws in the telecommunications industry; to the Committee on the Judiciary.

By Mr. TERRY (for himself, Mr. GREEN of Texas, Mr. SULLIVAN, and Mr. HUNTSMAN).

H.R. 413. A bill to require certain terms and conditions for the siting, construction, expansion, and operation of liquefied natural gas import terminals, and for other purposes; to the Committee on Energy and Commerce.

By Mr. MEEK of Florida (for himself, Mr. BOUGEON, Mr. THOMPSON of Mississippi, Ms. LOBERTA SANCHEZ of California, Mr. MARKEY, Mr. DICKS, Mr. FRANK of Massachusetts, Mr. ANDERSON of Wisconsin, Ms. LOPUREN, Ms. MCCARTHY of Missouri, Ms. JACKSON-LEE of Texas, Ms. CHRISTENSEN, Mr. LANGVYIN, Mr. SANDLIN, Mr. MATSU, Mr. SKELETON, Mr. HASTINGS of Florida, Mr. GREEN of Texas, Mrs. CAPPS, Mr. NADLER, Ms. ROYBAL-ALDARD, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. ISRAEL, Mr. HUNTSMAN, and Mrs. KILPATRICK).

H.R. 414. A bill to require designation of a senior official within the Office of Management and Budget as Chief Privacy Officer, and for other purposes; to the Committee on Government Reform.

By Mr. RISCHEL.

H.R. 415. A bill to amend the Immigration and Nationality Act to eliminate the ‘‘specialized knowledge’’ basis for obtaining nonimmigrant visas as a result of temporary transfers of foreign employees to foreign subsidiaries; to the Committee on the Judiciary, and in addition to the Committee on Education and 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. EHLERS.

H.R. 416. A bill to establish the Great Lakes Protection and Restoration Committee; to the Committee on Resources, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SENSBRENNER (for himself, Mr. CONVERS, Mr. HYDE, Mr. LACONTE, Mr. COX, Mr. HOSTETTLER, and Ms. JACKSON-LEE of Texas).

H.R. 417. A bill to modify certain deadlines pertaining to non-tamper-resistant entry and exit documents; to the Committee on the Judiciary.

By Mr. CRANE (for himself, Mr. RANDELL, Mr. WILSON, Mr. LEVIN, and Mr. RAMSTAD).

H.R. 418. A bill to authorize appropriations for fiscal years 2005 and 2006 for the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement of the Department of Homeland Security, for the Office of the United States Trade Representative, for the United States International Trade Commission, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DICKS (for himself, Ms. HOOLEY of Oregon, Mr. MATHESON, and Mr. DIAZ-BALART).

H.R. 419. A bill making emergency supplemental appropriations for fiscal year 2004 for wildland firefighting costs; to the Committee on Appropriations.

By Mr. SMITH of New Jersey (for himself, Mr. HYDE, Mrs. JO ANN DAVIS of Virginia, Mr. ALEXANDER, Mr. PITTS, Mrs. MYRICK, Mr. SOUDER, Mr. BURGESS, Mr. LINCOLN DIAZ-BALART of Florida, Ms. ROS-LEHTINEN, Mr. ADERHOLT, Mr. THIRST, Mr. CRANE, Mr. NEUGRAUER, Mr. FRANKS of Arizona, Mr. ISTOOK, Mr. AKIN, Mr. STEARNS, Mr. RENZI, Mr. SHIMKUS, Mr. PENCE, Mr. DE MINT, Mr. COLLINS, Mr. BRADY of Wisconsin, Ms. ROYCE of Iowa, Mr. TANCREDO, Mr. RYUN of Kansas, and Mr. TOOMEY).

H.R. 420. A bill to ensure that women seeking an abortion be informed regarding the pain experienced by their unborn child; to the Committee on Energy and Commerce.

By Mr. OBERY.

H.R. 421. A bill making appropriations for the Environmental Protection Agency for the fiscal year ending September 30, 2006, and for other purposes; to the Committee on Appropriations, 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. OBERY.

H.R. 422. A bill making appropriations for the Departments of Agriculture, Education, Health and Human Services, and Transportation for the fiscal year ending September 30, 2005, and for other purposes; to the Committee on Appropriations, 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. OBERY.

H.R. 423. A bill making appropriations for the Department of Veterans Affairs for the
fiscal year ending September 30, 2005, and for other purposes; to the Committee on Appropriations, 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. EDWARDS:
H.R. 4424. A bill making appropriations for military construction and family housing for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes; to the Committee on Appropriations, 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. FILNER:
H.R. 4425. A bill to amend title 10, United States Code, to provide for the Purple Heart Left Behind Act of 2001, and for other purposes; to the Committee on Education and the Workforce.

By Ms. BORDALLO:
H.R. 4426. A bill to prohibit certain entities from trading in capital markets in the United States, to provide for wage parity for prevailing rate employees in Guam; to the Committee on Government Reform.

By Mr. CHOCOLA (for himself, Mr. AKIN, Mr. BARNETT of South Carolina, Mr. BEAUPRE, Ms. GINNY BROWN-WATTE of Florida, Mr. BURGESS, Mr. CAFIETTI, Mr. COLE, Mr. CUHIN, Mr. CUNNINGHAM, Mr. DI MENT, Mr. FLAKE, Mr. HENNAS, Mr. HENKSTAR, Mr. JONES of North Carolina, Mr. KLINE, Mr. LEWIS of Kentucky, Mrs. MILLER of Michigan, Mrs. MUMORAVE, Mrs. MYRICK, Mr. NIEHUSHAUSER, Mrs. NORTHUP, Mr. NOEMWOOD, Mr. PAUL, Mr. PEARCE, Mr. PENCE, Mr. PITTS, Mr. SHADDEG, Mr. SMITH of Michigan, Mr. SOUCER, Mr. STACEY, Mr. TANCREDO, Mr. TOOMY, and Mr. WELDON of Florida):
H.R. 4426. A bill to amend chapter 85 of title 28, United States Code, to provide for greater access and diversity litigation after an offer of settle- ment; to the Committee on Judiciary.
H. R. 4449. A bill to provide assistance to combat HIV/AIDS in the Republic of India, and for other purposes; to the Committee on International Relations.

By Mr. LEVIN (for himself, Mr. CUMMINGS, Ms. KAPIT, MR. MCNULTY, Mr. KNOLLER, Mr. KUCINICH, Mr. OLIVER, MR. WELDON OF PENNSYLVANIA, Mr. PAYNE, Mr. KILDEER, Mr. HINO, Mr. HINCHELY, and Mr. QUINN):

H. R. 4450. A bill to authorize the Government of the United States to establish a memorial on Federal land in the District of Columbia to honor the victims of the Ukrainian famine-genocide of 1932-1933; to the Committee on Resources.

By Mr. MCKEON:

H. R. 4451. A bill to amend the Harmonized Tariff Schedule of the United States to correct to define certain non-knit gloves designed for use in sports; to the Committee on Ways and Means.

By Mr. MEIKS OF NEW YORK:

H. R. 4452. A bill to require funds made available to each Federal department and agency for United States development or humanitarian assistance programs to be made available to developing countries through the activities of United States organizations or businesses that are owned or controlled by naturalized United States citizens, or aliens lawfully admitted for permanent residence, who are from those foreign countries; to the Committee on International Relations.

By Mr. MORGAN OF KANSAS:

H. R. 4453. A bill to improve access to physicians in medically underserved areas; to the Committee on the Judiciary.

By Mr. NETHERCUTT:

H. R. 4454. A bill to amend title 18, United States Code, to protect and promote the public safety and interstate commerce by establishing Federal criminal penalties and civil remedies for certain violent, threatening, obstructive, and destructive conduct that is intended to injure, intimidate, or interfere with persons engaged in business, or for other purposes; to the Committee on the Judiciary, and in addition to the Committees on 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. NORTON:

H. R. 4455. A bill to prohibit discrimination on the basis of certain factors with respect to any aspect of a surety bond transaction; to the Committee on the Judiciary.

By Mr. OBERRY:

H. R. 4456. A bill to require labeling of raw agricultural or animal products, including the country of harvest; to the Committee on Agriculture.

By Mr. OTTER (for himself, Mr. FLAKE, Mr. DELAHUNT, Mr. NETHERCUTT, Mr. FARR, and Mr. MCGOVERN):

H. R. 4457. A bill to require congressional renewal of trade and travel restrictions on Cuba; to the Committee on International Relations, and in addition to the Committees on Rules, Ways and Means, Energy and Commerce, Financial Services, and 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. PELOSI, Mr. RANGEL, Mr. DINGELL, Mr. WAXMAN, Mr. STARK, Mr. BROWN of Ohio, Mr. MENENDEZ, Mr. MATSU, MR. SCHAKOWSKY, MR. MCDERMOTT, MR. NEAL OF MASSACHUSETTS, Mr. SANDLIN, MRS. JONES OF OHIO, Mr. PARKER OF VIRGINIA, Mr. DOGGETT, Mr. DAVIS OF FLORIDA, Mr. CARDIN, MR. ALLEN, Mr. STUPAK, Ms. SOLIS, Mr. STRICKLAND, Mr. RUSH, Ms. MCCARTHY OF NEW YORK, MRS. CAPPS, AND MR. GREEN OF TEXAS:

H. R. 4458. A bill to require the repayment of appropriated funds that are illegally dispersed for political purposes by the Centers for Medicare & Medicaid Services; to the Committee on House Administration, and in addition to the Committees on Ways and Means, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. POMBO:

H. R. 4459. A bill to authorize the Secretary of the Interior, acting through the Bureau of Reclamation and in coordination with other Federal, State, and local government agencies, to participate in the funding and implementation of a long-term groundwater remediation program in California, and for other purposes; to the Committee on Resources.

By Mr. RENZI (for himself, Mr. UDALL OF NEW MEXICO, AND MR. MATHESON):

H. R. 4460. A bill to fulfill the United States Government’s trust responsibility to serve the educational needs of the Navajo people; to the Committee on Education and the Workforce.

By Mr. RENZI:

H. R. 4461. A bill to direct the Secretary of the Interior and the Secretary of Agriculture to jointly conduct a study of certain land adjacent to the Walnut Canyon National Monument in the State of Arizona; to the Committee on Resources.

By Mr. SANDLIN (for himself and Mr. OBERY):

H. R. 4462. A bill making appropriations for homeland security programs within the Departments of Energy, Health and Human Services, and Homeland Security for the fiscal year ending September 30, 2005, and for other purposes; to the Committee on Appropriations.

By Mr. SERRANO (for himself, Mr. CROWLEY, AND MR. ENGEL):

H. R. 4463. A bill to provide for identification of members of the Armed Forces exposed to depleted uranium, to provide for health testing of such members, and for other purposes; to the Committee on Armed Services.

By Mr. SIMMONS:

H. R. 4464. A bill to improve the No Child Left Behind Act of 2001, and for other purposes; to the Committee on Education and the Workforce.

By Mr. STENHOLM:

H. R. 4465. A bill to amend the Higher Education Act of 1965 to extend loan forgiveness for certain loan holders to eligible teachers; to the Committee on Education and the Workforce.

By Mr. TANCREDO:

H. R. 4466. A bill to amend the Endangered Species Act of 1973 to exclude the Preble’s Meadow Jumping Mouse from lists of endangered species published under that Act; to the Committee on Resources.

By Mr. THOMPSON OF CALIFORNIA (FOR HIMSELF, Mr. DAVIS OF TENNESSEE, Mr. STENHOLM, MR. MILL, MR. BERRY, MR. CASE, MR. ROSS, MR. HOLDEN, MR. MOORE, AND MR. SCHIFF):

H. R. 4467. A bill to require reports to Congress reporting requirements relating to funds made available for military operations in Iraq or for the construction of Iraq, and for other purposes; to the Committee on Armed Services, and in addition to the Committee on International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. VISCLOSKY (for himself, Mr. ACUDEVO-VILA, Mr. GRIJALVA, Mr. MCDERMOTT, Mr. TOWNS, Mr. LYNCH, AND MR. SANDLIN):

H. R. 4468. A bill to amend title 38, United States Code, and title 10, United States Code, to provide for an opportunity for active duty personnel to withdraw not to participate in the program of educational assistance under the Montgomery GI Bill; to the Committee on Veterans Affairs, 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 Ms. WOOLSEY (for herself, Mr. ABBERCHROMEY, MR. BECERRA, MR. BERN, MR. BORDALLO, MR. CASE, MR. CROWLEY, MR. FAR, MR. FILN, MR. GRIJALVA, MR. GUTIERREZ, MR. HONDA, MR. HOOLEY OF OREGON, MR. LANTOS, MR. LEW, MR. LEE OF OHIO, MR. MATSUI, MR. MCDERMOTT, MRS. NAPOLITANO, MR. PELOSI, MR. ROYAL-ALLARD, MR. TOWNS, AND MR. WU):

H. R. 4469. A bill to authorize appropriations to the Secretary of the Interior for the restoration of the Angel Island Immigration Station in the State of California; to the Committee on Resources.

By Mr. DELLAY:

H. Con. Res. 432. Concurrent resolution providing for a conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate, considered and agreed to.

By Mr. LANTOS (for himself, Mr. CROWLEY, MR. ACKERMANN, MR. WILSON OF SOUTH CAROLINA, MR. PAYNE, MR. MEECE OF NEW YORK, MR. FALKOMAVAIRI, MR. MCCARTHY OF MISSOURI, MR. SCHIFF, MR. GARRETT OF NEW JERSEY, MR. BROWN OF OHIO, MR. FALLONE OF ALASKA, MR. JALILI OF CALIFORNIA, MR. ROSE-LEHTINEN, MR. DOGGETT, MR. MCDERMOTT, MR. SOLIS, MR. TINKER, MR. BERMAN, MR. MILLER-McDONALD, MR. McINTOSH OF GEORGIA, MR. ENGEL, AND MR. MCCOTTER):

H. Con. Res. 433. Concurrent resolution congratulating the Republic of India on the conduct of its recent democratic national elections; to the Committee on International Relations.

By Mr. FILNER:

H. Con. Res. 434. Concurrent resolution commending the persons who were inducted for service in the United States Armed Forces during World War II; to the Committee on Armed Services.

By Mrs. LOWEY (for herself, Mr. MCDERMOTT, Mr. WATSON OF VIRGINIA, MR. HINCHELY, MR. LANGOVIN, MR. MEEHAN, AND MR. MCCOLLUM):

H. Con. Res. 435. Concurrent resolution recognizing the National Celiac Awareness Month, and for other purposes; to the Committee on Energy and Commerce.

By Mr. PAYNE (for himself, Mr. MEEKS OF NEW YORK, MR. RANGEL, MR. ROYCE, AND MR. LANTOS):

H. Con. Res. 436. Concurrent resolution celebrating 10 years of majority rule in the Republic of South Africa and recognizing the momentous social and economic achievements of South Africa; to the Committee on International Relations.
By Mr. ROHRABACHER (for himself and Mr. RYAN of Kansas):
H. Con. Res. 437. Concurrent resolution expressing the sense of the Congress that the President of the United States should request Taiwan’s President Chen Shui-bian to deploy Taiwanese Marines to Iraq to join international Coalition forces in the global war on terrorism.

By Mr. VAN HOLLEN (for himself, Mr. MURPHY, and Mrs. MALONEY):
H. Con. Res. 438. Concurrent resolution recognizing and honoring the crew of the U.S.S. Pittsburgh for their heroism in March 1945 for rendering aid and assistance to the U.S.S. Franklin and its crew; to the Committee on Armed Services.

By Mr. HASTERT (for himself, Mr. DIETL, and Ms. FIELSO):
H. Res. 651. A resolution expressing the gratitude of the House of Representatives to its Parliamentarian, the Honorable Charles W. Johnson, III; considered and agreed to, to the Committee on Government Reform.

H. Res. 652. A resolution urging the Government of the Republic of Belarus to ensure the inclusion in CODIS of DNA profiles of persons whose DNA samples are collected under applicable legal authorities; to the Committee on the Judiciary.

H. Res. 653. A resolution honoring former President George Herbert Walker Bush on the occasion of his 80th birthday; to the Committee on Armed Services.

H. Con. Res. 439. Concurrent resolution recognizing and honoring the crew of the U.S.S. Franklin and its crew; to the Committee on Armed Services.

H. Con. Res. 440. Concurrent resolution recognizing the 38th anniversary of the independence of Guyana and extending best wishes to Guyana for peace and further progress, development, and prosperity; to the Committee on International Relations.

MEMORIALS
Under clause 3 of rule XII, memorials were presented and referred as follows:

332. The SPEAKER presented a memorial of the Senate of the State of Hawaii, relative to Senate Resolution No. 123 memorializing the federal government to conduct a thorough evaluation of the condition of the 187-acre property situated in Waikane Valley that was used by the United States Marine Corps for ordinance training until 1976, plan for and conduct as thorough a clean-up and removal of ordinance as is technologically possible, conduct an environmental assessment of the potential risk to human health and safety, and return the land to the State of Hawaii; to the Committee on Armed Services.

H. Con. Res. 433. Concurrent resolution recognizing the 38th anniversary of the independence of Guyana and extending best wishes to Guyana for peace and further progress, development, and prosperity; to the Committee on International Relations.

336. Also, a memorial of the Senate of the State of Hawaii, relative to Senate Resolution No. 51 memorializing the President and Congress of the United States to support the passage of S. 88 into law; to the Committee on the Judiciary.

337. Also, a memorial of the House of Representatives of the Commonwealth of Pennsylvania, relative to H. Con. Resolution No. 585 memorializing the United States Congress to amend 42 U.S.C. 14132(a)(1) to allow the inclusion in CODIS of DNA profiles of ‘other persons whose DNA samples are collected under applicable legal authorities’; to the Committee on the Judiciary.

338. Also, a memorial of the Senate of the State of Hawaii, relative to Senate Resolution No. 114 memorializing the United States Congress to support the passage of S. 88 to improve benefits for certain Filipino veterans of World War II; to the Committee on Veterans Affairs.

339. Also, a memorial of the Senate of the State of Hawaii, relative to Senate Resolution No. 24 memorializing the President and Congress of the United States to repeal the restriction on the government to negotiate reductions in prescription drug prices with manufacturers directly to the Committees on Energy and Commerce and Ways and Means.

340. Also, a memorial of the General Assembly of the State of New Jersey, relative to Assembly Resolution No. 66 memorializing the President and Congress of the United States to release first responder funds to municipalities; jointly to the Committee on Transportation and Infrastructure, the Judiciary, and Energy and Commerce.

ADDITIONAL SPONSORS
Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H. R. 236: Mr. BLUMENAUER and Mr. DINGELL.
H. R. 296: Mr. MILLER of North Carolina, Mr. RUFFERSBERGER, and Mr. BACUS.
H. R. 371: Ms. BALDWIN.
H. R. 442: Mr. CHANDLER.
H. R. 586: Mr. GRIJALVA.
H. R. 625: Mrs. JONES of Ohio.
H. R. 677: Mr. GRALYVA and Mr. HUNTER.
H. R. 716: Mr. VAN HOLLEN.
H. R. 727: Mr. BRADY of Pennsylvania.
H. R. 742: Mr. VISCLOSKY.
H. R. 745: Mr. ABERCROMBIE.
H. R. 785: Mr. MILLER of North Carolina.
H. R. 792: Mr. MENENDEZ, Mr. CAUFUANO, Mr. GILCHRIST, Mr. BORELIERT, Mr. PETERSON of Minnesota, Mr. LEWIS of California, Mr. CHANDLER, Mr. BURS, Mr. FERGUSON, and Mr. BOUSHER.
H. R. 814: Mr. MILLER of North Carolina.
H. R. 823: Mr. CHANDLER.
H. R. 832: Mr. DOYLE.
H. R. 847: Mr. HOLLER.
H. R. 852: Mr. MCGOVERN.
H. R. 857: Mr. BACUS.
H. R. 863: Mr. OBERSTAR.
H. R. 918: Mr. EHLERS, Mr. KINGSTON, and Mr. BRADLEY of New Hampshire.
H. R. 934: Mr. CHANDLER.
H. R. 963: Mr. CHANDLER.
H. R. 1034: Mr. CARDOZA, Ms. SCHRACKOWY, and Ms. BORDALLO.
H. R. 1160: Mr. SULLIVAN and Mr. DINGELL.
H. R. 1191: Mr. CHANDLER.
H. R. 1306: Mr. CHANDLER.
H. R. 1316: Ms. LINDA T. SANDEZ of California.
H. R. 1406: Mr. SOUDER.
H. R. 1470: Mr. GENELL.
H. R. 1839: Mr. HOFFERFL and Mr. MICHAUD.
H. R. 1884: Mr. THOMPSON of California.
H. R. 3459: Mr. Wexler and Mr. Hinchey.
H. R. 3474: Ms. Linda T. Sanchez of California and Mrs. Bono.
H. R. 3479: Mr. Rodriguez.
H. R. 3480: Mr. Berman, Mr. Doggett, Mr. Reyes, and Mr. Udall of Colorado.
H. R. 3483: Mr. Stenholm, Ms. Kilpatrick, Mr. Frost, Mr. Udall of Colorado, and Mr. Virgil of Texas.
H. R. 3507: Mr. Stark.
H. R. 3523: Mr. Owens.
H. R. 3543: Mrs. Musgrave.
H. R. 3579: Ms. Berkley, Mr. Young of Alaska, Mr. Calvert, and Mr. Jackson of Illinois.
H. R. 3591: Mr. Berenger.
H. R. 3602: Mr. Sullivan and Mr. Shaw.
H. R. 3619: Mr. Jefferson.
H. R. 3641: Mr. Crowley.
H. R. 3679: Mrs. Mischke, Mr. McCaffrey of Missouri, Mr. Weiner, and Mr. Peterson of Minnesota.
H. R. 3764: Mr. Van Hollen, Mr. Frank of Massachusetts, and Ms. Corrine Brown of Florida.
H. R. 3777: Mr. Chandler.
H. R. 3785: Mr. Grijalva and Mrs. Blackburn.
H. R. 3801: Mr. Shaw.
H. R. 3802: Mr. Miller of North Carolina, Mr. McCotter, Ms. Watson, and Mr. Gutterman.
H. R. 3803: Mr. Allen.
H. R. 3815: Mr. Schieff and Mr. Engel.
H. R. 3831: Mr. Lynch and Mr. Thomas.
H. R. 3860: Mr. Grijalva and Mr. Udall of New Mexico.
H. R. 3892: Mr. Frost, Mr. Thompson of Mississippi, and Mr. Nethercutt.
H. R. 3933: Ms. Dunn.
H. R. 3972: Mr. Price of North Carolina.
H. R. 3976: Mr. Matheson.
H. R. 4029: Mr. Miller of Florida.
H. R. 4035: Mr. Conyers.
H. R. 4051: Mr. Brady of Pennsylvania.
H. R. 4064: Mr. Bleming, Ms. Sam Johnson of Texas, and Mr. Forbes.
H. R. 4067: Mr. George Miller of California, Mr. Conyers, Mr. Grijalva, and Mr. Berman.
H. R. 4091: Mr. Akin, Mr. Frost, Mr. Hinchey, and Mr. Owens.
H. R. 4113: Mr. Cantor.
H. R. 4116: Mr. Turner of Texas, Mr. Allen, Mr. Jones of North Carolina, Mr. Berman, Ms. Baldwin, Mr. Davis of Florida, Mrs. Taucher, Mr. Taylor of Mississippi, Mr. Wu, Ms. Corrine Brown of Florida, Mr. Andrews, Mr. Engel, Mrs. Davis of California, Ms. Hooley of Oregon, Ms. DeGette, Ms. Bechler, Mr. Rodriguez, Ms. McCollum, Mr. Menendez, Mr. Emanuelli, Mr. Green of Texas, Mr. Ortiz, Mr. Pastor, Mr. Reyes, Mr. Strickland, Mr. Alexander, Mr. Boswell, Mr. Hulshof, Mr. Barton of Texas, Mr. Cunningham, Mr. Bilirakis, Mr. Bakers, Mrs. Cubin, Mrs. Capito, Mr. Simmons, Mr. Hostettler, Mr. Brady of Texas, Mr. Garrett of New Jersey, Mr. King of Iowa, Mr. Berrutier, Mrs. Northrup, Mr. Sensenbrenner, Mr. Ensign, Mr. Tancredo, Mr. Ratcliffe, Mr. Young of Arizona, Mr. Smith of New Jersey, Mr. Rogers, Mr. Fischer, Mr. Bright, Mr. Bouchard, Mr. Ros-Lehtinen, and Mr. Lowery.
H. R. 4118: Mr. Bilirakis.
H. R. 4117: Mr. Abercrombie, Ms. Watson, and Ms. Solis.
H. R. 4126: Mr. Barton of Texas and Mr. Marshall.
H. R. 4149: Mr. Peterson of Minnesota.
H. R. 4177: Mr. Baird.
H. R. 4182: Mr. Baird.
H. R. 4193: Mr. Blackburn and Ms. Petri.
H. R. 4203: Mr. Cummings.
H. R. 4210: Mr. Michaud.
H. R. 4230: Mr. Davis of Alabama, Mr. Matsui, and Ms. Berkley.
H. R. 4231: Mr. Bilirakis.
H. R. 4232: Mr. Rodriguez, Mr. Hall, Mr. Sam Johnson of Texas, Mr. Hinojosa, Mr. Sessions, Mr. Ortiz, Mr. Turner of Texas, and Mr. Neugebauer.
H. R. 4249: Mr. George Miller of California, Mr. Frost, Mr. Stark, Ms. Woolsey, Mr. Berman, and Mr. Rangel.
H. R. 4256: Mr. Price of North Carolina.
H. R. 4260: Mr. Hastings of Florida and Mr. Stark.
H. R. 4278: Mr. Kildee, Mr. Holt, Mr. Langevin, Mr. Rangel, Mr. Ballenger, Mr. Grijalva, Mr. Van Hollen, Mr. Isakson, Mr. Towns, Mr. Hoyer, Mr. Keller, Mr. Wilson of South Carolina, Mr. Burns, Ms. McCollum, Mr. Petri, Mr. Cannon, Mr. McNulty, and Ms. Kaptur.
H. R. 4233: Mr. Van Hollen.
H. R. 4316: Mr. Sanders, Mr. Brady of Pennsylvania, Mr. Rangel, and Mr. Owens.
H. R. 4325: Mr. Rohrabacher.
H. R. 4334: Mr. Lantos and Mr. McHugh.
H. R. 4341: Mr. Pomroy and Mrs. Cubin.
H. R. 4345: Mr. Bilirakis.
H. R. 4346: Mr. Berry, Mr. Kennedy of Rhode Island, Mrs. Eddy, Mr. Binken of Johnson of Texas, Mr. Udall of New Mexico, Mr. Payne, Mr. Smith of Washington, Mr. Wexler, Ms. Hooley of Oregon, Mr. Ruppersberger, Mr. Waxman, Mr. Lantos, Mr. Rangel, Mr. Crowley, Mr. Ortiz, Mr. Price of North Carolina, Mr. Serrano, Mr. Langevin, Ms. Loretta Sanchez of California, Mr. Sabo, and Mr. Delahunt.
H. R. 4348: Mr. Sanders, Mr. Rodriguez, Mr. Serrano, Mr. Reyes, and Mrs. Napolitano.
H. R. 4349: Mr. Ackerman and Mr. King of New York.
H. R. 4356: Mr. Owens.
H. R. 4359: Mr. Boren.
H. R. 4361: Mrs. Lowery, Ms. Kilpatrick, and Ms. Lee.
H. R. 4363: Mr. Harris, Mr. Hinojosa, Mr. Hayworth, Mr. Inskeep, and Ms. Ros-Lehtinen.
H. R. 4370: Mr. Hinchey.
H. R. 4377: Mr. Udall of Colorado.
H. R. 4380: Ms. Corrine Brown of Florida, Mr. Young of Florida, Ms. Ros-Lehtinen, Mr. Miller of Florida, Ms. Harris, and Mr. Davis of Florida.
H. R. 4391: Mr. Carter, Mr. Granger, Mr. Culverhouse, Mr. Ryan of Wisconsin, Mr. Paul, Mr. Neugebauer, Mr. DelRay, Mr. McGovern, Mr. John, Mr. Simmons, Mrs. Bugert, and Mr. Stenholm.
H. R. 72: Mr. Larsen of Washington.
H. R. 85: Mr. Ford, Mr. Holt, Mr. Pence, Mr. Michaud and Mr. Levin.
H. R. 95: Mr. Jones of North Carolina.
H. R. 182: Mr. Burton of Indiana.
H. R. 197: Mr. LaHood and Mr. Oxley.
H. R. 242: Ms. McCarthy of Missouri, and Mr. Green of Wisconsin.
H. R. 252: Mr. Owens, Mr. Gutierrez, and Mr. Deutch.
H. R. 258: Mr. Rogers of Alabama.
H. R. 310: Mr. Stenholm.
H. R. 366: Mr. Hastings of Florida.
H. R. 375: Mr. Filner, Mr. Oxley, Ms. Barnard, and Mr. Lewis of California.
H. R. 392: Mr. Moran of Virginia and Mrs. Maloney.
H. R. 413: Mr. Shaw, Mr. Wexler and Mr. Berman.
H. R. 418: Mr. Crowley, Mr. Ackerman, Ms. McCarthy of Missouri, Mr. McDermott, Mr. Abercrombie, Mr. Shimkus, Mr. Pence, Mr. Berenger, Mr. Berman and Mrs. Ros-Lehtinen.
H. R. 60: Mr. Mikenidez.
H. R. 542: Mrs. Ros-Lehtinen.
H. Res. 567: Mr. Upson, Mr. Rogers of Michigan, and Mr. Rehberg.
H. Res. 570: Mr. Wynn, Mrs. Jackson-Lee of Texas, Mr. Sweeney, Mr. Berman, Mr. Delhant, and Ms. Woolsey.
H. Res. 586: Ms. Eddie Bernice Johnson of Texas.
H. Res. 604: Mr. Range.
H. Res. 611: Mr. Kanjorski and Mr. Frost.
H. Res. 635: Mr. Van Hollen, Mr. Grijalva, Mr. Serrano, Mr. Matsui, Mr. Waxman, and Mr. Tom Davis of Virginia.
H. Res. 646: Mr. Cooper, Mr. Van Hollen, Mr. Markey, Mr. Grijalva, Mr. Kennedy of Rhode Island, Mrs. Christensen, Mr. Doggett, Mr.Tierney, Mr. Stark, and Mr. McDermott.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were deleted from public bills and resolutions as follows:
H. R. 3478: Mr. Holden.

PETITIONS, ETC.

Under clause 3 of rule XII, petitions and papers were laid on the clerk’s desk and referred as follows:
61. The SPEAKER presented a petition of Mr. Joe Sitting Owl White, Principal Chief, Cherokee of Lawrence County, Tennessee, relative to petitioning the United States Congress for redress of grievances; to the Committee on Resources.
62. Also, a petition of Mr. Dwight E. Walker, a Citizen of Texas, relative to an affidavit of pertinent facts; to the Committee on Ways and Means.
63. Also, a petition of the Governor of Kentucky, relative to a letter petitioning for the extension of funding for high risk pools under the Trade Act of 2002, to the Committee on Ways and Means.
The Senate met at 10 a.m. and was called to order by the Honorable Lisa Murkowski, a Senator from the State of Alaska.

The PRESIDING OFFICER. Today’s prayer will be offered by guest Chaplain Rabbi Ellen Bernhardt, Headmaster of Albert Einstein Academy, Wilmington, DE.

PRAYER

The guest Chaplain offered the following prayer:

God, Creator of the universe, source of all goodness and mercy, we thank You for the bounty that is ours in this world. Help us to live so that we may be worthy of Your love as we strive to do Your will. You have created each one of us with uniqueness and implanted within us a spark of the divine. We come from many backgrounds and ancestries, and we are bound together in these great United States of America with its cherished values and high ideals. Let us remember the gifts and responsibilities that God has given us as we strive to perfect the world in our days and for generations yet unborn.

We beseech You to give strength and wisdom to our Senators so that they will continue to do their work in this great Chamber and in every cubicule across this land. May they have the patience to listen to the voices of others, the vision to see within the hearts of each person, and the tenacity to continue to strive to make this world a better place for all humanity. And let us all say, Amen.

PLEDGE OF ALLEGIANCE

The Honorable Lisa Murkowski, a Senator from the State of Alaska, 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 legislative clerk read the following letter:

U.S. SENATE
PRESIDENT PRO TEMPORE

To the Senate:

Under the provisions of rule 1, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable Lisa Murkowski, a Senator from the State of Alaska, to perform the duties of the Chair.

Ted Stevens,
President pro tempore.

Ms. Murkowski thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 60 minutes, with the first half of the time under the control of the majority leader or his designee and the second half under the control of the Democratic leader. Following morning business, the Senate will resume consideration of the Department of Defense authorization bill. Senators Warner and Levin will continue working on amendments today and rollcall votes are expected on amendments to the bill throughout the day. Senators will be notified when the first vote is scheduled.

The majority leader announced last night that the fiscal year 2005 budget resolution conference report may become available and we may consider that conference report before the week concludes. Votes will occur over the next 2 days. Members should plan accordingly.

RECOGNITION OF THE ACTING MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada, Mr. Reid.

ORDER OF BUSINESS

Mr. Reid. Madam President, if the distinguished Chair would allow me a unanimous consent request, at the time the Democrats’ morning business hour begins, I ask unanimous consent that Senator Schumer be recognized for 12 1/2 minutes and Senator Bill Nelson be recognized for 12 1/2 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. Brownback. Madam President, I take a few minutes of the leader’s time to speak in morning business on one of the issues this week that has
drawn, obviously, the attention of everybody across the country. It has happened in Massachusetts where, 3 days ago, in keeping with the rulings of four Massachusetts Supreme Court justices last November, the State of Massachusetts started issuing marriage licenses to same-sex couples, as thousands descended on the State.

This event has significant repercussions for all Americans. According to news reports, local officials across the State were giving licenses to all who requested them, without asking for proof of State residency. This is in open defiance of Massachusetts law, which bars out-of-State couples from marrying in the State if the union would be illegal in their home State. Let there be no mistake about this. The stakes in this battle over the future of our culture are enormous. This attempt by an imperious judiciary to radically redefine marriage by a few people is both a grave threat to our central institution and a serious affront to democratic rule in our Nation.

Our reaction to this threat hinges on not only the future of marriage, which is a foundational unit for building a strong society, but our future as governing people as well—whether the people here rule or a few on the judiciary. The actions of the Massachusetts Supreme Court in Goodridge v. Department of Public Health, to mandate homosexual marriage, is simply the latest instance of arrogant judges riding roughshod over the democratic process and constitutional law alike, in a quest to impose a radical social agenda on America.

The decision in this case could not have been more radical. The court declared that our society’s longstanding, historical understanding of marriage as between a man and a woman was irrational or completely lacking a foundation in reason. As such, according to the court, the only possible explanation for the State denying marriage licenses to homosexual couples is prejudice, which the court compared with racial prejudice of the past that opposed interracial marriages. This analogy, of course, is false. It is misleading. The vast majority of African Americans recognize that. The vast majority of all Americans recognize it. All America should have the right to marry whom they choose, regardless of race. But while most Americans believe that homosexuals have a right to live as they choose, they do not believe that a small group of activists or a tiny judicial elite have a right to redefine marriage for the entire society and to impose this radical social experiment on the culture.

Almost every benefit that is being sought can be attained through contract or power of attorney. But let us be clear: this is not a battle over civil rights. It is a battle over whether marriage will be emptied of its meaning in contradiction to the will of the people and their duly elected representatives.

This is a key issue. I look for this body to take up the issue in a constitutional amendment defining marriage as between a man and a woman. This is going to be a very difficult discussion. I hope we can have a good, healthy discussion about the importance of marriage as a foundational building unit in this society, a marriage between a man and a woman bonded together for life. That, indeed, is the best place to raise children according to all of our sociological data. This institution has been in disrepair for 40 years—has had difficulty for a long period of time—but this is not the answer to curing it. This will harm it.

While this is going to be a difficult debate and discussion for us as a country, it is a valuable and important one for us to have. I look forward to this body, later this year, voting on a constitutional amendment defining marriage as between a man and a woman. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mrs. HUTCHISON. Madam President, I yield up to 10 minutes to the Senator from Colorado.

The ACTING PRESIDENT pro tempore. The Senator from Colorado.

ACCOMPLISHMENTS OF THE LAST FOUR YEARS

Mr. ALLARD. Madam President, I thank the Senator from Texas for yielding.

I want to talk a little bit about what has happened during the last 4 years after the President assumed office, and after we have had a Republican Congress.

I think there were problems within the world and within this country that nobody wanted to admit were happening.

For example, when this President took office, the economy was going down. The President—President Clinton didn’t want to admit that, but it was a fact. And that is an accepted fact today which everybody understands.

Look at what the economy was doing when President Bush assumed office. The economy was going down. This President and this Congress, instead of putting the problem off to future generations and putting out a lot of rhetoric, did something. We cut the tax burden of this country, and today the economy is doing much better. Employment is growing. We have a strong economy; it is getting stronger. People are being productive. We are getting people into homes. Right now, we have the highest home ownership rate in the history of this country, which means people of all races and ethnic backgrounds are getting an opportunity to own a piece of America. That is where the strength of this country is.

Because of this President and this Congress working on those kinds of issues, there is a real difference in people’s personal lives.

The other thing that was not recognized and which some people wanted to ignore is the fact that we are much more secure today than we were 4 years ago. We didn’t realize, 4 years ago, the threat that was happening as far as America.

I recall an opportunity where I was interviewed on BBC. This was an interview that happened a couple or 3 years back. There was an individual on the other side who was from the Middle East.

He said: Senator, what you don’t realize is that you have been at war in America for 5 years already because of what is happening in the Middle East. They have already declared war on you.

If you look at it historically, we had a few terrorist attacks on small areas that were rather insignificant. We ignored them. Then we had terrorist attacks in our Congress or some future them. We had a terrorist attack on Khorab Towers, and we ignored it. We had the attack on the USS Cole, and we ignored that. Then we had the World Trade Center in New York, and basically that was ignored. We took the attacks by terrorists on the Twin Towers and the Pentagon of the United States for people to wake up, and this President and this Republican Congress stepped to the plate and we dealt with those security issues. We provided the money to make this a modern military. This President said we needed a modern military; that is, more mobile because times are changing.

Our threat is terrorism throughout the world. We need to be prepared to address that. This President and this Congress didn’t put that off to the next generation. We didn’t put it off until somebody else would make a decision—some future Congress or some future President. We addressed that problem immediately. We got after it. We are continuing to get after it. We still have a concern.

I am excited about the fact that we are now talking about sovereignty for Iraq where they are going to be their own leaders. That doesn’t mean necessarily that we are going to have less involvement as far as the conflict is concerned.

But we need a leader in this world who is trying to promote world peace. And we need a leader who is trying to secure the economic health of this country and the world, too.

When we look back at the accomplishments of the last 4 years, there is a lot to be proud of. I am glad we had some real leadership in the White House. I am glad we had some real leadership in both the House of Representatives and the Senate that took on those issues. They are not easy issues. They are difficult issues.

But the good message to the rest of the world is, America is stepping to the plate.

I am looking forward to continuing the fight and the work with my other Members to make sure we have a strong economy. That is a challenge.
We need to make sure those tax cuts we provided are stimulating our economy and economic growth; make that economic engine go so we have a free market system which is working; and make sure those incentives are out there so Americans not only are justly rewarded and they can keep the benefits of their hard work in their own pockets and it doesn’t have to be sent to the Federal Government for it to spend; they get to spend it themselves in their own communities to meet there own needs. That means less government. It means we can rely more on individuals to assume responsibility. We need to work to make sure we create opportunities for everyone.

That is the challenge we have ahead of us. Tax cuts are expiring. One of the challenges we are facing in the Senate is the budget deficit. We have to be sure we reduce the deficit. Our economy is responding to the tax cuts. I don’t think anyone can say tax cuts didn’t help. We have to keep our country strong for our security.

We still have challenges, we recognize that. But we have to face up to those challenges and not push them off to future generations.

I happen to believe you have to stand up to terrorism. We learned the hard lesson. We learned if you ignore terrorism, it doesn’t go away. We learned that you have to stand up to the terrorists, with each success the recruitment of terrorist groups goes up. We saw that. With each success, the terrorist groups get more money, they get better financing, and they are a greater risk.

I compliment this President. I am proud to be a part of a body which has over the last 4 years made a difference in this country. That is not to say we do not have a lot of challenges; we certainly have a lot of challenges. But we are on to a good start. We need to continue.

I look forward to working with this President for another 4 years because I think he has done a good job in leadership, I think this country needs him.

I think this Congress has some challenges ahead of it, and we need good, strong leadership. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mrs. HUTCHISON. Madam President, how much time remains?

The ACTING PRESIDENT pro tempore. There is 18 minutes remaining on the Republican side.

Mrs. HUTCHISON. Madam President, I would like to be notified at the end of 5 minutes, after which I will yield the remainder on our side to the Senator from Maryland.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITMENT TO NATIONAL SECURITY

Mrs. HUTCHISON. Madam President, we just heard a wonderful talk by the President of the United States. He talked about our commitment and reminded us once again that our commitment to winning in Iraq is everything. There is no alternative. The President talked about the commitment of winning the war on terrorism.

That means we must stabilize Iraq. We must begin to show the people in the Middle East what freedom, free enterprise, economy and jobs can do, and an educational system that includes boys and girls, giving them hope for the future.

He reminded us of the commitment we must make to see the war on terrorism through. This is not going to be a war that goes exactly the way it was planned. Name for me a war that did.

Name for me a war that we said, Here is what is going to happen, and it happens just that way. This is war. We have been attacked. Thousands of Americans have been killed by fanatics. Nick Berg was assassinated on videotape and taken by terrorists. This will continue to happen if we lose our resolve. There is only one way that we can lose; that is, for America not to see this through.

It means winning the immediate war. It means winning the war in Iraq and Afghanistan. It means sowing the seeds of freedom and representative government in those countries to show how it can be done where people have not lived in freedom for years. We must see it through. That means not just the next year in which we have the big challenge we are facing in the Senate of us. Tax cuts are expiring. One of the things we must do is make sure we reduce the deficit. Our economy is responding to the tax cuts. I am sure we reduce the deficit. Our economy is responding to the tax cuts. I am sure we reduce the deficit.

We are about to do. American history sometimes seems to be the same story repeated over and over again. Some group of big-thinking but foolhardy visionaries head out to eradicate some evil and to realize some golden future. They get halfway along their journey and find they are unprepared for the harsh reality they suddenly face. It’s too late to turn back, so they reinvent their mission. They toss out illusions and adopt an almost desperate pragmatism. They never do realize, they do not plant the seeds of freedom, democracy, economic growth. They do not do anything.

Mrs. HUTCHISON. Madam President, I just ask unanimous consent to have printed in the RECORD an article by David Brooks from the New York Times.

There’s something about our venture into Iraq that is inspiringly, painfully, embarrassingly and quintessentially American.

No other nation would have been hopeful enough to try to evangelize for democracy across the Middle East. No other nation would have been naive enough to try that badly. No other nation would be adaptable enough to recover from its own innocence and muddle its way to success, as I suspect we were about to do.

American history sometimes seems to be the same story repeated over and over again. Some group of big-thinking but foolhardy visionaries head out to eradicate some evil and to realize some golden future. They get halfway along their journey and find they are unprepared for the harsh reality they suddenly face. It’s too late to turn back, so they reinvent their mission. They toss out illusions and adopt an almost desperate pragmatism. They never do realize, they do not plant the seeds of freedom, democracy, economic growth. They do not do anything.

Mrs. HUTCHISON. Madam President, I just ask unanimous consent to have printed in the RECORD an article by David Brooks from the New York Times.

There’s something about our venture into Iraq that is inspiringly, painfully, embarrassingly and quintessentially American.

No other nation would have been hopeful enough to try to evangelize for democracy across the Middle East. No other nation would have been naive enough to try that badly. No other nation would be adaptable enough to recover from its own innocence and muddle its way to success, as I suspect we were about to do.

American history sometimes seems to be the same story repeated over and over again. Some group of big-thinking but foolhardy visionaries head out to eradicate some evil and to realize some golden future. They get halfway along their journey and find they are unprepared for the harsh reality they suddenly face. It’s too late to turn back, so they reinvent their mission. They toss out illusions and adopt an almost desperate pragmatism. They never do realize, they do not plant the seeds of freedom, democracy, economic growth. They do not do anything.

Mrs. HUTCHISON. Madam President, I just ask unanimous consent to have printed in the RECORD an article by David Brooks from the New York Times.

There’s something about our venture into Iraq that is inspiringly, painfully, embarrassingly and quintessentially American.

No other nation would have been hopeful enough to try to evangelize for democracy across the Middle East. No other nation would have been naive enough to try that badly. No other nation would be adaptable enough to recover from its own innocence and muddle its way to success, as I suspect we were about to do.

American history sometimes seems to be the same story repeated over and over again. Some group of big-thinking but foolhardy visionaries head out to eradicate some evil and to realize some golden future. They get halfway along their journey and find they are unprepared for the harsh reality they suddenly face. It’s too late to turn back, so they reinvent their mission. They toss out illusions and adopt an almost desperate pragmatism. They never do realize, they do not plant the seeds of freedom, democracy, economic growth. They do not do anything.
is the precondition for the second wind, the grubbier, less illusioned effort that often enough leads to some acceptable outcome.

Today in Iraq local commanders seem to be allowed to try anything. We are adjoining former Baathists to man a Falluja Brigade to police their own city. We are pounding Moktada al-Sadr while negotiating with him. They had a plan of moving up inspections so when an Iraqi official is assassinated, he is not seen as a person working with the U.S., but as a duly elected representative of the Iraqi people.

Some of these policies seem incoherent, but they may work. And back home a new mood has taken over part of the political class. The kind of responsible faction has no time now for the witless applause lines the jeering jackdaws on left and right repeat to themselves to their own perpetual self-admiration and delight. Even in a political year, most politicians do not want this country to fail.

There are, for example, members of Congress from both parties who feel estranged from this administration. They feel it does not listen to their ideas. But in this troubled hour, they are desperate to help. If but a call were made, they would burst forth with intelligent suggestions: about Iraq, about political tactics, about getting additional appropriations.

Remember, the most untrue truism in human history is that there are no second acts in American life. In reality, there is nothing but second acts. There areshakeout moments, new beginnings. The weeks until June 30 are bound to be awful, but we may be at the start of a new beginning now.

Mr. HUTCHISON. I yield the remainder of my time to the Senator from New Mexico.

Mr. DOMENICI. Madam President, how much time do I have?

The ACTING PRESIDENT pro tempore. There is 12 minutes remaining.

HIGH ENERGY PRICES

Mr. DOMENICI. Madam President, again this morning I will talk about energy prices and the opportunity each week until we come to our senses and pass an energy bill to remind the American people one of the reasons gas prices are spiraling, one of the reasons we are skeptical about our future is the tremendously high price of crude oil.

That will never be reduced until America makes a commitment, until the people of the world and the producers of oil understand the United States of America is not going to sit by and do nothing. We are going to have a comprehensive policy with one objective. That is to produce more alternatives that can be used by the American people to satisfy and supply their energy needs. That means we want to do more to produce natural gas, not sit idly by, we want the industry to continue and soon be dependent on foreign countries for natural gas.

The occupant of the Chair comes from a State that has an abundance of natural gas. We have to bring it to the lower 48 States. The Energy bill which we have let die, the other bill of the aisle for the most part defeated, had a powerful provision which will bring natural gas from Alaska. It also had a provision that will get the maximum amount of natural gas from our sources in America.

The price of gas in California this week averaged $2.27; in San Francisco, it hit $2.79. In Brooklyn, it was $2.49. Each time our citizen pumps a gallon of gas, that tax is transferred. I would remember a majority of the Senators in this body, led by the Republicans, has been trying to pass a comprehensive energy legislation package. They are backed by an Administration led by the other side of the aisle, the Democrats, who, for some reason, find an excuse on every energy bill we propose. Either this must be changed, that must be changed, or this must be added—until we end up with nothing.

Fellow Senators, the Energy bill is not a silver bullet to lowering the price of gasoline. It does, however, set forth a plan for the future. The Energy bill will increase domestic oil and natural gas production that helps balance supply and demand. The Energy bill does a number of technical things. It removes a 2-percent oxygenate mandate that will make it easier on refineries to make gasoline that can be traded between regional markets.

Mr. HUTCHISON. I yield the remainder of my time.

Mr. DOMENICI. The situation with the Totalization of boutique fuels. There are a number of State-specific gasoline reformulations that make refining more challenging and make marketing inefficient. We can go on and on.

As I try to get ourselves off of this tremendous demand for gasoline and crude oil derivatives? One is hydrogen power. How do we do that without an energy bill that sets a policy of spending the research money on hydrogen power with the automobile manufacturers to come up with a solution?

We try, as part of a comprehensive energy bill, I said, try as we may—we are not going to change the rules of this game. I wonder if they really want an energy bill. I am beginning to think it is their way or no way. They might even think the President of the United States might help us too much with an energy bill. I hope that is not true.

The benefits are being denied to the American people. Some people want to kick the political football around and they hope they can score a touchdown. We are actually going to score in high energy prices and higher energy prices hurt the economy. I am a football fan. But that is one touchdown I don’t want to see scored.

Right now we are focusing on high gasoline prices. High gasoline prices are tied to the price of oil. What has been making the price climb? We know there is huge demand in the world led by China, which is gobbling oil like you would think there was no end to the supply. In addition, there is a risk factor being built into the price because of the uncertainty of oil production. There is a risk factor that is causing those who produce and sell it on the world market to not go rock bottom but to go as high as they can because they are afraid of terrorism.

We have to be hopeful that the cartel and those who are producing oil, who are listening to our President, some of whom have been friends of America, we have to think they will see the light of day, that the price they are forcing on the world is not good for them, either; it is bad for their friends; it is bad for the world. Ultimately, it is not good for the producing countries.

Our President is taking a leadership role with reference to the energy-producing countries. He is trying to crook, to talk to them, to work on them so they will increase production and hopefully bring down the price of oil.

Some want to embarrass the President by offering resolutions directing him to do what he is doing. Some want to use the Strategic Petroleum Reserve as if that reserve, which is there for emergencies, could, in fact, help with these high oil prices. The last time we tried, our President did not allow us to do what we wanted to do. We want to reduce the emergency oil we have and then find in a few months the terrorists do something and we are short of oil and then we have a real problem because of it? SPR was for that kind of situation.

Perhaps people forgot the last time Iran cut a little bit of the supply to the world, America was affected in a dramatic way. That caused us to build SPR so we could never be immediately cut off and immediately be a challenge to our economy disrupted by a challenge from outside. Why do we want to risk that when the consequences will be very little?

Maybe some think they can blame an economic downturn, because of high energy prices, on President Bush. They will not succeed. President Bush’s economic policy has brought America from a recession to a vibrant, growing economy. Its gross domestic product increases from 2 years— not 2 years, not 5 years, in 20 years. So they are not going to deny that by filibustering an energy bill.

But I can tell you, the purpose of debating in the Senate is to let the American people know who is responsible for what. And I don’t know what to do. We have tried everything with reference to getting an energy bill. Maybe we ought to ask the Democrats to sit down and talk about what they need. I am not sure I could get a majority of that kind of situation.

Because it seems to anything we try just cannot get anywhere because one group or another, principally on the other side of the aisle, seems to find fault; and there we go, we get nothing done.

Now, we have some who want to investigate the oil companies because of the prices. I have, in this statement, a list of the investigations that have occurred and who has done them. They are powerful, neutral bodies that have done them. They did one for California because their prices went skyrocketing. Nobody can find collusion or
price fixing. What has happened is the world demand is monstrous, and the cartel and others that are not part of it want to hold supply down to let prices go up.

And what do we do? We sit here in the U.S. Congress, wring our hands, and complain and worry and talk about President Bush needing a plan. Look, he gave us a plan. If you want to argue about how he did it, go ahead, but look at it and see what it will do. For the most part, the things we in this plan are exactly what America needs. We need to maximize our own production of oil. It will not be sufficient, but we can do some things. We need to maximize the production of natural gas. We need to quit blaming, quit wringing our hands, quit talking, especially on the energy grid more powerful, stronger, more reliable, and see that it can grow and prosper.

It is our future. How we energize it is our challenge. We cannot do it with natural gas alone. We have to have all of these. We need the basics. You cannot even get those done.

So from my standpoint, I hope we will quit blaming, quit wringing our hands, quit talking, especially on the other side of the aisle, about what we need to do. We need the basics. We need the incentives that are required. And, yes, in the end we have to put some incentives in to get started with nuclear again. But we do not have to have all of these. We need the basics. You cannot even get those done.

Mr. DOMENICI. Madam President, I wonder if the Senator will yield for 30 seconds?

Mr. CARPER. I yield.

Mr. DOMENICI. Madam President, I say to the Senator, I heard your remarks, and I do want to say to the Senator, that while I do not know your overall feelings about an energy bill, I will say on a couple of very difficult issues that I think are very important that were contentious—and many people on your side did not think we ought to do—you stood tall because you understand that we need diversification and you are not afraid to make votes. And I thank you for that.

Mr. CARPER. I thank the Senator.

Madam President, on a brighter note, with respect to energy policy, a week or so ago we passed a major bill called FSC/ETI. Some people call it the JOBS bill or a trade bill. But provisions of the Energy bill were incorporated in that legislation, important provisions that include incentives for renewable forms of energy—solar, wind, geothermal—and incentives to encourage people to buy more energy-efficient vehicles, hybrids, fuel-cell vehicles, to make them more affordable, to get more of them out there, and using less gasoline and diesel fuel, and also incentives for us to begin converting to a greater use of what I call biofuels—ethanol—and something we do in Delaware a lot on the Delmarva Peninsula, using soybean oil and mix it with diesel fuel.

They were able to do something good for the environment and actually reduce significantly our use of diesel-powered vehicles.

While it is still mid-May, we have a fair amount of time to go before we finish here. Before we finish, I hope we will find common ground on the rest of the energy policy, and that it is also respective of our environment and the demographic concerns we have, and gives the States the ability to recover damages for their drinking supply that has been damaged by MTBE.

ORDER OF PROCEEDURE

Mr. BIDEN. Madam President, I ask unanimous consent that the Democratic side be given an additional 10 minutes of order of business, with the time equally divided between Senator CARPER and myself. Before the Chair acts on this request, I am told it has been cleared by the Republican side.

Mr. DOMENICI. We have no objection.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CARPER. Madam President, I express to Senator BIDEN my appreciation for his inviting a wonderful woman, a rabbi from Delaware, to come here to be our guest Chaplain, and to say how pleased we are, all of us, to welcome Ellen Bernhardt. She gave the invocation about 40 minutes ago. I told her it was one of the best invocations I have heard in the 3 years I have been privileged to be a Senator. It was as good as any I have heard. We thank you for not only coming to bring the blessing of that invocation, but to remind us about what really matters.

I also thank her for just what she does in Delaware. She has been a rabbi, I think, about 17 years. She is a native of Philadelphia. For the last 11 years or so, she has run a school in Delaware which is, I believe, the only Jewish day...
school in our State. We have a lot of schools, but only one Jewish day school—Albert Einstein Academy. There are youngsters in kindergarten, from age 5, up to the sixth grade. While it is a Jewish day school, it is non-denominational. We believe the students happen to be Jewish or not. They can attend that school. I was kidding earlier about how most of them are Baptists. Actually, I don’t think that is the case. That gives you the flavor of a denominational school. We have been privileged to know a number of the kids who go there. They get a wonderful education and start for their lives and go on to do great work.

We have been joined today not only by Rabbi Bernhardt, but also by three of her children and her husband. We are so privileged that she lives in Delaware and that she provides great leadership on the educational side, and also for a lot of us on the spiritual side, whether we happen to be Jewish or not. Welcome.

Again, to my friend, JOE BIDEN, I thank him for making it possible for her to be here today.

Mr. BIDEN. Madam President, Delaware is a small State and everyone seems to know everyone else. We know just about everyone in the State. You can’t go to the grocery store, church, synagogue, or mosque without running into people you know. We go to each other’s events. It is a little like Alaska—small. Alaska is gigantic, but the population is small. We go to each other’s gatherings, and we are affected by each other’s achievements and each other’s losses, and we are affected by each other’s losses. Sometimes the closeness gets us in trouble, but I would not change it for the world.

It has been an honor and a pleasure to represent my State and to have the pleasure over the years to invite several members of our clergy to come and be guest Chaplains.

Rabbi Ellen Bernhardt is our guest Chaplain today. As Senator CARPER said, she is the daughter of Ellen’s. As I said, we are very similar in age, who were in an atrium that contained the temporary desk was the second from the end over there. I realized I was standing next to the desk where Daniel Webster sat. I thought to myself, it is the only time actually thought, my God, what is this story? In the last 31 years, some in my constituency have said: My God, what is he doing there? I have become accustomed to it. My impression at that time—and I don’t know the rabbi’s impression—was how small this Chamber is. There is a closeness to it. It is a comfort. Anyway, I am proud we are able to share the floor with the rabbi today.

Let me say, my relationship and personal connection with the rabbi is a quintessential example of the nature of the State of Delaware.

I happen to know that the rabbi grew up over her father’s drugstore in Belfonte, which I frequented a lot. I went to St. Helena, a Catholic grade school in Claymont. Everybody knew your father’s drugstore. Everybody hung out in your father’s drugstore. I am considerably older than the rabbi. We basically come from the same small neck of the woods, the same small neighborhood.

The rabbi’s father was a heck of a guy, by the way. As a kid and a member of the congregation Ades Kodesh, Shel Emeth, Ellen would study after Rabbi Gewirtz—a man I always affectionately referred to as literally “my rabbi.” He introduced me frequently. He became my first tutor—literally, not figuratively—because of my interest in theology and the Holocaust. I remember speaking up at a college, a rabbinical school in Philadelphia. I remember those big old thick shoes he used to wear that faced up the side and squeaked on a linoleum floor. I was speaking in this room that was not very commodious for speaking; it was long and with low ceilings, and the podium was in the middle. It was a shoal, actually. He came late and wanted to hear me speak. He opened the door and the congregation was seated and the door smacked against a pew. He walked in and, as you know, he walked right up to the front and sat down. It was kind of a tense moment. Everybody would say who is this guy walking in. I said, “My rabbi has arrived.”

After speaking to this all-Jewish congregation, a group of ladies my mom’s age, who, in an atrium that connected the shoal to the university, the school—as I walked out, they were arguing. I could hear them saying: Yes, he is. No, he isn’t. Yes, he is. A lady grabbed me by the coat and said: You said “your rabbi.” I said “your rabbi” influenced me—though much more profound to you but no less significant to me.” He was a great man.

I arrived here almost 32 years ago and I feel the same amount of pride today that I felt then as I walk out on this floor. I know that sounds corny, but I really do. I am incredibly proud of this institution. I remember the first time I walked on the floor; my temporary desk was the second from the end over there. I realized I was standing next to the desk where Daniel Webster sat. I thought to myself, it is the only time actually thought, my God, what is this story? In the last 31 years, some in my constituency have said: My God, what is he doing there? I have become accustomed to it. My impression at that time—and I don’t know the rabbi’s impression—was how small this Chamber is. There is a closeness to it. It is a comfort. Anyway, I am proud we are able to share the floor with the rabbi today.

Let me say, my relationship and personal connection with the rabbi is a quintessential example of the nature of the State of Delaware.

I happen to know that the rabbi grew up over her father’s drugstore in Belfonte, which I frequented a lot. I went to St. Helena, a Catholic grade school in Claymont. Everybody knew your father’s drugstore. Everybody hung out in your father’s drugstore. I am considerably older than the rabbi. We basically come from the same small neck of the woods, the same small neighborhood.

The rabbi’s father was a heck of a guy, by the way. As a kid and a member of the congregation Ades Kodesh, Ades Kodesh, Ellen would study after Rabbi Gewirtz—a man I always affectionately referred to as literally “my rabbi.” He introduced me frequently. He became my first tutor—literally, not figuratively—because of my interest in theology and the Holocaust. I remember speaking up at a college, a rabbinical school in Philadelphia. I remember those big old thick shoes he used to wear that faced up the side and squeaked on a linoleum floor. I was speaking in this room that was not very commodious for speaking; it was long and with low ceilings, and the podium was in the middle. It was a shoal, actually. He came late and wanted to hear me speak. He opened the door and the congregation was seated and the door smacked against a pew. He walked in and, as you know, he walked right up to the front and sat down. It was kind of a tense moment. Everybody would say who is this guy walking in. I said, “My rabbi has arrived.”

After speaking to this all-Jewish congregation, a group of ladies my mom’s age, who, in an atrium that connected the shoal to the university, the school—as I walked out, they were arguing. I could hear them saying: Yes, he is. No, he isn’t. Yes, he is. A lady grabbed me by the coat and said: You said “your rabbi.” I said “your rabbi” influenced me—though much more profound to you but no less significant to me.” He was a great man.

Rabbi Gewirtz was truly a spiritual leader and, as Ellen will tell you, is the reason she decided to become a rabbi. We miss her. Miss him is with her today. I know he is looking down and is very proud. He was also proud of this place, proud of this country, proud of the Senate. To have you here, I am sure, he is smiling.

There are a lot of other things I could and would want to say about Ellen. As I said, we are very similar in the sense that we are truly products of our parents’ upbringing and, knowing her story, it is no surprise to me that she has devoted her life to Jewish education, community service, and to her family.

Her grandparents came to this country by way of Ellis Island. Her entire mother’s side of the family chose to remain in Eastern Europe and were tragically killed in the Nazi Holocaust. Her extended family was conspicuously absent from her life. As one can imagine, this had a profound effect on Rabbi Bernhardt and her family’s life, priorities, and values.

Her father, Herman Gordon, was one of the many heroic members of the Armed Forces who chose to enlist in the Army Air Corps at the outset of World War II. Mr. Gordon served as a waist gunner on the Flying Fortress B-17 bomber.

Based in England, his unit performed missions over France and Germany, clearing the way for our troops to land on the beaches of Normandy. On his 24th mission, his plane was shot down over Germany. As a Jew, he became a prisoner of war in Germany for 9 months. The latter 3 months of his imprisonment was spent marching at gunpoint on the infamous “death march”—a desperate move by the Nazis to relocate their POWs straight into the heart of Germany, out of the hands of the Allied forces which were closing in, which I always thought was a metaphor for the insanity, the lust of Hitler and Nazi Germany. This nightmare all came to an end when Mr. Gordon’s camp was liberated by General Patton’s army.

It is quite a story, quite a heritage, and quite a family. As my dad, who passed away about a year and a half ago, would say: Girl, you have good blood; you have real good blood.

I only hope our children and grandchildren develop an appreciation for the sacrifices of so many Americans, such as Ellen’s father, and the thousands of soldiers who are currently serving abroad have done for this country.

One of the reasons I am telling this story is to give my colleagues and constituents insight into what motivates our guest Chaplain this morning to energize her students, families, and friends to better the Delaware
Mr. REID. Madam President, I say to the distinguished ranking member, we have 25 minutes that have been allocated. We could easily, I am confident, get another 10 minutes. Does the Senator wish to speak right now?

Mr. MURkowski. Madam President, I would like to do whatever accommodates the Senate.

Mr. REID. Through the Chair to the distinguished Senator from Florida, how is the Senator's time schedule?

Mr. NELSON of Florida. Madam President, I say there is never a dull moment in the life of this Senator from Florida. Since I have learned the ways of comity, accommodation, felicity, I yield to the distinguished Senator from the State of Delaware. In fact, in my remarks about are we better off now than we were 4 years ago, I was going to try to engage my distinguished colleague in a colloquy.

Mr. REID. Madam President, I ask unanimous consent there be 5 additional minutes on both sides for morning business. That will allow the Senator from Delaware to speak for 10 minutes. If my unanimous consent request is granted, that would allow him to begin now.

The ACTING PRESIDENT pro tempore. The Senator will need an additional 10 minutes. All time in excess has expired.

Mr. REID. Our time is gone.

The ACTING PRESIDENT pro tempore. There are 23½ minutes remaining.

Mr. REID. Where did our time go?

Did somebody speak?

The ACTING PRESIDENT pro tempore. The senior Senator from Delaware and the junior Senator from Delaware.

Mr. REID. Madam President, I ask unanimous consent for an additional 10 minutes on each side, then.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AHMED CHALABI

Mr. BIDEN. Madam President, I thank my friend from Florida who knows much more about what I am going to mention today. He and I worked on what I am going to talk about for some time. And that is—there are reports coming in that the home and offices of Ahmed Chalabi were raided today in Baghdad.

I do not have clear evidence yet as to whether they were raided by the Iraqi government or by the CPA, but both the Senator and I have been incredible skeptics of this administration’s reliance on this fellow, Ahmed Chalabi, who has been indicted, tried, convicted, and sentenced in Jordan.

For the last 2 years—although I have nothing personal against Mr. Ahmed Chalabi, I have been urging this administration, particularly the Secretary of Defense, the Vice President, and Mr. Wolfowitz: Do not put our eggs into Mr. Chalabi’s basket.

Mr. Chalabi is the President of the Iraqi National Congress. I was so concerned about this that my friend from Nebraska, Senator HAGEL, and I were literally smuggled into northern Iraq about a month before the war began because I wanted the Barzani and Talibani clients in northern Iraq to determine what their attitude was, first, toward our invasion with Iraq—would they be with us? There were reports that they would have been, but we wanted to find out for ourselves, not us.

I could never quite understand the incredible preoccupation of the administration with Mr. Chalabi. I think that reliance has done us great damage in terms of establishing a stable government in Iraq.

Today’s raid comes on the heels of an announcement earlier this week that the Defense Department belatedly, after well over a year, has cut off the $340,000 monthly payment to the INC, headed by Mr. Chalabi.

Last month, I wrote to the Secretary of State and the Secretary of Defense asking them to explain why we continue to pay Mr. Chalabi a monthly stipend. The action was seen as sort of putting our thumb on the scale—see, we say we want the Iraqis to decide their outcome, and here we are pouring into one man, an outfit, $340,000 a month.

It is no secret Mr. Chalabi has long been the favorite of the Pentagon civilians and the Vice President, although the CIA, the uniformed military, and the State Department have been adamantly opposed to him.

We recently had a meeting with the Secretary of Defense in a closed session, and I am allowed to say this in public, and I raised the question of funds to Chalabi and the phrase—well, I guess I cannot quote exactly what the phrase was. I cannot quote the Secretary. But the point is there has been a real difficulty in pushing back.

It has been clear for some time our close association with Mr. Chalabi has damaged American interests in Iraq. Chalabi is the best known figure in the Iraqi Governing Council, according to a poll taken. We asked, well, how do you vote? Well, for the way, a poll taken a couple of months ago in Iraq shows that he is not only the best known member of the Governing Council, but he is also the least popular, with a negative rating of over 60 percent.

Chalabi, as my colleagues will recall, was flown in to southern Iraq literally days before the statue of Saddam fell. It was actually during the war; he was flown in to a portion of southern Iraq that we had already conquered and passed. He has been flown in without the knowledge of the State Department and other senior officials. I guess he was going to be the triumphant Shi’a...
who was going to march through the Shi'a territories heading up to Bagh-
dad, except one thing, nobody liked him and nobody followed him.

I do not know what it took to get the message to this administration that
this was not helpful but this guy was hurting our legitimacy. At that
time, I rose in the Senate and said, what are we doing here? I think my
friend from Florida as well, if not here in the Senate, I know in our hearings,
said, what are we doing this for? How are we liberating the Iraqis, we are going to let them choose their
government and we are flying in a handpicked guy?

Well, that sort of went south, figuratively speaking. It was clear we were
attempts to put him in a place to take over the reins of Baghdad. Toward
the end of that year, he organized the militia, which was implicated in in-
stances of looting in Baghdad. The U.S. military wisely ordered the militia to
disable, but there were some sup-
porters here saying it is okay for him to set up a militia.

We are trying to disband militias, and we wonder why we have so little leg-
itimacy. This is not Monday-morning quarterbacking. If need be, for the
record, I will come back and lay out all the statements we made 2 years ago
about Mr. Chalabi, a year ago, 8 months ago, 10 months ago, as recently as
a hearing 2 days ago in the Senate. It is dangerous and some suspicion, but we con-
secutive speaking. In recent months, Chalabi has been moving closer and closer to the reli-
gious elements in Iraq, apparently belying his claims to be a secular lead-
er. His close association with hardliners in Iran, including Ayatollah
Khamenei, has been a matter of mys-
tery and some suspicion, but we con-

The King of Jordan made known his country’s distaste for Mr. Chalabi. They did not hide it. The Foreign Min-
ister of Jordan came to me personally
and told, for God’s sake, do not deal with this guy; do you not understand he is going to hurt you?

Mr. Chalabi has been convicted on fraud charges stemming from a failure of the Petra Bank which Chalabi head-
ed. In recent months, Chalabi has been moving closer and closer to the reli-
gious elements in Iraq, apparently belying his claims to be a secular lead-
er. His close association with hardliners in Iran, including Ayatollah
Khamenei, has been a matter of mys-
tery and some suspicion, but we con-

The bottom line is it is a long time in coming. It is time to put in a pinch-hitter, are you going to take advan-
ced from one of the most knowl-
edgeable Members of the Senate. In
thinking about the question of are you better off now than you were 4 years ago, are you safer now than you were 4 years ago, I have had the privilege of sitting at the knee of the former chair-
man of the Senate Foreign Relations Committee. He has taught me some-
thing about two countries where we better keep a laser eye focused, namely

Mr. Nelson of Florida. All of my
speech on “are you better off now than you were 4 years ago?’ I am going to
save for another day. I want to take advantage of one of the most knowl-
edgeable Members of the Senate. Is the impression of the Senator from Florida correct?

Mr. Nelson of Florida. Does that
give the Senator from New York enough time?
Mr. Schumacher. Yes. Mr. Nelson of Florida. All of my
speech on “are you better off now than you were 4 years ago?’ I am going to
save for another day. I want to take advantage of one of the most knowl-
edgeable Members of the Senate. Is the impression of the Senator from Florida correct?

Mr. Nelson of Florida. Does that
give the Senator from New York enough time?
Mr. Schumacher. Yes.

The Senator from Florida.
Mr. BIDEN. The bottom line is it is a long time in coming. I hope this means
we have listened to the sounds of voices in this administration. I say to
my friend, we both know this: We have both tried to help this administration, but it is as though there is a San
Andreas fault that runs down the middle of this popular notion, with two very different views of the world. One
is held by Mr. Powell, the State De-
partment, and the uniformed military, and the other being the Vice President, the Secretary of Defense, and Mr.
Wolfowitz, who are all fine, honorable, decent men who have a very dif-

The view of their world which they have been promoting has turned out
to be so accurate. I hope this is evi-
dence of the President is start-
ing to listen to saner voices.

I facetiously said—nobody asked—if you had a baseball team and you had somebody who batted zero and it came
time to put in a pinch-hitter, are you going to look at the batting averages? It is time to look at the batting averages, Mr. President. Listen to those
folks in your administration. There are some very good ones who have better batting averages, and I hope this is be-

Mr. Nelson of Florida. Then, Mr. President, indeed this is what the Sen-
ator from Delaware has constantly
preached. He has been a Johnny-one-
ote note on how we ought to engage with other nations around this world, through diplomacy, to better the pro-
tection of the United States.

Is it the impression of the Senator
from Delaware have we been dragging our feet with regard to North Korea, before we ever started engaging them,
in international and one-to-one discus-
sions?
Mr. BIDEN. Mr. President, I say to
my friend—I will make two points here. One is, it was not only the Senator
from Delaware and Florida, but also the Senator from Indiana, the Re-

Mr. Nelson of Florida. How much
time is allocated to this side on morn-

Mr. Nelson of Florida. Mr. President, indeed this is what the Sen-
ator from Delaware has constantly
preached. He has been a Johnny-one-
ote note on how we ought to engage with other nations around this world, through diplomacy, to better the pro-
tection of the United States.

Is it the impression of the Senator
from Delaware have we been dragging our feet with regard to North Korea, before we ever started engaging them,
in international and one-to-one discus-
sions?
Mr. BIDEN. Mr. President, I say to
my friend—I will make two points here. One is, it was not only the Senator
from Delaware and Florida, but also the Senator from Indiana, the Re-

Mr. Nelson of Florida. How much
time is allocated to this side on morn-

Mr. Nelson of Florida. Mr. President, indeed this is what the Sen-
ator from Delaware has constantly
preached. He has been a Johnny-one-
ote note on how we ought to engage with other nations around this world, through diplomacy, to better the pro-
tection of the United States.

Is it the impression of the Senator
from Delaware have we been dragging our feet with regard to North Korea, before we ever started engaging them,
in international and one-to-one discus-
sions?
Mr. BIDEN. Mr. President, I say to
my friend—I will make two points here. One is, it was not only the Senator
from Delaware and Florida, but also the Senator from Indiana, the Re-

Mr. Nelson of Florida. How much
time is allocated to this side on morn-

Mr. Nelson of Florida. Mr. President, indeed this is what the Sen-
ator from Delaware has constantly
preached. He has been a Johnny-one-
ote note on how we ought to engage with other nations around this world, through diplomacy, to better the pro-
tection of the United States.

Is it the impression of the Senator
from Delaware have we been dragging our feet with regard to North Korea, before we ever started engaging them,
in international and one-to-one discus-
sions?
Mr. BIDEN. Mr. President, I say to
my friend—I will make two points here. One is, it was not only the Senator
from Delaware and Florida, but also the Senator from Indiana, the Re-

Mr. Nelson of Florida. How much
time is allocated to this side on morn-

Mr. Nelson of Florida. Mr. President, indeed this is what the Sen-
ator from Delaware has constantly
preached. He has been a Johnny-one-
ote note on how we ought to engage with other nations around this world, through diplomacy, to better the pro-
tection of the United States.

Is it the impression of the Senator
from Delaware have we been dragging our feet with regard to North Korea, before we ever started engaging them,
in international and one-to-one discus-
sions?
Mr. BIDEN. Mr. President, I say to
my friend—I will make two points here. One is, it was not only the Senator
from Delaware and Florida, but also the Senator from Indiana, the Re-

came, said we were going to continue engaging the North as Mr. Kim wanted us to and thought we should, as our Japanese friends thought we should, and the President summarily stopped that. I think that was another mistake.

I make another point about Iran. The neoconservative view of why we should have gone into Iraq alone is it would teach a lesson to the other malcontents in the world such as the Iranians. They were going to say, My God, look at the unilateral use of force; we better point out what my friend knows well and we talked about. Prior to our invasion of Iraq, Iran had a genuine democratic movement—not prowestern, democratic movement. It was the Majlis, their parliament, 196 people. There was a genuine movement.

You had the mullahs and the apparatus and the clerics who controlled security and controlled the intelligence apparatus, afraid of world opinion if they crushed that democratic movement. What did they do? If, in fact, the neocons are correct, and having 140,000 troops in Iraq was going to teach Iran a lesson, in the midst of our greatest show of force in Iraq, the clerics in Tehran were going to say, Hey, the United States is a little like me, as a practicing Roman Catholic denying the Trinity. You can't deny the Trinity and be a Catholic. It is not possible. They cannot acknowledge they need the international community and stick to a theocratic regime. Iraq has been a trial for the last 12 years. That is as quickly, succinctly, and as accurately as I can state it. As Samuel Clemens said: All generalities are false, including this one. I made a bit of a generalization, but I believe an accurate one.

Mr. NELSON of Florida. Mr. President, what we have gotten in a few minutes is a short course of what, in the opinion of this Senator from Delaware, and in the opinion of this Senator from Florida, we need to do: Internationalize the effort, build a consensus, reach out, bring in an international force such as NATO, led by the American military, bring in a senior international diplomat, prepare Iraq for governing itself, and be prepared to be there for the long haul.

I yield the floor.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

NATIONAL SECURITY

Mr. SCHUMER. Mr. President, I thank my colleague from Florida for his persistence to get to the truth, and my colleague from Delaware, who succinctly described our problem brilliantly in terms of the ideology of the neocons running into reality. I could not agree more.

Ever since I was in college in the late 1960s, I would say to my colleagues, ideologies have bothered me. Anyone who thinks they have a monopoly on truth, and there is only one way to see the world, always gets us into trouble. They can be ideologues of the far right, they can be ideologues of the far left, they can be ideologues just on one issue. America is a place where all
come together. It is a place of consensus.

I tend to believe in a strong and muscular foreign policy. I think the war on terror is real. But by being so blind to the realities of the world, those who are last to be more angry at some of the things that have been done, as my colleague from Delaware outlined, than those who are doves because we are going to need strength and fortitude to continue this war for decades. I thank both my colleagues. I was privileged to listen to their erudite and illuminating explanation.

Over the last few days, we have been discussing the question: Are we better off than 4 years ago? We have been discussing mainly domestic issues the last few days. Today we are discussing it on national security; are we better off than 4 years ago? We have been discussing the question: Are we better off than 4 years ago, where there are pluses and minuses.

Contrary to the wake of September 11 and the horrible attacks—and now that the September 11 Commission was in my city yesterday, I am living them all over again and it shakes my insides to remember what happened, to remember every day after my colleague, Senator Clinton and Mayor Giuliani and the Governor, and seeing what happened—certainly we have responded. It is good we have responded.

Some do not want to respond or find every response wrong, and you get caught in a quagmire of no response, which would be the worst response, in my opinion.

Having said that, I focus on two areas where we should be a lot better off than we were 4 years ago, where there is a large deficiency. One I will touch on is Iraq. Again, as somebody who supported the President going into Iraq and supported the $67 billion, I am troubled, deeply troubled, by the lack of planning, not just in the prisons but in the whole way the peace has been managed.

No one knows what is going to happen on June 30. We set a June 30 deadline and then we have to fill in the blanks. What do we want to do? How long does it take? The lack of planning has been troubling. It is taking the great military victory we had in Iraq, a justified victory, and turning it into certainly less than a complete success in terms of what happened afterward.

So this inadequate planning, the “go it alone” attitude which my colleagues discussed, means we should be a lot better off than we were.

The place I want to focus on in my remaining few minutes is homeland security. It is a truism that has been stated before, but it is not irrelevant still. To win a war, to win a game, you need a good offense and a good defense. My colleagues talked about some of the problems on our team’s offense. Let me talk about our team’s defense. We are better off than we were 4 years ago in terms of homeland security. No question. Our guard was down, we know that. But we are not close to where we should be.

What has happened is basically this: While this administration is willing to fully fund the war on terror overseas—and we will get repeated requests for more—more support, provided they are planned out and we see what they are doing with the money—we are totally short on homeland security. There are so many areas where we are weak: Port security, rail security, computer technology, the borders, which is coming in and who we are.

What is frustrating is, we can solve all these problems. They are not technologically beyond our reach. We can have foreigners cross our borders free and clear and yet keep bad people out if we have the right computer systems and the right cards that we can give to foreigners before they come in.

We can make our rail and our ports far more secure. We can develop de- vices to detect explosives and biological and chemical weapons. We can detect nuclear devices so, God forbid, if one is sent over here, we will get it at the borders.

And why is the pace so slow? I will tell you why. Somehow the priorities in the White House are not to spend money on homeland security. It is to talk about it. It is to do some photo opportunities. Let me share with the American people somebody who has been deeply concerned and ahead of our task force on this side on homeland security. Every time we ask for the dollars that are needed to tighten one area—we say $10 is needed, and they say, We will give you $1.50.

As an example, shoulder-held missiles. We know the terrorists have them. God forbid, they smuggle 10 of them into this country, and on a given moment, take down a plane in New York, Chicago, Los Angeles, Houston, Seattle, Denver, any of them. The mayhem. Of course, all the progress we are trying to make on the economy would go right down the drain. No one would fly for 6 months or a year.

We can arm every one of our commercial planes so they can avoid these shoulder-held missiles. Our military planes have them. Air Force One has them. People on their own private jets, wealthy people, have them. We are not doing it on our commercial planes. It is a slow walk.

We said take $8 billion to do the whole thing in 2 years out of the $80 billion we are spending on the missile defense system—which was designed to fight Russia and now Russia, thank God, or the Communist Soviet Union, is no longer our enemy. And they said no. They do not say let’s do it, but they say let’s spend $50 million and study it.

We know what is going on. I have spoken to people in the White House who will talk to me privately and say they will not spend a nickel on homeland security. Between the military and the idea of cutting taxes, cutting taxes, cutting taxes, you cannot do it all. And it seems to me homeland security should be just as high a priority as helping our troops overseas fight the wars in Iraq and Afghanistan. Yet there is nothing. It hurts our localities. It is not just New York City, my city, where, obviously, we have a real problem. In Buffalo, Rochester, and smaller places, Watertown, Jamestown, talk to the police and fire departments, and they are trying to do their job. They do not have the dollars to do it. So they stretch and do their best. But it is not being done right.

In place after place after place, we are only inspecting 2 percent of the containers that come in on our ships. Two percent! Do you want there to be a 2-percent chance that we stop someone from smuggling in something terrible? We have the technology to do it. It costs dollars. We cannot do homeland security without the necessary resources to make it happen.

And every single time, the one place where we have done a good job is on air security, to prevent people from smuggling weapons on the planes. Even there we are not doing enough, but we have done better.

I give credit in one other place: In the biological area, we are doing a B. It is not an A—it should be an A—but we are doing B. In almost every one of the other areas we are at C’s, D’s, and F’s.

Who in America would not spend dollars to make us safe so that, God forbid, another September 11 does not happen? No one. But, once again, it is the ideologues in the White House who say they hate spending money on domestic things. It is not just education or health care, it is homeland security.

So we are not as well off, we are not close to as well off as we should be. We can do a lot better.

The bottom line is this: In area after area we should be far more secure than we are. We have taken some steps in every area, but who wants to wake up one morning and say: What if? God forbid, there was a terrorist incident the day before, and we say: What if we had put the detectors on the planes and ports to avoid nuclear? What if we had made our ports secure?

Mr. President, I hope the administration will change its view on homeland security and spend the dollars that are necessary.

The PRESIDING OFFICER. The Senator’s time has expired.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 2400, which the clerk will report.
A bill (S. 2400) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Mr. ALLARD. Mr. President, I understand Senator Graham might have an amendment he wants to bring forward.

Mr. President, I recognize the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, I call up amendment No. 3170.

The PRESIDING OFFICER. The clerk will report the amendment.

The senior assistant bill clerk read as follows:

The Senator from South Carolina [Mr. Graham] proposes an amendment numbered 3170.

The PRESIDING OFFICER. Without objection, reading of the amendment is dispensed with.

The amendment is as follows:

(Purpose: To provide for the treatment by the Department of Energy of waste material)

Strike section 3119 and insert the following:

SEC. 3119. TREATMENT OF WASTE MATERIAL.

(a) Availability of Funds for Treatment.—Of the amount authorized to be appropriated by section 312(a)(1) for environmental management for defense site acceleration completion, $350,000,000 shall be available for the following purposes at the sites referred to in subsection (b):

(1) The safe management of tanks or tank farms used to store waste from reprocessing activities.

(2) The on-site treatment and storage of wastes from reprocessing activities and related waste.

(3) The consolidation of tank waste.

(4) The emptying and cleaning of storage tanks.

(5) Actions under section 3116.

(b) Sites.—The sites referred to in this subsection are as follows:

(1) The Idaho National Engineering and Environmental Laboratory, Idaho.

(2) The Savannah River Site, Aiken, South Carolina.

(3) The Hanford Site, Richland, Washington.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM of South Carolina. Mr. President, I appreciate Senator Allard's comments. I will try to explain this amendment the best I can and as briefly as I can.

Several States played a very key role in winning the cold war by making sure we had a strong and effective nuclear deterrent. South Carolina is one of them, as are Idaho and Washington. These States have sites that have cold-war legacy materials.

As Senator Allard suggested, the Federal Government has been working with these sites for decades now. We spent billions of dollars—billions and billions of dollars—to clean up the cold-war legacy that exists at the Savannah River site and other sites. To be honest with you, we have spent a lot of money and have...
done very little cleanup. From a taxpayer point of view, from an environmental point of view, the longer you put this off, the more it costs, and the more damage that can be done.

I have an amendment that would allow the money that has been put on the table by the Department of Energy to accelerate cleanup—$350 million has been put on the table in, I think, a very creative fashion to accelerate cleanup at these sites, putting new money on the table.

Here is a little history about what has gone on in terms of how the DOE and the sites have been dealing with each other. There are 50-plus tanks of high-level waste in South Carolina as a direct result of winning the cold war, cold war legacy materials. The State of Washington has certainly done its share in helping win the cold war. They have a waste tank problem. Idaho has waste. These three States have a problem. I want to create an environment to fix the problem for each State.

Two years ago the State of Idaho entered into a cleanup agreement with the Department of Energy, setting standards that the State of Idaho would agree to help remediate the environment and clean up the sites in Idaho so that we could move forward to have a new day in Idaho. Washington has been negotiating with the Department of Energy to come up with acceptable standards for cleanup of the waste in tanks and other areas, and there are ongoing negotiations.

South Carolina, for over a year, has been negotiating with the Department of Energy about how to clean up 51 tanks that contain high-level nuclear waste. People in South Carolina want the waste cleaned up. They want it done in an environmentally sound manner, and people in South Carolina want it done sooner rather than later. They are conscious of the cost to the taxpayer.

All three States at some stage have negotiated with the Department of Energy about waste in their particular States and how they can find agreement between the Department of Energy and the State to remediate the site.

I am here to say, thankfully, that the Department of Energy and the State regulators in South Carolina have come up with a plan that will allow these 51 tanks, 2 of which have already been cleaned up, to be cleaned up and to close them, that is environmentally sound, in my opinion.

But it is just not my opinion. The people responsible for the groundwater and the safety of South Carolina, in conjunction with the Governor’s office and the Department of Energy, have come up with an agreement to allow these tanks to be closed. The tanks will be cleaned up in a manner that will save $16 billion compared to the old plan, and it will allow the tanks to be closed up 23 years ahead of schedule.

The issue is what is environmentally sound cleanup for the State of South Carolina and any other State that has this legacy material. No. 1, no State should be forced to accept standards that they find unacceptable for the high-level waste materials they need. The amendment I have authored and that is part of the base Defense authorization bill ratifies the agreement that South Carolina has achieved with the Department of Energy. Under that agreement, this subcommittee tells me that the permitting process of how you close up a tank and when you close up a tank and when a tank can be closed up is a collaborative process between the State and the Department of Energy. They feel they are protected. They have reached an agreement that the last 1.5 inches of waste that is in the bottom of these rather large tanks can be environmentally remediated in a manner safe for South Carolina that would prevent people from unneces.

sarily risk their lives to go get that last inch and a half other save $16 billion. What does it mean? It means that some things that were going to go to Yucca Mountain don’t have to go be buried. Yucca Mountain takes a long time and is not environmentally necessary and it is not financially sensible. I hope other States can find a way to get there. I know Washington is talking. I know Idaho had an agreement 2 years ago. I know South Carolina and the Nation and will move forward and clean up in a sound manner.

The amendment I am offering today doesn’t deal with that issue. It deals with the idea that the $350 million to clean up sites in Washington and Idaho, that the money due to Washington and Idaho shall be spent on cleanup, that the Department of Energy can require either one of those States to enter into an agreement to get this cleanup money like we have in South Carolina.

My goal has been to do two things: that my State could reach a sound agreement with the Department of Energy to get it ratified for the best interests of South Carolina—and the Nation—and do anything in South Carolina that is going to harm any other State’s ability to negotiate on their terms a remediation that is sound for their State, and not to change any standards of what would leave South Carolina going to Yucca Mountain or any other repository. So this language requires the Department of Energy to spend money to treat the waste in South Carolina, Idaho, and Washington. It also allows the agreement to be financed in South Carolina.

I know there is some disagreement on this issue. I welcome the debate. That is what the Senate is all about, having two sides of every story. But this is not something we just came into lightly; this is something that has been going on between the Department of Energy and South Carolina for a very long time. Similar processes are going on now in Idaho and Washington.

I am asking this body to join with me to make sure that the Department of Energy spends the money to treat the waste in South Carolina that not bind any site by the agreement in South Carolina but we allow the agreement between South Carolina and the Department of Energy to be ratified. Not only is it good for my State, it is good for this Nation. If we can clean up these tanks in an environmentally sound manner 23 years ahead of schedule and save $16 billion. That is my hope.

As to what is left behind, the Nuclear Regulatory Commission has looked at the 1.5 inches of material left in the bottom of the tank and has classified it as waste incidental to reprocessing, which is a separate category from high-level waste. The people in South Carolina who regulate our environment and our households is the State’s groundwater and other environmental obligations have said that this waste that is left can be dealt with in a sound manner, and to get the 1.5 inches totally out would risk people’s lives and would take as long as it takes and expense, and that we are going to secure these tanks in a way over which South Carolina would have control.

I didn’t come to Washington to tell my State it is not a player in control of its destiny. I don’t want to be part of an agenda that is not about the groundwater in South Carolina because they don’t live there. Some of them are very well motivated, but some of them have an agenda to make cleaning up these sites very difficult, to the point that they don’t care what it costs, and they are not trying to get a fair standard. They want to make it take as long as it takes and spend as much money as is necessary and send everything to Yucca Mountain and other repositories because they have an agenda that we don’t want to produce any more nuclear power and run out of places to store fuel rods. I don’t want to be part of that agenda.

I want to be a part of an agenda that allows each State that have these waste materials to be able to control their destiny, do it in a way that is safe for the State and makes sense for the Nation. That is exactly what we have accomplished.
We have been successful. I will never, as a Senator, leverage one of my sister States here to have to agree to something to which they don’t want to agree. That is not my goal.

I hope the Senate and the Congress will agree. This amendment was negotiated to its full term to be approved and to help South Carolina save some money. I am ready to agree on a small time agreement, a large one, or whatever time agreement we can have on this amendment, and have a vote.

Mr. ALLARD. If the Senator from South Carolina will yield, I wish to enter into a colloquy with him to make sure we have laid out this debate.

First, we had a plan by the DOE to expedite cleanups of sites in South Carolina, Washington, and Idaho. Then we had a court case that was litigated in the district court in Idaho. As a result of that, that case is going to definitely be appealed to the Federal court of appeals and may even go as far as the U.S. Supreme Court. In the meantime, we have some cleanup needs in these various States.

As I understand what the Senator’s amendment would provide, we are going to keep our $350 million for cycling, and I think it is fair saying that the money is going to be available for treatment. But we are not going to have any removal or anything from a contaminated site, except for South Carolina. South Carolina has a plan that has been worked out with the State. The State is very comfortable with it. It is a State-driven plan. We are trying to work out something where we don’t create a problem among the various States. We don’t want this process to tie up South Carolina and, obviously, we want to see cleanup move ahead in Idaho and Washington.

My concern, as chairman of the subcommittee, is that I don’t want to see taxpayer dollars wasted on a huge white elephant out there that will add something like $86 billion to the cleanup budget, which we don’t have.

I hope we can work this out, and you are trying to work it out among your- selves. I hope I characterized it properly.

Mr. GRAHAM of South Carolina. The Senator has done a good job characterizing it.

No. 1, this amendment makes the money flow for treatment. There is the $350 million that has been worked out with South Carolina, which is a huge deal. We need to make sure that the amendment knocks that out.

Then you had a court case in Idaho where South Carolina joined as a friend of the court to an amicus brief. Saying, no, we don’t want the DOE unilaterally telling a State to take it or leave it. That is why we joined as a friend of the court. We think that is a bad policy.

What we want to do, and what all three States have tried to do, is make sure cleanup occurs in an environmentally sound manner, where the States are involved. What we have been able to do in South Carolina is reach that agreement to have the waste directly shipped to the Savannah River Site. The tank is left in the bottom of the tank we believe we can handle in an environmentally sound manner. Some people don’t want us to do that. That is not their agenda to accomplish that. It is my agenda that we accomplish that when and how we can.

We are not going to let the DOE unilaterally decide. That is what this amendment is about. It doesn’t allow the Department of Energy to take money away from a site. They have to let the $350 million go. The language in the bill, which Senator ALLARD helped me write and get passed, ensures that South Carolina is protected. Now we need language to ratify that agreement.

Mr. ALLARD. Mr. President, I thank the Senator for his hard work and diligence. Certainly, I am glad he is a member of the Armed Services Committee. It has been a pleasure to work with him on many issues.

I know there is a good deal of frustration on this particular issue. I recognize, in a public way, his dedication and hard work on this issue in trying to clean up this area. It is very important to his State and, hopefully, we can reach some kind of agreement in the ensuing few hours on this debate.

Mr. GRAHAM of South Carolina. I say to Senator ALLARD, he has been a very responsible subcommittee chairman here. This is a big deal for the Senator from Nevada, and Idaho, and Washington, and any other State. It is a huge deal. We need to make sure these sites are remediated and the environment of each State is protected and that we get on with it and not give DOE unilateral authority to tell us what to do, and do it in a collaborative way.

We have achieved that in South Carolina. I think it would be inappropriate if Washington or Idaho could reach an agreement between DOE and Idaho and Washington, I can talk by it the NRC and they say, yes, we like this agreement, we think it protects us, we would like to do it, and then somebody else says no, or they make up a reason of telling us no, which would prevent this from ever happening.

Now, we are going to disagree over some aspects of this. But here is where we do not disagree. The States are going to have the ability to unilaterally go into these States and say, we have an agreement to have the waste as contemplated in section 3116.

Mr. ALLARD. Mr. President, I have a letter from the Defense Nuclear Facilities Safety Board to the Secretary of Energy. It addresses the disposal of waste as contemplated in section 3116. The last paragraph reads:

The Board believes that disposal of waste as contemplated in Section 3116 can be accomplished safely and should enable efficient disposition of the remainder of the waste in the repository. The Board, under its statutory safety oversight mandate, will continue to follow DOE’s actions to ensure that activities related to disposal of such waste are accomplished.

I ask unanimous consent that the letter be printed in the RECORD. There being no objection, the material was ordered to be printed in the RECORD, as follows:

Hon. SPENCER ABRAHAM, Secretary of Energy, Washington, DC.

Dear Secretary Abraham: This is in response to the letter of May 13, 2004, from the Assistant Secretary for Environmental Management regarding the nuclear safety consequences of proposed Section 3116 of the National Defense Authorization Act for Fiscal Year 2005 (S. 2400). Section 3116 would permit certain radioactive residual materials to remain in a facility (including a tank) at the Savannah River Site.

Safe disposal of radioactive waste is essential to preserving public health and safety. In 1991, the Board issued Recommendation 90-2, ‘‘Conformance with Protective Standards at Department of Energy Low-Level Nuclear Waste and Disposal Sites, which identified the importance of performance assessments for storing safe disposal of radioactive materials in shallow land burial grounds. Department of Energy (DOE) subsequently
Mr. ALLARD. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina, Mr. Hollings, is recognized.

Mr. HOLLINGS. Mr. President, I have not had the opportunity to work with my distinguished colleague. We have worked very closely together on many matters, and I have the highest respect for him. It has really been a pleasure for this Senator to work with him as he has come over to the Senate.

Only yesterday on our way to a vote, I asked him about this issue because I heard about it from our colleague from the State of Washington, Senator Cantwell. He said he had a letter from the Environmental Control Division of the State of South Carolina.

I thereupon got in touch with the director of the DHEC of South Carolina, the Department of Health and Environmental Control. Mr. Hunter said: Oh, no, we adamantly oppose any kind of reclassification of high-level to low-level.

I said: That is exactly what is being done.

He said: That is not what we understand. We know that Senator Graham has been working with the Department of Energy, and we were led to believe we would have a signoff on it and his amendment would give us any kind of collaborative agreement, as characterized by the distinguished Senator, that was worked out, and we could sign off on it.

On page 2 of the amendment, he refers to subsection A and subsection B—rather subsection A shall not apply to any other material otherwise covered by that subsection that is transported from the State. Then down in section D, in this section, the term ‘State’ means the State of South Carolina. So referring to that particular section, what we have is not a preemption, but really the preemption is invalid. That language is, ‘any such action may be completed pursuant to the terms of the closure plan of the State-issued permit notwithstanding the final criteria adopted in subsection A’.

We had this in the Kentucky case with respect to the supremacy clause. We know this has already been taken to the 6th Circuit Court. That does not protect the State of South Carolina at all. I know my distinguished colleague wants to protect the State of South Carolina, but I think he even knows now that language does not protect the State.

I asked: Where in the world did this all come from anyway?

He said: Oh, Senator, we have been working on it.

We have a brief filed on March 25, a certiorari was in the case of the National Resources Defense Council v. Spencer Abraham. We won the case, and it is up on appeal. On this appeal, we have signed that brief, Samuel L. Finckley III, South Carolina Department of Health and Environmental Control, few weeks ago—stating the Department’s position.

I have nothing from the Governor. I know Governor Sanford extremely well. We traveled back and forth for 6 years whereas, I know the one thing he is known for and that is protecting the environment. Governor Sanford does not approve of this. I understand informally he told my distinguished colleague: If you can work out an agreement that protects the State of South Carolina, then we will go along with it. That is not what is occurring with this amendment.

I have been in this game for 50 years. In 1955, I was the chairman of the Regional Advisory Council on Nuclear Energy. We called it RACNE then. It was a 17-State compact. We had all the dangers of nuclear emissions. We looked for places for permanent storage. At that time, in the early fifties, they said—at that time, I was Lieutenant Governor—they said: Governor, don’t worry about it. This Savannah River site we are developing is twofold very dangerous for any kind of permanent storage. One reason is this site is over the Tuscaloosa aquifer. We do not think that comes down below Aiken County.

More than anything else, there is an earthquake fault from Calhoun, Orangeburg, into Aiken County. He said: We are not going to have anything stored here for over 2 years. Two years, 4 became 4, 4 became 8, 8 became 16, 16 became 32, and now it is some 50 years. It has been some 50 years and that problem has yet to be solved.

We worked on the financial end of the problem, and we exacted 1/10th of the remaining residual material constituted any other material otherwise covered by that subsection that is transported from the State. Then down in section D, in this section, the term “State” means the State of South Carolina. So it is cut down, and we work with the Department of Energy. We have the facility...
down when Secretary Richardson—now the Governor of New Mexico—was in, and I have brought every particular benefit that I could possibly bring to this particular facility, but apparently the contractors want to move ahead and certainly the Department of Energy wants to move ahead and not have to pay out the full sums. If they can get a precedent set for the reclassification in a surreptitious fashion of this kind called low-level waste, then it will set a precedent for the other States and we will not be protected in the offing because we will not be here.

That is about the attitude around here, that if it can be handled in a day's time, then let us forget about the future. This is a highly dangerous procedure. It is wrong for the State of South Carolina. It is wrong for the Nation. It is wrong for the Department of Energy.

I had misgivings when the Secretary of Energy came up for nomination. I remembered very clearly my debate with Spencer Abraham. He wanted to abolish the Department of Energy and abolish the Department of Commerce. I can see him over on that side of the floor right now. We had a debate about that. I was sort of shocked that he would want to be Secretary of a Department that he wanted to abolish, but he is a good fellow. I got along with him, and I said, all right, I will cast a vote against him. But we crossed our fingers. But this is monkeyshines. We cannot go along with this one.

If they want a reclassification—this is not a money problem, this is a reclassification problem—then let us reclassify it in the orderly fashion in which we made the classification back some 22 years ago in the Congress.

The House of Representatives says let us handle it that way, so let us handle it that way over in the Senate. If we want to go there, I was there at the last hearings and then change that law, that is fine business, let us do it in that fashion, but do not put a rider that says this is for the interest of the State of South Carolina because it is not. It is not in the interest of the United States of America.

I do not know how else we can solve this. I know the other States are involved. The Senator from Michigan on the Defense appropriations has been very particular in his particular measures. I am just a Johnny-come-lately to it, but it affects my State, and it affects an area that I have been vitally interested in for over 50 years now. I have worked with every particular facet that one can think of. Never has this Senator been contacted about this deal. I know the Governor, I know his position on the environment, and I know he will not approve of this one.

I can tell my colleagues right now that reclassifying high level waste to low level wastes that we protect the State of South Carolina when we know the legalistic wording is just that, legalistic wording, has already been found ineffective by the highest court of the land. I yield the floor.

The PRESIDING OFFICER (Mr. Graham of South Carolina). The Senator from Virginia.

ORDER FOR RECESS

Mr. WARNER. I ask unanimous consent that the Senate stand in recess at the hour of 12:45 to accommodate the Secretary of Defense, who will be briefing us, and resume at 2:15.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I think the two managers are very wise, offering the opportunity for everyone to go to hear the Secretary of Defense and the three generals who testified yesterday. It is commendable. It speaks well of the management of the Senate floor because there would be nothing happening here anyway. Everyone needs to go there. So I commend the two managers of this bill.

Has the Senator offered a unanimous consent that we would be out from 12:45 to 2:15?

Mr. WARNER. That is correct. It is essential that Senator Levin and I be present with the Secretary.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, 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. WARNER. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. Craig). Without objection, it is so ordered.

RECESS

Mr. WARNER. Mr. President, the distinguished Senator from Michigan and I, together with the distinguished Senator from Nevada, are doing our very best to try to arrange the debate on the pending amendment to accommodate both sides. It is not likely we are going to achieve that in the next few minutes, so I ask unanimous consent the pending unanimous consent request for 12:45 be revised to reflect that the recess start not to terminate at 2:15.

There being no objection, the Senate, at 12:37 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. Alexander].

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. 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. CRAPO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.
It is estimated that not treating mental illness costs our society $300 billion a year. The Wellstone bill will end that discrimination for all Americans. It is modest, affordable, and urgently needed.

I mentioned yesterday people from across America were coming to Washington on June 10 for a rally in support of mental health parity and the Wellstone bill. The famous Wellstone green bus that Paul loved to campaign on is coming back here for that rally. It is my hope the majority leader will agree to allow the Senate to vote on the Wellstone bill prior to the June 10 rally. I think it would be a fitting tribute to Paul, and it would make a profound difference for millions of Americans who live with mental illness.

The remarks of Mr. DASCHLE pertaining to the introduction of S. 2451 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions."

COMMENORATION OF MEMORIAL DAY

Mr. DASCHLE. Mr. President. 2 weeks ago, in the Black Hill National Cemetery, SD, SSG Cory Brooks was laid to rest.

A member of the South Dakota National Guard, Sergeant Brooks died in Iraq in late April, and his friends and family gathered to remember his service and patriotism to their children, and their sons.

Among the mourners was a man Cory Brooks had never met, Pat Red Fox, as a representative of the Cheyenne River Sioux Tribe.

Six months earlier, the tribe had suffered the loss of PVT Sheldon Hawk Eagle, who died when his Black Hawk helicopter collided with another above Mosul.

The families of Sheldon Hawk Eagle and Cory Brooks had little in common on the surface.

But each passed along the values of service and patriotism to their children.

With pride and sorrow, each said good-bye as their loved ones were shipped overseas. And each prayed that Sheldon and Cory would complete their mission unharmed. Today, they are bound to one another in mourning. And so to acknowledge this bond, this sacred bond that transcends all apparent differences, the family of Sheldon Hawk Eagle sent Pat Red Fox to Cory Brooks’ funeral with one of the most valued gifts in the Sioux tradition—a star quilt bearing the colors of the Sioux nation, and the Sioux symbol representing the immortality of the soul and the connection between the living and the dead.

During the upcoming recess, our Nation will commemorate Memorial Day with a special unity, immediacy, and poignancy.

As we honor those who gave their lives for our country in generations past, the bonds of American soldiers today face mortal danger.

As we offer thanks for the sacrifice of families who suffered the loss of loved ones, hundreds of American families are today mourning the deaths of their children, spouses, and parents.

For them, the cost of war and the price of freedom is not a thing of memory. It is the inescapable fact of their lives. And their pain and shock reverberate throughout American communities.

All Americans stand together in awe of the courage of our soldiers, and in gratitude for what they did.

But the urgency of this Memorial Day also serves to amplify and clarify our understanding of America’s history.

Within the sacrifices of today’s soldiers, we see a clear reflection of the sacrifice of those who came before. Like our soldiers today, our veterans, too, left families behind. They, too, woke up to uncertain dangers. They, too, saw their friends fall. Yet, knowing both their risks and their responsibilities, they, too, performed their duty each day. And many gave their lives.

Forty years ago, President Kennedy noted that no nation “in the history of the world has buried its soldiers farther from its native soil than we Americans—or closer to the towns in which they grew.”

At our proudest moments, the American people have sent our sons and daughters across the globe to fight for freedom.

Today, the honor of defending those who cannot defend themselves is carried forward by young American soldiers. But their service is doubled, for in addition to offering a chance for freedom to the Iraqi people, they are renewing our understanding of the cost of war, the price of freedom, and the immeasurable depths of American valor.

Seven hundred and ninety one Americans have lost their lives in Iraq. Another 122 have died in Afghanistan during the course of Operation Enduring Freedom.

As was true in World War I, World War II, and the Vietnam War, South Dakotans have volunteered for service in disproportionate numbers. And as before, South Dakota has borne a disproportionate share of loss. Seven of South Dakota’s sons have lost their lives in this conflict:

CWO Hans GOO-Kye-sen, of Lead; PFC Michael DOOL, of Nemo; CWO Scott Saboe, of Willow Lake; CPT Christopher Morgan, of Winner; PFC Sheldon Hawk Eagle, of Eagle Butte; SSG Cory Brooks, of Philip.

For them and for the hundreds more who have lost their lives in service to their country, America is united in sorrow, and in debt for their sacrifice. But this sorrow, and this debt, is not unique to us. In many ways, it has been the central experience of each and every American generation.

My father was a sergeant in World War II. He landed on the beaches of Normandy with the 6th Armored Division on “D Plus 1”—June 7, 1944.

He was injured during the landing, and, as he was recovering, one of his duties was sending word back to the States of those who had died so their loved ones could be notified.

That experience left my father with a profound sense of the sacrifices that freedom sometimes demands, and he passed that lesson on to his four sons.

When I was a boy, every Memorial Day, my parents would take my brother and me to the cemetery to pay our respects to the heroes who lie buried there.

Later in life, when I was in the service, I learned the lesson in a deeper way, as friends of mine lost their lives in Vietnam.

The men whose names my father sent home from Normandy, the men whose names are carved into The Wall in Washington, and all of the other noble heroes we honor gave their lives to preserve our freedom.

We are in their debt—today and every day. Now a new generation of Americans is called to battle—in Iraq, Afghanistan, and many other areas around the world. And once again, they are answering the call, and making us proud.

In 1868, just three years after the end of the bloodiest conflict our Nation has ever known, General James Garfield led the first observance of the holiday we now know as Memorial Day.

Standing among the graves of Union and Confederate soldiers alike, he said:

"If silence is ever golden, it must be here below the graves of fifteen thousand men whose lives were more significant than speech and whose death was a poem the music of which can never be sung. We do not know one promise these men made, one pledge they gave, one word they spoke, but we do know they summed up and perfected, by one supreme act, the highest virtues of men and citizens. For love of country they accepted death, and thus resolved all doubts, and made immortal their patriotism and virtue.

No words, no ceremony could add to the honor they won in their lives.

So this year, with the heroism of our soldiers so radiant, we must acknowledge that Memorial Day is not commemorated for the sake of those who gave their lives, but for our own.

We remember their courage because within it lie the seeds of our own courage.

We remember their sacrifice, because it shows us both the cost, and the value of freedom.

Memorial Day is not merely a time to remember those who died in uniform, but a time for each of us to rededicate ourselves to trying in our own way, in our own lives, to meet the example of patriotism set by all the men and women who defend our Nation.

It is a time to rededicate ourselves to carrying forward the legacy that has been passed down from one generation to the next.

As with the families of Sheldon Hawk Eagle and Cory Brooks, it is a legacy that binds together every American.
It transcends borders and generations and all political divisions. Above all else, it is this shared legacy, and the great gifts that it has conferred upon our Nation, that we reaffirm on Memorial Day. I yield the floor.

The PRESIDING OFFICER. The assistant democratic leader is recognized.

Mr. REID. Mr. President, 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. REID. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

RULE OF LAW

Mr. REID. Mr. President, the core concept which has guided this Nation for 200 years is the rule of law. That is why we have a Constitution. That is why we have a judiciary. That is why we have a national legislature, to make and revise the laws which rule our conduct, one and all, no exceptions. Therefore, no one, not the mightiest in his mansion, not the lowest beggar on the street, is above, beneath, or outside the law.

If a law is outmoded, has lost its utility, if it is obsolete, it is not the place of any citizen, no matter how high or how low, to decide that it must no longer be obeyed. That decision rests only with the Congress or with an interpretation by the Federal courts. That is the only place that decision can rest.

Yet I have in front of me a memorandum written in January of 2002 by Alberto Gonzales, the White House counsel to President Bush, telling the President of the United States that the Third Geneva Convention of 1949 is obsolete, that the War Crimes Act, which we passed in 1996, making it a felony to commit a grave breach of that Convention, is inapplicable, and that as a result, prisoners captured on the battlefield can be questioned using means that would violate the Third Geneva Convention.

I am not talking about members of al-Qaida. The Gonzales memo specifically discusses members of the Taliban. It makes an extremely questionable argument that the Taliban are not prisoners because they were not the government of a state.

That argument is most disturbing. In the first place, it represents precisely the kind of arguments which the drafters of the Third Geneva Convention tried to defeat, drafters who included representatives of the United States. Those drafters repeatedly expressed their concern that the German Government, the Nazi government during World War II, used trumped-up legalisms to avoid applying the 1929 POW Convention. That Convention, the first internationally recognized law on prisoners of war because they were declared captives by a legal government during World War II, used trumped-up legalisms, the Nazi government during the Third Reich, to try to defeat, drafters who included representatives of the United States. Those drafters repeatedly expressed their concern that the German Government, the Nazi government during World War II, used trumped-up legalisms to avoid applying the 1929 POW Convention.

Those drafters repeatedly expressed their concern that the German Government, the Nazi government during World War II, used trumped-up legalisms to avoid applying the 1929 POW Convention.

The underlying bill is flawed. As far as I am concerned, it has made the whole DOD bill radioactive itself. Why do they play politics on an issue that is so important to our country? Why do they try to sneak through a change that ought to be debated in full daylight, with people weighing in on what is appropriate science?

Mr. President, if I sound as if I am a little upset about this underlying bill and the fact that it has this smok attack language to reclassify high-level nuclear waste, you are right.

Fifty-three million gallons of nuclear waste reside at the Hanford nuclear reservation in the State of Washington. Thirty million of these gallons are stored in underground storage tanks that exist below ground and have already gained access to the Columbia River. Where are the underground storage tanks that exist below ground and have already gained access to the Columbia River?

We have been left with the aftermath of that and we should handle it in the same professional way those men and women did, by cleaning up the waste and recognizing that these tanks are leaking and they are causing hazard to the environment. The appropriate way to clean them up is by making sure the material is removed and that material is placed in a more permanent form and stored in a more permanent form.

Now we have been left with the aftermath of that and we should handle it in the same professional way those men and women did, by cleaning up the waste and recognizing that these tanks are leaking and they are causing hazard to the environment. The appropriate way to clean them up is by making sure the material is removed and that material is placed in a more permanent form and stored in a more permanent form.

What science has been saying. Yet my colleagues believe that in this underlying bill, the Defense authorization bill, the Defense authorization bill, the Defense authorization bill, the Defense authorization bill, the Defense authorization bill.
was somehow appropriate, in a closed-door session, with no public, no public testimony, no public witness to this language, no bill saying they were going to put this in the DOD bill, they can now sneak through this policy.

We also hear some people in America are paying attention because they are starting to respond. I will share some of that with my colleagues. For example, the Idaho Falls Post Register basically said those on the other sides are choosing the wrong side.

What is this about the Department of Energy—maybe I should stop for a second and give some of my colleagues a little reminder of how we got to this point, because everybody thinks reclassification of waste is something that belongs to the States. It does not belong to the States. It belongs in the Nuclear Waste Policy Act which was passed in 1982. That was passed by Congress, after much debate. It went through the Energy and Natural Resources Committee and the EPW Committee. They had a discussion about what nuclear waste cleanup should be. They have the authority.

So when the Department of Energy recently said "let us accelerate the cleanup to do it faster and cheaper" —I have an idea, instead of removing all of the material from these tanks we can just pour cement and sand on top of it and somehow we can get this done quicker and cheaper"—"I am sure everybody in Idaho agrees that pouring sand and cement on top of the waste that is there instead of cleaning up it is cheaper. But no one says it is safer and no one says it satisfies current law in the Nuclear Waste Policy Act.

That is why when the Department of Energy tried to use an order basically reclassifying waste, saying, "let us try this accelerated cleanup, let us try this notion of grouting and see if it, in fact, it goes on to say: "If you reclassify this waste into the DOD authorizing bill, then DOE will be doing the cleanup"—I think they said it best when they said the view from Boise is more accurate, and that Kempthorne, the Governor, believes the measure "would wreck Idaho's position in the court by setting up a paradox that, if in public there is, would undermine the State's landmark decision."

It goes on to say: "Would you reward DOE for its heavyhandedness against the State by passing something in the committee with the thinnest of claims to jurisdiction? If the Nuclear Waste Policy Act needs revision, do so in the open. Hold hearings. Conduct them in germane committees. What is going on here is not science, it is bare-knuckle politics. That is from the Idaho paper."

The Seattle Post-Intelligencer said a similar thing: "The Senate should halt the nuclear waste plan." Why? Because the bill gives the DOE the reclassification authority and withholds funds, and that this is a scheme to reclassify, hoping the States will cave in. It is not a good idea.

What did the Idaho Statesman say? Well, basically in a headline that said "Statesman Faces An All or All Proposition." It said: "We expect the Feds to clean up and move out all the highly radioactive liquid waste now stored in Idaho. No haggling, no short-cuts. Our political leaders need to hold firm even when politicians in other States are willing to cut deals." What did the Spokesman Review in my State say? I thought the Spokesman Review had an interesting take. They said: "For example, let us say the next step would be to persuade the affected parties and the public there is scientific consensus on this matter. Without that, there will be no hope of political consensus. The U.S. Department of Energy believes leaving some waste behind is a good idea but is trying to slip this in as a seismic policy shift in the Defense authorization bill without comment or without congressional debate."

Now all of a sudden we are presented with this bill and people think we ought to move ahead without removing this radioactive language that is in the DOD bill which has no business being here. If people want to debate this policy, let us debate it in the broad daylight of a hearing and discuss what hazardous waste is and the changes to the Nuclear Waste Policy Act that might be appropriate. I guarantee, if somebody wants to change the Nuclear Waste Policy Act, that bill would not go to the Senate Armed Services Committee. It would be a policy that was debated by the Energy and Natural Resources Committee and by the EPW Committee. It is not the Armed Services Committee's jurisdiction to change the Nuclear Waste Policy Act. This underlying bill basically is a scheme to downplay the language into the DOD authorizing bill. It does not have that authority to reclassify waste, saying, "let us try this accelerated cleanup, let us try this reclassification."

What are newspapers around America saying about this? Basically, the Idaho Falls Post Register says, "if we can now sneak through this policy, we can now start getting the waste remediation project at Savannah River, S.C."

It was bad enough that the U.S. Department of Energy was trying to do things in secret with Congress. DOE found an ally and behind closed doors in the Senate Armed Services Committee won a provision in the Defense authorization bill that would allow DOE to reclassify the high-level waste as "low-level waste."

I think they said it best when they said: "If you reclassify this waste into the DOD authorizing bill, then DOE will be doing the cleanup." That is from the Buffalo News, Mr. President, I ask unanimous consent to have all those editorials printed in the RECORD.

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

[From the Buffalo News, May 10, 2004]

DANGEROUS GAMES—FEDERAL EFFORT TO BURY NUCLEAR WASTES AT WEST VALLEY IS UNCONSCIONABLE

The federal Department of Energy is trying to use administrative sleight of hand to avoid its responsibility in the cleanup of nuclear waste sites at West Valley and several other states. This contemptible effort involves downgrading the threat of nuclear waste, thereby allowing the government to bury that dangerous material at West Valley and other sites instead of shipping dangerous waste to permanent repository as called for in a 1982 law.

Fortunately, New York Sens. Charles E. Schumer and Hillary Rodham Clinton recognized this downgrading for what it was, a threat to West Valley and surrounding areas from the possibility of future leakage of this radioactive material. After they protested the legislation, Sen. Lindsey Graham, a Republican from South Carolina who introduced the bill that would have allowed the DOE to downgrade the threat of nuclear wastes, altered his bill. It now will apply only to the waste remediation project at Savannah River, S.C. It is a step that doesn't remove the danger. The House, essentially by Republican Majority Leader Tom DeLay, still has to consider the DOE legislation. That cannot be a comforting thought to residents living near West Valley.

The department argues that the wastes should be classified as "high-level" based on how they organized them, but that is not what they are. But what they are is still bad, still radioactive and still a federal responsibility. Decades of expensive cleanup progress have improved safety at West Valley, but the work is far from over. The radioactive liquid wastes from a nuclear fuels reprocessing effort have been solidified into safe glass logs, which are supposed to be stored elsewhere. But the anticipated long-term storage facility at Yucca Flats is years from completion.
Tanks and residual wastes still remain at West Valley, and an underground plume of water is contaminated with radioactive strontium. Covering wastes with concrete won’t stop it.

The 600,000 gallons of West Valley wastes have counterpart in nuclear weapons production wastes at other sites—35 million gallons from the Washington-Oregon border, 34 million gallons at Savannah River near Aiken, S.C., and 900,000 gallons at the Idaho National Engineering and Environmental Laboratory.

West Valley is the only site where the state shares the cost of cleanup. The DOE has demanded the coincidence of tens of billions of dollars over decades, but the mess remains a federal issue. At West Valley, the risk includes not only the site’s land but water drainage that flows into Buttermilk Creek, Cattaraugus Creek and Lake Erie. Trace amounts of that radioactivity have been tracked as far as Buffalo.

The DOE also is threatening to withhold $350 million in cleanup money from military-related cleanup efforts unless it gets a change in the definition of what constitutes high-level spent fuel.

The bit of weaseling does not get a state innocent of muckety-muck politics off the hook. Federalism means the state pays what the federal government would not, whether it is at West Valley or a Hanford unit.

The EPA has asked the feds to every word of it. Especially the EPA.

Fortunately, the House version contains none of this mischief. So even if the Senate goes along, there’s still hope a conference committee will reject it.

Craig and the Senate should not be deferring to Graham on something they believe affects only his state—as long as the cleanup funds are kicked loose. They also believe Graham will persevere and not let the road down when Idaho needs his help.

The view from Boise is the more accurate one, however. Kemphorne believes the Graham measure contains Idaho’s position in the courts by setting a precedent. In short order, it would undermine the state’s land.

And, the bill, which requires the agency to clean up the INEEL and ship wastes out of the state. That’s not to say Idaho isn’t willing to negotiate. But no governor can surrender unilaterally to DOE demands without unraveling the 8-year-old truce that ended the state-wide battle over the INEEL, its future and the waste issue that has raged for more than a decade.

Politically, two states are weaker than three. If South Carolina cuts a private deal on waste, Washington and Idaho are left to fight on their own.

And why would you reward DOE for its heavy-handedness against the states by pase.

Acceetcleanup at West Valley involves removal of all wastes and dismantling and removal of the contaminated structures that house the waste. The government cannot be allowed to escape that responsibility through administrative trickery.

If the federal government truly could end a problem by renaming it, we’d already be at “mission accomplished” in Iraq.

[From the Idaho Falls Post Register, May 19, 2004]

CHOOSING THE WRONG SIDE

Why would Idaho’s two U.S. senators support the Department of Energy against their own state?

You’ll have to ask them. A big vote is coming up—possibly today or tomorrow—in the Senate.

Idaho has a lot at stake.

The outcome is expected to be close.

Idaho Sen. Dirk Kempthorne is on the right side.

Sens. Larry Craig and Mike Crapo intend to be on the wrong side.

At issue is nearly 1 million gallons of high-level radioactive wastes stored in Idaho. The Hanford nuclear site in Washington has 33 million gallons. Savannah River in South Carolina had 37 million gallons.

Federal law says that waste may be collected and stored in a national repository. DOE wants to reclassify it, leave some material behind and save a few billion dollars.

But it can’t get a judge to go along. Last year, U.S. District Judge Lynn Winmill ruled DOE couldn’t do that on its own. DOE appealed.

If the courts are uncooperative, try blackmail. DOE is withholding $350 million in cleanup money—and has in hand a binding agreement with the feds mandating the tank cleanup. Then-Gov. Phil Batt reached a comprehensive waste cleanup deal in 1995, and Idaho voters backed it last year.

The deal gives Idaho leverage—but only if state officials and the Idaho delegation hold the feds to every word of it. Especially the word “all.”

[From the Seattle Post-Intelligencer, May 18, 2004]

SENATE SHOULD HALT NUCLEAR WASTE PLAN

Senators should halt the Bush administration’s Department of Energy’s attempts to bypass everyone around on nuclear waste policy and end run the federal courts. The administration’s bullying tactics should be met with a firm refusal to submit.

The DOE has a responsibility to clean up the heavily contaminated radioactive waste in tanks at Hanford and several other sites around the country. A federal judge already has overruled the department’s attempts to reclassify the waste in order to save money and leave it at the sites.

Legitimately, Energy has filed an appeal. But is has shown horrid judgment with attempts to dictate changes in federal law to evade its responsibility, blackmail states into accepting the waste and free itself of state control.

Sen. Lindsey Graham, R-S.C., has put language into a defense authorization bill to give the department much of what it wants. The law explicitly specifies the waste in its state and let DOE withhold $350 million in cleanup money for Hanford and other sites until their states cave in to reclassification.

Sen. Maria Cantwell, D-Wash., is leading a fight against the plan. Tank waste at Hanford threatens to pollute the Columbia River. Environmental groups rightly complain about rewriting the waste law in a defense bill without public hearings.

Craig should support the Senate’s amendment from the bill. The Energy Department needs to clean up nuclear waste fully, not evade public accountability.

[From the Idaho Statesman, May 11, 2004]

STATE CLEANUP FACES ALL-OR-ALL

PROPOSITION

Idaho’s political leaders need to hold the Department of Energy to a simple standard.

We expect the feds to clean up and move out all the highly radioactive liquid waste now stored in Idaho. No haggling and no shortsightedness. Our political leaders must hold firm even when politicians in other states are willing to cut deals.

About 900,000 gallons of high-level radioactive waste sit in underground tanks in the Eastern Idaho desert, above an aquifer that provides water for many Idaho farms and communities.

After decades of nuclear defense work in states like Idaho, it’s time for the Energy Department to fully clean up the sites that helped produce the implements of the Cold War.

Unfortunately, the Energy Department has been more interested in cutting corners than in doing the right thing. They want to clean up most of the waste but leave a fraction of it in the tanks, sealed with grout.

The Energy Department has been trying to foist off less-than-clean cleanup as adequate and cost-effective. B. Lynn Wimmill, an Idaho federal judge, ruled last year that the DOE plan violated federal law. Since then, the Energy Department has pushed the idea in Congress, and it may have a taker. With the help of Sen. Lindsey Graham, R-S.C., the Energy Department now has language in a defense bill limiting future definitions in South Carolina, where 34 million gallons of waste are stored at its Savannah River Plant.

The language covers only South Carolina, not Idaho. Still, it could set an alarming precedent, and could put pressure on Idaho’s political leaders to cave to the federal government.

In Idaho, cleanup should be non-negotiable. Idaho has the law and Winmill on its side and has in hand a binding agreement with the feds mandating the tank cleanup. Then-Gov. Phil Batt reached a comprehensive waste cleanup deal in 1995, and Idaho voters ratified it a year later.

The deal gives Idaho leverage—but only if state officials and the Idaho delegation hold the feds to every word of it. Especially the word “all.”

[From the Tacoma News Tribune, May 10, 2004]

FIX ENERGY DEPARTMENT. NOT THE LAW IT’S BREAKING

It was bad enough that the U.S. Department of Energy was trying to carry out an illegal quick-and-dirty “disposal” of some of the nation’s most dangerous radioactive waste. Now a U.S. Senate committee is helping the department circumvent the law.

The law in question is the Nuclear Waste Policy Act, which Congress passed in 1982. Among other things, this act requires the federal government to safely dispose of high-level nuclear waste in a deep underground repository. The law quite explicitly specifies that the radioactive byproducts of plutonium creation—a category of waste all-too-abundant at the Hanford Nuclear Reservation—will be buried in clay.

Despite what the law says, the Energy Department has other plans. Hanford’s high-

CONEGRESSIONAL RECORD — SENATE  S5911
May 20, 2004
level wastes are presently being stored on site in steel-walled tanks, many of which have leaked dangerous radioisotopes into the surrounding soils. The department does not intend to clean up 99 percent of the waste in glass cylinders, which will be buried. But it also wants to leave significant quantities on site. Naturally, the idea is to save money.

The Nuclear Waste Policy Act, however, doesn’t say, “Bury what’s convenient, and don’t spend too much trying to get the rest.” It says, bury it, bury it all, and bury it deep.” A federal judge in Boise last year called the Energy Department on its scheme, ruling that the leave-it-in-place plan would violate federal laws.

Laws, however, can be altered. That is what Sen. Linsey Graham (R-S.C.) is now trying to do, so far with success. At this behest, the Senate Armed Services Committee last week amended a defense bill with a measure that partially exempts the Energy Department from the requirement that all high-level waste be sent to a repository.

The amendment applies only to South Carolina wastes, but it’s a scary precedent for this state. The Energy Department has already said it would like to delay complete cleanup at Hanford, the nuclear contamination capital of America.

If Congress were to relax the disposal standards in Washington as well, the state had better have its own consultation rights and veto power over whatever plan the Energy Department comes up with. The department simply cannot be trusted to act in the interest of Washington and its environment.

As for Graham, his constituents in South Carolina are giving him an earful about the prospect of living in perpetuity with the world’s most lethal garbage.

[From the Spokesman-Review.com, May 9, 2004]

DEBATE NEEDED ON NUCLEAR WASTE

For the sake of argument, let’s say leaving some lethal waste buried at nuclear weapons sites is a good idea, because the cost benefits outweigh the risks.

The next step would be to persuade affected parties and the public there is a scientific consensus on the matter. Without that, there would be no hope of a political consensus. The U.S. Department of Energy believes that leaving some waste behind is a good idea. It came to us in Washington State with a draft that we had no chance to sit down and talk about before it was drafted. The department is giving him an earful about the prospect of living in perpetuity with the world’s most lethal garbage.

But now the Department of Energy wants to say, “We’ve made a new definition of that.” In fact, in the underlying DOD bill, in section 3116, it basically says:

High-level radioactive waste does not include radioactive material resulting from the processing of spent nuclear fuel.

How about that? One change in the DOD bill and billions of gallons of waste in my State is no longer high-level radioactive nuclear waste. Just like that, changing the definition. Yes, it says the Secretary can determine whether various hurdles have been scaled, but that is contradictory to the current law in the 1982 act.

I remind my colleagues this is an act that was passed through this body after hearings, after discussion. I think the idea was that it would take more than a year. It took more than a year to define high-level radioactive waste. Yet now we want to pass the DOD authorizing bill with this change in it and basically say, “Let’s go ahead and reclassify this waste.”

I am not for reclassifying nuclear waste without a debate and a discussion and, frankly, the notion that this underlying bill would reclassify it in such an inappropriate fashion, to say you need something new and something different and that this would be a sufficient way to deal with the country’s nuclear waste, is incredible. It is incredible that this is the scam being used on the American public just to get this process in place.

Let’s go through some of the history, because as I said, I think this is really sour grapes by the Department of Energy, which has tried to get this policy pushed through and has not been successful. In fact, in 2001, basically, the Department said that they would reclassify nuclear waste, which is still dangerous, toxic, radioactive sludge. It is still dangerous, toxic, radioactive.

They came to us in Washington State and we said: We have an agreement with you about the level of waste that is going to be cleaned up under the requirements of the Nuclear Waste Policy Act, so we don’t really know what you mean by reclassification. At that time, they refused to say that they meant they would clean up 99 percent, or all that was technically possible, of this waste.

So we in Washington State said: Listen, it doesn’t sound like you have a serious plan for reclassifying waste. They didn’t have the ability to reclassify that waste. That is exactly why they are trying to sneak this language in today, because they would like to
continue to say that they can move ahead on a plan that, sure, would save money, but who wants to save money by leaving nuclear waste in the ground, where it is leaking into the Columbia River or the Savannah River, or other areas of the country?

If somebody thinks this is an issue that affects the State of Washington, or affects just Idaho, or affects South Carolina—it doesn’t. These are bodies of water, with the potential of nuclear waste in them, that flow through many parts of our country. To pass legislation without debate on changing the Nuclear Waste Policy Act is an incredible statement, that people are willing to override 30 years of law just to do that.

There are other issues I think we need to talk about. I am very pleased the Governor of Idaho, Governor Kempthorne, issued a release saying:

Federal legislation undermines the cleanup that was to take place in Idaho, at the Idaho facilitated.

In fact, Governor Kempthorne has said his opposition to the legislation that was passed by the Senate Armed Services Committee is because it allows the Secretary of Energy to withhold an estimated $85 million from cleanup funds, which is part of the debate we are going to have on the underlying amendment. But then he goes on to say:

I recognize the need to ensure public confidence in how we manage nuclear waste. This is going to be a huge step backward, reinforcing public fears about our Nation walking away from nuclear cleanup obligations. I am also concerned this legislation will negatively impact DOE’s compliance with the 1995 court settlement case in Idaho.

I think Governor Kempthorne, who has to deal with this, just as Governor Locke does in the State of Washington, has more of a bad deal this is for Idaho. He realizes the underlying language, when it tries to reclassify waste, is a danger.

I find it interesting that we will forget the Nuclear Waste Policy Act, no problem, it is the first case in our own rule about what hazardous waste is. We will come up with our own definition.

The states of Washington, Idaho, Oregon, South Carolina, New Mexico, and New York filed into the court case and in their amicus brief said:

DOE cannot ignore Congress’ intent... by simply calling [high level] waste by a different name.

South Carolina joined that case. South Carolina went to the courts, put its name on a brief, objecting to the DOE attempt to reclassify high-level nuclear waste by issuing an order.

Why all of a sudden are we now going to listen to one State tell us they have the right to decide they are going to keep nuclear waste in their State and they are going to call it something else? Let’s just say that radioactive waste that reaches the Savannah River does not affect just South Carolina, and a definition in statute that conflicts with the Nuclear Waste Policy Act does not just affect South Carolina; it affects everyone. That is not the way to legislate, by sneaking it in without having full public debate about this issue and the obligations we have for nuclear waste cleanup.

What has the Atomic Energy Commission said? Basically, it said in 1970 that over the life of these tanks, basically you have a problem. Basically, what you are saying when you assume that you will take those Hanford tanks or Idaho tanks or South Carolina tanks or West Valley tanks, and you are going to leave material in them and somehow put cement over the top of them and everything will be okay—that is counter to all the science we have had for 50 years.

The Atomic Energy Commission said “over periods of centuries”—guess what, that is what happens when you leave it in the tanks for a long period of time; you are talking about centuries of surveillance and care which tank storage requires.”

(Mr. CRAPO assumed the Chair.) Ms. CANTWELL. They are saying if you put in high-level waste, we cannot tell where it went or where it is. That is why the decision was made to take it out and put it in a permanent storage facility somewhere else, because these tanks do not have the capacity.

The science says that once you do the grouting of this waste, unfortunately, your opportunity to do other things is much more difficult. Once you have poured cement on the ground and solidified it, the process of getting it out and retrieving it is made immensely more difficult. In fact, the Institute for Energy and Environmental Research in 2004 said:

Grouting residual high-level waste in tanks that contain significant quantities of long-lived radionuclides... is a policy that poses considerable risk to the long-term health of the water resources in the region.

This statement is from 2004. In 2004, people have said this grouting technique, which basically is storing this in the leaking position in underground tanks, is a threat to the water resources of the region. These tanks are not more than 7 miles from the Columbia River, not 7 miles from one of the major water resources of the Pacific Northwest. It has a plume of nuclear waste that has reached the river. Fortunately, it is at a level that we can contain today but only if we continue to clean up the tanks.

This proposal to pour cement and sand on top of it and just keep the waste in the ground has not been proven as a secure way to keep the waste intact and water resources clean. So what you are leaving us with in the Pacific Northwest—in Washington, in Oregon, in the tributaries feeding in and out of the Columbia River into the Pacific Ocean—is the threat of 50 million gallons of nuclear waste not being cleaned up in a sufficient fashion and that waste ending up in the Columbia River. Or in the South Carolina, Savannah River. Governor Kempthorne said it right: this is a huge step backward because it reinforces the public fears about this process.

This Senator wants to have the nuclear waste cleaned up in our State. Some people may not understand the process, or some people listening to this debate may even think this is somehow about four or five States in this country. It is not about four or five States in this country anyway, just about whether we will change the definition of high-level radioactive waste and what we will do about the definition.

That is what I am concerned about today in the underlying bill. This Nation has a responsibility—as it had a responsibility in development of the reactors, the development of the plutonium, and the development of that product—this Nation has a responsibility for the cleanup facilities. Oftentimes my colleagues forget about that responsibility until it comes time to do the budget and people see the huge amount of money that is spent on nuclear waste cleanup.

I would be the first Senator to say we have made mistakes in this process. It is mind-boggling to think prior to my coming here that at one point in time somebody gave contracts to a company to produce vitrified logs, and they were not going to pay them until they made the vitrification work. Somewhere along the way people figured that would not work, that the vitrification process was not underway and operating. But now we have been successful and vitrification is starting to take place. That means we are taking the nuclear waste out of the ground and solidifying it into a glass log substance and that glass log substance will then go to permanent storage. So it will be in a facility that can help store that product for an indefinite period of time. That has been the plan. That is the plan on the books. That is the plan of record.

But that is not what the DOE authorizing bill does. It says, “no, let’s reclassify that waste and say that it is not high level. Let’s just call it another name, let’s call it grout and say it is okay to keep in the ground, let it contaminate water, and let’s keep the sayings from that unbelievable process, or some people listening to this debate may even think this is somehow about four or five States in this country. It is not about four or five States in this country anyway, just about whether we will change the definition of high-level radioactive waste and what we will do about the definition.

That is what I am concerned about today in the underlying bill. This Nation has a responsibility—as it had a responsibility in development of the reactors, the development of the plutonium, and the development of that product—this Nation has a responsibility for the cleanup facilities. Oftentimes my colleagues forget about that responsibility until it comes time to do the budget and people see the huge amount of money that is spent on nuclear waste cleanup.

I would be the first Senator to say we have made mistakes in this process. It is mind-boggling to think prior to my coming here that at one point in time somebody gave contracts to a company to produce vitrified logs, and they were not going to pay them until they made the vitrification work. Somewhere along the way people figured that would not work, that the vitrification process was not underway and operating. But now we have been successful and vitrification is starting to take place. That means we are taking the nuclear waste out of the ground and solidifying it into a glass log substance and that glass log substance will then go to permanent storage. So it will be in a facility that can help store that product for an indefinite period of time. That has been the plan. That is the plan on the books. That is the plan of record.

But that is not what the DOE authorizing bill does. It says, “no, let’s reclassify that waste and say that it is not high level. Let’s just call it another name, let’s call it grout and say it is okay to keep in the ground, let it contaminate water, and let’s keep the sayings from that unbelievable process.” I don’t think that is something we want to do as a body and government.

I would like to talk about how this legal process worked and why DOE is attempting to do this. What my colleagues seem to want to think today is that this is all about giving the State of South Carolina the ability to negotiate with DOE what nuclear waste cleanup should be. In fact, as I said, in the beginning of my statement, that high-level waste is something that needs to be retrieved, basically that spent fuel from reactors is something...
that needs to be retrieved from tanks and put in permanent storage, basically the DOE underlying bill says, no, high-level radioactive waste resulting from fuel process can be reconsidered and considered for a different kind of storage permanently in the tank. And that South Carolina and DOE can do together.

That is not what the cleanup partnership really is. The cleanup partnership is not about the State of South Carolina and the Federal Department of Energy setting the Nuclear Waste Policy Act in a new way by passing contradictory language.

Let’s imagine for a second that we let the State of Michigan determine what the clean air standards are for the State of Michigan. Let’s say that EPA and the State of Michigan decided, well, the clean air standards for Michigan are going to be at X level, and that somehow that is OK for Michigan, but somehow we do not think it is going to apply to the rest of the country.

Does anyone think that once it applies to Michigan, some other State is not going to say: How come you gave Michigan an exemption? They continue to pollute the air at a level that the rest of the country does not, which has a higher standard. We are talking about a recipe for disaster in the courts and for predictability in the process. I think it is very detrimental, where we are going with this legislation. We are talking about a recipe for disaster in the courts and for predictability in the process. I think it is very detrimental, where we are going with this legislation.

The court process that took place is now on appeal to the Ninth Circuit Court. We are still waiting for a decision. I think the appropriate thing for Congress and have hearings on changing the Nuclear Waste Policy Act in a new way by passing contradictory language.

I appreciate the fact the Senator from Michigan, Mr. LEVIN, as this issue was discussed in the Armed Services Committee, understood the dangerous precedence of this language, and understood how important it was to get the DOD bill done. He basically asked that they not include that language in the bill.

Now, it was a closed-door session. I do not know what the real vote was. I am sure it was a closely, hotly debated issue and that they put in was section 3116, which would overturn 30 years of carefully crafted laws and 50 years of scientific consensus related to the cleanup of the Nation’s radioactive defense waste.

As written, this provision—because it allows DOE to reclassify waste that, as I said, for decades has been classified as high-level waste—basically says the radioactive and chemical toxic components would stay the same. So basically the same toxic level of waste is there, only they are just going to call it another name. I appreciate the fact that the Senator from Michigan tried to change this language and prevent it from being in the bill. Unfortunately, it is in the underlying bill before us.

The underlying bill before us also created a slush fund of $350 million. I find it intriguing. I love knowing a little bit about software because when you are programming, you basically try to make changes to different parts, and you e-mail those around to everybody, you can look at the text and see where the changes came from. It is very interesting, this legislation was proposed by a member of the Senate Armed Services Committee. But when you check on who was really the author of the legislation, when you look at who was making the changes to the legislation, it was the Department of Energy.

The Department of Energy wrote the statute and basically submitted it to the committee, and tried to make it look like it was a Member’s idea. This is coming straight from the Department of Energy, that lost a court battle, and does not want to wait for an appeal, and they have tried to fight their battle in the daylight, but wants to try to sneak language in a bill, in the hopes these people will blink on a Thursday afternoon. Well, I am not prepared to have this bill move forward without discussing this discussion today about this change.

Now, what was DOE’s great idea that they submitted through a member of the Senate Armed Services Committee? What was their wonderful idea? They basically said, as we said, they decided, “well, let’s create a $350 million slush fund that gives the Secretary of Energy the authority to withdraw cleanup funds from the States of South Carolina, Washington, and Idaho—until they agree with our reclassification plan.” Basically, it was to hold them hostage and blackmail them into agreeing.

As I said, when the State of Washington was offered this deal 2 years ago, they were taking any deal unless we understand what you are cleaning up and how you are cleaning it up. The fact that you think you are going to reclassify and rename this is not good enough for us. Let’s see the details. When they refused to show us that they planned on cutting cleaning up all this waste, we refused to accept the deal. Now they are hoping they will buy off some other State.

If the Department of Energy really believes that they can see one side, if it really believes this grouting technique works, if it really believes this is the process we ought to pursue, then come before the Energy and Natural Resources Committee, come before the EPW Committee, and debate a change to the Nuclear Waste Policy Act, the policy that defines highly radioactive waste and how it should be cleaned up. I think it is a tragedy, especially when you think about the good job the people did at Hanford, the process by which these people arrived got to the business of helping us in World War II, in the cold war years, and providing us with help and support. They got the job done. They did their job. Now it is our turn to do our job and clean this up.

When you are talking about 100 million gallons of highly radioactive waste that is stored in 233 deteriorating tanks in all of these States—as I said, at Hanford we have 1 million gallons of high-level radioactive waste, about 60 percent of the whole national inventory. So 60 percent is in Washington State, along with other high level waste stored in the Hanford 200-Area. That includes spent fuel and miscellaneous volumes that contain high-level waste from off-site which are also buried in the ground.

I am all for considering new technology and new ways to clean up waste and to retrieve waste that is buried in the ground that is considered high-level waste, which may have come from other States or have been basically brought to the Hanford Reservation. Some has been dumped on the Hanford Reservation and then has been part of high-level waste, which has been buried sometime, but that is a different issue.

The Nuclear Waste Policy Act makes it very clear that spent nuclear fuel from reactors needs to be placed in a permanent isolated area. That does not mean pouring cement in tanks in the cold war years, and providing us with help and support. They got the job done. They did their job. Now it is our turn to do our job and clean this up.

When you are talking about 100 million gallons of highly radioactive waste that is stored in 233 deteriorating tanks in all of these States—as I said, at Hanford we have 1 million gallons of high-level radioactive waste, about 60 percent of the whole national inventory. So 60 percent is in Washington State, along with other high level waste stored in the Hanford 200-Area. That includes spent fuel and miscellaneous volumes that contain high-level waste from off-site which are also buried in the ground.
and sand on it, we are all going to be OK.

Everybody wants to say how much cheaper that proposal is. I think everybody in America gets how cheap it would be to pour concrete and sand. What DOE is saying is that it is safe, whether it is the right technology, whether it is going to stop the plumes or leaking tanks, whether you are going to change the current law first to get there.

This is a beautiful, pristine area of our country that we can preserve, but only if we do the job we are responsible to do, as the people who created the B reactor and created this facility were responsible in doing.

To be irresponsible today by offering this on the DOD authorizing bill and thinking we are going to have a debate about it in a few short hours and change 30 years of law and 50 years of science is shameful. It is shameful that we think we can have this kind of discussion and make a decision. If people are so sure about their position, then hold the public hearings and have the debate. Because these tanks are leaking and one million gallons have already leaked in my State. It is something that is a to-morrow issue.

What about the science? Let’s go back, so my colleagues are clear about how we got here. Congress required DOE to clean up these sites and make it a priority, and they did that in that 1982 act. That act reflected science dating back to 1950, when the National Academy of Sciences recognized that high-level radioactive waste, such as the waste at Hanford, must remain isolated from human beings and the environment long enough for the radioactivity to decay. That is a long process.

That is why the Atomic Energy Commission, a precursor to the Department of Energy, also recognized something must be done to treat high-level radioactive waste in the tanks and at these DOE sites, and they referred to “over a period of centuries.” As I said earlier, this isn’t a problem where you think about it for a few years or even a decade. You have to come up with a solution for centuries.

Over a period of centuries, the Atomic Energy Commission wrote in 1970, “one cannot assure the continuity of surveillance of care with storage tanks.” Basically they said, you can’t get it right, so treat high-level radioactive waste in the tanks and at these DOE sites, and they referred to “over a period of centuries.”

Yet there are provisions in this bill where DOE says, let’s throw out the science. And the provision in this bill would allow DOE to take 50 years of science and leave an indeterminate amount of toxic sludge in these leaky tanks and simply say: Mission accomplished. I think we have heard that statement before.

What DOE says is that grouting residual high-level waste in tanks that contain significant quantities of long-lived radionuclides is a policy that poses considerable risk to the long-term health of the water resources of the region. That is what science says.

The grouting proposal that is in this bill is a considerable risk. In the State of Washington, we are very familiar with this. In Washington State, thank God our Department of Ecology has had strong reservations about grouting and we have vocalized those. For us, because it is 50 million gallons of this highly radioactive waste, it would have to be a plan for durability for 10,000 years. That is what you would have to do. That is how radioactive the waste is.

What is bothersome is when people say an indeterminate amount, that is what DOE can decide. An indeterminate amount? The last 8 percent of the waste in the tanks has 50 percent of the radioactivity. Think about that. So we are saying in this underlying bill, go ahead, DOE. Leave an indeterminate amount in the tanks. Maybe they will say let’s elbow 10 percent. Maybe they will all elbow to know they will know at 8 percent it is 50 percent of the radioactivity.

We think the grouting plan is something that is not the way to go. We set it aside in Washington State. We said that sealing tanks, that vitrifying the waste was the way to go. That means that process of turning it into a glass structure so it is a solid structure and taking it to permanent storage was a better way to go.

As I said earlier, DOE wanted to use this accelerated initiative. We in Washington State had people come and talk to us about what accelerated cleanup was and what the schedule would be on high-level waste. And we said: We want to understand how you are going to comply with the agreements that are already on the table and with the Nuclear Waste Policy Act, with the tri-party agreement, because this isn’t the first time the Department of Energy has had debates with the State about their responsibilities for cleanup.

I can’t imagine that there is an OMB director or a DOE executive who does not come to that post and look at the numbers involved in cleanup and basically says: Boy, there has to be a way we can get this done quicker and cheaper. I am all about getting it done quicker, given that I have a million gallons already leaking and running into the Columbia River. I am all about quicker. But I am not about a plan that doesn’t make science, that has not had a hearing in a full committee as to this process and what it will mean.

Everybody gets the quick factor, but who said cleaning up nuclear waste in America should be about doing it on the cheap? It is about doing it the right way. As the Atomic Energy Commission said, it is about keeping it out of the reach of humans for centuries.

Subsequently DOE has insisted upon researching new technologies for the treatment of Hanford tanks, this new form of grout, cast stone, steam reforming, and different forms of vitrification. In all, I think there were three cases. DOE said they would still retrieve waste from the tanks, but try to treat it and bury it in steel containers and lined trenches in the Hanford site.

I tell you, even the new and improved grout was quickly rejected by the State of Washington and by other scientists.

According to the officials at the Washington State Department of Ecology, grouting would have violated the State requirement that any alternative waste that was not performed at the vitrification objected to. And, in addition, the State found that this grouting would still pose ground water risks and create leaching; furthermore, that this would violate drinking water standards.

Even more interesting is the fact that the grouting was not to be found more efficient. In some instances, grouting wasn’t found to be any cheaper than other options of cleaning up the tanks. While everybody says that pouring cement and sand on this is a great way to clean up nuclear waste, most people figured out that leaking would still happen and that nuclear waste would still need to be removed. They figured out that it was even more expensive to remove than waste.

So those are the scenarios with which we are dealing. Those are the scenarios that have been discussed. This debate—whether we are going to reclassify nuclear waste and call it low-level waste and say we are going to grout it—might be new to some of my colleagues in the Senate as to. But for the State of Washington, we already said this plan wasn’t acceptable science, and that reclassification was something we didn’t think we should go along with, when DOE wasn’t willing to give us a definition on how they were going to clean up the waste.

The grouting is very difficult because the tanks holding sludge and salt cake and hard heels—this would mean the waste in those tanks would not be penetrated to remove and segregate the radionuclides. The hazardous material would not be separated out and removed. It means those tanks would not be thoroughly mixed without the right level of product. Basically, what they found is that grout, as engineered, is not an option that protects human health and the environment for such a significant portion of time, when we don’t know the definition, because it is an indeterminate amount of tank waste.

As I said, even the last 8 percent of tank waste in 10 percent of the radioactivity. How do you know, by using this grouting process, that you have successfully rendered this a non-hazardous substance? So grout as an in-tank treatment for significant waste volume will be, as I said, probably more expensive, more intrusive when we find out that it is not successful.

The best science says is don’t hold States hostage by reclassifying waste
and telling them we are not going to give them money for cleanup unless they agree to our definition. This definition is something that the Department of Energy thinks they can come up with on their own. But the courts have determined that DOE doesn’t have that authority.

The courts have not sided in DOE’s favor. The courts have not said don’t go ahead with cleanup. They didn’t say you cannot move forward on cleaning up the tanks. The courts understood for deep geologic repositories licensed by the Nuclear Regulatory Commission was not given the responsibility for these low-level tanks. The Nuclear Regulatory Commission was not given the responsibility to interpret this change in the DOD bill to whether DOE could move forward on its plan of reclassifying waste and saying that it is a grout process and that is going to work. It says you cannot move forward on that.

So back to the underlying bill and what happened in the Defense authorization bill. There was an amendment that would enable the Department of Energy to exempt an intermediate amount of highly radioactive waste from regulation as high-level radioactive waste.

I am reading from legal counsel’s interpretation of this underlying provision in the DOD bill. This interpretation says the amendment would allow the Department of Energy to continue to store high-level waste destined for deep geologic repository in existing storage tanks or send them to waste isolation pile up plants or low-level radioactive waste burial sites. It also would exempt the Department’s handling of those wastes from the license and regulation by the Nuclear Regulatory Commission. It will, in short, overturn the fundamental legal principles that have governed the disposal of these wastes for the past 30 years. This legal briefing goes on to point out—which I think is very important—that for nearly half a century, when the DOE and its predecessors made plutonium for their nuclear weapons, they did so by irradiating uranium fuel, transforming it into plutonium. Now that we have reprocessing of spent fuel, as I showed in the picture with the reactor. And that became high-level radioactive waste. This is the term given to the plutonium spent fuel from the reactors with high-level waste.

So what did the Nuclear Waste Policy Act say? In 1981, the Nuclear Waste Policy Act said: Let’s establish a comprehensive program for the disposal of this spent nuclear fuel, and put it in deep geological repositories licensed by the Commission.

So let me be clear about this point, because I am sure we will hear about this in the debate. The Nuclear Regulatory Commission was given the responsibility for these low-level tanks. The Nuclear Regulatory Commission was not given the responsibility of the deep geological repository license procedure. The Nuclear Regulatory Commission was not given the responsibility for these low-level tanks. The Nuclear Regulatory Commission was not given the responsibility to interpret this change in the DOD bill to whether DOE could move forward on its plan of reclassifying waste and whether they can license it because that is not their responsibility. Their responsibility, as

the Nuclear Regulatory Commission, is on Yucca Mountain and the deep geological solution. That is what their responsibility is.

The act directed the President to decide whether high-level radioactive defense waste should be put in the same repository as civilian waste, or in a separate repository. So in 1985, President Reagan decided this defense waste should be put in the same repository as civilian waste.

The 1985 policy defines high-level radioactive waste. We had a decision by the President in 1985 that military waste should be treated as civilian waste, and that the civilian waste should be in the same spot.

So that is the plan we have been on. Now, I have had some concerns about how much waste you are actually going to take out of Hanford because, I tell you what, I want more than 17 percent of the waste taken from Hanford to go to Yucca Mountain. I want it cleaned up and I want it in a permanent place.

I don’t want grouting and I don’t want to have plumes continuing to leak. But that was the decision made in 1985, and the President made that decision. They said, let’s vitrify this waste and put it out of the tanks, turn it into glass logs, and take that to a site for permanent storage, wherever that site is.

The plan, since 1985, has not been to pour cement and sand and create grout on a level of percentage of undetermined amount of waste in tanks.

I cannot emphasize how important it is if DOE believes in this philosophy, this science, if DOE thinks this is the successful course of discussion that should happen with spent nuclear fuel, then come to the broad daylight of a Senate hearing and make their case and put that before the appropriate Senate committees. If they are so proud of their science and the standing of their decision, they should have no problem doing that. As Governor Kempthorne of Idaho said, when you don’t end up achieving public consensus, you don’t do anybody any favors.

The issue is the Department of Energy knows all too well, because these States of Washington, Oregon, Idaho, and South Carolina challenged the Department of Energy in court, that these States do not believe this order, they would have no problem in putting that waste directly from reprocessing and dry solid material derived from that solid waste.

In addition, it gave the Nuclear Regulatory Commission the authority to include other waste in the definition of such material. Significantly, West Valley gave the Commission power to add material other than reprocessing waste to the definition and exempt any part of the processing of waste.

We have had this debate, and I know the Department of Energy objected to the definition. I know they wanted the regulatory agencies to be able to exclude material from high-level radioactive waste. I know that is what they wanted. But Congress reworked the definition, not as the Department asked, but, as enacted, the final definition provides, as I said earlier, high-level radioactive waste means material from reprocessing of spent nuclear fuel, and that other radioactive material that the Commission, consistent with existing law, determines requires permanent isolation.

That is the process by which we, as the legislative branch, have gotten to the point of making decisions about this incredible product that was made by men and women throughout our country in the 1940s. It was a time of great military need, during World War II and the cold war. And they did their job, as the federal government had asked.
Now we are saying we are going to ignore the definitions and the process and not really have a hearing on the Nuclear Waste Policy Act or the fact that the DOE has already been turned down in the courts in its ability to reclassify.

Mr. ALLARD. Mr. President, I wonder if the Senator from Washington will allow me a moment.

Ms. CANTWELL. Does the Senator have a question?

Mr. ALLARD. Pardon?

Ms. CANTWELL. Does the Senator have a question?

Mr. ALLARD. I do not have a question. I wanted to know how much longer the Senator from Washington will take because we have Members in the Chamber who would like to speak. They have schedules and would like to get some feel of when their opportunity may come up to speak.

Ms. CANTWELL. Without yielding the floor to the Senator?

Mr. ALLARD. Mr. President, I ask the Senator from Washington how much longer she anticipates taking to complete her remarks.

Ms. CANTWELL. Mr. President, I have some more material on the history of this legislation. I see 2 of my colleagues in the Chamber who are also very concerned about this issue, but I imagine at least another half hour or so longer, maybe more.

Mr. ALLARD. I thank the Senator for that information.

Ms. CANTWELL. Does the Senator from Washington have a question?

Mr. ALLARD. I would hope we could go back and forth. I think that is the way the debate has been going. The next Senator I will call on is Senator INHOFE, and then whoever on your side.

Ms. CANTWELL. I obviously want my colleagues to join in the debate on this issue, but the reason this Senator feels so strongly about this process is because this bill is a piece of legislation that clearly does not belong on the Defense authorization bill. We have a very important piece of legislation that needs to move through the process, and yet we have an entity the courts have turned them down, that believes that States have turned them down, that believes this is a controversial issue, and thinks they ought to sneak it in on a DOD bill and that is not a way to do legislation. It is not the way to do legislation.

This is the only opportunity we have to expose the fact this legislation has been drafted this way and the unbelievable effect it has on so many people in this country when the Department of Energy can author legislation and give it to a member of the Senate Armed Services Committee who then offers it in a mark-up in private and includes it in the legislation.

I am going to take a little more time to go over these facts because I think the bright light of day needs to shine on the fact the Nuclear Waste Policy Act of 1982 ought to have the attention of the Energy and Natural Resources Committee and ought to have the attention of the Environment and Public Works Committee and not be proposed on the Defense authorization bill without the scrutiny of public debate and forewarn that such a huge, significant change in policy would bring about.

This is a question: I am going to take as much time as necessary to explain this policy and to say to the members of the Senate Armed Services Committee that while any member has the ability to offer any amendment they want, including in an authorizing bill, usually it is the Department of Energy that authorizes on appropriations and issues and of that nature that have caused—

Mr. INHOFE. Will the Senator yield for a question?

Ms. CANTWELL. The Senator will yield for a question.

Mr. INHOFE. I remind the Senator from Washington, if she is concerned about the action that we had proposed with the Environment and Public Works Committee, I chair that committee. We have put in and said it is to be heard concerning this issue because I also have a lot of interest in it. I appreciate the fact that the Senator is suggesting our jurisdiction should be heard, and that is what I am waiting to do. Will the Senator yield for a question? Ms. CANTWELL. I thank the Senator for his question. The issue is that the Senate Armed Services Committee should never have voted and considered this legislation in a closed door session without the Members. I certainly want the Member to be heard but—I think I have the floor, Mr. President.

Mr. INHOFE. Will the Senator yield the floor for a question?

Ms. CANTWELL. I think I have the floor. Mr. President, and I will yield in a moment for another question.

The issue is that we have been trying to work with the author of this legislation on a compromise that would promote a dialog and a hearing. My staff has been working diligently since the language came out of the Senate Armed Services Committee.

This morning we learned without warning, without notice, that perhaps now they did not want to continue discussion on that, they did not want to continue discussion on how we brought this issue to light.

I really did not want to spend the afternoon on the Senate floor. We had hoped we would actually propose a better way, but others want to move forward on changing the underlying bill, which in this amendment is still flawed. The proposed amendment by Senator GRAHAM of South Carolina makes a bad situation slightly better but does not correct the underlying problem. And this Senator whose home state has one million gallons of nuclear waste flowing to the Columbia River—is going to be heard on the details of this proposal.

The fact that there had not a full public hearing on a significant change in 30 years of policy and 50 years of science is something that, if it takes me 5 hours to explain, I will take it. I

will take the 5 hours to explain to my colleague the significance of these changes.

Mr. WARNER. Mr. President, will the distinguished Senator yield for a question?

Ms. CANTWELL. I will yield to the Senator for a question.

Mr. WARNER. I thank the Senator. May I most respectfully explain that under the Senate rules of allocation of committee responsibilities, this issue takes place in clear with the Armed Services Committee. We control, through oversight, 70 percent of the budget of the Department of Energy. The cost of nuclear waste cleanup comes before our committee. So I want to say to my distinguished colleague, while she may have concerns about the legislative process as a whole, there is no doubt about the jurisdiction of the Armed Services Committee over this subject. We have put in one of our jurisdiction, the specific provisions the Senator is addressing. Jurisdictionally we had the perfect right to incorporate in our bill such legislative language we deemed as a committee necessary for dealing with the disposition of this type of nuclear waste. I was not certain that the distinguished Senator was aware that clearly this is in the jurisdiction of this committee.

Ms. CANTWELL. I thank the Senator for his question. Under rule XXV, the Armed Services Committee has jurisdiction over national security aspects of nuclear energy, the Energy and Natural Resources Committee has jurisdiction over nonmilitary development of nuclear energy, and the EPW Committee has jurisdiction over the nonmilitary environmental regulation and control of nuclear energy.

Undoubtedly SASC has jurisdiction over the reprocessing that created the tanks that begin with because DOE is responsible for the national security, but I do not see how anyone could seriously argue how the waste, disposal, and cleanup of the Nuclear Waste Policy Act is a part of the national security aspect of the Senate Armed Services Committee's jurisdiction.

While I am more than happy that the committee has used this authority to bring this issue up, I think the committee is doing an injustice to say to the Members that there is in contradiction to the Nuclear Waste Policy Act ought to be passed by the committee without hearing, without debate, without full scrutiny of public daylight. This provision would really contradict 30 years of law on the books which the agency promulgating that rule change lost a court battle basically telling it does not have the authority to redefine high-level nuclear waste.

With full respect, because of all the committees that I work with, I know that the chairman of the Armed Services Committee always strives to be fair and balanced at his hearings. And
there are difficult challenges that we have had over many sensitive subjects in the last several weeks. The chairman has gone way out of his way to make sure the continuity of that committee works well and that the rules and procedures have the debates with the other committees that have jurisdiction for the cleanup, not the national security efforts the Senator was responsible for as the chairman of that committee.

Mr. WARNER. Mr. President, if I could reply, without the Senator losing her right to the floor, I will shortly bring the President's budget request for funds. I will bring appropriations acts and I will show the Senator the direct linkage of the request for funds coming from the Committee, the Armed Services Committee, the Appropriations Committee, and action by the Appropriations Committee on the authorizations of expenditure of the funds for nuclear waste and cleanup. It is important for the Senator and I will take a little time to go out and get the documentation. Then I will ask unanimous consent to print that documentation in the RECORD.

I thank the Chair.

Ms. CANTWELL. I thank the Chairman again for his statement. I point out to him that the difference between authorizing for appropriations and oversight of policy, and what I am debating is that the committee's oversight over nuclear waste cleanup policy as set out in the Nuclear Waste Policy Act. When that was passed in 1982 and moved through the legislative branch and made its way through the debates, it was debated in the Energy and Natural Resources Committee. But I say to the Armed Services Committee. As the parliamentarian referred to those committees, I am sure that the SASC, because of its nature of the appropriated funds, has some responsibilities. But I do not think that the SASC is the committee of jurisdiction for changing the Nuclear Waste Policy Act. I do not think that is the primary responsibility of that committee.

So, I don't know. I say to the Senator, the chairman of the Senate Armed Services Committee, I have a great deal of respect for his willingness at all times in the most difficult of situations to try to have consideration of issues be as fair and balanced as possible, and to give Members their opportunity. I am happy to continue to discuss with him the nuances of this particular issue. But I have a feeling that if we had this Nuclear Waste Policy Act before us today and we asked the Parliamentarian—this change that is in your separate stand-alone bill—it would not be referred to that committee. It would be referred jointly to those other committees and maybe to SASC in the authorizing of an appropriation, but not for the policy change.

Mr. WARNER. Mr. President, I will reply later today with the documents in hand.

Ms. CANTWELL. Mr. President, I think there are several other people here.

Mr. REID. Will the Senator respond to a question from the Senator?

Ms. CANTWELL. Without losing my right to the floor.

Mr. REID. Yes. I say to my friend from Washington, having spoken with her, it is my understanding the Senator has said publicly that if we came back after the break, the Senator would be willing to look very closely at the amendment pending and would be willing to offer one of her own, that she would agree to a time certain on that amendment. Is that true?

Ms. CANTWELL. I simply want the issue to have a debate of a substantial amount of debate and dialog. All of us will have the opportunity to vote up or down on any of the amendments anybody wants to offer to this section. But the question before us was, all of a sudden at 11:30 today, without notice, when we had had the facility to bring this language, to bring it to the floor, this Senator feels obligated to make sure this time period is used to bring committee members and colleagues up to speed about the contents of the underlying bill.

Mr. REID. Does the Senator yield for another question?

Ms. CANTWELL. Yes.

Mr. REID. It is my further understanding the Senator, who has spoken for some time now, has a lot more to say, is that right, on this amendment, on this date? She has only gotten warmed up; is that right?

Ms. CANTWELL. That is correct.

Mr. REID. And you, as a matter of courtesy, will allow Senators HOLLINGS and MURRAY and anyone on the majority side to speak and you will be back at a later time for another round or two; is that correct?

Ms. CANTWELL. That is correct. I will give my colleagues from Washington and South Carolina an opportunity to join in this debate and participate because I think it is very important that this issue receive the full attention of Members. As I said at the beginning of our discussion, I do not believe this is an issue—even though a lot of my colleagues would like to classify it as an issue that only affects Washington State, South Carolina, or Idaho perhaps with some impact on Oregon and maybe Georgia, or New York in its commercial facility. I have never thought of this nuclear waste issue as a geographic-specific debate.

Our responsibility as a body is to make sure nuclear waste cleanup happens in a way that the science determines will not be with harm to humans or to the environment. We now have a proposal before us that science says will be harmful, that is not based on sound science, that has not met the test, nor has our approval.

While I am willing to have this debate, I hope my colleagues will use this debate as an opportunity to understand our challenge on nuclear waste cleanup and tremendous amounts of resources that are spent by our Government on that cleanup and the efficiencies that need to happen to make that process go more smoothly than it has in the past.

I can't guarantee to my colleagues that wanting that process to go more smoothly in the future, and wanting it to be more cost effective, does not simply mean coming up with a short-term proposal, a fix that is counter to what existing statute and law is. If we want to have that debate, let's go through the normal committees and have that debate, and let's have the scientists come in and discuss it with us, and let's not end up with a process where we are going to be battling in the Appropriations Committee that doesn't do any of us any good. Certainly, for us in the State of Washington, with a 1-million-gallon plume heading toward the Columbia River, it doesn't do us any good.

I hope my colleagues will use this opportunity to focus attention not just on the question at hand, of high-level radioactive waste, but I would say the consistency by which the States of Washington, Oregon, Idaho, South Carolina, and others have banded together in the last year or two in authorizing and appropriations language that has done a good job to make sure the processing of radioactive waste is completed.

I remind my colleagues, this is the first time I think the Department of Energy has successfully picked off a State. At first the underlying language was actually blackmail: We are going to make this change and nuclear waste cleanup will not be reauthorized, and if you are going to agree with us, we will give you some money, and if you don't agree with us, we are not cleaning up your waste. That is blackmail. That is what the current language in the DOD authorizing bill is. It is blackmail.

Now, after my colleagues have seen what ludicrous language that is, Senator GRAHAM wants to offer an amendment that will not tie up the funds. But we still remain with the underlying problem, which is the Department of Energy is trying to reclassify highly radioactive waste as low-level ancillary waste and say it can be grated, that is that cement and sand can be poured on it and somehow, leaving incidental amount of tank wastes is a sufficient way to clean up tanks.

I will continue to fight on this issue until Members understand the significant policy change that is before this body.

I seek unanimous consent after the remarks of Senator INHOFE that Senators MURRAY, ALLARD, and HOLLINGS be recognized, and that I immediately be recognized after them.
Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Washington has the floor.

Ms. CANTWELL. I want to accommodate the Senator from Nevada. I was proposing to accommodate and trade off recognition of the four Members who are present on the floor?

Does the Senator have a question?

Mr. REID. When the Senator yields the floor, I will speak.

Ms. CANTWELL. The Senator from Nevada—I am happy to yield the floor to the Senator from Nevada.

Mr. REID. Pardon me?

The PRESIDING OFFICER. Is the Senator yielding the floor?

Several Senators addressed the Chair.

Ms. CANTWELL. Does the Senator from Nevada have a question?

Mr. REID. Mr. President, I yield to the Chair. I have a question on that statement. The Senator from Washington has a right to speak, but we are not going to set a long list of speakers here at random, what speakers are going to speak. I think what we are going to do, we have a number of speakers on the floor. Senators INHOFE, HOLLINGS, ALLARD, MURRAY—people who have been here for a long period of time.

It appears to me we are not going to have a vote on this in the near future. I suggest what we do is enter into agreement that the Senator from Washington has a right to speak, but we are not going to set a long list of speakers here at random, what speakers are going to speak. I think what we are going to do, we have a number of speakers on the floor, Senators INHOFE, HOLLINGS, ALLARD, MURRAY—people who have been here for a long period of time.

He has been here longer than he has. Senator INHOFE could be recognized for whatever time he feels appropriate. I would like to get some idea of what the time should be. Then, Senator HOLLINGS, I think that would be the best way.

But in the meantime, it must be under some agreement, whoever gets the floor.

Mr. ALLARD. Will the Senator from Nevada yield?

Mr. REID. I am happy to.

The PRESIDING OFFICER. The Senator from Washington has the floor.

Ms. CANTWELL. The Senator from Washington is happy to entertain a question that would allow the various Members here—

Mr. REID. The Senator from Washington has to understand—she has the floor, and if she wants to keep talking, let her keep talking. When she finishes, we will be happy to—

Mr. ALLARD. If the Senator from Washington will yield, I would like to pose a plan of how we can go through this. I suggest that maybe we can sit down with leadership and work out some time for debate. I know Senator GRAHAM on this side of the Senate floor would be to wrap up this debate. Maybe we can get some time limits to give everybody an opportunity to speak. I know there is some interest in having some votes tonight. I believe I need to work with leadership on this side, if Senator REID will work with leadership on his side, to determine if we can work this out. The Senator from Washington can finish, and I can call on the Senator from Oklahoma. Maybe we can go down and work out a time agreement.

Mr. REID. Mr. President, if the Senator will yield—

Mr. ALLARD. I yield.

Mr. REID. The Senator from Washington has the floor.

Let me say this: Everyone should understand that there is not going to be a vote on this amendment tonight. Everyone should understand that. There is going to be no vote on the pending amendment tonight, I told people that 5 hours ago. No one believed me. There is not going to be a vote on the Graham amendment tonight.

Mr. ALLARD. Nobody is calling for a vote on the Graham amendment tonight, but there might be other votes.

Mr. REID. We will not agree to set this one side. If the Senator from South Carolina wishes to withdraw his amendment and set some orderly procedure to take it up when we get back after an extended period, we are in agreement. But we are not going to agree to set this aside to go to another amendment.

Ms. CANTWELL. Mr. President, this Senator is happy to yield the floor to my colleague, the Senator from Oklahoma. I want to make it clear that after 30 years of standard policy, they are not willing to just have a few hours of debate and then vote on this significant a change. The underlying Graham amendment does not fix the underlying DOD committee-passed authorization language that allows the Department of Energy to reclassify waste.

That is the key issue at hand. We do not want to leave this bill with this reclassification of highly radioactive waste to an amendment on spent fuel storage tanks to then be grouted over. We need to have the attention of this body, my colleagues who are members of the various committees I mentioned and my colleagues from those States directly affected, although I said it is a policy everybody should be discussing, and the public needs to have an idea and an opportunity to understand that this is a major policy proposal which is being proposed by this bill.

I would have preferred that the Graham amendment not be brought up today, not to this particular issue of the DOD bill being discussed. We are still talking. We hoped we might be able to work something out, and save our colleagues the time and attention of studying a nuclear waste policy proposal and what level of radioactivity could be sufficiently removed from tanks and what couldn’t be. But if my colleagues want to continue to pursue this issue, I am willing to just have a few hours of debate and then vote on this significant a change.

With that, I know various Members of both sides of the aisle are waiting, and I will have more to say on this subject as we continue to debate the DOD authorizing bill and continue to debate whether the Graham amendment is sufficient in disposing of the problem that has now been created in the underlying bill in overriding 30 years of law and something that the country should clean up nuclear waste. I don’t believe anybody in America wants to do it on the cheap. We need to give the American public the certainty that this body will not propose major policy changes without hearings, without debate, without committees of jurisdiction having oversight of this policy proposal that is in the Defense authorization bill.

I yield the floor.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeds to call the roll.

Mr. REID. 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. REID. Mr. President, we are trying to work out a subject to the approval of the majority leader, to allow Senator INHOFE to speak for 15 minutes and Senator HOLLINGS for 45 minutes. They have waited a long time. Senator ALLARD, being the gentleman he is, did look as though he wanted to talk about the subsequent votes; there are a couple of judges who need votes. We have 25 to do before the end of June, so we have a lot of voting to do. Then, of course, everyone should understand that we will be right back on the Defense bill following those votes.

We appreciate the courtesy of the Senator from Oklahoma for being patient and the Senator from South Carolina. The order has not been entered, because of what we will order. It would be appropriate for the Senator from Oklahoma to start his speech.

Members should understand that we will have a couple of votes around 5:30.

Mr. ALLARD. I yield 15 minutes to the Senator from Oklahoma.

Mr. INHOFE. I ask the manager if I could have 20 minutes, but I will probably not take that long. I am saving the best for last and I don’t want to miss it.

Mr. ALLARD. I amend that and ask unanimous consent that the Senator from Oklahoma be allowed to speak for 20 minutes.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 20 minutes.

Mr. INHOFE. Mr. President, I will clarify a couple of things that were said by the distinguished Senator from Washington that I am sure she believes are true but need to be elaborated upon. First, characterizing the consideration of going back to the old policy as something that happened in the middle of the night, something that happened in the dark, something that
happened in a less than honest way is not at all accurate.

I suggest two things. First, I chaired the Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety of the Environment and Public Works Committee in 1996 and now. During that time of course, we had jurisdiction over the Nuclear Regulatory Commission. During that time, they had countless hearings. They had comment periods. They talked about this out in the open, with people given an opportunity to participate. I think I can be the committee that had oversight at the time. I remember that very well.

Second, I suggest this was discussed in the Senate Armed Services Committee. It certainly was not something that was done in any way that was less than totally honest and totally done in the daylight. By suggesting that Senator Joe Lieberman and Senator Jack Reed and the other Members on this side of the aisle did something that was not out in the open, I don’t think is quite fair.

We had a hearing this morning with the Nuclear Regulatory Commission. It is an oversight hearing we have had ever since that is what is going on in the NRC. I believe we saw a major change. They have done a good job. The NRC says we should manage waste based on the risk it poses, not how it is defined.

The Department of Energy was attempting to shut down the NRC when it was stopped in its tracks. What stopped it? Several of my colleagues already mentioned a lawsuit was brought against the DOE by the Natural Resources Defense Council. This is the allegedly charitable organization that uses a substantial amount of taxpayer dollars in the form of discretionary grants to achieve its goals.

Three weeks ago I spoke in the Senate about the spurious and misleading advertising run by the NRDC. This organization places a higher priority on imposing ridiculously stringent environmental standards than on essential elements of national security. They have proven this many times in the past by filing lawsuits to limit the Navy readiness exercises and otherwise hampering our military. Now the NRDC has hamstrung the Department of Energy in the faithful execution of its responsibilities.

The amendment allows the DOE to pursue the best plan to dispose of this nuclear material. That plan saves our taxpayers money. It shortens the amount of time the waste remains in the tanks. It is a safe way to do it. It is a well-thought-out plan done in a way that one and that has been the subject of a lot of daylight. It is merely going back to a policy that has worked for a long period of time.

We know the background. Sometimes it is necessary to repeat it. During the cold war, the national security of the United States necessitated the building of nuclear weapons. Now, 50 years later, we are faced with the legacy of this effort and the need to clean up the sites where there is waste from the reprocessing of spent nuclear fuel. The creation of this waste was a necessary result of the chemical processes needed to make defense nuclear material. We all understand that.

Last summer NRDC, this very important cleanup effort, which is the single largest ongoing environmental risk reduction project for the Department of Energy, took a crushing blow when the district court issued a ruling that created significantly higher uncertainties and enormous problems for the Department’s tank waste cleanup at the Savannah River site, the West Valley, the Hanford site, and the Idaho National Engineered Environmental Laboratory. Unless these legal uncertainties are resolved, the only path the Department of Energy could in theory pursue that does have the necessary legal certainty would be to involve sending all the waste in tanks and the tanks themselves would be simply emptying the tanks and treating the waste there by four decades, thereby further substantially increasing the risk, as the NRC pointed out, to the public health and safety during the time period by leaving the waste in the tanks for that much longer. It would also increase the cost of simply emptying and treating the tank waste, according to the DOE estimates, by an additional $86 billion, only $1 billion less than last year’s supplemental appropriation for the Iraq war, for approximately a total cost of $138 billion.

We are talking about something really big. The estimates for delay and the additional costs do not take into account of the complex logistics of transporting and disposing of all the additional waste at Yucca Mountain or the complex logistics of preparing for disposal, transporting, and disposing of the tanks themselves. Keep in mind, it is not just what is in the tanks. The tanks themselves would have to go there and be disposed of at the Yucca Mountain facility. These would also add additional decades and tens, if not hundreds, of billions of dollars to the cleanup.

Furthermore, under this scenario, the number of canisters of waste that would be transported to Yucca Mountain would increase from 20,000 canisters to approximately 200,000 canisters.

I know there are a lot of members in the Senate concerned about the transport of waste to Yucca Mountain. That would increase it tenfold. Some have asked, why not just authorize and appropriate $250 million needed for the cleanup activity for fiscal year 2005 and force the Department of Energy to continue its work? This is not a responsible path. If the Department of Energy constructs the facility necessary to prepare waste for disposal as low-level or transuranic waste and prepare the waste for disposal and then finds out after the fact that it lacked the legal authority to classify the waste in this manner, hundreds of millions of dollars of the taxpayers’ money would already have been wasted and years of cleanup work lost. The Department may have actually made it harder to put the waste in the form needed to dispose of it at Yucca Mountain.

I suggest two things. First, I chaired the committee that had oversight at the time. I remember that very well.

The thing that I guess bothers me the most—I see the ranking minority member of the Senate Armed Services Committee on the Senate floor. We acted very responsibly. This was not a partisan issue. This was a bipartisan issue. The things that were done in the dark of night or in any way inappropriately is to say that I and several others—certainly the chairman of the committee; certainly Senator Joe Lieberman; certainly Senator Jack Reed, who supported this effort and supported the Senator from South Carolina—were acting inappropriately. I do not think that is realistic.

By the way, it has been said several times that there is some doubt as to what the NRC’s position is on this issue. I will read you the last paragraph of a letter that was sent to me, on May 18, as chairman of the Environment and Public Works Committee. This last paragraph says:

It is our understanding that some opponents of DOE’s proposed plan believe that the tanks and the waste residuals should be disposed of as high-level waste in a geologic repository. While each approach could potentially be implemented within NRC regulatory requirements, we note that removal of the tanks, packaging of the tanks and residuals for transport and disposal, and disposing of the waste at a repository, if feasible, would incur significant additional worker exposures—
That is human lives. We are exposing individuals, and transportation exposures. The transportation exposures we have talked about on this floor many, many times—at very large financial costs.

You might conclude that, at this time, with all the terrorist threats around us, this could become prime targets while being transported. Still quoting the letter:

Whereas, if DOE’s proposed plans meet appropriate criteria, such as those used in NRC’s cases, then the NRC believes that public health and safety can be maintained while avoiding unnecessary additional exposures and risks associated with removal and transport of the waste and unnecessary additional expenditures of Federal funds.

I hope this letter satisfactorily addresses your questions.

Mr. President, I ask unanimous consent that the entire letter from the NRC to me dated May 18 be printed in the RECORD.

Mr. INHOFE. We have a lot of commissions and a lot of organizations in the committee that I chair. We have some 17 Departments for which we have oversight and we deal with on a daily basis. When the Nuclear Regulatory Commission was originally formed, it was the scientists and the knowledge as to what is going to assure the most safety for the public in the cheapest way you can get things done. They have done a good job. We have a lot of organizations such as this throughout Government. We have CASAC, the Clean Air Scientific Advisory Committee. We look to them because they have expertise. We look to the NRC because they have expertise. I do not want to imply that any of the NRC does not have necessary less expertise than the NRC, but I suspect that is the case. So we rely on that expertise. Here we have the Department of Energy with all of its experts saying: This is the safe way to do it. This is the least way to do it. And we have the NRC, which is charged with the responsibility of public safety, saying: This is the best way to do it.

So I believe, when the time comes, we need to look at this rationally and not try to make disparaging remarks about some of the members of the Armed Services Committee in our consideration of this amendment. Keep in mind, this was years in the making. Six years ago we started hearings on how to properly dispose of this, and the conclusions they came to were unanimous.

With that, Mr. President, I yield the floor.

Mr. REID. Mr. President, I ask the Senator, are we in a position now to do anything on this request we had?

Mr. ALLARD. No. We are still hearing. Senator INHOFE has finished his statement. I would suggest we recognize the Senator from South Carolina for 40 minutes.

The PRESIDENT. The Senator from South Carolina is recognized—

Mr. REID. No. The Senator is recognized for whatever time he wants. He has the floor.

The PRESIDENT (Mr. CORYN). The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I thank my distinguished colleagues. I have, this afternoon, the opportunity to respond to being charged as anti-Semitic when I proclaimed the policy of President Bush in the Mideast as not for real. I strongly believe that the sense that he is worried about Saddam and democracy. If he were worried about democracy in the Mideast, as we wanted to spread it as a policy, we would have invaded Lebanon, which is the democracy in the Mideast. Terrorism and terrorists who have been problems to the interests of Israel and the United States.

It is very interesting that on page 231, Richard Clarke, in his book “Against All Enemies,” cites the fact that there had not been any terrorism, any evidence or intelligence of Saddam’s terrorism against the United States from 1993 to 2003. He says that in the presence of Paul Wolfowitz. He says that in the presence of John McCaughlin of the CIA. In fact, he says: Isn’t that right, John? And John says: That is exactly right.

The reason was when they made the attempt on President Bush, Senior, back in 1993, President Clinton ordered a missile strike on Saddam in downtown Baghdad, the intelligence head-quarters, and it went right straight down the middle of the headquarters. It was after hours so not a big kill—but Saddam got the message: You monkey around with the United States, a missile will land on your head.

So, in essence, the equation had changed in the Saddam-Iraq/Mideast concerns whereby Saddam was more worried about any threat of the United States against him than the United States was worried about a threat by Saddam against us.

I want to read an article that appeared in the Post and Courier in Charleston on May 6; thereafter, I think in the State newspaper in Columbia a couple days later; and in the Greenville News—all three major newspapers in South Carolina. You will find
that there is no anti-Semitic reference whatsoever in it.

The reason I emphasize that upfront is for the simple reason that you cannot put an op-ed in my hometown paper that is anti-Semitic. We have a very, very proud Jewish community in Charleston. In fact, it is where reform Judaism began. The earliest temple, Kadosh Beth Elohim, is on Hasell Street. I have spoken there several times. I had the pleasure of having that particular temple publish the National Register. This particular Senator, with over 50 years now of public service, has received a strong Jewish vote.

Let me emphasize another thing because the papers are piling on and bringing up again a little difference of opinion I had on the Senate floor with Senator Metzenbaum. It was not really a difference. What had happened was we were discussing a matter, and we referred to each religion in order to make sure it would not be misunderstood or tempers flaring. The distinguished Senator from North Carolina, Mr. Helms, referred to himself as the Baptist lay leader, Senator Danforth as the Episcopal priest. I referred to myself as the Lutheran Senator, who when Senator Metzenbaum came on the floor, I referred to him as the Senator from B’nai Brith, and he took exception. He thought it was an aspersion, I told him: Wait a minute, I was glad to identify myself as the Senator from B’nai Brith. He did not mean to hurt his feelings. I apologized at that time but not for the legitimacy and the circumstances of the particular reference.

Now here we go again, some years later. The Senator from Virginia, Mr. George Allen, and I are good friends. Maybe after this particular thing he might feel different, but I know his role as the chairman of the campaign committee. And so I have an article here from a newspaper that is anti-Semitic, political conspiracy statement. Let me refer to myself as the Lutheran Senator for the simple reason that you can’t put an op-ed in my hometown paper that is anti-Semitic. We have a strong Jewish vote.

Let me go, diverting for a minute, right now, I didn’t have that in mind. I have read Charles Krauthammer. I think, frankly, we have caused more terrorism than we have gotten rid of. That is my Israel policy. You can’t have an Israel policy other than what AIPAC gives you around here. I have followed them mostly in the main, but I have also resisted signing certain letters from time to time, to give the poor President a chance.

I can tell you now President takes office—I don’t care whether it is a Republican or a Democrat, I don’t think a sudden AIPAC will tell him exactly what the policy is, and Senators and members of Congress ought to sign letters. I read those carefully and I have joined in most of them. On some I have held back. I have my own idea and my own policy. I have stated it categorically.

The way to really get peace is not militarily. You cannot kill an idea militarily. I was delighted the other day when General Myers appeared before our Appropriations Committee on Defense and he said that we will not win militarily in Iraq. He didn’t say we are going to get defeated militarily but that you can’t win militarily in Iraq.

Mr. ALLARD. Will the Senator yield? Mr. HOLLOWS. Not until I complete this thought. Time is running out on me.

The papers are the ones that pointed out Wolffowitz, Pearle, and Charles Krauthammer were of the Jewish faith. They are the ones who brought this to the Senate. I have to admit that right now, I didn’t have that in mind. I had my friends in mind and I followed them. We had this in the late 1990s.
under President Clinton, when we passed a resolution that we ought to have Saddam removed from power, have a regime change. I was wondering how it went. I had to find my old file—on this Project For The New American Century.

Now, going back to my article: “every President since 1947 has made a futile attempt to help Israel negotiate peace. But no leadership has surfaced amongst the Palestinians that can make a binding agreement. President Bush realized his chances at negotiation were no better. He came to office imbued with one thought.”

Mr. ALLARD. I wonder if the Senator will yield, preserving his time, for a unanimous consent request to move forward with the judge vote we have at 5:40.

Mr. HOLLINGS. Without losing my right to the floor, I will yield.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. ALLARD. Mr. President, as in executive session, I ask unanimous consent that at 5:30 today the Senate proceed to executive session to consider the following nominations on bloc on today’s Executive Calendar: No. 556, the nomination of Raymond Gruender to be U.S. Circuit Judge for the Eighth Circuit; and Calendar No. 557, the nomination of Franklin S. Van Antwerp, to be U.S. Circuit Judge for the Third Circuit.

I further ask unanimous consent that following 10 minutes of debate, equally divided between the chairman and ranking member of the Judiciary Committee, or their designees, that the Senate proceed to consecutive votes on the confirmation of the nominations, with no further intervening action or debate; further, that following the vote, the President be immediately notified of the Senate’s action, and the Senate then return to legislative session.

“The PRESIDING OFFICER. Is there objection?”

Mr. REID. Mr. President, I ask that the Senate modify his request so that the statement of the Senator from South Carolina will stop at 5:40, and the rest of the unanimous consent Kick in at 5:40, rather than 5:30, so we will be voting at 5:50.

Mr. ALLARD. I am willing to modify it.

“The PRESIDING OFFICER. Without objection, it is so ordered.”

Mr. HOLLINGS. Mr. President, let me again read from my article: President Bush came to office imbued with one thought: reelection. He is interested in one thing, and that is to be out campaigning. So he had one thought in mind, and that was reelection.

Again, let me read: Bush thought tax cuts would hold his crowd together and that spreading democracy in the Middle East to secure Israel would take the Jewish vote from the Democrats.

Is there anything wrong with referring to the Jewish vote? Good gosh, every 1 of us of the 100, with pollsters and all, refer to the Jewish vote. That is not anti-Semitic. It is appreciating them. We campaigned for it.

I just read about President Bush’s appearance before the AIPAC. He confirmed his surrender vote, referring to adopting Ariel Sharon’s policy, and the dickens with the 1967 borders, the heck with negotiating the return of refugees, the heck with the settlements he had objected to originally. They had those borders, Resolution No. 242—no, no, President Bush said: I am going along with Sharon, and he was going to get that and he got the wonderful reception he got with the Jewish vote. There is nothing like politicizing or a conspiracy, as my friend from Virginia, Senator ALLEN, says—that it is an anti-Semitic, political, conspiracy statement.

That is not a conspiracy. That is the policy. I didn’t like to keep it a secret, maybe; but I can tell you now, I will challenge any 1 of the other 99 Senators to tell us why we are in Iraq, other than what this policy is here. It is an adopted policy, a domino theory of The Project For The New American Century.

Everybody knows it because we want to secure our friend, Israel. If we can get in there and take it in 7 days, as Paul Wolfowitz says, then we would get rid of Saddam, and when we got rid of Saddam, now all they can do is fall back and say: Aren’t you getting rid of Saddam?

Let me get to that point. What happens is, they say he is a monster. We continued to give him aid after he gassed his own people and everything else. That is the report. Now, President Bush said in his book All The Best in 1999, never commit American GIs into an unwinnable urban guerrilla war and lose the support of the Arab world, lose their friendship and support. That is a general rephrasing of it.

The point I have authority is the President’s daddy. I want everybody to know that. I don’t apologize for this column. I want them to apologize to me for talking about anti-Semitism. They are not getting by with it. I will continue doing this every day— I have nothing else to do—and we will talk about it and find out what the policy is.
in a minute’s time, they were outside over Jordan.

Militarily, Israel is a veritable aircraft carrier. You can hardly fly and you are out of the country, and everybody has to understand that. You cannot change the arithmetic game by military means. He thinks he can do it militarily.

I want to remind you, it was in that 6-day war—the book is “Six Days of War.” Look on page 151, and Major Ariel Sharon has described it.

Look, we are going to decimate the Egyptian army and you will not hear from Egypt again for several generations. And Levi Eshkol, the Prime Minister, on page 32 says: “Militarily victory decides nothing. The Arabs will still be here.”

That is my theme. I have watched it over the years. You have to learn not to kill together, but to live together. The peace process was always the line in the sand.

When we stood up, he said: “You have to settle the question. That is the only way to get this thing going. When we get all this talk about hate America? I do not buy that stuff. I have traveled the world. They love Americans.

Recently we met with the Ambassadors of Germany and France, and Bush was in our policy committee and they said the young people are disillusioned. They always look to the United States for the moral position and taking and defending that particular position. They do not look there anymore.

We are losing the terrorism war because we thought we could do it militarily under thedomino policy of President Bush, going into Iraq. That is my point. That is not anti-Semitic or whatever they say in here about people’s faith and others refer to any faith. I should have added those other names from the Project For The New American Century, but I picked out the names I had quoted for. And for space, I left other things out.

President, on May 12 this year, I had printed in the Record the article in its entirety.

I diverted from the reading of the article several times, so for the sake of accuracy I wanted the whole article printed.

This particular op-ed piece appeared in the Post and Courier. Never would they have thought, having read it, if it was anti-Semitic, that they would have ever put it in there. Nor would the Knight Ridder newspapers in Columbia, SC. Nor would the Metro Media newspapers in Greenville, SC. But the Anti-Defamation League picked it up and now they have given it to my good friend, Senator ALLEN of Virginia. I have his particular view. I am anti-Semitic and I cannot let that stay there.

My staff knew I was coming over and waiting my turn in order to talk under the Pastore rule. I know I am as vitally interested as anybody can be about this issue. Our distinguished colleague from Washington, Senator CANTWELL, knows this subject backward and forward.

The reason I had not known or gotten all the data up is I have been doing some other work and South Carolina has already looked to me for everything at that Savannah River plant. I am on the Energy Appropriations Subcommittee and we have all the money—do not worry about money. This is a policy of nuclear waste disposal, high-level waste, being reclassified under an end-around-end deal of trying to make it low-level waste and, as Senator CANTWELL says, pouring in some sand and concrete on top of it. The scientific community in these tanks are 50 percent as deadly and dangerous as the entire tank container.
Back to Saddam, everybody is glad we have gotten rid of Saddam, but we can see what has happened. There is an old saying we learned in World War II that no matter how well the gun is aimed, if the recoil is going to kill the gun crew, you do not fire.

Did this White House and administration ever think of the recoil? It severely injured the gun crew. Yes, ordinarily to get rid of Saddam, like they put a missile on the intelligence head, they could have put a missile on him any time they wanted, but they did not want to do that. They wanted the domino policy.

No, no, getting rid of Saddam was not worth almost 800 dead GIs and over 3,500 maimed for life. Some say every time we want to criticize the policy, we are weakening the GIs. I am strengthening the GIs. I said let's get enough in there so they can secure themselves. We have 135,000 now. A third of those are guarding the other third, and that means leaving a third, 35,000 or 40,000 troops, running out like a fire drill to any particular trouble and coming back in and eating. I have been there.

You can quit building a big old thing like in Kosovo, where we hunker down and act like we are in charge of Kosovo. The Albanians are in charge of Kosovo.

You can't force-feed democracy. It has to grow from within. We helped liberate Morocco, Algeria, Tunia, 60-some years ago, and Morocco, Algeria, Tunisia have not opted for democracy, nor has Libya, nor has Egypt, nor has Lebanon, nor has Syria, nor has Iraq, nor has Iran, nor has Afghanistan, nor has Pakistan, nor has Jordan, nor has Yemen, nor has Aden, nor has Saudi Arabia, nor has the organization of Arab states.

Come on. So we have to go out and not speak sense with respect to policy, and when you want to talk about policy, they say it is anti-Semitic. Well, come on. Let's deal with the facts.

I cause my friend from Virginia admonishes me. Referring to me he says, "I suggest he should learn from history before making accusations." I didn't make any accusations. I stated facts. That is their policy. That is not my policy.

Mind you me, when we went into Iraq, the only people in the world who favored that policy were the people of the United States and the people of Israel. The people of Jordan, Iraq, Britain, Spain, Poland, Italy, Japan, everywhere around the world said you just don't invade a sovereign country no matter how bad the rascal is. We have Kim Jong of North Korea—he has weapons of mass destruction, but we don't do anything there.

Don't give me this about how we saved this or did that. We have to sort of learn that the front line now is not the Pentagon but the State Department. We have to work through diplomacy. We live in a global economy and a global world. That is only going to come about economically, politically, diplomatically, and by negotiations.

The United States, until this invasion and this domino policy for Israel—don't tell me it is otherwise, about spreading democracy. They know what they are talking about. They are insisting on it. It is not a Jewish policy or a Semite policy. It is their domino policy. That is exactly what it is. But they know how to make you tuck tail and run. Not the Senator from South Carolina. We don't run, we don't win. We are not right. We are wrong a lot of times, but I have thought this out as thoroughly as I know how, and it worries me that here we are.

I said after we got into that thing in Vietnam with the Gulf of Tonkin—I came there at that particular time, in 1966, went to Vietnam when we were under fire three times—actually over into Cambodia before and that kind of thing. We finally came up with McNamara writing a book saying he was wrong.

I'll never forget, McNamara comes out to Allie Richenberg near Saint Alans to get his tennis lesson at 7 o'clock, and Bob McNama turned to Allie and said, "Allie, what do you think about my book?" He said, "It's as bad as your backhand. You should not have written it."

But we had almost 20 years for that one, and we killed 58,000 Americans. Now we have killed almost 800, maimed for life thousands of others. Are we going to just continue on?

What would the Senator from South Carolina do if I were king for a day? Yes, I would put the troops in to get security, and I would step up the election. I can tell you right now, I have run for all kind of offices, 20-some statewide offices and campaigns. But don't put me in on that temporary coalition. That fellow, El Baradei, who is running around saying, what time do we get a temporary coalition or government to turn power over to on June 30—don't put me in that. I immediately have to repudiate the United States, that I am not a stooge for the United States. We just have our fingers crossed that we are ordered and so we can have an election. But don't wait until 2005, or December; by September 30, let's get that election going.

Let's realize we are in real trouble. Saudi Arabia is in trouble. Israel is in trouble. The United States is in trouble. I am going to state what I believe to be the fact. In fact, I believe it very strongly. They just are whistling by on account of the pressures that we get politically. Nobody is willing to stand up and say what is going on.

It was a mistake like Vietnam. We got misled with the Gulf of Tonkin, we got misled here, and we are in that quagmire. "Municipal guerrilla war and a quagmire," that says George Herbert Walker Bush. I will end on my authority—President George Herbert Walker Bush said:

Never commit U.S. troops into an unwinnable urban guerrilla war and turn off the Arab world.

Look in that book of his and you will see exactly what I am talking about. He is not anti-Semitic. He is sensible. He didn't go in.

Yes, Colin Powell, General Powell said if you are going in, let's have enough troops. They tried to do it on the cheap. They were ill advised. My friend Paul Wolfowitz said you will do it in 7 days. Come on. And they let the Republican Guard back into the city of Baghdad and into the Sunni triangle, and the next thing you know, when Chalabi, who has now been demoted or set aside—he did away with their leadership and everything, so they got turned off and they buddied up with the insurgents, and now we have hell on our hands. Everybody knows that.

So it has been ill prepared, ill advised, and ill administered. The entire thing is a mess. Don't give me "support the troops." They have been with troops, about 3 years in combat, so don't tell me about troops. I have always supported the troops.

You ask how many Senators have gotten a Woodward Award from the U.S. Army. They don't give that out lightly. I have been with every Secretary of Defense until this one, and I think he is brilliant, but I think he has made a mistake going along with this domino policy. We have it now out on the table, and we will all talk about it, and we will be around and ready to debate it.

I appreciate the colleagues yielding to me. I wish I had all the time to put all these articles in.

I want to thank—and I am going to sit here and support my friend from Washington. She has done a magnificent job stating what the issue is.

It is simply under the auspices of an accelerated disposal plan going around end to reclassify—and it is around end. I had not heard anything about it. I have been handling everything at the Savannah River for 30 some years. I called up the South Carolina Department of Health and Environmental Control—DHEC—and they were adamantly opposed and gave me the brief they signed a few weeks ago adamantly opposing it, with the assistant attorney general's name on it. They say this is DHEC policy. I talked to two members of DHEC and they said it was never brought up at their meetings. They do not know anything about it.

So, yes, it is a little rider for one special State that is injurious not only to the State itself—I say that adversely—but also to the United States.

I yield the floor.
RAYMOND W. GRUENDER, OF MISSOURI, TO BE UNITED STATES CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT

FRANKLIN S. VAN ANTWERPEN, OF PENNSYLVANIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE THIRD CIRCUIT

The PRESIDING OFFICER (Mr. COLEMAN). Under the previous order, the Senate will now go into executive session. The clerk will report the nominations.

The legislative clerk read the nominations of Raymond W. Gruender, of Missouri, to be United States Circuit Judge for the Eighth Circuit, and Franklin S. Van Antwerpen, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

The PRESIDING OFFICER. The PRESIDING OFFICER. There is 15 minutes of debate evenly divided.

Mr. BOND. Mr. President, I rise today to support the confirmation of Raymond W. Gruender, who has been nominated to the U.S. Court of Appeals for the Eighth Circuit.

Our nominee has ideal qualifications for the federal bench. He is a graduate of Washington University School of Law. Mr. Gruender has nearly ten years of experience as a trial attorney in private practice along with a solid record in public service. He joined the U.S. Attorney’s Office for the Eastern District of Missouri in 1990, specializing in white collar and economic crimes, including fraud and corruption cases.

Mr. Gruender has the bipartisan support of Senator DASCHLE, Senator FRIST, Judge Gonzales and the White House.

Mr. LEAHY. Mr. President, earlier this week, we were able to reach an agreement on Tuesday. I again commend our two leaders. I have been working with Senator DASCHLE for months, as well as with the White House, to find a way out of this impasse in judicial confirmations.

Mr. HATCH. Mr. President, I rise to support the confirmation of Marcia Cooke to the federal bench in Florida. Today we debate and vote on the nomination of Ray mond Gruender to the Eighth Circuit.

Thus, despite the pessimism expressed by some last week, I have been working to conclude an arrangement between the White House and the Senate that would allow additional progress on judicial confirmations.

Mr. LEAHY. Mr. President, the Senate is going to be voting on the nomination of Raymond W. Gruender III has a fine background, which will serve him well back to his community, and in addition devoting a significant amount of his career to public service, he has been very active in civic affairs. He has volunteered his time on domestic violence issues, serving at various times as President of the Board of Directors, Vice President, and Secretary of Alternatives to Living in Violent Environments, ALIVE is a not-for profit organization dedicated to eliminating domestic violence. He also serves as a volunteer on the Allocations Committee of the Variety Club of St. Louis, which raises and distributes funds to disadvantaged and disabled children.

Raymond W. Gruender III has a fine background, which will serve him well as a circuit court judge. He will be a terrific addition to the Court, and I urge my colleagues to join me in supporting his nomination.

Mr. LEAHY. Mr. President, earlier this week, we were able to obtain a firm commitment from the White House that there would be no further judicial recess appointments for the remainder of this presidential term. That undertaking led immediately and directly to the Senate vitiating a cloture vote and proceeding to confirm the nomination of Mr. Gruender to the federal bench.

Representatives of Raymond Gruender to the Eighth Circuit.

The PRESIDING OFFICER. The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the quorum call be dispensed with.

The PRESIDING OFFICER. The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, shortly we are going to be voting on the nomination of Raymond Gruender to be United States Circuit Judge for the Eighth Circuit Court of Appeals.

I want to tell my colleagues this is one of the finest young men I know. He worked his way through Washington University, getting an MBA and a law degree in 6 years while working full time to support himself. His personal story is a very touching one, with very significant difficulties which he overcame.

He served as an assistant U.S. Attorney under Republican and Democratic administrations.

He has been in private practice of law and has tried cases in district courts—criminal and a wide range of civil cases.

He served as an appellate lawyer.

Most recently, he has been U.S. Attorney for the Eastern District of Missouri.

I can assure you this is a man who will bring not only integrity, legal skills, and judicial knowledge to the Eighth Circuit, but he is a person of great human understanding and intellect. He will be a pleasure to appear before.

We can be proud the President has nominated a man who has such great respect among the bar in the Eastern District of Missouri and law enforcement personnel, as well as plaintiffs’ and defendants’ attorneys.

I urge my colleagues to vote for Raymond Gruender.

Mr. HATCH. Mr. President, I rise today to support the confirmation of Raymond W. Gruender, who has been nominated to the U.S. Court of Appeals for the Eighth Circuit.

Our nominee has ideal qualifications for the federal bench. He is a graduate of Washington University School of Law. Mr. Gruender has nearly ten years of experience as a trial attorney in private practice along with a solid record in public service. He joined the U.S. Attorney’s Office for the Eastern District of Missouri in 1990, specializing in white collar and economic crimes, including fraud and corruption cases.

Mr. Gruender has the bipartisan support of Senator DASCHLE, Senator FRIST, Judge Gonzales and the White House.

Senator DASCHLE, Senator FRIST, Judge Gonzales and the White House.

Francesco S. Van Antwerpen, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

The PRESIDING OFFICER. The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the quorum call be dispensed with.

The PRESIDING OFFICER. The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, shortly we are going to be voting on the nomination of Raymond Gruender to be United States Circuit Judge for the Eighth Circuit Court of Appeals.

I want to tell my colleagues this is one of the finest young men I know. He worked his way through Washington University, getting an MBA and a law degree in 6 years while working full time to support himself. His personal story is a very touching one, with very significant difficulties which he overcame.

He served as an assistant U.S. Attorney under Republican and Democratic administrations.

He has been in private practice of law and has tried cases in district courts—criminal and a wide range of civil cases.

He served as an appellate lawyer.

Most recently, he has been U.S. Attorney for the Eastern District of Missouri.

I can assure you this is a man who will bring not only integrity, legal skills, and judicial knowledge to the Eighth Circuit, but he is a person of great human understanding and intellect. He will be a pleasure to appear before.

We can be proud the President has nominated a man who has such great respect among the bar in the Eastern District of Missouri and law enforcement personnel, as well as plaintiffs’ and defendants’ attorneys.

I urge my colleagues to vote for Raymond Gruender.

Mr. HATCH. Mr. President, I rise today to support the confirmation of Raymond W. Gruender, who has been nominated to the U.S. Court of Appeals for the Eighth Circuit.

Our nominee has ideal qualifications for the federal bench. He is a graduate of Washington University School of Law. Mr. Gruender has nearly ten years of experience as a trial attorney in private practice along with a solid record in public service. He joined the U.S. Attorney’s Office for the Eastern District of Missouri in 1990, specializing in white collar and economic crimes, including fraud and corruption cases.

Mr. Gruender has the bipartisan support of Senator DASCHLE, Senator FRIST, Judge Gonzales and the White House.

Senator DASCHLE, Senator FRIST, Judge Gonzales and the White House.

Franklin S. Van Antwerpen, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

The PRESIDING OFFICER. The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the quorum call be dispensed with.

The PRESIDING OFFICER. The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, shortly we are going to be voting on the nomination of Raymond Gruender to be United States Circuit Judge for the Eighth Circuit Court of Appeals.

I want to tell my colleagues this is one of the finest young men I know. He worked his way through Washington University, getting an MBA and a law degree in 6 years while working full time to support himself. His personal story is a very touching one, with very significant difficulties which he overcame.

He served as an assistant U.S. Attorney under Republican and Democratic administrations.

He has been in private practice of law and has tried cases in district courts—criminal and a wide range of civil cases.

He served as an appellate lawyer.

Most recently, he has been U.S. Attorney for the Eastern District of Missouri.

I can assure you this is a man who will bring not only integrity, legal skills, and judicial knowledge to the Eighth Circuit, but he is a person of great human understanding and intellect. He will be a pleasure to appear before.

We can be proud the President has nominated a man who has such great respect among the bar in the Eastern District of Missouri and law enforcement personnel, as well as plaintiffs’ and defendants’ attorneys.

I urge my colleagues to vote for Raymond Gruender.

Mr. HATCH. Mr. President, I rise today to support the confirmation of Raymond W. Gruender, who has been nominated to the U.S. Court of Appeals for the Eighth Circuit.

Our nominee has ideal qualifications for the federal bench. He is a graduate of Washington University School of Law. Mr. Gruender has nearly ten years of experience as a trial attorney in private practice along with a solid record in public service. He joined the U.S. Attorney’s Office for the Eastern District of Missouri in 1990, specializing in white collar and economic crimes, including fraud and corruption cases.

Mr. Gruender has the bipartisan support of Senator DASCHLE, Senator FRIST, Judge Gonzales and the White House.

Senator DASCHLE, Senator FRIST, Judge Gonzales and the White House.

Franklin S. Van Antwerpen, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

The PRESIDING OFFICER. The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the quorum call be dispensed with.

The PRESIDING OFFICER. The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, shortly we are going to be voting on the nomination of Raymond Gruender to be United States Circuit Judge for the Eighth Circuit Court of Appeals.

I want to tell my colleagues this is one of the finest young men I know. He worked his way through Washington University, getting an MBA and a law degree in 6 years while working full time to support himself. His personal story is a very touching one, with very significant difficulties which he overcame.

He served as an assistant U.S. Attorney under Republican and Democratic administrations.

He has been in private practice of law and has tried cases in district courts—criminal and a wide range of civil cases.

He served as an appellate lawyer.

Most recently, he has been U.S. Attorney for the Eastern District of Missouri.

I can assure you this is a man who will bring not only integrity, legal skills, and judicial knowledge to the Eighth Circuit, but he is a person of great human understanding and intellect. He will be a pleasure to appear before.

We can be proud the President has nominated a man who has such great respect among the bar in the Eastern District of Missouri and law enforcement personnel, as well as plaintiffs’ and defendants’ attorneys.

I urge my colleagues to vote for Raymond Grunder.
power by making recess appointments during the remainder of his presidential term. It was the White House’s refusal to reach a reasonable accommodation of the concerns of many Senators about the unilateral approach of the President’s recess appointments in the federal courts that complicated our efforts to reach an agreement regarding votes on judicial nominees over the past few months. That is demonstrated by the prompt vote and confirmation of Judge Colloton after my amendment was passed and by the prompt vote and confirmation of Judge Geyh after your amendment was passed.

And now we are set to vote on another candidate, the nominee of Raymond Gruender to the U.S. Court of Appeals for the Eighth Circuit. While some have mischaracterized the nominees included in this week’s agreement as “noncontroversial,” they in fact include a number who will require debate and will each require a roll call vote.

Unfortunately, Mr. Gruender is another nominee whose record raises concerns, just as have the records of far too many Bush’s judicial nominees. Mr. Gruender, though only 40 years old, has been a member of the Federalist Society since 1988 and has played a lead role in many national Republican campaigns. For the past two years, he has served as the U.S. Attorney for the Eastern District of Missouri. In this capacity, he has been a vocal defender of Attorney General John Ashcroft’s aggressive and controversial tactics.

Raymond Gruender is a distinguished career as a public servant and practicing attorney. He has a distinguished career as a public servant and practicing attorney. He is an outstanding and highly qualified candidate as evidenced by his professional and academic credentials.

From humble beginnings, Mr. Gruender has risen to the top of the legal profession. Neither of his parents graduated from high school; his father painted houses; his mother worked in a factory as a bookbinder and is now a public guard. He has worked since age 10 with his father and he continued to work all through school.

Mr. Gruender obtained three degrees from Washington University in less than 6 years, all while working and paying his own way through school. By 1987, he had obtained Bachelor of Science in Business Administration, Master of Business Administration and Juris Doctor degrees. Not only did he work twenty hours per week during the 6 years to switch to the United States degrees, but he also ranked near the top of his class in each program. In law school, Mr. Gruender served on the Washington University Law Quarterly and is a member of The Order of the Coif. In December 2003, he was awarded an honorary Doctor of Laws degree by William Woods University in Fulton, Missouri.

Since May 1, 2001, Ray Gruender has served as the United States Attorney for the Easter District of Missouri. As United States Attorney he oversees an office of 60 Assistant United States Attorneys actively engaged in both civil and criminal matters. During his term, the number of Federal firearms prosecutions in his district has increased dramatically. In 2003, the City of St. Louis experienced 69 homicides, the first time it had fewer than 100 homicides in more than 40 years.

Mr. Gruender served as an Assistant United States Attorney—AUSA—between 1990 and 1994 and again between 2000 and 2001. As an AUSA, he specialized in fraud and public corruption. He rose from AUSA to U.S. Attorney, the first time it had fewer than 100 homicides in more than 40 years.

In addition to his experience as a Federal prosecutor, Mr. Gruender has spent 9 years in the private practice of law. Between 1987 and 1990, he was an associate with the large St. Louis law firm of Lewis, Rice and Fingersh. Between 1994 and 2000, he as a partner with Thompson Coburn, LLP, another large Missouri firm. He has represented both plaintiffs and defendants in a broad array of civil matters such as advertising, contracts, employment, securities, fraud, banking and various torts claims.

He is a member of the Missouri and Illinois bars, the Bar Association of Metropolitan St. Louis, and has been a member of the Eastern District of Missouri’s Criminal Justice Act Lead Counsel Panel, making himself available to accept criminal appointments.

Just as a nominee last year attempted to stonewall Committee Members by not answering questions in a forthright manner, so Mr. Gruender avoided answering some of my questions by claiming that he could not express an opinion about Congress’s power under the Commerce Clause, Section 5 under the 10th or 11th Amendments. This is a timely, evasive and useless response. And many other circuit court nominees of this President have answered the same questions.

Mr. Gruender does, however, have the support of both of his home-State Senators and has served both as prosecutor and a defense attorney.

I am hopeful that he will be open-minded on the Circuit. William, at least as he says he will, that he will follow the law and not seek out opportunities to overturn precedent or decide cases in accordance with his political beliefs rather than his obligations as a judge. I also sincerely hope that Mr. Gruender will treat all those who appear before him with respect and courtesy and will not abuse the power and trust of his position.

For the last three and one-half years, I have urged President Bush to work with us. Our proceeding today on this nomination demonstrates our going the extra mile.

I would note that President Clinton’s nomination of Bonnie Campbell to this court was blocked—by a secret Republican hold—from ever getting Committee or Senate consideration. By contrast, the Senate has already confirmed four of President Bush’s nominees to the Fourteenth Amendment. Unlike Bush, Mr. Gruender will not seek out opportunities to over-turn precedent or decide cases in accordance with his political beliefs rather than his obligations as a judge. I also sincerely hope that Mr. Gruender will treat all those who appear before him with respect and courtesy and will not abuse the power and trust of his position.

The President’s recess appointments to the Eighth Circuit Court of Appeals for the Eighth Circuit. While some have mischaracterized the nominees included in this week’s agreement as “noncontroversial,” they in fact include a number who will require debate and will each require a roll call vote.

I would note that President Clinton’s nomination of Bonnie Campbell to this court was blocked—by a secret Republican hold—from ever getting Committee or Senate consideration. By contrast, the Senate has already confirmed four of President Bush’s nominees to the Fourteenth Amendment. Unlike Bush, Mr. Gruender will not seek out opportunities to overturn precedent or decide cases in accordance with his political beliefs rather than his obligations as a judge. I also sincerely hope that Mr. Gruender will treat all those who appear before him with respect and courtesy and will not abuse the power and trust of his position.

The President’s recess appointments to the Eighth Circuit Court of Appeals for the Eighth Circuit. While some have mischaracterized the nominees included in this week’s agreement as “noncontroversial,” they in fact include a number who will require debate and will each require a roll call vote.

I would note that President Clinton’s nomination of Bonnie Campbell to this court was blocked—by a secret Republican hold—from ever getting Committee or Senate consideration. By contrast, the Senate has already confirmed four of President Bush’s nominees to the Fourteenth Amendment. Unlike Bush, Mr. Gruender will not seek out opportunities to overturn precedent or decide cases in accordance with his political beliefs rather than his obligations as a judge. I also sincerely hope that Mr. Gruender will treat all those who appear before him with respect and courtesy and will not abuse the power and trust of his position.

The President’s recess appointments to the Eighth Circuit Court of Appeals for the Eighth Circuit. While some have mischaracterized the nominees included in this week’s agreement as “noncontroversial,” they in fact include a number who will require debate and will each require a roll call vote.
Mr. Gruender also has been active in civil affairs. His numerous civic contributions include serving as a volunteer on the Allocations Committee of the Variety Club of St. Louis to help raise and distribute funds to disadvantaged and disabled children in the St. Louis area. He also served on the Board of Directors—including as board president—of ALIVE—Alternatives to Living in Violent Environments—a for-profit entity dedicated to eliminating domestic violence and helping its victims.

I urge all of my colleagues to vote to confirm Raymond Gruender, of Missouri, to be U.S. Circuit Judge for the Eighth Circuit.

Mr. BOND. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I yield time for the minority on the judges matter.

The PRESIDING OFFICER. Without objection, all time is yielded.

The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that there be 4 minutes equally divided between the two votes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. HUTCHISON. Mr. President, have the yeas and nays been asked for?

The PRESIDING OFFICER. They have not.

Mrs. HUTCHISON. I ask for the yeas and nays on the first vote.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Raymond W. Gruender, of Missouri, to be United States Circuit Judge for the Eighth Circuit?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

Mr. MCCONNELL. I announce that the Senator from Virginia (Mr. WARREN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 1, as follows:

[Rollcall Vote No. 102 Ex.]

YEAS—97

Akaka  Alpert  Allard  Allen  Baca  Bayh  Bennett  Biden  Bingaman  Boxer  Brown  Brownback  Burns  Byrd  Campbell  Cantwell  Carpenter  Chafee  Chambliss

NAYS—1

Harkin  Warner

The nomination was confirmed.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. S antorum. Mr. President, I rise to express my strong support for the confirmation of Franklin S. Van Antwerpen to the Court of Appeals for the Third Circuit.

Judge Van Antwerpen is an impressive man and has the enthusiastic support of both Pennsylvania senators, and his former colleagues on the federal bench. I urge my colleagues to join me in supporting his nomination.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. Leahy. Mr. President, today, in addition to voting on the nomination of Raymond Gruender, we vote to confirm another circuit court nominee, Judge Franklin Van Antwerpen to the United States Court of Appeals for the Third Circuit. A Federal District Court judge since he was appointed by President Reagan in 1987, Judge Van Antwerpen comes to the Senate floor strongly supported by the Senior Senator from Pennsylvania, who I know is eager to see him confirmed.

Today’s confirmation will make the 76th judge confirmed this year alone and the 166th judicial nominee to be confirmed for this President. With 76 judicial confirmations in just a little more than 16 months, the Senate has now confirmed more federal judges than were confirmed during the two full years of 1995 and 1996, when Republicans first controlled the Senate and President Clinton was in the White House. It also exceeds the 2-year total for the last 2 years of the Clinton administration, when Republicans held the Senate. In fact, with 176 total confirmations for President Bush in just 3½ years, the Senate has confirmed more lifetime appointees for this President than were allowed to be confirmed in President Clinton’s entire second term, the most recent 4-year presidential term. We have already surpassed the number of judicial confirmations won by President Reagan in his entire first term as President.

The confirmation of Judge Van Antwerpen also marks the second circuit court nominee confirmed for President Bush this year, which is double the number of circuit court nominees confirmed in all of 1996, the last time a president was running for reelection and Republicans refused to allow a single circuit court nominee of President Clinton to be confirmed all year. Today we confirm the 2nd circuit court nominee of President Bush, which is more circuit court confirmations than in all 4 years of President Clinton’s first term in the White House.

A look at the Federal judiciary in Pennsylvania demonstrates yet again that President Bush’s nominees have been treated far better than President Clinton’s and shows dramatically how Democrats have worked in a bipartisan way to fill vacancies, despite the fact that Republicans blocked more than 60 of President Clinton’s judicial nominees. With this confirmation, 16 of
President Bush’s nominees to the Federal courts in Pennsylvania will have been confirmed, more than for any other State except California.

With this confirmation, President Bush’s nominees will make up 16 of the 41 active Federal circuit and district court judges for Pennsylvania—that is more than one third of the Pennsylvania Federal bench. With the additional four Pennsylvania district court nominees pending on the floor and likely to be confirmed soon, nearly half of the district court seats in Pennsylvania will be held by President Bush’s appointees. Republican appointees will outnumber Democratic appointees by nearly two to one.

This is in stark contrast to the way vacancies in Pennsylvania were left unfilled during Republican control of the Senate when President Clinton was in the White House. Although Republicans now decry Democratic filibusters of a mere handful of the most extreme nominees, Republicans denied votes to nine district and one circuit court nominees of President Clinton in Pennsylvania alone. Despite the efforts and diligence of the senior Senator from Pennsylvania, Mr. SPECTER, to cure the confirmation of all of the judicial nominees from every part of his home State, there were ten nominees by President Clinton to Pennsylvania vacancies who never got a vote. Despite how well-qualified these nominees were, a majority of their nominations sat pending before the Senate for more than a year without being considered.

Such obstruction provided President Bush with a significant opportunity to shape the bench according to his partisan and ideological goals. Recent news articles in Pennsylvania have highlighted the way that President Bush has been able to reshape the Federal bench in Pennsylvania. For example, the Philadelphia Inquirer, on November 27, 2003, said that the significant number of vacancies on the Pennsylvania courts “present Republicans with an opportunity to shape the judicial makeup of the court for years to come.”

Democratic support for the confirmation of Franklin Van Antwerpen is yet another example of our extraordinary cooperation despite an uncompromising White House and the record of how President Clinton’s Pennsylvania nominees fared under Republican control in the Senate. In contrast to many of President Bush’s nominees, Judge Van Antwerpen comes to us with a distinguished and widely acclaimed career on the bench—both on the State and Federal levels. He was rated unanimously well-qualified by the American Bar Association and has the respect of his peers on the bench and of the attorneys who appear before him. He is the kind of nominee this President and my Republican colleagues should be looking for, not someone we have the constitutional duty of appointing members to the Federal judiciary—an independent branch of the government.

I congratulate Judge Van Antwerpen and his family on his confirmation today.

The PRESIDING OFFICER. All time is yielded back.

The question is, Will the Senate advise and consent to the nomination of Franklin S. Van Antwerpen, of Pennsylvania, to be United States Circuit Judge for the Third Circuit?

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The clerk will call the roll.

The bill clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Texas (Mrs. HUTCHISON) and the Senator from Alabama (Mr. SESSIONS) are necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Georgia (Mr. MILLER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 103 Ex.]

<table>
<thead>
<tr>
<th>YEAS—96</th>
</tr>
</thead>
<tbody>
<tr>
<td>Akaka</td>
</tr>
<tr>
<td>Alexander</td>
</tr>
<tr>
<td>Allard</td>
</tr>
<tr>
<td>Allen</td>
</tr>
<tr>
<td>Baucus</td>
</tr>
<tr>
<td>Bayh</td>
</tr>
<tr>
<td>Biden</td>
</tr>
<tr>
<td>Bingaman</td>
</tr>
<tr>
<td>Bond</td>
</tr>
<tr>
<td>Boxer</td>
</tr>
<tr>
<td>Breaux</td>
</tr>
<tr>
<td>Brownback</td>
</tr>
<tr>
<td>Bunning</td>
</tr>
<tr>
<td>Burns</td>
</tr>
<tr>
<td>Byrd</td>
</tr>
<tr>
<td>Campbell</td>
</tr>
<tr>
<td>Cantwell</td>
</tr>
<tr>
<td>Carlson</td>
</tr>
<tr>
<td>Chafee</td>
</tr>
<tr>
<td>Chambliss</td>
</tr>
<tr>
<td>Clinton</td>
</tr>
<tr>
<td>Cochran</td>
</tr>
<tr>
<td>Coleman</td>
</tr>
<tr>
<td>Collins</td>
</tr>
<tr>
<td>Conrad</td>
</tr>
<tr>
<td>Cornyn</td>
</tr>
<tr>
<td>Craig</td>
</tr>
<tr>
<td>Crapo</td>
</tr>
<tr>
<td>Daschle</td>
</tr>
<tr>
<td>Dayton</td>
</tr>
</tbody>
</table>

NOT VOTING—4

Hatchinson  Miller
Kerry  Sessions

The nomination was confirmed.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I join with my colleagues in requesting Senators to send in as many amendments as they possibly can. The Senator from Michigan and I will be here tomorrow in hopes that we can clear amendments. There are days when clearances could be facilitated. I think tomorrow is one of those days.

I say to my good colleague, the Senator from Michigan, Mr. LEVIN, am I correct in that?

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I say to my good friend from Virginia, he is absolutely not only correct but I would join his plea to our colleagues that we make good use of time tomorrow. If Senators are not here, their staff can deliver amendments so at least we can begin to consider them. We can make good use of tomorrow so when we come back we will have to use up less of the Senate’s time.

So I join the chairman’s plea that Members on both sides of the aisle, who have not filed amendments or given our staffs amendments, do that tomorrow. Let us try to work through some of them. We could clear them tomorrow and, even if we do not have contested amendments tomorrow, we could make some progress on this bill.

Mr. WARNER. I thank my colleague. The distinguished Senator from Nevada, the Democratic whip, pointed out that he has a count of over 100 odd amendments with which we have to deal. So there is a formidable task ahead of us.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. The record speaks. As we close out this evening is to comment on a few things about the amendment pending before the Senate in regard to an effort to do two things: to make sure the $350 million that is available for the Department of Energy to provide cleanup in the States of Washington, Idaho, and South Carolina can move forward without any strings attached, and to ratify an agreement that the State of South Carolina has entered into with the Department of Energy concerning 51 tanks containing low-level waste.

I really do very much like my colleague from Washington, Senator CANTWELL, but we dramatically disagree on this. I cannot emphasize how dramatically we disagree about what is at stake and what we are trying to accomplish.

My senior Senator from South Carolina could not have been possibly better to me since I have been in the Senate almost 18 months now. He is going through some accusations that I find not consistent with who Senator HOLINGS is. I am not going to dwell on that, but I believe that most of us who
know Senator Hollings very well believe he gives everybody the same treatment. Really hard. He is a fair man. He is a good man. We have some disagreement about how to handle the amendment before us, but I did not come here without some time, attention, and thought to the matter. Well over a year I have been involved with my State working with the Department of Energy to make sure that the 51 tanks that have high-level waste are cleaned up in a way that is environmentally sound for South Carolina, good for the taxpayer, and it makes sense.

I have a letter from the Governor of South Carolina. Contrary to what Senator Hollings suggested, the Governor of South Carolina not only knows what we are doing, he encourages what we are doing. I received a letter to that effect. Contrary to what Senator Hollings suggested, the letter be printed in the RECORD.

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

STATE OF SOUTH CAROLINA
OFFICE OF THE GOVERNOR
Hon. Lindsey O. Graham.
U.S. Senator
Washington, DC.

Dear Senator Graham:

I am writing in support Section 3116, Defense Site Acceleration Act, of FY 2006 Department of Defense Authorization bill, S. 2400. More specifically, this section of the bill will allow for an accelerated clean up of the Savannah River Site in South Carolina.

This Administration is concerned about the prospect of long-term storage of radioactive waste in aging tanks at the Savannah River Site. Under the current Nuclear Waste Policy Act, the clean up process could leave the waste in those storage tanks for an additional 30 years.

However, the amendment allows the U.S. Department of Energy, working with the South Carolina Department of Health and Environmental Control, the state’s environmental regulatory agency, the clean up process will still require an equal partnership with the State.

As you move through the legislative process, we urge you and your colleagues to retain the fundamental goals for South Carolina: 1. allow for a more accelerated clean up process, and 2. provide strong language to protect the State’s sovereignty within the process of accelerated cleanup.

Thank you for your leadership in the United States Senate. I look forward to working with you on this and many other matters of importance to our State.

Sincerely,

Mark Sanford.

Mr. Graham of South Carolina. I am going to read from it. The question Senator Hollings raised was well, if our Governor knew about this he would not agree to this because he is a good environmentalist.

We will agree on this: Our Governor is a good environmentalist. He has been a great Governor trying to change the culture of the way we do business in South Carolina. I have been working with him for over a year to make sure our State’s tanks—in those tanks cleaned up in their lifetime and we do not have to worry about ground water leakage.

The folks in Savannah have a real problem on their hands, and I want to help them. The people in Idaho have problems on their hands, and I want to help them. I believe they are being very responsible in terms of how we are dealing with each other’s problems.

Here is a chronology of what has been going on in these three States. Idaho, South Carolina, and Washington have been separately negotiating with the Department of Energy about trying to agree on standards in their States to remediate the high-level waste that is left over from the cold war. Washington has been working with DOE to clean up those tanks. They have tanks that are leaking into the ground water. That needs to be fixed sooner rather than later.

The question is: What is clean? The question is: Are we going to allow South Carolina to move forward, and cleaned 23 years ahead of schedule, and it saves $16 billion to the American taxpayer. I hope Washington and Idaho can get there. If they ever do get there, if they ever do reach an agreement with the Department of Energy where the Governor says I like it, where the environmental regulators say I like it, where the Nuclear Regulatory Commission says this is waste incidental to reprocessing, that this can be done in a way that is environmentally sound— I hope I will help, not stand in the way.

So much was said that is so wrong about this issue. To my two friends from Idaho, you have taken some political abuse here that is far so far from the truth. What is true is this. What is true is this. What Senators Crapo and Craig have been doing is they have been working with me, in conjunction with all three States, to make sure they get the money they are entitled to regardless of what we do in South Carolina, and they have been kind enough to work with me to make sure my State’s agreement can go forward. We are doing nothing to prejudice the lawsuit of the State of Idaho or their ability to reach an independent agreement. I can assure you, this is not blindsiding anybody because there is paperwork from January all the way through to recent months between Idaho and Washington, talking with DOE about trying to find an agreement.

On February 2, the deputy secretary and Governor Locke connected. Governor Locke indicated he would designate someone to enter into a discussion on behalf of the State of Washington.

That has been going on in South Carolina far before January 26. It is going on in Idaho. About 8 or 9 years ago Idaho reached agreement about certain aspects of cleaning up of the Idaho sites. Each site has a different problem and it is working with DOE in a way that is good for everyone, the State and at the Federal level, to clean up these sites.

The reason we are in court in Idaho is DOE unilaterally issued an order that gave them the authority to set the cleanup standards without consulting with the States. They were trying to change the game and the agreement Idaho had with DOE, and Idaho sued and we—South Carolina and Washington—joined as a friend of the court, saying we will not sit on the sidelines and watch the Department of Energy have the unilateral right to set cleanup standards. That is what we agree upon.

The amendment I have before the Senate does two important things. It does not allow the Department of Defense to withhold funds to Idaho and Washington unless they reach a similar agreement with South Carolina. It does not make what is going on in South Carolina a Presidential event, in terms of how it affects other States. It limits what is going on in South Carolina. It is not disadvantage our Idaho. They have the right, the obligation to enter into an agreement, if any, with DOE. What are we doing in South Carolina only affects South Carolina. I will tell you in a moment what people in South Carolina and Idaho are in charge of their own environmental needs say about this agreement. I will read the letter from the Governor here in a moment.

The Department of State, the Department of Energy, and the State of Washington, along with the State of Idaho, exchanged drafts and held conversations between January and April. There is a lot of paperwork out there that shows Idaho and Washington have been trying to do the same thing that we have been doing. Here is the difference. We reached an agreement South Carolina likes that will get our tanks cleaned up in an environmentally sound manner. And listen to this. It allows the tanks to be cleaned up, remediated, and closed 23 years ahead of schedule, and it saves $16 billion to the American taxpayer.

I hope Washington and Idaho can get there. If they ever do get there, if they ever do reach an agreement with the Department of Energy where the Governor says I like it, where the environmental regulators say I like it, where the Nuclear Regulatory Commission says this is waste incidental to reprocessing, that this can be done in a way that is environmentally sound— I hope I will help, not stand in the way.

So much was said that is so wrong about this issue. To my two friends from Idaho, you have taken some political abuse here that is far so far from the truth. What is true is this. What is true is this. What Senators Crapo and Craig have been doing is they have been working with me, in conjunction with all three States, to make sure they get the money they are entitled to regardless of what we do in South Carolina, and they have been kind enough to work with me to make sure my State’s agreement can go forward. We are doing nothing to prejudice the lawsuit of the State of Idaho or their ability to reach an independent agreement. I can assure you, this is not blindsiding anybody because there is paperwork from January all the way through to recent months between Idaho and Washington, talking with DOE about trying to find an agreement.

On February 25, 2004, Jessie Roberson, the Assistant Secretary for Energy for Environmental Management came before Senator Allard in a hearing and talked about this extensively. He was asked numerous questions.

I ask unanimous consent to have an excerpt of that hearing printed in the RECORD.
May 20, 2004

CONGRESSIONAL RECORD — SENATE

S5931

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

TRANSCRIPT ON WASTE INCIDENTAL TO REPROCESSING, STRATEGIC FORCES SUBCOMMITTEE HEARING, FEBRUARY 23, 2004

QUESTIONS WAYNE ALLARD TO MS. JESSIE ROBERSON, ASSISTANT SECRETARY OF ENERGY FOR ENVIRONMENTAL MANAGEMENT

ALLARD: Well, thank you very much for your participation. It's invaluable to this committee.

I'm going to be referring in my questioning to WIR, which stands for Waste Incidental to Reprocessing. I think it would behoove the committee to hear, Secretary Roberson, you summarize what the WIR issue is.

ROBERSON: Thank you, Chairman Allard. Thank you.

Clean-up of tank waste at Hanford, Idaho, and Savannah River represents the greatest risk-reduction effort in the department's entire clean-up program.

ALLARD: And this all falls under Waste Incidental Reprocessing, is that correct?

ROBERSON: Absolutely.

ALLARD: Okay.

ROBERSON: And I'll explain what portion of the waste that specifically applies to.

ALLARD: Very good.

ROBERSON: Okay, we have planned at these three sites to clean up tank waste, plans agreed to with our host states and that DOE had also carefully reviewed. At each site, our plans acknowledge we would remove as much tank waste as we could. We would separate the tanks into two categories.

The first is a high-activity fraction containing over 95 percent of the radioactivity, which is removed as highly-level waste and treated and disposed of in the repository for spent fuel and high-level waste called for by the Nuclear Waste Policy Act. And the other category, which we would classify as low-level waste, incidental to reprocessing and, depending on its characteristics, treat and dispose of in an appropriate disposal facility for such material.

We would then determine whether we could demonstrate that disposing of a small amount of residues remaining in the tank, generally around one percent of the original volume, by immobilizing it in place and demonstrating that it would be comparable to the public health and safety requirements for a near-surface disposal facility. If it would, our plans were to classify the residues as low-level and to reprocessing, to immobilize them in the tank and close the tanks with these residues in place.

A key element of these plans is the classification of the tank waste.

The problem we have encountered is that in July of 2003, an Idaho district court struck down the waste incident to reprocessing portion of DOE Order 435.1, the DOE order addressing how DOE and its contractors classify waste under the Atomic Energy Act. As a result, we now face uncertainty in implementing the very plans our host states had anticipated. We now face uncertainty in implementing the very plans our host states had anticipated. As a result, we now face uncertainty in implementing the very plans our host states had anticipated. As a result, we now face uncertainty in implementing the very plans our host states had anticipated.

We have since held discussions with affected states over the impact the Idaho district court decision had on our activities in Hanford, Idaho, and Savannah River, in order to seek to address issues that have raised about our proposed legislative approach.

In addition, we've just filed our opening brief in our appeal of the Idaho court decision to continue our litigation efforts to resolve the WIR issue. Without timely resolution of this issue, not only could we be unable to implement our clean-up plans, but DOE also could be forced to realign its resources across the complex in a manner that would significantly distort the department's clean-up and other priorities.

ALLARD: What about the $350 million, and what does it take to get that money released?

ROBERSON: The Department's fiscal year 2005 budget request includes $350 million in a high-level waste proposal that reflects the recommendations of the Nuclear Waste Policy Commission, including funds to continue to support clean-up. These funds will be requested only to the extent that legal uncertainties concerning disposition of these wastes are resolved.

Until we can resolve the legal uncertainties related to WIR, it does not make sense for us to proceed with projects that prepare tank waste for disposition as other than high-level waste destined for deep geologic repository.

ALLARD: I want to thank you for your response.

Mr. GRAHAM of South Carolina.

There was another Energy and Water hearing where the same topic was brought before the Congress. The topic is, how are you doing with your efforts to reach agreements with the three States in question to find cleanup standards they can agree to that are environmentally sound, that will allow things to go forward in a more expeditious manner?

The truth is, we have spent billions of dollars talking about what we are doing. We have done nothing but let tanks leak and have waste stay around for years and decades. Now we have a new model. Now we have new money, $350
What are we trying to do is clean these tanks up in a manner consistent with safety for South Carolina. The amendment says no tank can be closed unless the State of South Carolina issues a closure permit. The letter from my Governor says, not only am I aware of what you are doing, Senator Graham, I support it because it will allow the tanks to be closed up 23 years ahead of schedule, it will save money, and we don’t have to worry about tanks deteriorating.

The plan is to take all of the liquid out and the film on the bottom, which will be 1 to 1.5 inches, treated with concrete and other materials and the tank will be closed. To get that 1 to 1.5 inches out of the bottom of that tank will cost $16 billion and take 23 additional years and put people’s lives at risk for no good reason, no good environmental reason.

Every State is trying to define what is clean for their State. Washington is trying to do the same thing. Maybe they will want half an inch. I don’t know what they want. Idaho is trying to do the same thing. We have done it and I have a Nuclear Regulatory Commission report that says what is left in that tank after treatment is waste incidental to reprocessing, not high-level waste.

The people in my State who regulate the environment have sent a letter saying we want this agreement because we have done it already. In front of you, Senator, before you put the tank and the standards we have negotiated think are good for South Carolina. The only reason we are having this argument is they don’t want one State to go—I guess some groups want to have the leverage of all three States to get standards they believe are better than those by the South Carolina folks who regulate our environment, and they are trying to use some standard that may not be necessary. Idaho and South Carolina. We don’t have the same problems they do in Washington.

I will stand behind any Senator from Washington to make sure DOE doesn’t run over them. I will stand behind any Senator from Idaho to make sure they can negotiate on their own terms. I am asking this body to approve an agreement that is environmentally sound, fiscally responsible, that affects South Carolina, and is what all three States are trying to achieve.

I have had printed in the RECORD the letter from my Governor. I have had printed the study from the Nuclear Regulatory Commission. I ask unanimous consent to have printed the letter from the Department of Health and Environment Control in South Carolina, saying this is good for the State, they retain control over the tanks, and this is environmentally sound.

The letter from the Governor of South Carolina was an amendment that was ordered to be printed in the RECORD, as follows:

Mr. ROY J. SCHEPENS, Assistant Manager for High-Level Waste, U.S. Department of Energy, Savannah River Operations Office, Aiken, SC.

SAVANNAH RIVER SITE HIGH LEVEL WASTE TANK CLOSURE: CLASSIFICATION OF RESIDUAL WASTE AS INCIDENTAL

DEAR MR. SCHEPENS: The U.S. Nuclear Regulatory Commission (NRC) has completed the review of the tank closure methodology for the high-level waste (HLW) tanks at the Savannah River Site (SRS). Under the terms and conditions of the Department of Energy (DOE)/NRC Memorandum of Understanding and the DOE/NRC Interagency Agreement, both dated July 9, 1997, the NRC is acting in an advisory capacity and is not providing regulatory approval. The focus of the review was whether or not waste left in the HLW tanks, after cleaning, could be labeled as incidental waste. The criteria for incidental waste were approved by the Commission and technically and economically practical. The residual waste left in the tanks is limited to waste that cannot be removed by application of those technologies currently considered necessary and economical for HLW tank cleaning. As the HLW tank closure process evolves over the next several decades the technical and economic feasibility of other waste removal options should continue to be evaluated.

The staff recommends that a set waste sampling protocol should be developed and followed. The number of samples obtained will be a function of the tank contents, as well as the homogeneity of the sludge. All sample results should be compared to process data to ensure accuracy. Any significant inconsistencies resulting from tank sampling and process history should result in further evaluation.

The staff review generally found that DOE’s methodology for removal of key radionuclides to the maximum extent economically and technically practical achieves the objectives of Criterion One. The staff review of Criterion Two, “... wastes will be incorporated in a solid physical form at a concentration that does not exceed the applicable concentration limits for class C low-level waste as set out in 10 CFR Part 61,” made use of information you provided on initial and expected removal efficiencies. Fourteen of the 51 HLW tanks are anticipated to meet Class C limits by utilizing concentration averaging with only bulk waste removal and water washing. The other 37 tanks would require chemical cleaning via oxalic acid washing to meet Class C limits, even with the application of concentration averaging. DOE, therefore, plans to rely on alternative considerations of the classification of waste, rather than planning to use oxalic acid chemical cleaning to meet Class C limits.

The staff recommends that a set waste classification methodology be defined. DOE is also working on a detection technique to identify the presence of Class C concentration limits. In particular, DOE relies on its plans to solidify the waste in layers of grout, some 30 feet thick. DOE relies on information the NRC provides on the disposal site, which it considers to be stable. In addition, it appears that there is reasonable assurance that the performance objectives of 10 CFR Part 61, Subpart C can be met without meeting the Class C concentration limits for all tanks. These considerations are similar to those in 10 CFR 61.58. DOE is currently working on Concentration Averaging, is generally acceptable in this context to meet Class C concentration limits, and recognizes that the alternative provisions for waste classification proposed by DOE are generally similar to those in 10 CFR 61.58. Staff recommends that DOE develop site-specific concentration limits for residual waste in the SRS HLW tanks in order to bound the associated analyses and to provide a specific benchmark for satisfactory cleaning of the tanks.

For the portion of Criterion Two that addresses the solid physical form, the staff believes that the waste has been sufficiently immobilized to help prevent inadvertent intrusion of the associated wastes. DOE has concluded that available removal technologies have been extensively examined to determine those that are both technically and economically practical. The residual waste left in the tanks is limited to waste that cannot be removed by application of those technologies currently considered necessary and economical for HLW tank cleaning. As the HLW tank closure process evolves over the next several decades the technical and economic feasibility of other waste removal options should continue to be evaluated.

The staff recommends that a set waste sampling protocol should be developed and followed. The number of samples obtained will be a function of the tank contents, as well as the homogeneity of the sludge. All sample results should be compared to process data to ensure accuracy. Any significant inconsistencies resulting from tank sampling and process history should result in further evaluation.

The staff review of Criterion Two, “... wastes will be incorporated in a solid physical form at a concentration that does not exceed the applicable concentration limits for class C low-level waste as set out in 10 CFR Part 61,” made use of information you provided on initial and expected removal efficiencies. Fourteen of the 51 HLW tanks are anticipated to meet Class C limits by utilizing concentration averaging with only bulk waste removal and water washing. The other 37 tanks would require chemical cleaning via oxalic acid washing to meet Class C limits, even with the application of concentration averaging. DOE, therefore, plans to rely on alternative considerations of the classification of waste, rather than planning to use oxalic acid chemical cleaning to meet Class C limits.

The staff recommends that a set waste classification methodology be defined. DOE is also working on a detection technique to identify the presence of Class C concentration limits. In particular, DOE relies on its plans to solidify the waste in layers of grout, some 30 feet thick. DOE relies on information the NRC provides on the disposal site, which it considers to be stable. In addition, it appears that there is reasonable assurance that the performance objectives of 10 CFR Part 61, Subpart C can be met without meeting the Class C concentration limits for all tanks. These considerations are similar to those in 10 CFR 61.58. DOE is currently working on Concentration Averaging, is generally acceptable in this context to meet Class C concentration limits, and recognizes that the alternative provisions for waste classification proposed by DOE are generally similar to those in 10 CFR 61.58. Staff recommends that DOE develop site-specific concentration limits for residual waste in the SRS HLW tanks in order to bound the associated analyses and to provide a specific benchmark for satisfactory cleaning of the tanks.
the mobility of the radionuclides. The middle layer of grout provides a solid foundation to guard against subsidence, and, finally, the top layer of strong grout provides protection against long-term erosion of the bottom liner. Therefore, the physical form aspect of Criterion Two appears to be achieved by our methodology.

Assessment Criterion Three. "... wastes are to be managed, pursuant to the Atomic Energy Act, so that safety requirements are met and performance objectives are satisfied" involves the evaluation of the tank farm performance assessment (PA). DOE has indicated that it intends to meet a 4 mrem/year drinking water dose limit. From standard dose modeling methodology, the drinking water dose is expected to be the largest dose contributor to the dose rate from the performance assessment that the drinking water dose will be less than the 4 mrem/year drinking water dose limit, and by extrapolation, that the individual dose will be less than the 25 mrem/year total effective dose equivalent (TEDE) requirement of 10 CFR 61.41. In meeting the performance objective of § 61.41, reliance on institutional controls beyond 100 years will not be needed, although DOE has proposed institutional controls that will have to be set in order to meet the performance objectives of § 61.44. The NRC has completed all-pathways dose assessment. See the enclosed Technical Evaluation Report for further recommendations. In addition, future tank closure modeling should include a more thorough PA for all predicted or known source terms (i.e., all HLW tanks) in the F-Area Tank Farm. The following key points were noted:

- Early degradation of grout, degradation of ancillary equipment and piping, combined aquifer scenarios, conservative distribution coefficients and geometry, and a 5-year radionuclide dispersion analysis, submerged tanks, conservative analysis for the horizontal versus vertical flux radionuclide transport processes for the saturated zone, and a complete all-pathways dose assessment. See the enclosed Technical Evaluation Report for further recommendations.

- Based on the information provided to the staff, DOE has concluded that the methodology for tank closure at SRS appears to reasonably analyze the relevant considerations for Criterion Three. These include the three incidental waste criteria, DOE would undertake cleanup to the maximum extent that is technically and economically practical, and, if needed, it would demonstrate it can meet performance objectives consistent with those required for disposal of low-level waste. These commitments, if satisfied, should serve to provide adequate protection of public health and safety. Further, DOE's methodology relies on alternative classification considerations similar to those contained in the Commission's draft rulemaking. The NRC staff, from a safety perspective, therefore does not disagree with DOE's proposed methodology. DOE is reaching current goals for bulk waste removal, as well as water and chemical washing, such that the performance objectives comparable to those stated in § 61.44 are met. In addition, NRC judgment as to the adequacy of the methodology is dependent on verification that the assumptions underlying the analysis are correct. DOE's methodology is adequate to meet performance objectives comparable to those stated in § 61.44.

- With that, to be continued. Thank you.

Sincerely,

WILLIAM F. KANE, Director, Office of Nuclear Material Safety and Safeguards.

Mr. GRAHAM of South Carolina. With that, to be continued. Thank you. Happy holidays.

Mr. AKAKA. Mr. President, I rise today in support of the fiscal year 2005 Defense authorization bill. I want to first commend Chairman WARNER and Senator LEVIN, who have continued their tradition of strong and bipartisan leadership on this important effort. I thank my friend, colleague and subcommittee chairman Senator ENSENHAUSER, for his cooperation and leadership this process this year.

While I think the bill before us goes a long way to support the needs of our service men and women, I do want to highlight a few concerns.

First, I am pleased that the administration finally followed Congress's lead and sent a request for an additional $25 billion to begin to address the ongoing military operations in Iraq and Afghanistan for the first few months of fiscal year 2005. While I do not support the structure of the administration's request, in part because it does not do enough to ensure accountability for these funds, I do believe it is important that we support its intent, and I think it is imperative that we include an authorization of additional funding in the final version of this bill.

I support every action to aid our brave men and women in the armed forces, who are making so many sacrifices as they fight for our freedoms. I am concerned and disappointed by some of the actions we have taken in the bill we are reporting to the Senate. As the Senate voted last year, in the reductions we have made in the working capital funds of the military services and defense agencies. While I disagreed with the cuts in these accounts last year, the ones this year are even more harmful, as DOD is already tapping these accounts to the greatest possible extent to get through the remainder of this fiscal year. So they will already be well below normal cash balances as they enter fiscal year 2005, and the $1.6 billion in reductions we have recommended in this bill will increase the risk of readiness problems by decreasing DOD's ability to provide spare parts, maintenance, and other support for our forces that are critical to their continued success. By cutting into these accounts, I believe we are sending a message that we do not support our troops, a message that I know could not be further from the truth.

Our forces deserve armored vehicles to protect them. We also deserve the spare parts they need to keep those vehicles running. When our troops come home, they deserve to have those vehicles repaired, rather than wait for maintenance from a depot until parts arrive that could have been ordered earlier. If the working capital funds had had sufficient cash. We owe them the courage to make tough decisions to ensure that those needs are met now, not when future funds not yet requested may or may not become available later.

On the positive side, I am pleased about our continued support for military construction and family housing.
needs that are so critical to quality of life for our service men and women. I also support many of the provisions we have included that will further improve the management of the department. I particularly appreciate the bipartisan effort that the staff has made to address and resolve procurement issues, environmental issues, and longstanding DOD financial management problems.

While I support the overall actions taken in this bill, and commend all of my colleagues for the hard work that they have invested, as ranking member of the Readiness Subcommittee I have mixed feelings about our actions. We have increased funding for some key programs, but at the expense of others where the impact might be more easily obscured. Our experience with the Air Force over the last few years has shown that there is a direct correlation between increased spare parts and mission capable rates for aircraft; those spare parts are provided through the Air Force Working Capital Fund. The Navy expects to have only a few days of cash on hand at the end of this fiscal year, and may be forced to bill customers before they actually receive their orders. And the Army faces a situation where its orders for parts and other key items exceed its cash on hand by more than 70 percent. Wartime, when we see a great expansion of customer needs for readiness and large fluctuations in required support, is not the time to take on more readiness risk by decreasing cash balances in the working capital funds. It hurts readiness, and it hurts the men and women who serve in uniform.

By reducing funding for the readiness accounts and failing to provide any supplemental funding for 2005, this bill does not do enough to meet the most pressing needs of our men and women in uniform.

I will support this bill, and urge my colleagues to do the same. I think it is a good bill that could have been better, and I will continue to work throughout the rest of the authorization process to improve it.

MORNING BUSINESS

Mr. WARNER. I ask unanimous consent that the Senate now go into a period for morning business, with each Senator permitted to speak no longer than 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Michigan.

MEDICARE VIDEOS

Ms. STABENOW. Mr. President, as we are wrapping up the session this week, I think it is very important to note what we all read in the Washington Post today. Something very serious was in the headline: that the General Accounting Office has concluded the U.S. Department of Health and Human Services illegally spent Federal money on what amounted to covert propaganda, by producing videos about the Medicare changes that were made to look like news reports. Portions of the videos which had been aired by 40 television stations around the country do not make it clear that the videos were paid for by Health and Human Services, or paid by taxpayers, and that they were not real reporters.

In fact, the administration has violated two Federal laws. This comes from the Congres- sional Investigative Services, the General Accounting Office.

They indicated two different laws that the administration broke in these ads on Medicare.

No. 1, the Omnibus appropriations bill of 2003: The prohibition on using appropriated funds for publicity or propaganda purposes.

No. 2, the Anti-Deficiency Act: In- curred obligations in excess of appro- priations available for that purpose.

This is just one more example of the ongoing saga in what happened in rela- tionship to the passage of the new Medicare law and all of the irregular- ities—the pronouncement that, in fact, there is no law there against the interests of those who count on Medi- care—our seniors and disabled, and the American taxpayers who have been funding what the GAO says are illegal ads.

In addition to that, 2 weeks ago, the Congressional Research Service con- cluded that the administration poten- tially violated the law in a related matter in which the Medicare Pro- gram’s chief actuary has said he was threatened with firing a year ago if he shared with Congress cost estimates that the Medicare legislation would be one-third more expensive than what we were told—one-third more expensive than the $400 billion the President said it would cost.

Also, the House ethics panel mean- while is investigating whether Republi- can leaders attempted to bribe or cor- corce a Republican House Member—in fact, someone in my own State—to vote for this bill. Someone voted by a few votes just before dawn after the longest record rolcall in the history of the House.

We have numerous other challenges and questions. It is important to note for the record that the latest investiga- tion by the GAO was not prompted by our side of the aisle, nor requested. It was something they looked into on their own separate from other concerns which have been raised. We have raised issues that relate to the advertising we have seen.

Concerning materials, the GAO indi- cated that, while they were not specifically in violation, the HHS materials have notable omissions and other weaknesses. They say it is a question of prudence and appropriateness for HHS’s decision to communicate by placing advertising in Roll Call, which we all know is something that we read and certainly our constituents and the seniors of the disabled of the country do not read.

This goes on and on, questions of viola- ting the law and questions of an ethics violation.

Now we see, in fact, that the adminis- tration specifically has broken two different laws. One of the questions is, What do we do about that? I think the public deserves the answer to that.

What is it that we do when the adminis- tration violates the law as it relates to spending public dollars and adver- tising as it relates to this Medicare bill?

A colleague of mine is suggesting—since we know it is a campaign year and we know this is put forward cer- tainly by the administration the administra- tion wants to get the best face put on this Medicare package and certainly has everything to gain from using public dollars to advertise that. I think it would be appropriate to ask the administration to repay the funds from his Presidential campaign.

Given what we know is happening this year and the Senate is in re- tirement, let me ask the administration if the administration wants to have the best face put on this Medicare package and certainly has everything to gain from using public dollars to advertise that, I think it would be appropriate to ask the President to repay the funds from his campaign funds. In fact, they are in violation of the law.

We have seen questionable action after questionable action. The head of the center of Medicare and Medicaid, after writing this bill and working closely with the industry that benefits from it—the pharmaceutical industry—leaves to take a job with folks involved in the industry that will make money off of this new law.

We have seen other individuals leav- ing and going into lucrative positions where they will themselves be making money off of this new law.

We know it has been analyzed and that the pharmaceutical industry will be making, during the next 8 years, about $339 billion in new profits. That is tough to do if you are lowering prices and tough to do if you are pro- viding a real Medicare benefit to sen- iors which they can afford.

The reality is that is not what this bill does. This bill doesn’t allow Medi- care to be able to negotiate group dis- counts as we do through the VA.

It creates a situation where up to 40 million seniors and disabled are locked into the highest possible prices—not only in our country but in the world. We have a bill that locks in high prices.

The industry is making billions of dollars from it. People from the adminis- tration are going to work for the indus- try or related businesses that will be making money off of this process.

We now see a situation where, again, the taxpayer money that was put aside
to be able to explain the Medicare bill has actually been used in a way that is in violation of the law.

I say again that the GAO concluded that the Department of Health and Human Services illegally spent Federal money to 'gam' money—on what amount to covert propaganda by producing videos about the Medicare changes that were made.

Another piece of that which is extremely disconcerting to me is what I now have discount cards for seniors for those who qualify for Medicare—depending on where you live—and there could be 60 or 70 different cards that you now can attempt to wade through to try to find a discount card that will help you when you really are struggling to pay for your medicine.

We are now finding since passing the Medicare bill that many of the name brand companies have dramatically increased the prices of their products in anticipation of the discount card. The base is higher. That is like the storeowner who marked up the product 25 percent and then put a sign out that says: "15 percent sale." That is what is happening to our seniors.

Add to this injury, those who purchase cards—most of them are purchased for about $30—lock themselves into one card for a year after wading through all of the different cards. They pick the one that covers the medicines they use. They purchase the card and they are locked into it for a year, but the business, the industry can change every 7 days the list of what is covered. Todays are not covered; next week maybe two aren't covered; and next week maybe none of them are covered.

Why would this be set up like this? It is confusing. They are not real discounts. Why would you do it? It is certainly not set up for the people who depend on Medicare every day.

Once again, the implementation of the bill that passed is being done in a way that helps the industry that already assured and billed billions of dollars in producing the products, but it is not helping our seniors. We want industry to be successful.

Taxpayers help subsidize the billions of dollars of research given free to the industry. We provide tax credits, tax deductions, writeoffs and patents. All we ask at the end of the day is that people can afford their medicine, that people can afford oftentimes the life-saving medicine they need for their cancer, diabetes, or other chronic disease.

This is serious. We debated and had a lot of hoopla about a new law in Medicare. We have seen nothing but broken promises, broken laws, broken ethics rules since the adoption of the law. I suggest it is time to start over. We can do better. It is time to scrap this benefit, start over, get it right, follow the law, follow the ethics rules, negotiate group prices, get a real benefit, bring prices down. That is what our seniors expected the first time. It is time we make a commitment to get it right.

I am very hopeful between now and the end of the session in the fall that we are going to turn around and get this right. Scrap the old bill and pass a new one that focuses on helping our seniors and bringing down prescription drug prices for everyone. And by the way, it is time to follow the law in the process.

The PRESIDING OFFICER. The Senator from Washington.

NUCLEAR WASTE

Ms. CANTWELL. Mr. President, I take a few minutes to clarify points from the debate we had prior to moving off the DOE bill and the specifics of the Graham amendment.

I know my colleague, the Senator from South Carolina, is probably somewhere still in the vicinity of the Senate. I, too, admire the Senator from South Carolina on a variety of issues, particularly on National Guard issues and some of the challenges we have had, both coming from States that have been hard hit economically and challenged with a large number of people participating in our efforts in Iraq and Afghanistan. That said, he and I disagree on obviously is one of utmost importance and certainly one that needs a lot of attention by the Members of this body. We will get that time and attention when we return to DOE after the recess.

I bring up a couple of points made that are the crux of my concern about this legislation; that is, that section 3116 of the underlying bill, the Defense authorization bill, attempts to recategorize high-level nuclear waste into a low-level material and allow it to be disposed of in a different way.

I object to that and I object to the process by which that legislation was drafted. The Senate Armed Services Committee does not have jurisdiction over the Department of Energy. That is a change to the Nuclear Waste Policy Act drafted in 1982. If the Department of Energy wants to have that debate, then the Department of Energy should come down here and have hearings, as it has, as we will have on Thursday, and discuss that issue. But to have such a major policy change of 30 years' policy since 1982 and 50 years of science saying this is what high-level nuclear waste is and one day changing it in the DOE bill is absurd. Obviously, that is why we have spent time this afternoon talking about it.

The chairman of the committee asked me in a question whether that committee has jurisdiction over the issue. I know that DOE many times has tried with various environmental issues to have them go through the Senate Armed Services Committee, environmental issues such as the Resource Conservation Recovery Act, Comprehensive Environmental Response, Reclamation, and Safety Act, the Federal Liability Act, the Endangered Species Act. All of those, even though they are DOE issues, do not go through the Senate Armed Services Committee. In fact, the committee even said they are not part of our issues. Those are environmental policies or policies for other committees and referred to those specific committees.

To my colleagues rule XXV earlier regarding what the jurisdiction of the Senate Armed Services Committee is. It is specific to the national interests that were necessary in creating nuclear fuel. That was an oversight of the reactionaries in the development of plutonium for our efforts in World War II and the cold war, but they do not have the legislative oversight of the cleanup policy. That is the prerogative of other committees, the Energy and Natural Resources Committee, the Environment and Public Works Committee.

To make my point, I took section 3116 of this bill, this section that reclassifies waste, and introduced it today in my own legislation. I ask unanimous consent for a referral. If we took this section on reclassification now as a stand-alone bill, let's see where it was referred to. That bill, Senate bill 2457, by Senator CANTWELL, was referred to the Energy and Natural Resources Committee.

That proves my point, that this policy change is not the jurisdiction of the Senate Armed Services Committee, and the Senate Armed Services Committee should not try, in a closed-door session in secrecy without having a public hearing, without having a public debate, to change policy of this significant nature which is not the jurisdiction of their committee.

I ask unanimous consent to have printed in the Record a letter from the ranking member of the Senate Energy and Natural Resources Committee that was also sent to the Senate Armed Services Committee chairman and ranking member asking them not to proceed with this legislation, and that it was the jurisdiction of the Energy and Natural Resources Committee.

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


Hon. John W. Warner, Chairman.

Hon. Carl Levin, Ranking Democratic Member.

Committee on Armed Services, U.S. Senate.

Dear Senator Warner and Senator Levin:

I am writing to urge you not to include language relating to the reclassification of high-level radioactive defense wastes proposed by Senator Graham of South Carolina in the defense authorization bill.

For thirty years, it has been the policy of this committee that the Department of Defense temporarily stored in tanks at Savannah River and elsewhere would, in time, be removed from those tanks and permanently disposed of at new facilities licensed by the Nuclear Regulatory Commission. Enactment of Senator Graham's amendment would abandon that policy and permit the Department of Defense, at its discretion, to reclassify an unknown part of the tank wastes as transuranic or low-level...
waste and either leave it where it is or ship it to New Mexico for disposal in the Waste Isolation Pilot Plant as transuranic waste, or to some other state for shallow land burial as low-level waste.

In addition, Senator Graham’s amendment would exempt the Department’s handling of these wastes from licensing and regulation by the Nuclear Regulatory Commission. Its enactment would have profound consequences for the nation’s high-level nuclear waste policy, which is under the jurisdiction of the Committee on Energy and Natural Resources. It would also interfere in litigation now pending before the United States Court of Appeals for the Ninth Circuit.

For these reasons, I urge you not to include Senator Graham’s amendment in the defense authorization bill.

Sincerely,

JEFF BINGAMAN.

Ms. CANTWELL. Mr. President, I am trying to make the point that the ranking member of the committee, and now the parliamentarian, have agreed that this is not the jurisdiction of this committee.

I ask my colleagues to weigh that in the time we have away from here, to drop this policy as it relates to reclassify waste without having the proper public hearing and public comments.

Yes, everyone has heard of DOE attempts to try to reclassify this waste. It is well known that they actually tried to do it by order themselves and were shot down in court. They were shot down because specifically they do not have the authority. They have to change the definition under the Nuclear Waste Policy Act. If they want to do that, debate it on the Hill, have this discussion, and move forward.

I make a point that cleanup around America—whether it is in South Carolina, in the Savannah River, or whether it is Washington State at the Hanford reservation, whether it is Idaho or any other facility in this country—should be continuing. There is nothing about stopping the waste or any court battle that prohibits the Department of Energy from continuing with cleanup. I hope they understand that is the judgment and the clarification of the court that ruled.

If my colleague from South Carolina is hearing that nuclear waste cleanup may be going slow or may be put on hold in the future, that is the absolute wrong message from the Department of Energy. Congress has appropriated funds that should be used by the government in the past, and they should be going about their cleanup job.

What we are not going to do as a body is whitewash a change of significant nature where we do not have science backing that says we ought to reclassify this waste. In fact, science has been very specific in saying this is not a simple proposition.

In 1990, the National Academy of Sciences said:

There is strong worldwide consensus that the best and safest, long-term option for dealing with HLW is geologic isolation.

Again, not grouting waste in existing tanks but removing the waste and putting it in a geological isolation, as we have suggested, and others have suggested, at Yucca Mountain.

A 1992 report by the Pacific Northwest Laboratory said:

The grouts will remain at elevated temperature and high temperatures expected during the first few decades after disposal will increase the driving force for water vapor transport away from the grouts; the loss of water may result in cracking...

A 1992 study on this issue regarding just pouring cement and sand on nuclear waste and somehow storing it and solidifying it in the ground said there would be a risk of terrorism.

What we know in Washington State is we already had the cracking of the tanks. We already had a plume of nuclear waste going toward the river. So I think they know what this situation is all about.

In 2000, the National Academy of Sciences said:

[Waste tank residue is likely to be highly radioactive and not the grout, so there is substantial uncertainty.]

Another 2000 study by the National Academy of Sciences says:

[Using grout, the ability of the site to reliably meet long-term safety performance objectives remains uncertain.

I think there is much science that basically says we do not think grout can work. Obviously, we do not know what the Department of Energy is trying to do, because they want to leave an unspecified amount of waste in the ground and avoid Robert Graham's language in the Department of Energy. Congress has appropriated funds in the past, and they should be going about their cleanup job.

What they did comment on was the fact that you could take the entire tanks out of the ground and it would be very expensive, which I do not know if people can imagine, because the Hanford site is miles and miles of acres—I think earlier we said something close to one-third the size of the State of Rhode Island. That is how big the Hanford reservation is—580 miles of land. These tanks that have stored the spent fuel are enormous.

The Nuclear Regulatory Commission is saying: We do not know if it is feasible to take out the tanks entirely. Well, no one ever said we expected to take out the entire tanks. What we said was we think the tanks have to be cleaned and the site has to be cleaned. And that this is a removal process we should continue to do.

So I think while we would be wise to get a letter from the Nuclear Regulatory Commission that was specific about the exact proposal that is in this bill and get their response, the issue is they are not in charge of short-term waste disposal. They are in charge of this geological isolation solution we in Congress and others are looking for, and basically asking questions about, and saying, Where are you going to take the vitrified waste and put it? They are not the regulatory entity over those short-term issues.

I think the Nuclear Regulatory Commission has not fully addressed the question. I think perhaps we should send them a more direct question to which we can get a more specific answer.

We will hear a lot more about this issue when we return from the legislative recess. But I assure my colleagues, we are going to continue to talk about the fact that we in Congress cannot have this significant a change in a policy by simply sneaking language into a Senate Armed Services Committee bill that does not have jurisdiction over this issue and make a major policy change that is 30 years of law—30 years of established law—50 years of scientific evidence and override that in a short period of time without a full discussion and debate.

This underlying bill language needs to be stricken. We need to get about the nuclear waste cleanup that the science says we should do; that is, removing the high-level waste and not simply trying to do cleanup on the quick by calling it grout.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROBERT A. (BOB) BEAN

Mr. DASCHLE. Mr. President, earlier today many of our Senate family attended the funeral of a former Senate employee, Robert Bean. Bob started here in the Senate when he was 15 years old as a Senate page under the sponsorship of Majority Leader Mike Mansfield. Following his page graduation, he moved into the Democratic cloakroom where he continued his outstanding service to our members. He rose to the position of Assistant Secretary for the Majority and then was appointed by Senate Majority Leader George Mitchell to the position of Deputy Sergeant at Arms in 1990. He moved to the Treasury Department’s legislative affairs office in 1995 and remained there until 1999 when he returned to the Hill to work on the House side as the minority staff director of the House Administration Committee. He retired from the Hill in 2002 and he had just recently begun work for the Jefferson Consulting Group.
Throughout these years of service Bob earned his undergraduate degree from George Washington University and his law degree from American University’s Washington College of Law. But all of these accomplishments pale in comparison to his personal achievements. Bob was known as a friend by anyone who came into contact with him. Whether you were a member of Congress or a new staffer, lost on the Hill, Bob would find a way to help you, and you could be sure you knew that, if you ever needed help again, he’d be there to assist you. The church was filled today and that was a testament to the type of person Bob was to so many people. He died at the age of 43 leaving behind his mother, Margaret and his brothers John, Kenneth, and Brian. Bob also left behind a Capitol Hill community united in mourning the loss of one of its most cherished possessions—a true friend. I would like to express my sympathies to his mother, his brothers and to all those who were lucky enough to know him.

Mr. President, I ask unanimous consent that the eulogy given earlier today by Congressman Steny Hoyer be printed in the RECORD.

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

EULOGY FOR ROBERT A. (BOB) BEAN
Father Nash, Father Polland, Members of St. John’s Parish, Friends:
I first want to express my deepest condolences to the Bean family, Bob’s mother, Margaret; his brothers, John, Kenneth and Brian; his sister-in-law, Patti; niece, Rachel; and nephew, Christian.

Your loss, I know, is as immeasurable as it is unexpected; that this good, decent, kind man who graced and brightened your lives and all of ours—was summoned by our Creator, at what seems to so many of us as the twilight of youth.

The legacy of one who had so much to offer, who yearned to serve others, who continually took it upon himself to help others, and who was enjoying what seemed to be the twilight of his own youth.

The loss of Bob is great. And I think of all the people who have had it no other way."

Walking through the Capitol with Bob was a constant reminder of his experience and popularity on Capitol Hill—with people from all walks of life. And he returned their affection with kindness, consideration and respect.

A friend of Bob’s for nearly 30 years, Sharon Daniels, the long-time executive assistant for Congressman Richard Gephardt, said of Bob:

“Bob is the kind of friend you could call at two in the morning, and ask: Can I borrow twenty thousand dollars? And, by the way, can you bring it to me by 4 a.m. out on Route 50? And Bob would not only do it. He would ask if there was anything else he could do—and, of course, when he showed up at 4 a.m., he would be wearing a suit and tie.”

And, then, of course, there was Captain Bean, skipper of the “Margaret B.” Fisherman extraordinaire. He loved the bay and he loved his boat. And all who sailed and fished with him remember that experience as one filled with the joy of life and adventure.

How appropriate that God chose to take Bob home from his beloved bay and boat. As Bob loved his family and all of us, as well. He was a blessing to each of us—a kind and gentle man, who succeeded in all of his careers: government leader, businessman, captain, consultant.

But his greatest success was as a human being. So as we pay our respects to a beloved son and brother, a trusted and good friend, a colleague, let us quote from the poem “Chesapeake Mornings” by Chris Kleinfelter:

“I measure all of my daybreaks at home,
Against the Chesapeake mornings I have known,
Anchored in the stillness of emerging light,
Waiting for dawn to open my shadowed eyes.
A grove of tall masts is tracing circles
In the sky as restless keels and unmanned sails
Stain the blue water with rippling patterns;
Brush stokes from the steady hand of God.”

Bob has joined God now on one last voyage that beckons us all.
Yes, his heart has been still. But ours have been enriched beyond measure—forever—for having this opportunity to share time with this good and decent man.

HONORING OUR ARMED FORCES
PETTY OFFICER 2ND CLASS TRACE DOSSETT
Mr. GRASSLEY. Mr. President, I would like to pay tribute to Petty Officer 2nd Class Trace Dossett who valiantly gave his life for his country on Sunday, May 2, 2004. Petty Officer Dossett was one of five Navy Seabees from the Naval Mobile Construction Battalion 14 killed during a mortar attack on the Ramadi Marine base in Iraq. I offer my deepest sympathy to his wife, Angela, their two daughters, Cassidee and Raimi, and his parents, Larry and Cheryl of Wapello, IA.

Petty Officer Dossett was a 1985 graduate of Wapello High School in Wapello, IA. He was respected in the community for his strong mind and sense of devotion to serve our country. Trace joined the Navy shortly after graduating from high school and ended his six year tour in the early 1990s. He joined the Naval Reserve a year ago and was activated in January. I am proud of the patriotism displayed by Petty Officer Trace Dossett and his exemplary commitment to defending America. I offer my condolences to his family and close with the words of his wife, “Trace died a hero and he would have had it no other way.”

PFC BRANDON CHAUNCY STURDY
Mr. GRASSLEY. Mr. President, I rise today to pay tribute to PFC Brandon Chauncy Sturdy, the fourteenth Iowaan to be killed in Iraq in brave service to our country. PFC Sturdy was a machine gunner in the 2nd Battalion of the 1st Marine Regiment in the 1st Marine Division. I offer my deepest sympathies to his parents, Shelly Rivera and David Sturdy and his fiancé, Tricia Johnson.

PFC Sturdy was killed by the explosion of a homemade bomb in Iraq on Thursday, May 13 in the Al Anbar Province near Fallujah. I thank him for his patriotic duty to his country and am proud to honor the courage he boldly displayed as a Marine. PFC Sturdy was a 2003 graduate of Urbandale High School in Urbandale, IA. A statement released by Brandon’s family describes him as “the best of the best” who “set the bar high for us to reach for.” He was a top notch Marine who had already been awarded the
National Defense Medal and a Purple Heart. Brandon Sturdy died a hero fighting to preserve freedom. He was a brave patriot whose presence will be missed. I am proud of the model of service he provided to Iowans and I again offer my condolences to his family.

MAJ. WILLIAM E. BURCHETT

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave man who served in the Indiana Air National Guard unit stationed in Terre Haute, IN. Major William E. Burchett, 35 years old, died during a training mission when the F-16 he was flying collided with another F-16 fighter jet, just west of Indiana on Monday, May 14, 2004.

Bill graduated from the United States Air Force Academy in 1991. A native of Michigan, Bill moved to Terre Haute, IN after completing his military duty and being reassigned to the 181st Fighter Wing. He was a seasoned fighter pilot with over 2,300 flight hours in various military aircraft, which he flew while bravely serving our Nation on numerous occasions, including missions in Kosovo, Bosnia, Yugoslavia and Saudi Arabia. His love of flying also spilled over into his civilian career. When Bill wasn’t training in his Air Force flight suit, he was working in his FedEx pilot uniform flying around the packages and supplies that help keep our Nation’s economy moving forward.

Bill was a man of great faith as well as a hardworking and brave airman. He leaves behind his wife, Deborah who is expecting their third child in a few weeks and his two sons, ages six and two years old. May Bill’s children grow up knowing that their father gave his life for this war, for this country, and for freedom.

No monument—even one so grandly conceived as this gleaming tribute to the fallen, to the heroes, to the killed in battle—can fully capture the full enormity of the service and sacrifice of the 16 million soldiers, sailors, airmen and others who served in uniform during those 5 years of war and struggle. Yet with its marble expanse, majestic pillars, and carefully chiseled engravings, this memorial will forever stand as a symbol of the Nation’s appreciation for those who served and for those who made the ultimate sacrifice.

World War II was truly an epic struggle. It was a struggle that would determine the very direction of humanity, whether militarism and Nazism would supplant freedom and democracy. Every American soldier understood the purpose and the stakes of that war. They unwaveringly answered the call to duty, and when they returned home, and then the greatest generation soldiered on further to also win the peace.

We in Vermont often pride ourselves on our healthy skepticism of centralized government. Yet we are early and arduous in railing against the Nation’s defense in disproportionate numbers to our relatively small population, from the Civil War onward. In World War II nearly 50,000 men from the State of Vermont served. More than 1,200 Vermonters lost their lives in the war. At home and overseas, Vermont women also made great contributions to the war effort, and 1,400 of them served with our armed forces.

Today a new generation of veterans is being minted. I have had the honor of meeting many of the young men and women who are serving in Afghanistan and Iraq. These soldiers, sailors, airmen, and Marines tell me time and time again that they look over their shoulders to Cavalier Bill and to the examples set by our World War II veterans, as well as our veterans from more recent wars.

On behalf of all Vermonters, as an American citizen, and as a member of one of several grateful generations, I welcome our proud veterans to Washington on the occasion of the dedication of the World War II Memorial. We thank you for all that you have done, and in honor of your sacrifice will forever honor your sacrifices.

We cannot thank you enough, but we can, and we will, always remember.

MEMORIAL DAY 2004 AND WWII MEMORIAL DEDICATION

Mr. DOMENICI. Mr. President, on this Memorial Day, I encourage my fellow New Mexicans to take a few moments to remember those Americans who have given their lives in the name of freedom. The freedom we enjoy today remains only because of their courage and unselfish sacrifice.

American men and women, throughout our Nation’s history, have fought and died because they believed in their country and believed in preserving its immeasurable blessings. Many gave their lives for her in a far away land, and failed to make it back to the country that enabled them to serve.

With this upcoming remembrance, I am reminded of Oliver Wendell Holmes, Jr. Holmes gave us some of the best thoughts, and his speech and writings, as a whole, will always be among the best of their kind.

On May 30, 1884, Holmes delivered a Memorial Day address before John Sedgwick Post No. 4, Grand Army of the Republic. The address reflected on the Civil War and during his address he focused on a question posed to him by a young man, about why people still kept up Memorial Day. In his wonderful style he gave attention why Memorial Day is what it is.

He said, “Not the answer that you and I should give to each other—not the expression of those feelings that, so long as you live, will make this day sacred to memories of love and grief and heroic youth—but an answer which should command the assent of those who do not share our memories. In which we of the North and our brethren of the South could join in perfect accord. . . . but Memorial Day may and ought to have a meaning also for those who do not share our memories.”

One month ago on April 29, 2004, the National World War II Memorial opened for public view. The memorial is the first national memorial dedicated to all who served during the WWII. The formal dedication will take place this Memorial Day weekend as a service and tribute to members of the World War II generation, and to share their memories. The memorial honors all military veterans of the war, the citizens of the time that stayed on the home front, and the America’s moral purpose that ultimately warranted our nation’s involvement.

The memorial was authorized by Congress in 1993, and this year’s Memorial Day celebration on the National
Mall will culminate a long effort to honor America’s World War II generation. I take a quick moment to thank my friend former Majority Leader Bob Dole, a wounded and decorated WWII veteran who served in this body, for chairing the WWII Memorial Commission and for giving countless hours to this wonderful work.

It has been nearly 59 years since the end of World War II. However, I think it is safe to say that from 1939 to 1945, when every major power in the world was involved in a worldwide conflict, those times, like the Civil War, were some of our nation’s toughest. We live in a remarkably different world today, but Memorial Day has kept many memories. At this moment in America’s history, our men and women in uniform are engaged in conflict in both Iraq and Afghanistan. They serve with the same courage and commitment shown by Americans of generations past, and they deserve our thoughts and prayers.

From the Bataan Peninsula to beaches of Normandy, from the Ia Drang Valley to Inchon, from Iwo Jima and Okinawa to the North Apennine Mountains of Italy, from Afghanistan to Iraq, airman, and marines have fought when which so many of our soldiers, sailors, and marines have fought and died because of their love of country. I am proud that we have kept up Memorial Day. This one, in particular, brings meaning and a special time to remember and reflect. I pay a special tribute today to those who have fallen during the two conflicts in Iraq and Afghanistan, including those from my home state of New Mexico: CPT Tamara Archuleta of Los Lunas; Marine CPL Jason Austin of Lovington; SrA Jason Cunningham of Carlsbad; Army SP James Pirtle of Las Mesa; and Marine PFC Christopher Ramos of Albuquerque.

As we enjoy this holiday weekend with our family and friends, let us take some time to recognize the valor with which so many of our soldiers, sailors, airmen, and marines have fought when called upon by their country. Finally, may our United States continue to be blessed and may America forever remain the land of the free and the home of the brave.

HONORING WORLD WAR II VETERANS

Mr. CRAIG. Mr. President, more than 60 years ago a generation of Americans answered the call to service, leaving their daily lives and joining the fight in a world war that would dramatically change the way this country, and the world, conducted itself. Raised during the Great Depression, this “Greatest Generation” would have such a profound impact on our history that is almost impossible to overstate. Their legacy is impossible to lastingly tell.

Almost six decades later, we are finally paying full tribute to those men and women, and this generation, who served and sacrificed their lives in defense of this great Nation and who ultimately saved the world from tyranny and tyrants. No doubt, those men and women and their triumph over evil have served as a stark reminder and inspiration to the men and women in uniform who followed in their permanent footsteps.

However, the presence of this generation was not limited to the islands of the Pacific or the beaches of Normandy; it was wielded by those who remained in this country to mobilize the home front during and after the war. No one can question the hard work and dedication this generation embraced that ultimately pushed this nation to the position of global economic, military, political, and social leadership we still maintain today. Almost overnight, America moved from isolation to a country of engagement.

Having learned this lesson well, America remained engaged with the world in a way that would define the cold war. Now, against the advance of communism, and ultimately winning that battle.

I am proud of the role the citizens of my state played in these struggles, and as such, I would like to take a moment to highlight the contributions of some very numerous to mention, American men and women have fought and died because of the influence of this generation.

Mr. PRYOR. Mr. President, this week marks the 50th anniversary of Brown v. Board of Education, the Supreme Court decision that ultimately ended legal segregation in schools and helped catalyze a better education for all of America’s children.

This landmark decision was the first significant action by an institution of national government in the struggle for equality. However, it would be naive to believe that Brown erased the hatred and ignorance that black families faced when testing their rights to a better education. One of the most dramatic examples occurred on September 24, 1957 when President Eisenhower ordered federal troops to Little Rock, AR to allow nine black children, the Little Rock Nine, to attend the all-white Central High School.

Of her experience, Melba Pattillo Beals of the Little Rock Nine recalls: “I had to become a warrior. I had to learn not how to dress the best but how to get from that door to the end of the hall without dying. I had to become a warrior. I had to be a fighter, I had to be courageous, and those of the other eight students who integrated Little Rock Central, helped change history for all Americans in a tale that continues to have immediacy.

Another one of those students was Ernest Green, who best explains why the Little Rock Nine sacrificed their innocence for a chance at a better education. He said, “We wanted to widen our options for ourselves and later for our children.” Mr. Green was the first black student to graduate from Central High School. He later served as Assistant Secretary of Housing and Urban Affairs under President Jimmy Carter and now serves as the vice president of Lehman Brothers.

Turning opportunity into achievement is what civil rights pioneer Daisy Bates had in mind when she helped the Little Rock Nine break down the barriers that stood between an equal education. Despite threats on her life and financial ruin, Daisy Bates made significant strides in the courtroom and increased public awareness through her newspaper.

Mr. President, as a former student of Central High, I can tell you the impact of the Little Rock Nine is still felt in the hearts of its student body and teachers past and present. In 2007, Central High will commemorate the 50th anniversary of its desegregation crises. The National Park Service plans to build the Little Rock Central High School Visitors Center in time for this watershed anniversary, and I will be working with my colleagues to support funding for this endeavor later this year.

What we know today is that children all over America have the right to learn—whether their ancestors came to America on slave ships or the Mayflower. What we know today is that we all benefit when we learn together and work together for a common purpose. What we know today is...
there are more black doctors, lawyers, judges and elected officials than ever before. What we know today is that there is more equality and more opportunity for all children.

But what we don’t know, what we still question is whether we have really achieved inclusion, equality and diversity in our schools that the Court intended when it struck down the “separate but equal” doctrine and required the desegregation of schools across America. I do not believe we have met the promise of Brown yet.

I am concerned that many public schools in Arkansas and around the country remain segregated by race and class, still unequal in regard to performance and resources. Today, a fourth-grade Hispanic child is only one-third as likely to read at the same level as a fourth-grade white child. Only fifty percent of African-Americans are finishing high school, and only 18 percent are graduating from college. We dismiss the education of our students, and President Bush and the Congress can do better by keeping the promises made to parents and students when it passed the No Child Left Behind Act. We must live up to this promise, and provide every child access to a quality public education. Daisy Bates, the Little Rock Nine and countless civil rights leaders did not endure hardship and sacrifice for us to fail now.

Mr. President, on this landmark anniversary, let us stand together to celebrate how far we have come. But let us also acknowledge the problems that stand in the way to a better education for all children. And let us commit ourselves to preparing our children for today’s expectations and tomorrow’s challenges.

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.

On June 1, 2000, Gary William Mick, 25, pleaded guilty to first-degree murder, attempted murder, and armed robbery. It is said that he shot a gay man and tried to kill another because he believed gay men were “evil.” In the first attack, a New Jersey man was bludgeoned to death with a claw hammer. Mick met his second victim, a dentist, at a bar. There, he had dinner with him and went home with him. Mick later attacked the man with a knife, a struggle ensued, and the victim escaped. Mick told police that a childhood incident caused him to hate homosexuals.

I believe that Government’s first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

A COLOSSAL FAILURE OF WHITE HOUSE LEADERSHIP IN IRAQ

Mr. LEAHY. Mr. President, according to the Washington Post, a recent poll revealed that 53 percent of Iraqis believed that the U.S. military was not well-organized in Iraq, which is, for all intents and purposes, an entity of the U.S. Government, showed that 80 percent of the Iraqis surveyed reported a lack of confidence in the CPA and 82 percent disapprove of the U.S. and allied military in Iraq.

I mention this for two reasons.

First, I remember when, less than 2 months ago, much was made by administration officials and several Senators of a February poll which suggested that Iraqis strongly supported the U.S. occupation. They held it up as proof that our strategy was working, even if they could not explain what the strategy was.

To quote one of my friends on the other side of the aisle, who spoke on April 8:

[I] noticed the BBC/ABC poll results in Iraq, which are fascinating. I only wish Americans were as upbeat about America as Iraqis are about Iraq. If you watched U.S. TV every day, you would think there was nothing but bad things happening in Iraq... But, if you take a moment of context, in fact, this poll was taken from February 9th to February 28th, in answer to the question, “How are things going today, good or bad, in Iraq?” Overall, 70 percent said good, 29 percent said bad. And in terms of the optimism factor, how they will be a year from now, 71 percent of Iraqis thought things would be better a year from now... He concluded by saying that this encouraging news was thanks to the leadership of the President of the United States.

Whatever the accuracy of that February poll, the CPA’s recent poll indicates that far more Iraqis today oppose what we are doing in Iraq. The CPA’s poll also shows that more than half of Americans surveyed oppose the President’s policy.

This latest poll also compels us to ask why so many of the people we sought to liberate, and did liberate from the brutality of Saddam, turned against us so quickly. And why so many Americans are questioning the President’s decision to go to war.

There are many reasons, the genesis of which dates back to the President’s fateful decision to shift gears from fighting al-Qaida, which had attacked us, to overthrowing Saddam Hussein, who hounded out of their jobs because they were either ridiculed or hounded out of their jobs because they had the temerity to suggest realistic estimates for the number of soldiers and amount of money it would take to do the job right in Iraq.

Incredibly, there was no real plan, despite a year-long, $5 million study by the State Department, to deal with the widespread looting that greeted our soldiers once Saddam had fallen—doubling or tripling the cost of reconstruction, and leaving open the gates to stockpiles of weapons and ammunition that have been used with deadly results against our soldiers.

Let’s review the history. After September 11, there was nearly universal support for retaliation against al-Qaida. There was widespread sympathy and support for the United States from around the world. But then the President, encouraged by a handful of Pentagon and White House officials, most notably the Vice President, who were fixated on Saddam Hussein, changed course. And what followed, I believe, has very possibly increased the risk of terrorism against Americans.

I remember those in the administration “gave currency to a fraud,” to quote George Will, by putting in the President’s 2003 State of the Union speech that Iraq was trying to buy uranium in Africa.

This administration repeatedly, insistently and unrelentingly justified pre-emptive war by insisting that Saddam Hussein not only had weapons of mass destruction but was hell-bent on using them against us and our allies.

Let’s remember Vice President CHENEY, repeatedly tried to link Saddam Hussein to 9/11 in order to build public support for the war, though there never was any link—none.

Truth tellers in the administration—like General Shinseki and Lawrence Lindsay—were either ridiculed or hounded out of their jobs because they had the temerity to suggest realistic estimates for the number of soldiers and amount of money it would take to do the job right in Iraq.

Two months later, the President taunted Iraqi resistance fighters to “Bring It On!” while our troops were still in harm’s way and were fending off ambushes and roadside attacks every day and every night.

Some of our closest allies and friends, like Mexico and Canada, and even our closest ally, Secretary Rumsfeld called “Old Europe,” were belittled and alienated because they disagreed with our strategy of pre-emptive war—countries whose diplomatic and intelligence and military support we so desperately need today.

Earlier, I enjoyed reading about John Yoo’s legal opinion that spy detainees brought to us from where we are today. Each day that passes, more Iraqis seem to turn against us, threatening the mission and morale of our troops.

The latest episode in this misguided adventure is the Abu Ghraib prison scandal. It is tragic for many reasons, but none more so than the harm it has caused to the image of our Armed
Forces and to our Nation, particularly among Muslims, and the fact that it could so easily have been prevented.

The International Red Cross had warned U.S. officials about the mistreatment of Iraqi prisoners last year, and nothing was done about it for months.

We also know that similarly cruel and degrading treatment of prisoners occurred at Bagram Air Base in Afghanistan. The New York Times first reported on Feb. 19, 2004, that American soldiers who had been kept naked in freezing cold cells, forced to stand for days with their arms upraised and chained to the ceiling, subjected to other humiliating and abusive treatment, and in at least two instances prisoners died in what were ruled homicides.

We have since learned that many more detainees have died in U.S. custody in both Afghanistan and Iraq.

Even before last June, when I first sought information about the abuses at Bagram, we learned about the International Red Cross warnings about the dehumanizing and, I believe, illegal treatment of prisoners at Guantanamo were ignored.

It is no secret that Guantanamo was chosen precisely because the Pentagon wanted to avoid the jurisdiction of U.S. courts. They did not want to be subjected to the watchful eyes of attorneys who know the law. They did not want to be bothered with U.S. or international law. As it turns out, many of the prisoners at Guantanamo who had been drugged and shackled and hooded and denied access to lawyers, were released after it was determined, a year or two later, that they were innocent.

Now we hear that there are videos of the treatment of prisoners at Guantanamo, but, like Abu Ghraib, we only learned about it from the press. That is no way to have learned about any of what is increasingly looking like a pattern of cruel and degrading treatment of terrorism suspects in U.S. military custody.

Top Pentagon officials continue to insist that there is no pattern; that we are dealing only with “isolated incidents.” We could debate when “incidents” become so pervasive that they are part of a “pattern.” One might think that similar types of abuses of prisoners in U.S. custody in Cuba, Afghanistan, and Iraq during approximately the same time period would suggest that perhaps not only to those who bear responsibility. The fact is, as the Washington Post so clearly stated on May 20, this was “A Corrupted Culture.”

We have heard that U.S. military intelligence gave the orders. We have heard of attempts by military to block investigations by the International Red Cross. We have heard that FBI officers declined to be present during interrogations because of the harsh methods they were forced to use. We have heard of complaints by former Iraqi and Afghan prisoners that were ignored. We have heard about investigations of alleged abuses that were cursory, at best.

We have heard of instances when denials of misconduct by military officers were treated as proof that nothing bad happened, while those who alleged the abuse were never interviewed.

We have learned that self-serving and reassuring statements by the Pentagon were often at odds with the law by officials here in Washington, including the President and the Pentagon’s top lawyer, bore little resemblance to what was going on in the field.

The sadistic acts that have now been published on the front pages of every newspaper in the world as well as millions of television screens have endangered our soldiers and civilians abroad and threaten our national security and foreign policy interests abroad. The photographs will be used as recruiting posters for terrorists around the world. They depict an interrogation and detention system that is out of control.

They have made a mockery of President Bush’s statement a year ago that the United States will neither “torture” terrorist suspects, nor use “cruel and unusual” treatment to interrogate them, and they directly contradict the more detailed policy on interrogations outlined in a June 25, 2003, letter to me by Deputy Defense General Counsel William Haynes.

It is apparent that, when it comes to Iraq, this administration is disinterested, at best, in the views of anyone who is either a member of the minority, or who, Republican or Democrat, dares to utter words of caution or criticism. But there are some basic truths that cannot be ignored.

First, atrocities occur in all wars. Invariably, there are incidents—often many incidents—in which excessive force is used, civilians are brutalized, prisoners of war are tortured and summarily executed. There has never been a war without such heinous crimes.

Second, our Armed Forces are the finest in the world. The vast majority of our troops have conducted themselves professionally and courageously, in accordance with the laws of war. But even Americans have at times used excessive force and violated the rights of civilians or prisoners. There were instances of this long before Abu Ghraib prison.

And it is precisely because these atrocities are predictable in any war that the Geneva Conventions and the Torture Convention exist. The United States was instrumental in the drafting and adoption of these conventions, whose purpose is to prevent atrocities against civilians and the mistreatment of prisoners of war, including Americans.

We should also recognize that not only were the abuses at Abu Ghraib prison not isolated incidents; similar practices have recently been documented in many prisons in the United States. We have seen the same types of humiliating and sexually degrading treatment, the assaults by prison guards, the misuse of dogs against defenseless prisoners, and the same failure to hold accountable those in positions of responsibility.

The President reaffirmed, in the midst of the Abu Ghraib scandal, that the United States is a nation of laws, and that those responsible for the mistreatment of Iraqi prisoners will be punished. This did not happen. But it does not obscure the glaring hypocrisy of this administration.

On the one hand, last March, referring to the capture of U.S. soldiers by Iraqi forces, President Bush said, “We expect them to be treated humanely, just like we’ll treat any prisoner of theirs that we capture humanely. If not, the people who mistreat the prisoners will be treated as war criminals.”

On the other hand, there is the White House Counsel, who called the Geneva Conventions “quaint” and “obsolete,” and there is the pattern of abuses themselves and the way the administration ignored inquiries and warnings for months.

The House set the tone, and the consequences were disastrous. According to the International Red Cross, 70 to 90 percent of the Iraqi prisoners arrested—who were unquestionably entitled to the protections of the Geneva Conventions—were later determined to have been detained by mistake. That is appalling, but not so appalling that the Administration did anything about it.

The Red Cross reported that soldiers carrying out arrests “usually entered a house, breaking down doors, waking up residents roughly, yelling orders. Sometimes they arrested all adult males present in a house, including the elderly, handicapped or sick people. Treatment often included pushing people around, insulting, taking aim with rifles, punching and kicking and striking with rifles.”

Is it any wonder that so many Iraqis want us to leave? This is not what we expect of the conduct of our military forces. The Geneva Conventions have the force of law, and as a nation whose Bill of Rights was the model for the Universal Declaration of Human Rights, that holds itself out as a force for human rights and human dignity around the world, we should set the example. Any person taken into U.S. custody should be treated, at a minimum, consistent with the Geneva Conventions and in accordance with the Torture Convention.

This failure is part and parcel of the increasing insecurity in Iraq and the dangers facing our troops from a hostile population that has resulted from such miserably poor planning that so many people warned of.

It has claimed the lives and limbs of hundreds of Americans and of thousands of Iraqis.

It has caused deep divisions between ourselves and the Iraqi people and Muslims around the world.

It has damaged our image as a nation that stands for respect for human rights.

It represents a colossal failure of leadership.
As I and so many others have said for months, we cannot succeed in Iraq by ourselves. Not when the rationale for going to war has been exposed for the pretense that it was. Not when we are widely perceived as occupiers. Not when photographs of uniformed Americans abusing naked Iraqi prisoners have become the symbol of that occupation.

We saw, with the horrifying murder of Nicolas Berg by al-Qaida, the incredible duplicity and determination of the enemy we face. Only weeks ago there were images of dismembered American corpses hanging from a bridge.

We are united in our revulsion, and in our commitment to bring to justice those responsible for such despicable acts. The question is how to do it effectively.

Last October 13th, in a memo entitled “Global War on Terrorism,” Secretary of Defense Rumsfeld called for a reorientation whether we can succeed in Iraq, and how many more billions of dollars it may cost.

Unless the President can answer these questions, more and more Americans will question how much longer we can ask our troops to risk life and limb in Iraq and the taxpayers to continue to pay for a policy that is not working.

END THE BLOCK AND BLAME GAME

Mr. GRASSLEY. Mr. President, I rise today to make an appeal to our Democratic colleagues to end this obstruction of legislation vital to our Nation. I am appealing to my Democratic colleagues to abandon this harmful, politically motivated, election year strategy of gridlock, and if I may be so bold, to suggest a different election year political strategy that will not hurt Americans.

The Democrats’ obstruction strategy is no secret in Washington, although it may not be so obvious to those outside the beltway. We have all heard of the old “blame game.” Well now, Congressional Democrats have taken it to a new level and created a new game. I call it the “Block and Blame Game.”

According to a lobbyist, a few weeks ago one of the Democratic leaders gave a briefing to campaign contributors. First, all were assured, naturally, that the Democrats would take over the Senate. Second, they were told that to help secure this Democratic victory, they were implementing a strategy to block all major legislation, except for some appropriations measures.

So how does blocking legislation elect Democrats? The answer came within days as a Senate Democrat blasted away, charging that while Republicans control the White House, the Senate and the House of Representatives, the GOP is getting nothing done. The block and blame game.

Democrats have said that as long as no one outside Washington can figure out the nuances of the legislative procedures of obstruction, then as they say, “the proof is in the pudding.” Nothing is getting done, the Republicans are in control, and therefore the Republicans are to blame.

Who is really hurt by this strategy? Republicans? Maybe, if they are unable to explain the complicated procedures that are being used by Democrats to block the business of the Senate.

Clearly, it is the American people who are harmed. And for what reason? Simply, the interests of Americans are being sacrificed upon the altar of the selfish, political power struggle.

Please understand that I refuse to insulate my Democratic colleagues by suggesting that they should not vigorously oppose control of Congress and the White House.

But they can do it in a way that helps Americans, not hurt them. I do strongly urge them to abandon the block and blame game strategy and instead to join Republicans in making this closely divided Government work.

Let’s all acknowledge that there are precious few legislative days left in the 108th Congress, that we have a large number of bills very important to our country, and that we do not have the luxury of debating and voting on each and every amendment we desire.

Let’s recognize that no legislation will be perfect in everyone’s mind, but let’s not block it simply because we don’t get everything we want.

Instead, let’s work hard together to get these important bills to the President’s desk to be signed into law.

And that is the basis of a better campaign strategy for Democrats, and one that will not undermine the vital interests of Americans.

Simply, Democrats could share credit for all the legislation enacted this year, but then they are free to argue with voters that had they been in control of the Congress and the White House, they would have done much, much better.

Or, Democrats might try to persuade voters that if they are elected, they will ensure that Democrats’ views as conceived, will be repealed or modified.

Republicans are happy to engage Democrats in the debate this fall over the issues, our goals and our vision for our nation’s future. And Democrats should be just as enthusiastic.

In short, there is no need to obstruct legislation. It makes no sense, it is totally irrational, for Democrats to be blocking critically needed legislation, because they are not even going to control the White House, simply because they fear that Republicans might get credit for passing and enacting legislation.

The ongoing fight over the Energy bill is a perfect case study that underscores my point of how the vital interests of Americans are being sacrificed on the altar of political ambition.

Last year, lobbyist working hard for health care and Medicare coverage, or the Energy bill, were telling me that the Senate Democratic caucus was struggling with the following question: “Which, if either bill, should we allow to pass? We definitely cannot let the President have two victories this year.”

Let me repeat. Congressional Democrats concluded that they could not let the President have two victories. So as it happened, Medicare was passed first, but then Democrats mounted a successful filibuster against the Energy bill.

They wanted to deny the President a victory.

What did they get that was crazy notion? What genius political consultants and pollsters are advising them?

Enacting the Energy bill would be a victory for all Americans, not just the President! It would be a victory for people of all political stripes.

There are provisions in the Energy bill that would help increase oil production, which would reduce gasoline prices.

You thing Americans, who drive up to the pump today, having to spend well over two dollars a gallon for gasoline, give a hoot whether or not enacting the energy bill could be considered
May 20, 2004

CONGRESSIONAL RECORD—SENATE
S5943

a victory for the President? Do you think for one moment that even the most dyed-in-the-wool Democrats living outside of Washington, DC say to themselves, "Well, we may be paying $2.50 for gasoline, but thank goodness Congressmen elected by the President legislative victory"?

Why don't Democrats do to the Energy bill, what they did to the prescription drug bill? Let it be enacted into law, and then go out and tell everyone what a terrible bill it is. Tell voters that that bill is just terrible, but that Republicans are in control, and if that's their idea of good energy policy, so be it. But if you elect us, we will do this and that differently, and you will be far better off.

That type of political strategy does not undermine Americans. That strategy sets the stage for vigorous campaigns that will win or lost based upon who have the best ideas and vision.

Perhaps, therein lies the problem for Democrats. Perhaps the block and blame game is easier to play for those who are not confident that they have better ideas and winning arguments about their goals and vision.

We saw in the two votes of shutting off the Democrat-led filibuster against the Energy bill. There are provisions in that bill of vital interest to virtually every part of our country, let alone establishing critically needed energy policy for our Nation as a whole.

For the upper Midwest's farm country, it contains renewable fuel provisions that will expand farm markets for corn and soybeans which in turn will increase income for farmers and rural Americans while expanding job opportunities. It contains provisions that increase our sources of oil and gas which will reduce the production costs of farmers as well as save money for all consumers throughout our country.

Each of us, every one of us can point to things we did not like in the bill, but instead of passing it for the greater good, it has fallen prey to the Democrat's block and blame game.

Just 3 weeks ago, Democrats sacrificed the renewable fuels section of the Energy bill to the block and blame game.

It is inconceivable that the renewable fuels amendment offered by the Democratic leader on April 27 could have failed—any better way to assure its failure. It was guaranteed to fail. If you understand Senate procedures, and the importance of passing a regionally attractive, comprehensive Energy bill, it is obvious to you that this amendment was designed to fail.

Let me offer the proof.

First, everyone knows that any energy bill that has any hope of passing this Congress must be a comprehensive package that addresses a wide variety of energy issues and that draws bipartisan support from all regions of the country.

This fact has long been recognized by ethanol and farm organizations who have been working hard for approval of the renewable fuels standard. Moreover, these groups recognize that the comprehensive energy bill has provisions beyond ethanol and biodiesel that are very important to their members.

So why did the Democratic leader fail to offer instead the comprehensive energy bill, which included the renewable fuels standard, as an amendment?

He has been around here long enough to know Senators from other parts of the country, who want to pass pro-energy provisions more important to their states than ethanol, are not likely to vote to strip ethanol out. After all, such an effort would unravel the energy coalition, and thus reduce the likelihood of passing their preferred energy provisions.

So the Democratic leader offered an amendment that he knew was less likely to pass.

The second bit of evidence that this effort was part of the block and blame game is that perhaps the most dyed-in-the-wool Republican ally was contacted in advance to help develop a strategy to assure that we secure enough votes.

We have always counted on bipartisan cooperation to support ethanol legislation. A vote that the Democratic leader's amendment No. 3048 was not contacted I can remember neither I nor any other pro-ethanol Republican was contacted.

Third, and even more telling, the Democrat leader failed to contact the lobbyist who had been working for the Republican ally in advance. That, I know, has never happened. If you really want to pass renewable fuels legislation, every one of us in this body knows you better have the National Corn Growers and the Renewable Fuels Association ready and able to help you line up the votes.

Why weren't they contacted? Perhaps it is because Democrats knew they would refuse to be part of an effort to splinter the broad energy coalition, sink hopes of pasting 150's unique energy legislation this year, including that for renewable fuels.

They would not willingly let themselves become victims of the Democratic block and blame game!

The fourth bit of evidence that this amendment was designed to fail involves Senate procedure. As soon as the amendment was offered, a signed cloture petition was immediately offered by the Democratic leader to his own amendment. This cloture petition, by the way, was signed exclusively by Democrats.

The most obvious reason to invoke cloture is to cut off a filibuster. But who in the world was going to filibuster this amendment? We were trying to pass a long-overdue solution to differences that has stalled the internet tax bill. Moreover, if the Democratic leader's renewable fuels amendment was so popular, why worry about a filibuster? Let's just vote up or down on the amendment.

Although cutting off debate is the obvious, normal purpose of filing a cloture petition, there is another purpose which is not so widely understood. If cloture is invoked, all amendments to that underlying provision must be germane. If a second degree amendment is not germane, then you have constructed a hurdle requiring 60 votes to overcome. Could it be, therefore, since no one was filibustering this amendment, that an attempt to invoke cloture was aimed at blocking the more popular, comprehensive energy legislation as a second degree amendment?

Recognizing hopes for energy legislation was being jeopardized by this block and blame game, offered the comprehensive energy bill as a second degree.

What most constituents do not know, is that had the democratic leader succeeded in gaining the 60 votes needed to invoke cloture on his amendment, the Domenici amendment would have been ruled out of order as non germane because it was far more expansive than the underlying amendment. Would have taken another 60-vote majority to overcome this ruling. That may not be impossible, but we know that some Senators vote will vote differently on a procedural question than they might have on the underlying amendment. So this was another hurdle, another attempt at blocking the more popular provision that, remember, included the renewable fuels standard and had a much higher likelihood of passing.

The second bit of evidence that the Democratic leader's amendment was designed to fail is that he offered it to S. 150, instead of the compromise substitute amendment developed and offered by Senator McCAIN, the chairman of the Senate Commerce Committee.

Given the long stalemate over the internet tax bill, we all knew that Senator McCAIN's substitute had broken the impasse and that if anything was going to pass, it was his compromise.

But his amendment, No. 3048 was an entire substitute to the language of S. 150. We all know, therefore, that any amendment to S. 150, including amendment No. 3050 offered later by the Democratic leader, would fail when the McCain substitute was approved.

So you should offer an amendment to the substitute that will prevail. If you did not think you knew which would prevail, then you could offer two amendments—one to the underlying bill and one to the substitute amendment.

Here is a good way to explain this. Suppose our objective is to get supplies to the space station. Do you load your supplies on the booster rocket, or do you load it into the space shuttle? The booster rocket in this case was S. 150, and the McCain substitute was the space shuttle. And we all knew that.

The next bit of evidence that the Democratic leader's ethanol amendment was designed to fail, is the very fact that he picked a bill, again, the internet tax bill, that is controlled and managed by the Senate's most out-spoken, anti-ethanol Senator.
If everything else failed to fail, adding an amendment to a bill to be taken to conference by Chairman McConnell was the iron-clad guarantee it would be rejected. And in fact, that is exactly what Senator McConnell stated on the floor of the Senate. He stated emphatically, predictably, that if the ethanol or energy amendment passed, he would drop it in conference.

So the Democrat leader’s amendment was designed in so many ways to fail, and thus, to block his own amendment. And guess who gets the blame? Republicans.

Farmers lose. All energy consumers lose. But if the block and blame game works and Republicans lose, too, then it is all worth it, because Congressional Democrats win.

The block and blame game.

An interesting exchange occurred between Chairman McConnell and Senator Dorgan during the debate of this amendment. Senator McConnell said, “I am sure there may be a headline in South Dakota that says: Senator Daschle fights for ethanol.”

Senator Dorgan responded, “Senator Daschle has not offered an amendment for the purpose of a headline in South Dakota.”

Guess what. As soon as his amendment failed, Senator Daschle did issue a press release. And not only that, the press release attacked Republicans.

The release, according to the Congressional Quarterly, was headlined, and “Washington Republicans abandon ethanol.”

The block and blame game: hurts the farmers, hurts Americans, but helps the Democrats.

I would like to share a statement issued by the National Corn Growers following the vote:

Yesterday, during consideration of legislation dealing with internet sales tax, Senator Dorgan offered an amendment to create a Renewable Fuels Standard (RFS). Senator Domenici offered S. 2095 as a second degree amendment to the Daschle amendment. S. 2095 is a bill as well as energy standard. NCGA will support all efforts to pass an energy bill that contains an RFS and addresses the serious problem of our nation faces regarding energy. We again call upon Congress to set aside partisan bickering and to pass an energy bill.

I agree wholeheartedly with the National Corn Growers Association. We have serious problems facing our nation, and we have several very important bills aimed at addressing these problems that are falling victim to the block and blame game.

I wish that what I was told by a Democratic lobbyist, about the strategy to block everything this year, was true. I wish that it were not true. I hope that the Democratic leaders will have a change of heart and a change of campaign strategy that allows vital pieces of legislation to be signed by the President this year, and then let the election over who has the best ideas or who will do better if they take control of Congress or the White House.

SECTION 8 HOUSING ASSISTANCE

Mr. DODD. Mr. President, I am pleased to join Senators Schumer, Kennedy, Reed, and others as an original co-sponsor of this important legislation, which would clarify the intent of a provision in the fiscal year 2004 appropriations law regarding the Section 8 housing voucher program.

The Department of Housing and Urban Development, HUD, has claimed that language in the FY2004 appropriations law requires it to distribute voucher funds according to a formula that leaves no alternative but to reduce assistance by $191 million nationwide. Subsequently, it issued a notice on April 22, 2004 that put in place a new system for funding Section 8 vouchers that differed greatly from its usual practice. In the past, HUD would reimburse housing authorities for the cost of providing housing to low-income individuals based on their real, current costs. Under the April 22 guidelines, voucher funding will be frozen until the change will be retroactive to January 1, 2004, plus a small adjustment for inflation. In addition, the change will be retroactive to January 1, 2004, which will create even further confusion for those public housing authorities whose vouchers are already issued and whose budget are already finalized.

I strongly believe that that HUD’s interpretation of the FY2004 appropriations law is both unduly restrictive and in sharp contradiction to the intent of Congress to fully fund Section 8 program. Despite HUD’s protestations that Congress forced its hand to make these cuts, Congress in fact added funding to the Section 8 program its FY2004 budget so that HUD could fully fund all vouchers currently in use. Congress appropriated $17.6 billion in FY2004 to renew expiring Section 8 contracts, or $1.4 billion above the amount requested by the administration. Although the FY2004 appropriations law may make some modest changes in how voucher funding is disbursed, nothing in the law mandated that HUD take the unprecedented step of cutting housing assistance for senior citizens, the disabled, and working families and individuals with the greatest housing needs.

It therefore makes little sense that HUD would insist on reading the FY2004 appropriations law in such a way as to produce more homelessness, more people living in extreme poverty, and more families losing their homes. Connecticut will be especially hurt if HUD’s April 22 notice is not changed to reflect the program commitments of housing authorities. Many public housing authorities in Connecticut are anticipating that the HUD proposal will result in a significant reduction in funds needed to honor existing contracts as well as effectively administer the voucher program. The current average Housing Assistance Payment for many agencies has typically increased beyond friendly” plus the Annual Adjustment Factor. In most cases, this result is not due to increases in local rental rates but reflects the rise in unemployment among Section 8 participants and thus an increase in the public housing authority’s share of the rent.

The impact of the April 22, 2004 rule on Connecticut will be particularly severe given that it has the sixth most expensive rental housing market in the nation and very few vacancies to meet the needs of low-income individuals. Coupled with the administration’s proposed FY2005 budget cuts and block granting of the Section 8 program, which could adversely affect over 4,000 existing voucher holders in Connecticut, it is difficult to understand why HUD would be trying to balance its budget on the backs of low-income Americans.

The Department of Housing and Urban Development’s April 22, 2004 notice is therefore just another salvo in the administration’s war on the Section 8 program. Section 8 provides more than just rent assistance for low income families, it provides stable housing in high cost housing markets. It also helps to sustain the employee base in urban markets, keeps wages for jobs in the service and manufacturing sectors competitive, enables corporations to remain and expand in communities, and reduces the strain on vehicular transportation systems.

In an economy that is creating few jobs and producing scant affordable housing, HUD should be pursuing policies that enable seniors, the disabled, and working families and individuals with the greatest housing needs. It remains to be seen why HUD should be trying to balance its budget on the backs of low-income Americans.

MANUEL RODRIGUEZ GOMEZ, MD

Mr. COLEMAN. Mr. President, I rise today to honor Manuel Rodriguez Gomez, MD, Emeritus Professor of Pediatrics, Mayo Medical School in Rochester, Minnesota, for his lifetime of education and as one of the first physicians in the United States to champion tuberous sclerosis complex, TSC. Dr. Gomez is considered by many to be the “father” of tuberous sclerosis complex research because of his many contributions to the field of TSC research and passionate patient care. Through his work to describe TSC over the lifespan of an individual with the disorder and the extraordinary research he provided by Ambisonic TSC Research Center, Dr. Gomez published extensively on his growing knowledge of the multiple organ involvement in TSC. He passionately encouraged his colleagues to not only provide medical care for individuals with TSC, but to also share their knowledge through conferences, publications and the three editions of the book, “Tuberous Sclerosis Complex.” This book is considered by his peers to be the premier medical textbook for care of TSC patients. For his dedication to the care of TSC patients throughout his medical practice and his guidance of the Tuberous Sclerosis Alliance, Dr. Gomez made the world a
better place for individuals living with TSC by providing exceptional medical care and guidance through the many challenges associated with living with the disease. His quest to better understand the nature and cause of the disease and all patients diagnosed with this condition, and possible unlock the secret to a cure that will eradicate this disease once and for all. Because of his dedication to his patients and his contribution to the research community, it is my pleasure to rise today, and offer this tribute to Dr. Gomez.

**ADDITIONAL STATEMENTS**

**HONORING ERWIN ARNDT**

- **Mr. HARKIN.** Mr. President, the National World War II Memorial will be dedicated on Saturday before Memorial Day. It is a stunningly beautiful monument, located midway between the Lincoln Memorial and Washington Monument. It is a long-overdue salute—an expression of profound gratitude—to the millions of Americans who served their country with courage, sacrifice, and selflessness in that war.

  I would like to share with my Senate colleagues a remarkable story about how the small community of Walnut, IA, has expressed its gratitude to a local veteran of the Second World War, Erwin Arndt.

  Mr. Arndt returned from the war to serve his community as an electrician, a volunteer firefighter, a city council member, and commander of the local AMVETS unit. Just about everybody in Walnut knows and respects Mr. Arndt. And there was much concern when he suffered a series of strokes over the past year.

  All too typically, a man in Mr. Arndt’s condition would have no choice but to become a dependent in a nursing home. But friends and neighbors in Walnut came to his rescue in a truly remarkable and inspiring way. They joined hands to give him the wherewithal and assistance he needed to continue living independently in his apartment.

  A local restaurant helped to provide daily meals. Several citizens helped Mr. Arndt to keep his apartment clean and orderly, and take him to medical appointments. Still others organized shifts to keep him company in his apartment. Several especially kind citizens got together to purchase a motorized chair to help Mr. Arndt get around.

  It was truly a community effort—an act of kindness that was truly inspiring. As you can imagine, Mr. Arndt’s daughter, Karen Dewinter, is overwhelmed with gratitude for what the people of Walnut did for her father. She told me that she was especially touched that on her father’s birthday, the local AMVET auxiliary hosted a party at a cafe, where they brought cards from local elementary and preschool children.

  I express my own gratitude to the people of Walnut, IA, for their extraordinary caring and kindness toward Erwin Arndt. Like millions of Americans of what Tom Brokaw has labeled the “Greatest Generation,” Mr. Arndt served our Nation with dedication in both war and peace.

  In their own special way, the people of Walnut have said thank you to this veteran and beloved member of the community. I would like to add my own gratitude, not just to Mr. Arndt but also to the good citizens of Walnut.

**FRIENDS OF THE DES PLAINES PUBLIC LIBRARY**

- **Mr. DURBIN.** Mr. President, I want to honor The Friends of the Des Plaines Public Library, an organization that has been serving the Des Plaines community for the past 50 years.

  The Friends of the Des Plaines Public Library was founded in April 1954 by a planning committee of the northwest suburban branch of the American Association of University Women and members of several parent organizations from Des Plaines area schools.

  The initial objectives of The Friends of the Des Plaines Public Library were to stimulate interest in the library and record historical data for the town of Des Plaines. Much of the historical data that The Friends of the Des Plaines has generated and recorded since 1954 has since become part of the collection of the Des Plaines Historical Society.

  Over the course of the past 50 years, The Friends of the Des Plaines Public Library has come to play an invaluable role in the ongoing operations of the institution and community they serve. Members have volunteered to straighten book shelves, provided rainy day plastic bags to help protect books on loan, and held voter registration drives.

  The Friends of the Des Plaines Public Library holds ongoing book sales to provide financial support to the library, enabling the library to purchase additional resources and provide educational programming for the citizens of Des Plaines. In the past, the proceeds of these book sales have enabled the library to purchase computers and audio visual equipment.

  I congratulate The Friends of the Des Plaines Public Library as it celebrates its 50th anniversary. I am confident that this organization will continue its long tradition of promoting and fostering a lifelong commitment to reading and education in the community of Des Plaines long into the future.

**THE LIFE OF AN AWARD-WINNING COLUMNIST, REPORTER, AUTHOR**

- **Mr. BIDEN.** Mr. President, I honor the life of an award-winning columnist, reporter, and author. Bill Fiset, lived a long, distinguished life of 73 years, serving his country in World War II. In addition to his honorable career, he was a devoted husband, father, and grandfather.

  Bill Fiset was born March 15, 1921 in Seattle, WA and attended Queen Anne High School and the University of Washington, where he was a member of the Delta Kappa Epsilon Fraternity. In 1943 at the age of 21, he was a reporter and wrote a column called “Strolling Around the Town” for the Seattle Times.

  At 22, Fiset saw foreign service in Africa as an ambulance driver in the American Field Service, an organization giving medical aid to the Allies before the U.S. entered the war. He resigned the Field Service in Egypt in April 1942, and enlisted with the Royal Armored Service Corps. As a second lieutenant in the British 8th Army in North Africa, he served as a machine gunner on an armored lorry defending convoys from Italian bombers between Tobruk and Suez. Fiset also filed field reports as a war correspondent.

  Then America entered WWII. With refugees flooding African transports, Fiset’s rapidly used infantry experience to sign on with an American freighter as a member of the gun crew, reaching the U.S. 3 months later.

  In October, 1942, he joined the Navy. He did his preflight training at St. Mary’s College in Moraga, CA, and served as a blimp pilot in Airship Squadron 32 on a coastal submarine patrol stationed out of Moffet Field, California.

  After the war, Fiset worked as a reporter for the Oakland Post Enquirer from 1946 to 1950 and joined the San Francisco Call Bulletin as a staff reporter from 1950 to 1952.

  Fiset then wrote for the Oakland Tribune from March 1952 to 1955 as a general assignment reporter covering such infamous murder and kidnap tales as Burton Abbott, Carl Chessman; and Barbara Graham, Jack Santo and Emmett Perkins of the so-called Mountain Murder Mob. He also witnessed and reported on their executions at San Quentin Prison.

  In 1956 he wrote the Tribune’s first television column where he became internationally syndicated and was invited to do walk-on acting parts in “Route 66” and “Tales of Wells Fargo.” He began a general column for the Tribune in 1962. That same year, he was nominated for a Pulitzer Prize and won many awards for his writing. His award-winning public service booklets “This Is Sherry” and “Want To Be Smart,” written by Fiset and illustrated by artist Ray Marta were discreetly designed to warn children and parents about the dangers of kidnapping and child sex offenders. Over a million copies were distributed free worldwide and locally by the Tribune, the Bay Area Board of Education, and local police departments. The efforts of the Oakland Tribune’s Public Information Director J. Edgar Hoover as, “a graphic message which may mean the difference between life and death for countless
youngsters," and was requested by police departments throughout the United States, Canada, and Europe.

From time to time Fiset continued to file news reports. He wrote about the airlift of Vietnamese-American children out of Vietnam by Ed Daly, a friend and the flamboyant owner of World Airways. In 1973, Fiset was one of the first to file an eyewitness report on the crash of the Soviet SST TU–144 crash at the Paris Air Show.

An avid golfer, Fiset participated in many civic groups and fund raisers. He taught news writing and reporting at the College of Alameda and for many years was a board member for JACKIE, an agency that finds foster homes for children.

He was married for almost 60 years and is survived by his wife, Marian Fiset of Walnut Creek, his sons Rick Fiset of Danville, Gary Fiset of Alamo, daughter Michele Fiset Rice of Bryn Mawr, PA, and his eight grandchildren. Bill Fiset died peacefully on Sunday, May 2, in Concord, CA.

HONORING THE STUDENTS OF DOBSON HIGH SCHOOL

Mr. KYL. Mr. President, earlier this month, more than 1,250 students from across the United States were in Washington, DC to compete in the national finals of the "We the People: The Citizen and the Constitution" program. I am proud to note that the class from Dobson High School from Mesa, AZ received a fourth place honorable mention in this year's competition.

I would like to take a moment to mention the names of those students who competed for Dobson High: Andrew Barrett, Andi Berlin, Amanda Campell, Catherine Capozzi, Eric Chen, Katy Cronenberg, Tom Emmons, Eva Farnsworth, Jennifer Heller, Annie Ho, Jamie Kearney, Katie Kearney, Maureen Klaum, Nicole Klundt, Jessie Leatham, Angela Mallard, Tara McMurdy, Joanna Sung, Taylor Morris, Kim Naka, Janne Peronna, Dean Thong-Kahn, and Shaochen Wu. I would also like to acknowledge their teacher, Abby Dupke, the district coordinator, Kathy Williams, and the State coordinator, Susan Nusso.

I congratulate these budding constitutional experts and wish them the best of luck in the future.

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 the executive session the President of the United States was communicating to the Senate the following enrolled bills from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF THE CONTINUATION OF THE NATIONAL EMERGENCY PROTECTING THE DEVELOPMENT FUND FOR IRAQ AND CERTAIN OTHER PROPERTY IN WHICH IRAQ HAS AN INTEREST—PM 78

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:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the Federal Register and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice, stating that the national emergency declared in Executive Order 13303 of May 22, 2003, as expanded in scope by Executive Order 13315 of August 28, 2003, protecting the Development Fund for Iraq and certain other property in which Iraq has an interest, is to continue in effect beyond May 22, 2004, to the Federal Register for publication.

The obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq constituted by the threat of attachment or other judicial process against the Development Fund for Iraq, Iraqi petroleum and petroleum products, and interests therein, and proceeded upon financial and economic instruments of any nature whatsoever arising from or related to the sale or marketing thereof, pose a continuing unusual and extraordinary threat to the national security and foreign policy of the United States. For these reasons, I have determined that it is necessary to continue the national emergency protecting the Development Fund for Iraq, and certain other property in which Iraq has an interest, and to maintain in force the sanctions to respond to this threat.

2004 COMPREHENSIVE REPORT ON U.S. TRADE AND INVESTMENT POLICY FOR SUB-SAHARAN AFRICA AND IMPLEMENTATION OF THE AFRICAN GROWTH AND OPPORTUNITY ACT—PM 88

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 Finance:

To the Congress of the United States:


GEORGE W. BUSH.
THE WHITE HOUSE.

MESSAGES FROM THE HOUSE

At 10:38 a.m., a message from the House of Representatives, delivered by the House Enrolling Clerk, announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the resolution (S. Con. Res. 95) setting forth the congressional budget for the United States Government for fiscal year 2005 and including the appropriate budgetary levels for fiscal years 2006 through 2008.

The message also announced that pursuant to section 211 of the Older Americans Act Amendments of 2000 (42 U.S.C. 3001 note), the Minority Leader appoints the following individuals on the part of the House of Representatives to the Policy Committee of the White House Conference on Aging: Barbara Kennelly of Connecticut and Robert B. Biancato of Virginia.

ENROLLED BILLS SIGNED

At 11:55 a.m., a message from the House of Representatives, delivered by Ms. Nioland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H. R. 923. An act to amend the Small Business Investment Act of 1958 to allow certain premier certified lenders to elect to maintain an alternative loss reserve.

H.R. 3104. An act to provide for the establishment of separate campaign medals to be awarded to members of the uniformed services who participate in Operation Enduring Freedom and to members of the uniformed services who participate in Operation Iraqi Freedom.
ENCELLED BILLS SIGNED

At 7:28 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H. R. 408. An act to provide for expansion of Sleeping Bear Dunes National Lakeshore.

H. R. 708. An act to require the conveyance of certain Forest System lands in the Mendocino National Forest, California, to be conveyed to the State of California for public purposes.

H. R. 856. An act to authorize the Secretary of the Interior to revive a repayment contract with the Tom Green County Water Control and Improvement District No. 1, San Angelo project, Texas, and for other purposes.

H. R. 1596. An act to amend the Reclamation Waterurity and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in projects within the San Diego Creek Watershed, California, and for other purposes.

MEASURES PlACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

H. R. 2728. To amend the Occupational Safety and Health Act of 1970 to provide for adjudicative flexibility with regard to an employer filing of a notice of contest following the imposition by the Occupational Safety and Health Administration; to provide for greater efficiency at the Occupational Safety and Health Review Commission; to provide for an independent review of citations issued by the Occupational Safety and Health Administration; and to provide for the award of attorney's fees and costs to very small employers when they prevail in litigation prompted by the issuance of citations by the Occupational Safety and Health Administration.

H. R. 853. An act to direct the President to present to the Senate the President's 2004 Annual Report to the Committee on Banking, Housing, and Urban Affairs.

H. R. 4279. To amend the Internal Revenue Code of 1986 to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements, to improve patient access to health care services and provide improved medical care by reducing the excessive liability burden on places on the health care delivery system, and to amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for small businesses with small health care plans.

S. 2541. A bill to amend the Agricultural Marketing Act of 1946 to restore the application date for country of origin labeling.

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-7632. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report of a rule entitled "Indoxacarb; Time-Limited Pesticide Tolerance" (FR-7253-S) received on May 19, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC-7633. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report of a rule entitled "Isoxadifen-ethyl; Pesticide Tolerance" (FR-7255-S) received on May 19, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC-7634. A communication from the Assistant Director, Executive and Political Personnel, Department of the Army, transmitting, pursuant to law, a report of a rule entitled "Airworthiness Directives: Boeing Model 747-400 and 400D Airplanes Doc. No. 2004–NM–42" (RIN2120–AA64) received on May 19, 2004; to the Committee on Commerce, Science, and Transportation.

EC-7642. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: McDonnell Douglas Model MD–90–30 Airplanes Doc. No. 2001–NM–226" (RIN2120–AA64) received on May 19, 2004; to the Committee on Commerce, Science, and Transportation.

EC-7643. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: McDonnell Douglas Model MD–90–30 Airplanes Doc. No. 2002–NM–335" (RIN2120–AA64) received on May 19, 2004; to the Committee on Commerce, Science, and Transportation.

EC-7644. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 737–300, 400, and 500 Airplanes Doc. No. 2002–NM–197" (RIN2120–AA64) received on May 19, 2004; to the Committee on Commerce, Science, and Transportation.

EC-7646. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 737–300, 400, and 500 Airplanes Doc. No. 2002–NM–197" (RIN2120–AA64) received on May 19, 2004; to the Committee on Commerce, Science, and Transportation.

EC-7647. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Construcciones Aeronauticas, S.A. (CASA),
The following reports of committees were submitted:

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with an amendment:

S. 1071. A bill to authorize the Secretary of the Interior, through the Bureau of Reclamation, to conduct a feasibility study on a water conservation project within the Arch Hurley Conservancy District in the State of Nevada, and for other purposes (Rept. No. 108–267).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 1087. A bill to authorize the Secretary of the Interior to implement the Calfed Bay-Delta Program (Rept. No. 108–268).

S. 1382. A bill to amend the Valles Preservation Act to improve the preservation of the Valles Caldera, and for other purposes (Rept. No. 108–269).

S. 1587. A bill to direct the Secretary of the Interior to conduct a study on the preservation and interpretation of the historic sites associated with the Manhattan Project for potential inclusion in the National Park System (Rept. No. 108–270).

S. 1778. A bill to authorize a land conveyance between the United States and the City of Craig, Alaska, and for other purposes (Rept. No. 108–271).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, without amendment:

S. 1791. A bill to amend the Lease Lot Conveyance Act of 2002 to provide that the Lease Lot Conveyance Act under that Act shall be deposited in the reclamation fund, and for other purposes (Rept. No. 108–272).

By Mr. CAMPBELL, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:
S. 1933. A bill to promote effective enforce-
mint, and referred to the Committee on the Judiciary.

S. 1934. A bill to amend the Social Security Act to establish an Ombudsman of the Peace Corps and a Office of Safety and Security of Peace Corps and to improve security, and for other purposes; to the Committee on Foreign Relations.

By Ms. HUTCHISON:
S. 1956. A bill to provide disaster assistance to agricultural producers, and for other purposes; to the Committee on Finance.

S. 1957. A bill entitled “Nuclear Waste Cleanup Act”; to the Committee on Energy and Natural Resources.

By Mr. REID (for himself and Mr. ENZIGNI):
S. 1948. A bill to provide for the conveyance of certain lands and around historic mining townsites in Nevada, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BAUCUS:
S. 1959. A bill to provide for the conveyance of certain lands and around historic mining townsites in Nevada, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. REID (for himself and Mr. ENZIGNI):
S. 1956. A bill to provide for the conveyance of certain lands and around historic mining townsites in Nevada, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. REID (for himself and Mr. ENZIGNI):
S. 1948. A bill to provide for the conveyance of certain lands and around historic mining townsites in Nevada, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. REID (for himself and Mr. ENZIGNI):
S. 1956. A bill to provide for the conveyance of certain lands and around historic mining townsites in Nevada, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. REID (for himself and Mr. ENZIGNI):
S. 1956. A bill to provide for the conveyance of certain lands and around historic mining townsites in Nevada, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. REID (for himself and Mr. ENZIGNI):
S. 1948. A bill to provide for the conveyance of certain lands and around historic mining townsites in Nevada, and for other purposes; to the Committee on Energy and Natural Resources.
By Mrs. CLINTON:
S. 2471. A bill to regulate the transmission of personally identifiable information to foreign affiliates and subcontractors; to the Committee on the Judiciary.

By Mr. NELSON of Florida:
S. 2472. A bill to require that notices to consumers of health and financial services include information on the outsourcing of sensitive personal information abroad, to require relevant Federal agencies to prescribe regulations to ensure the privacy and security of sensitive personal information outsourced abroad, to establish requirements for foreign call centers, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (acted upon), as indicated:

At the request of Mr. COLEMAN:
S. Res. 366. A resolution supporting May 2004 as National Better Hearing and Speech Month and commending those States that have implemented routine hearing screenings for every newborn before the newborn leaves the hospital; considered and agreed to.

By Ms. STABENOW (for herself and Mr. LEVIN):
S. Res. 367. A resolution honoring the life of Mildred McWilliams “Millie” Jeffrey (1910-2004) and her contributions to her community and to the United States; considered and agreed to.

ADDITIONAL COSPONSORS

S. 577

At the request of Ms. COLLINS, the name of the Senator from North Carolina (Mr. EDWARDS) was added as a cosponsor of S. 557, a bill to amend the Internal Revenue Code of 1986 to exclude from gross and earnings amounts received on account of claims based on certain unlawful discrimination to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 846

At the request of Mr. GRAHAM of Florida, his name was added as a cosponsor of S. 846, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for premiums on mortgage insurance, and for other purposes.

At the request of Mr. SMITH, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 846, supra.

S. 847

At the request of Mr. SMITH, the name of the Senator from Minnesota (Mr. DAVIES) was added as a cosponsor of S. 847, a bill to amend title XIX of the Social Security Act to permit States the option to provide Medicaid coverage for low income individuals infected with HIV.

S. 1368

At the request of Mr. LEVIN, the names of the Senator from Maine (Ms. SOWE) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 1368, a bill to authorize the President to award a gold medal on behalf of the Congress to Reverend Doctor Martin Luther King, Jr. (posthumously) and his widow Coretta Scott King in recognition of their contributions to the Nation on behalf of the civil rights movement.

At the request of Mr. AKAKA, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1369, a bill to ensure that prescription drug benefits offered to Medicare eligible enrollees in the Federal Employees Health Benefits Program are at least equal to the actuarial value of the prescription drug benefits offered to enrollees under the plan generally.

At the request of Mr. JOHNSON, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1379, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

At the request of Mr. CRAIG, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 1420, a bill to establish terms and conditions for use of certain Federal land by outfitters and to facilitate public opportunities for the recreational use and enjoyment of such land.

At the request of Mr. GREGG, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 1515, a bill to establish and strengthen postsecondary programs and courses in the subjects of traditional American history, free institutions, and Western civilization, available to students preparing to teach these subjects, and to other students.

At the request of Mr. CAMPBELL, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 1721, a bill to amend the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land, and for other purposes.

At the request of Mr. ENZI, the name of the Senator from Nevada (Mr. HAGEL) was added as a cosponsor of S. 1883, a bill to amend the Public Health Service Act to provide greater access for residents of frontier areas to the healthcare services provided by community health centers.

At the request of Mr. ENZI, the names of the Senator from Missouri (Mr. TALMONT) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. 1890, a bill to require the mandatory expiring of stock options granted to executive officers, and for other purposes.

S. 2176

At the request of Mr. BINGAMAN, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of S. 2176, a bill to require the Secretary of Energy to carry out a program of research and development to advance high-end computing.

S. 2270

At the request of Mr. DEWINE, the names of the Senator from Maine (Ms. SOWE) was added as a cosponsor of S. 2270, a bill to amend the Sherman Act to make oil-producing and exporting cartels illegal.

S. 2271

At the request of Mr. DURBIN, the name of the Senator from Vermont (Ms. LEAHY) was added as a cosponsor of S. 2271, a bill to establish national standards for discharges from cruise vessels into the waters of the United States, and for other purposes.

S. 2283

At the request of Mr. GREGG, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 2283, a bill to extend Federal funding for operation of State high risk health insurance pools.

S. 2302

At the request of Mr. CONRAD, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 2302, a bill to improve access to physicians in medically underserved areas.

S. 2305

At the request of Mr. HAGEL, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of S. 2305, a bill to authorize programs that support economic and political development in the Greater Middle East and Central Asia and support for three new multilateral institutions, and for other purposes.

S. 2351

At the request of Ms. COLLINS, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 2351, a bill to establish a Federal Interagency Committee on Emergency Medical Services and a Federal Interagency Committee on Medical Services Advisory Council, and for other purposes.

S. 2363

At the request of Mr. HATCH, the names of the Senator from Minnesota (Mr. DAYTON), the Senator from Idaho (Mr. GRYA), the Senator from Alaska (Ms. MURKOWSKI), the Senator from Mississippi (Mr. COCHRAN) and the Senator from Alabama (Mr. SESSIONS) were added as cosponsors of S. 2363, a bill to revise and extend the Boys and Girls Clubs of America.

S. 2389

At the request of Mr. ENSIGN, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 2389, a bill to require the withholding of United States contributions to the United Nations until the President certifies that the United Nations is cooperating in the investigation of the United Nations Oil-for-Food Program.
May 20, 2004

CONGRESSIONAL RECORD — SENATE

S. 2411

At the request of Mr. Dodd, the name of the Senator from California (Mrs. Boxer) was added as a cosponsor of S. 2411, a bill to amend the Federal Fire Prevention and Control Act of 1974 to provide flexible federal financial assistance for the improvement of the health and safety of firefighters, promote the use of life saving technologies, achieve greater equity for departments serving large jurisdictions, and for other purposes.

S. 2412

At the request of Mr. Cochen, the name of the Senator from Alabama (Mr. Shelby) was added as a cosponsor of S. 2425, a bill to amend the Tariff Act of 1930 to allow for improved administration of new shipper administrative reviews.

S. 2413

At the request of Mr. Baucus, the names of the Senator from New Hampshire (Mr. Sununu) and the Senator from North Dakota (Mr. Dorgan) were added as cosponsors of S. 2449, a bill to require congressional renewal of trade and travel restrictions with respect to Cuba.

S. CON. RES. 81

At the request of Mr. Stevens, his name was added as a cosponsor of S. Con. Res. 81, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

S. CON. RES. 90

At the request of Mrs. Feinstein, the name of the Senator from Arkansas (Mr. Pryor) was added as a cosponsor of S. Con. Res. 90, a concurrent resolution expressing the Sense of the Congress regarding negotiating, in the United States-Thaiad Free Trade Agreement, access to the United States automobile industry.

S. RES. 221

At the request of Mr. S. Sarbanes, the name of the Senator from Alabama (Mr. Sessions) was added as a cosponsor of S. Res. 221, a resolution recognizing National Historically Black Colleges and Universities and the importance and accomplishments of historically Black colleges and universities.

S. RES. 357

At the request of Mr. Campbe, the name of the Senator from Utah (Mr. Hatch) was added as a cosponsor of S. Res. 357, a resolution designating the week of August 8 through August 14, 2004, as "National Health Center Weak." AMENDMENT NO. 370

At the request of Mr. Graham of South Carolina, the names of the Senator from Colorado (Mr. Allard) and the Senator from Idaho (Mr. Crapo) were added as cosponsors of amendment No. 3170 proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 371

At the request of Ms. Landrieu, the name of the Senator from New Mexico (Mr. Bingaman) was added as a cosponsor of amendment No. 3171 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3196

At the request of Mr. Duren, the name of the Senator from Maryland (Mr. Sarbanes) was added as a cosponsor of amendment No. 3196 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

AMENDMENT NO. 3204

At the request of Mrs. Clinton, the name of the Senator from New Mexico (Mr. Bingaman) was added as a cosponsor of amendment No. 3204 intended to be proposed to S. 2400, an original bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. Daschle (for himself, Mr. Johnson, Mr. Conrad, Mr. Wyden, and Mr. Graham of Florida):

S. 2451. A bill to amend the agricultural marketing act of 1946 to restore the application date for country of origin labeling; read the first time.

Mr. Daschle. Mr. President, today the Washington Post reported that the United States Department of Agriculture is working to prevent American meatpackers to resume imports of ground and processed beef from Canada last September, just weeks after Secretary Veneman publicly reaffirmed the Department’s ban on such imports as a result of mad cow disease being found in Canadian-borne cattle.

The article states that a total of 33 million pounds of Canadian processed beef came into the United States and went straight to American consumers under a series of undisclosed permits USDA issued to the meatpackers.

This is how today’s article describes Secretary Veneman’s public position last August:

She and her top deputies said ground beef imports would resume only after the agency completed a formal rulemaking process, with public debate.

There was no public debate. Instead, there were undisclosed permits allowing banned Canadian beef in the United States.

Not only am I extremely concerned that the Department of Agriculture deceived American consumers by allowing the import of Canadian beef that was previously banned, but I am also disappointed that the Bush administration is actually working to prevent American consumers from knowing where the food they buy comes from.

That is why I am introducing a bill today that will require the USDA to implement country-of-origin labeling on schedule this September. That was the date agreed upon in the Farm Bill which the President signed into law in 2002.

Unfortunately, at the urging of the Bush administration and the large meatpackers—most likely the same people who urged USDA to issue permits to allow the importation of banned Canadian meat products—Republican leaders in Congress inserted language into last year’s omnibus appropriations bill in the dead of night delaying implementation of country-of-origin labeling for 2 years until September 2006.

The bill I am introducing today is what the Senate has voted to do several times: Inform consumers about the origin of their food.

Over 80 percent of American consumers have said they want to know the country of origin of their food, and over 170 groups representing over 50 million Americans support mandatory food labeling.

We must not allow anyone who may represent special interests, anyone who now abrogates the spirit as well as the letter of the law to choose big business interests over the interests of the average American family. We must ensure consumer confidence, particularly now in light of recent developments. We would have not had the situation of 33 million pounds of banned beef entering the United States if it couldn’t have been properly labeled.

This legislation is long overdue. It is time that it become the law of the land.

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. 2451 Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,
S5952

CONGRESSIONAL RECORD — SENATE

May 20, 2004

S. 2452

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

SECTION 1. SHORT TITLE.
This Act may be cited as the ‘‘Ginseng Harves
ting Labeling Act of 2004.’’

SEC. 2. DISCLOSURE OF COUNTRY OF HARVEST.
The Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) is amended by adding at the end the following:

Subtitle E—Ginseng

SEC. 291. DISCLOSURE OF COUNTRY OF HARVEST.

(a) Definition of Ginseng.—In this sec
tion, the term ‘‘ginseng’’ means an herb or herbal
ingredient that

(1) is derived from a plant classified
within the genus Panax; and

(2) is offered for sale as a raw agricultural
commodity in any form intended to be used
in or as a food or dietary supplement under
the name of ‘‘ginseng’’.

(b) Disclosure.—

(1) In General.—A person that offers gin
seng for sale as a raw agricultural com
modity shall disclose to potential purchasers
the country of harvest of the ginseng.

(2) Importation.—A person that imports

ginseng into the United States shall disclose
the point of entry of the United States, in


(c) Manner of Disclosure.—

(1) In General.—The disclosure required

by subsection (b) shall be provided to poten
tial purchasers by means of a label, stamp,
mark, placard, or other clear and visible sign
on the ginseng or on the package, display,
holding unit, or bin containing the ginseng.

(2) Retailers.—A retailer of ginseng shall—

(A) retain disclosure provided under subsec
tion (b); and

(B) provide disclosure to a retail pur
chaser of the raw agricultural com
modity.

(3) Regulations.—The Secretary of Agri
culture shall by regulation prescribe with
specificity the manner in which disclosure
shall be made in transactions at wholesale or
retail (including transactions by mail, tele
phone, or Internet or in retail stores).

(4) Failure to Disclose.—The Secretary of
Agriculture may impose on a person that
fails to comply with subsection (b) or (c) a

(A) $1,000 for each day on which the failure
to disclose occurs; and

(B) $250 for each day on which the failure
to disclose continues.’’.

SEC. 3. EFFECTIVE DATE.

This Act and the amendment made by this Act take effect on the date that is 180 days
after the date of enactment of this Act.

By Mr. DEWINE (for himself and
Mr. DURBIN):

S. 2454. A bill to amend the Peace
Corps Act to establish an Ombudsman
of the Peace Corps and an Office of
Safety and Security of the Peace
Corps, to establish an Independent In
spector General of the Peace Corps, and
for other purposes; to the Committee
on Foreign Relations.

Mr. DEWINE. Mr. President, I ask
unanimous consent that the Peace
Corps Volunteers Health, Safety, and
Security Act of 2004 be printed in the
 RECORD.
There being no objection, the bill was
ordered to be printed in the RECORD.
May 20, 2004

S. 2454

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress as-
sembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “Peace Corps Volunteers 
Health, Safety, and Security Act of 2004”.

SEC. 2. OMBSMAN OF THE PEACE CORPS.
The Peace Corps Act (22 U.S.C. 2501 et seq.) is amended 
by inserting after section 4 the following new section:

SEC. 4A. OMBSMAN OF THE PEACE CORPS.
(a) ESTABLISHMENT.—There is established in the 
Peace Corps an Office of Ombudsman of the 
Peace Corps (in this section referred to as the “Omb-
udsman”), who shall be appointed by and report 
directly to the Director of the Peace Corps.

(b) VOLUNTEER COMPLAINTS AND OTHER 
MATTERS.—The Ombudsman shall receive and, as 
appropriate, inquire into complaints, questions, or 
concerns submitted by current or former volunteers 
regarding services or support provided by the Peace Corps 
to its volunteers, including matters pertaining to—

(1) the safety and security of volunteers;
(2) due process, including processes relating 
to separation from the Peace Corps;
(3) assistance that may be due to current or 
former volunteers;
(4) medical or other health-related assistance; 
and
(5) access to files and records of current 
or former volunteers.

(c) EMPLOYEE COMPLAINTS AND OTHER 
MATTERS.—The Ombudsman shall receive and, as 
appropriate, inquire into complaints, questions, or 
concerns submitted by current or former employees of 
the Peace Corps on any matters of grievance.

(d) ADDITIONAL DUTIES.—The Ombudsman 
shall—

(1) recommend responses to individual 
matters received under subsections (b) and (c);
(2) make recommendations for legislative, 
administrative, or regulatory adjustments to 
address recurring problems or other difficulties 
of a substantive nature;
(3) identify systemic issues relating to the 
practices, policies, and administrative procedures of 
the Peace Corps that affect volunteers and employees;
(4) call attention to problems not yet 
adequately considered by the Peace Corps.

(e) STANDARDS OF OPERATION.—The Omb-
udsman shall carry out the duties under this 
section in a manner that is—

(1) independent, impartial in the conduct 
of inquiries, and confidential; and
(2) consistent with the revised Standards 
for the Establishment and Operation of Omb-
udsman Offices (August 2003) as endorsed by 
the Association of Ombudsman Offices.

(f) INVOLVEMENT IN MATTERS SUBJECT TO 
ONGOING ADJUDICATION, LITIGATION, OR 
INVESTIGATION.—The Ombudsman shall refrain 
from any involvement in the merits of indi-
vidual matters that are the subject of ongo-
ing adjudication or litigation, or investiga-
tions related to such adjudication or litiga-
tion.

(g) REPORTS.—

(1) IN GENERAL.—Not later than 180 days 
after the date of the enactment of this sec-
tion, the Ombudsman shall submit to the Director of the 
Peace Corps, the Chair of the Peace Corps National 
Advisory Council, and Congress a report 
summarizing—

(A) the complaints, questions, and con-
cerns considered by the Ombudsman;

(B) the inquiries completed by the Omb-
udsman;

(C) recommendations for action with re-
spect to such complaints, questions, con-
cerns, or inquiries;

(D) any other matters that the Ombuds-
man considers relevant.

(2) CONFIDENTIALITY.—Each report sub-
mitted under subsection (1) shall maintain 
confidentiality on any matter that the Omb-
udsman considers appropriate in accord-
ance with subsection (c).

(b) EMPLOYEE DEFINED.—In this section, the term ‘employee’ means an employee of the Peace Corps, 
an employee of the Office of the Inspector General of the 
Peace Corps, an individual appointed or assigned under 
the Foreign Service Act of 1980 (22 U.S.C. 2301 et seq.) 
to carry out functions under this Act, or an individual 
subject to a personal service contract with the Peace Corps.”.

SEC. 3. OFFICE OF SAFETY AND SECURITY OF THE 
PEACE CORPS.
The Peace Corps Act (22 U.S.C. 2501 et seq.), as amended by 
section 2 of this Act, is further amended by inserting after section 4 
the following new section:

SEC. 4B. OFFICE OF SAFETY AND SECURITY OF THE 
PEACE CORPS.
(a) ESTABLISHMENT.—There is established in the 
Peace Corps the Office of Safety and Security of the Peace 
Corps (in this section referred to as the ‘Office’). The Office shall 
be headed by the Associate Director of the Peace Corps Act 
for Safety and Security, who shall be appointed by and report 
directly to the Director of the Peace Corps.

(b) RESPONSIBILITIES.—The Office estab-
lished under subsection (a) shall be responsible for all 
security and safety activities of the Peace Corps, including 
background checks of volunteers and staff, the safety and 
security of volunteers and staff (including training), the 
safety and security of facilities, the security information technology, 
and other responsibilities as required by the Director.

(c) SENSE OF CONGRESS.—It is the sense of 
Congress that—

(1) the Associate Director of the Peace 
Corps, Safety and Security, be appointed by the President, 
with the advice and consent of the Senate, pursuant to the 
appointment of any individual whose official duties primarily 
include the safety and security of Peace Corps volunteers or 
employees.

(2) the head of the office responsible for 
medical services of the Peace Corps.

(3) any health care professional within 
the office responsible for medical services of the Peace 
Corps.

(4) members of the Ombudsman’s team 
assigned to the Peace Corps.

(5) the Inspector General of the Peace 
Corps;

(6) the Budget Director of the Peace 
Corps;

(7) the Inspector General of the Peace 
Corps; and

(8) individuals whose official duties 
primarily relate to the Peace Corps.

(d) COMPENSATION.—Section 7 of the 
Peace Corps Act (22 U.S.C. 2506) is amended—

(1) in general—Section 7 of the Peace 
Corps Act (22 U.S.C. 2506) is amended by striking “7(c)” and 
inserting “7(b)”; and

(2) by adding at the end the following new 
subsection:

(c) EXEMPTION FROM EMPLOYMENT TERM 
LIMITS UNDER THE PEACE CORPS ACT.—

(1) IN GENERAL.—Section 7 of the Peace 
Corps Act (22 U.S.C. 2506) is amended—

(A) by redesignating subsection (c) as sub-
section (b); and

(B) by adding at the end the following new 
subsection:

(c) E XEMPTION FROM EMPLOYMENT TERM 
LIMITS UNDER THE PEACE CORPS ACT.—

(1) IN GENERAL.—Section 7 of the Peace 
Corps Act (22 U.S.C. 2506) is amended—

(2) by striking subsection (b) and 
inserting “The provisions of this section that 
limit the duration of service, appointment, or assignment of individuals shall not apply to—

(1) the Inspector General of the Peace 
Corps;

(2) officers of the Office of the Inspector 
General of the Peace Corps;

(3) any individual whose official duties 
primarily include the safety and security of Peace Corps volunteers or employees;

(4) the peace officer responsible for 
medical services of the Peace Corps;

(5) any health care professional within 
the office responsible for medical services of the Peace 
Corps.

(e) STANDARDS OF OPERATION.—The 
Office of Safety and Security shall be a free-standing 
entity.

(f) DELEGATION.—The Office of Safety 
and Security may delegate any of its functions to 
individuals under its authority.

(g) REPORT ON MEDICAL SCREENING 
AND PLACEMENT COORDINATION.—Not later than 
120 days after the date of the enactment of 
this Act, the Director of the Peace Corps shall submit to the appropriate congres-
sional committees a report that—

(1) describes the medical screening proce-
dures and guidelines used by the Peace 
Corps to determine whether an applicant for Peace Corps service has worldwide clearance, 
limited clearance, or is not medically, including psychologically, qualified to serve in the Peace Corps as a 
volunteer;

(2) describes the procedures and guidelines 
used by the Peace Corps to ensure that applicants for Peace Corps service are matched with a host country where the applicant can, with reasonableness accomplished, complete at least two years of volunteer service with-
out interruption due to foreseeable medical conditions; and

(3) with respect to each of fiscal years 2000 
through 2003 and the first six months of fis-
cal year 2004, states the number of—
SEC. 6. REPORTS ON THE "FIVE YEAR RULE" AND ON WORK ASSIGNMENTS OF VOLUNTEERS OF THE PEACE CORPS.

(a) REPORT BY THE COMPTROLLER GENERAL.

(1) IN GENERAL.—Not later than one year after the date of enactment of this Act, the Comptroller General shall submit to the appropriate congressional committees a report on the ability of the Peace Corps to implement the five-year rule and to manage Peace Corps operations in accordance with the rule.

(b) CONTENTS.—The report described in paragraph (1) shall include—

(1) an assessment of the extent to which agreements between the Peace Corps and host countries or other appropriate bodies provide for volunteers to assist host governments to advance their national development strategies;

(2) an assessment of the extent to which the Peace Corps—

(A) recruits volunteers who have skills that correlate with the expectations cited in the country agreements; and

(B) assigns such volunteers to such posts;

(3) a description of the procedures in place for determining volunteer work assignments and minimum standards for such assignments;

(4) the results of a survey of volunteers on health, safety, and security issues and of satisfaction surveys, which are to be conducted after the date of the enactment of this Act; and

(E) an assessment of the plan of the Peace Corps to increase the number of volunteers who are assigned to projects in sub-Saharan Africa, Asia, and the Western Hemisphere, particularly among communities of African descent within countries in the Western Hemisphere, that help combat HIV/AIDS and other global infectious diseases.

SEC. 7. DEFINITION OF APPROPRIATE CONGRESSIONAL COMMITTEES.

In this Act, the term "appropriate congressional committees" means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

By Mrs. HUTCHISON. May 20, 2004

S. 2455. A bill to amend title II of the Social Security Act, to extend the windfall elimination provision and protect the retirement of public servants; to the Committee on Finance. 

"Mr. HUTCHISON. 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. 2455

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 "Public Servant Retirement Protection Act." 

SEC. 2. REPEAL OF CURRENT WINDFALL ELLIMINATION PROVISION.

Paragraph (7) of section 21(a) of the Social Security Act (42 U.S.C. 415(a)(7)) is repealed.

SEC. 3. REPLACEMENT OF THE WINDFALL ELLIMINATION PROVISION WITH A FORMULA EQUALIZING BENEFITS FOR CERTAIN INDIVIDUALS WITH NON-COVERED EMPLOYMENT.

(a) SUBSTITUTION OF PROPORTIONAL FORMULA FOR FORMULA BASED ON COVERED PORTION OF PERIODIC BENEFIT.—

(1) IN GENERAL.—Section 21(a)(5) of the Social Security Act (as amended by section 2 of this Act) is amended by inserting after paragraph (6) the following new paragraph:

"(7)(A) In the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection, who—

(i) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986 and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

(ii) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985, and

(iii) first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subparagraph (E), before indexing (1) a payment determined under the Railroad Retirement Act of 1974 and 1977, (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 221, and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 210(m)) which is based in whole or in part upon his or her earnings for service which did not constitute employment as defined in section 210 for purposes of this title, for purposes of this paragraph (except for the treatment in this paragraph of subparagraph (d)(3) referred to as 'noncovered service'), the primary insurance amount of that individual during his or her concurrent entitlement to such noncovered service and to old-age or disability insurance benefits shall be computed or recomputed under subparagraph (B) or subparagraph (D) (as applicable).

(B) In the case of an individual who first performs service described in subparagraph (A) after the 12th calendar month following the date of the enactment of the Public Servant Retirement Protection Act, if paragraph (1) of this subsection would apply to such individual (except for the treatment in this paragraph of subparagraph (d)(3)) referred to as 'noncovered service'), the individual's primary insurance amount shall be the product derived by multiplying—

(i) the individual's primary insurance amount, as determined under paragraph (1) of this subsection and subparagraph (C)(i) of this paragraph, by

(ii) a fraction—

"(i) the numerator of which is the individual's average indexed monthly earnings (determined without regard to subparagraph (C) of section 210(m)) which is based in whole or in part upon his or her earnings for service which did not constitute employment as defined in section 210 for purposes of this title, for purposes of this paragraph (except for the treatment in this paragraph of subparagraph (d)(3) referred to as 'noncovered service'),

(ii) the denominator of which is an amount equal to the individual's average indexed monthly earnings (as determined under paragraph (1) of this subsection which is based in whole or in part upon his or her earnings for service which did not constitute employment as defined in section 210 for purposes of this title) which is rounded, if not a multiple of $0.10, to the next lower multiple of $0.10.

(C)(i) For purposes of determining an individual's primary insurance amount pursuant to subparagraph (B)(i), the individual's average indexed monthly earnings shall be determined by treating any insured months after 1950 on which the individual's monthly periodic payment referred to in subparagraph (A) is based (other than noncovered service) as a member of service (as defined in section 210(m)) as 'employment' as defined in section 210 for purposes of this title (together with all other service performed by such individual consisting of 'employment' as so defined).

(ii) For purposes of determining average indexed monthly earnings as described in clause (i), the Commissary of Social Security shall provide by regulation for a method for determining the amount of wages derived from service performed after 1950 on which the individual's periodic payment referred to in subparagraph (A) is based (other than noncovered service) as a member of service which is to be treated as 'employment' solely for purposes of clause (i). Such method shall provide for reliance on employment records which are provided by the individual and which constitute a reasonable basis for treatment of service as 'employment' for
such purposes, together with such other information received by the Commissioner as the Commissioner may consider appropriate as a reasonable basis for treatment of service as ‘employment’.

“(D)(i) In the case of an individual who has performed service described in subparagraph (A) during the 12th calendar month following the date of the enactment of the Public Servant Retirement Protection Act, if paragraph (1) of this subsection would apply to such individual (except for subparagraph (A) of this paragraph), there shall first be computed an amount equal to the individual’s primary insurance amount under paragraph (1) of this subsection, except for purposes of such computation the percentage of the individual’s average indexed monthly earnings established by subparagraph (A)(i) of paragraph (1) shall be the percent specified in clause (ii). There shall then be computed (without regard to this paragraph) a second amount, which shall be equal to the individual’s primary insurance amount under paragraph (1) of this subsection, except that such second amount shall be reduced by an amount equal to one-half of the portion of the individual’s primary insurance amount which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service to which the individual is entitled (or is deemed to be entitled) for the initial month of his or her concurrent entitlement to such monthly periodic payments and to old-age or disability insurance benefits. There shall then be computed (without regard to this paragraph) a third amount, which shall be equal to the individual’s primary insurance amount determined under subparagraph (B) as if subparagraph (B) applied in the case of such individual. The individual’s primary insurance amount is the benefit upon which the amounts computed under this subparagraph (before the application of subsection (i)).

“(ii) For purposes of clause (i), the percent specified in this clause is—

```
(1) 80.0 percent with respect to individuals who become eligible (as defined in paragraph (3)(B)) for old-age or disability insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62) in 1986;

(2) 70.0 percent with respect to individuals who so become eligible in 1987;

(3) 60.0 percent with respect to individuals who so become eligible in 1988;

(4) 50.0 percent with respect to individuals who so become eligible in 1989; and

(5) 40.0 percent with respect to individuals who so become eligible in 1990 or thereafter.
```

“(E)(i) Any periodic payment which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equal to that of a payment made on a monthly basis.

“(ii) In the case of an individual who has elected to receive a periodic payment that has been reduced in accordance with this subparagraph (E)(i), the payment shall be deemed to be increased (for purposes of any computation under this paragraph or subparagraph (D)(i) by the amount of such reduction.

“(iii) For purposes of this paragraph, the term ‘periodic payment’ includes a payment payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

“(F)(i) Subparagraph (D) shall not apply in the case of an individual who has 20 or more years of coverage. In the case of an individual who has more than 20 years of coverage but less than 30 years of coverage (as so defined), the percent specified in the applicable subparagraph (D)(i) shall (if such percent is smaller than the applicable percent specified in the following table) be deemed to be the percent specified in the following table:

<table>
<thead>
<tr>
<th>Years of Coverage</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>18-20</td>
<td>50%</td>
</tr>
<tr>
<td>21</td>
<td>55%</td>
</tr>
<tr>
<td>22</td>
<td>60%</td>
</tr>
<tr>
<td>23</td>
<td>65%</td>
</tr>
<tr>
<td>24</td>
<td>70%</td>
</tr>
<tr>
<td>25</td>
<td>75%</td>
</tr>
<tr>
<td>26</td>
<td>80%</td>
</tr>
<tr>
<td>27</td>
<td>85%</td>
</tr>
</tbody>
</table>

“(ii) For purposes of clause (i), the term ‘year of coverage’ shall have the meaning provided in paragraph (1)(C)(ii), except that the reference to ‘15 percent’ therein shall be deemed to be a reference to ‘25 percent’.

“(G) An individual’s primary insurance amount determined under this paragraph shall be deemed to be computed under paragraph (1) of this subsection for the purpose of applying other provisions of this title.

“(H) This paragraph shall apply in the case of an individual whose eligibility for old-age or disability insurance benefits is based on an agreement concluded pursuant to section 223 or an individual who on January 1, 1984—

```
(i) is an employee performing service to which social security coverage is extended on that date solely by reason of the amendments made by section 101 of the Social Security Amendments of 1983; or

(ii) is an employee of a nonprofit organization which social security coverage is extended on that date solely by reason of the amendments made by section 102 of that Act, unless social security coverage did not have in effect a waiver certificate under section 3121(k) of the Internal Revenue Code of 1986 and to the employees of which social security coverage is extended on that date solely by reason of the amendments made by section 102 of that Act, unless social security coverage had previously extended to service performed by such individual as an employee of that organization under a waiver certificate which was subsequently (prior to December 31, 1983) terminated.
```

(2) Consequences.

(A) Section 215(d)(3) of such Act (42 U.S.C. 415(d)(3)) is amended—

```
(i) by striking ‘‘subparagraph (a)(7)(C)’’ each place it appears and inserting ‘‘subparagraph (a)(7)(E)’’;

(ii) by striking ‘‘subparagraph (B)’’ and inserting ‘‘subparagraph (D)’’; and

(iii) by striking ‘‘subparagraph (F)’’.
```

(B) Section 215(b)(9)(A) of such Act (42 U.S.C. 415(b)(9)(A)) is amended by striking ‘‘(a)(7)(C)’’ and inserting ‘‘(a)(7)(E)’’.

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to monthly insurance payments made with or after the 12th calendar month following the date of the enactment of this Act.

Notwithstanding section 215(f) of the Social Security Act, the Commissioner of Social Security shall recompute primary insurance amounts to the extent necessary to carry out the amendments made by this Act.

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

S. 2458. A bill to provide for the conveyance of certain public lands in and around historic mining townsites in Nevada, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today on behalf of myself and Senator ENSIGN to introduce the Nevada Mining Townsite Conveyance Act, which will address an important public land issue in rural Nevada. As you may know, the Bureau of Land Management manages over 97 percent of the State of Nevada. That’s more than 61 million acres of land.

This fact makes it necessary for our State and our communities to pursue Federal remedies for problems that in other States can be handled by a much more expeditious manner. With this in mind, Senator ENSIGN and I look forward to working with our colleagues to pass this common-sense legislation in a bipartisan and timely fashion.

Two rural counties in Nevada have asked for our help in settling longstanding trespass issues that hurt 2 historic mining communities. The towns of Ione and Gold Point have been crossed by historic trails for over 100 years. Many residents live on land that their families have ostensibly owned for many decades. These citizens have paid their property taxes and made improvements to their properties, rela
cated historic structures and built new ones.

The documents by which many of these people claim possession of the properties date back many years. In fact, some of the deeds are historic docu
tuments themselves. Yet because many of these documents do not satisfy modern requirements for demonstrating land title, they have been deemed invalid. In other words, the Bureau of Land Management determined that some of the residents of Ione and Gold Point are trespassing on Federal land.

This unfortunate situation puts the BLM at odds with the local residents and county governments. Nye County, Esmeralda County, and the BLM have worked together for almost 10 years to come up with a solution to this problem. All of these parties support the legislation that we offer today as a solution to these land ownership conflicts and as a means of promoting responsible resource management. All of the land included in our bill has been identified by the BLM for disposal.

Our legislation represents the first of a two-part solution. Under this bill, specified lands within the historic mining townsites of Ione and Gold Point would be conveyed to the respective counties. Under the provisions of a separate piece of legislation, the counties will then re-convey the land to these people or entities who can demonstrate ownership or longstanding occupancy of specific land parcels.

The sum of our bill is that it conveys for no consideration approximately 760 acres in Ione and Gold Point to the counties of Nye and Esmeralda. As a condition of the conveyance, all historic and cultural resources contained in the townsites shall be preserved and protected under applicable Federal and State law. These conveyances will ben
efit the agencies that manage Nevada’s
vast Federal lands as well as the proud citizens of our rural communities. We sincerely hope that our colleagues will support this legislation. It is a practical solution that deserves swift passage. We salute the Bureau of Land Management, the counties, and the local residents for their cooperation and hard work in crafting this excellent compromise.

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

The Saunders offered no objection, the bill was ordered to be printed in the RECORD, as follows:

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 ‘‘Nevada Mining Townsite Conveyance Act’’.

SEC. 2. DISPOSAL OF PUBLIC LANDS IN MINING TOWNSITES, ESMERALDA AND NYE COUNTIES, NEVADA.

(a) FINDINGS.—Congress finds the following:

(1) The Federal Government owns real property in and around historic mining townsites in the counties of Esmeralda and Nye in the State of Nevada.

(2) While the real property is under the jurisdiction of the Secretary of the Interior, acting through the Bureau of Land Management, some of the real property has been occupied for decades by persons who took possession by purchase or other documented and putatively legal transactions, but whose title or interest in the real property, even if valid, is subject to claims from the Federal Government or any successor to it.

(3) As a result of the confused and conflicting ownership claims, the real property is difficult to manage under multiple use policies and creates a continuing source of friction and unease between the Federal Government and local residents.

(4) All of the real property is appropriate for disposal for the purpose of promoting administrative efficiency and effectiveness, and the Bureau of Land Management has already identified several parcels of the real property for disposal.

(b) MINING TOWNSITE DEFINED.—In this section, the term ‘‘townsite’’ means real property in the counties of Esmeralda and Nye, Nevada, that is owned by the Federal Government, but upon which improvements were constructed because of a mining operation on or near the property and based upon the belief that:

(1) the property had been or would be acquired from the Federal Government by the entity that operated the mine; or

(2) the person who made the improvement had a valid claim for acquiring the property from the Federal Government.

(c) CONVIVANCY AUTHORITY.—

(1) In general.—Notwithstanding sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715c), the Secretary of the Interior, acting through the Bureau of Land Management, shall con-

vev, without consideration, all right, title, and interest of the United States in and to mining townsites (including improvements thereon) identified for conveyance on the maps entitled ‘‘Nevada Mining Townsite: Ione Land Disposal Map Nye County’’ and ‘‘Original Mining Townsite Gold Point Land Disposal Map Esmeralda County’’ dated October 29, 2003.

(2) AVAILABILITY OF MAPS.—The maps referred to in paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Secretary of the Interior, including the office of the Bureau of Land Management located in the State of Nevada.

(d) RECONVEYANCE TO OCCUPIANTS.—In the case of a mining townsite conveyed under subsection (c) for which a valid interest is proven by one or more persons, under the provisions of Nevada Revised Statutes Chapter 244, the county that received the mining townsite under paragraph (1) shall reconvey the property to that person or persons by appropriate deed or other legal conveyance as provided by law. A person who proves the validity of a claim under this subsection submitted more than 10 years after the date of the enactment of this Act.

(e) PROTECTION OF HISTORIC AND CULTURAL RESOURCES.—As a condition on the conveyance of a mining townsite under subsection (c), all historic and cultural resources (including improvements) on the mining townsite shall be preserved and protected in accordance with applicable Federal and State law.

(f) VALID EXISTING RIGHTS.—The conveyance of a mining townsite under subsection (c) shall be subject to valid existing rights, including any easement or other right-of-way or lease in existence as of the date of the conveyance. For the conveyance of a mining townsite under subsection (c), all historic and cultural resources shall be maintained, unless those rights or interests are deemed abandoned and void or null and void under—

(1) section 2320 of the Revised Statutes (30 U.S.C. 21 et seq.);

(2) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); or


(g) SURVEY.—A mining townsite to be conveyed by the United States under this section shall be sufficiently surveyed to legally describe the land for patent conveyance.

(h) RELEASE.—On completion of the conveyance of a mining townsite under subsection (c), the United States shall be relieved from liability for, and shall be held harmless from, claims arising from the presence of improvements and materials on the conveyed property.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of the Interior such amounts as may be necessary to carry out the conveyances required by this section, including funds to cover the costs of cadastral and mineral surveys, mineral potential reports, hazardous materials, biological, cultural and archaeological examinations and other expenses incidental to the conveyances.

By Mr. ROCKEFELLER:

S. 2459. A bill to authorize the Secretary of Homeland Security to award research and equipment grants, to provide a tax credit for employers who hire temporary workers to replace employees receiving first responder training, to provide school-based mental health training, and for other purposes; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, I am pleased today to introduce the Community Security Act of 2004. This bill is intended to help prepare our Nation to cope with future disasters, as well as help the daily work of our first responders, by adequately training and equipping them, and by increasing Federal investments in relevant research and development. While much of the bill applies generally to all first responders, this legislation gives special emphasis to the role of volunteer first responders.

As my colleagues surely know, volunteers make up a very significant portion of our Nation’s fire service, as well as emergency medical personnel and, of course, the role of volunteers in law enforcement. The role of volunteers is especially prominent in rural areas, such as in my State of West Virginia. Making certain that local governments can recruit and retain first responders, and that they are properly serving the men and women have the necessary tools, are essential factors in protecting our communities.

Inspiration for much of this bill came from the West Virginia Summit on Homeland Security, which I hosted in November of last year, and from the numerous roundtable discussions I have had with my State’s first responders since the terrorist attacks on our country on September 11, 2001. During the Summit and in the discussions that preceded it, first responders, educators, health officials, and local elected officials from around West Virginia provided me with thoughtful analysis of what works in Federal assistance programs, what doesn’t, and what has been completely lacking.

Although the President and Congress have made great strides in improving our homeland security, there are still gaping holes in our level of preparedness that must be filled. For the most part, the Federal Government is the only source of funding for this work; work that must be done. This legislation is intended to help prepare our Nation to cope with future disasters, as well as help the daily work of our first responders, by adequately training and equipping them, and by increasing Federal investments in relevant research and development. While much of the bill applies generally to all first responders, this legislation gives special emphasis to the role of volunteer first responders.

What was reiterated in meeting after meeting was that the gaps were many, and that additional State funding was unlikely. As almost every State in the Union uses its budget to fund responses to terrorism, I expect my colleagues have heard much the same thing. First responders and local politicians need to recruit and train volunteers; they need the Federal Government to help them supply these men and women with basic lifesaving and interoperable communication equipment; and they need help in fostering cooperation among not only the
different professions within the first responder community, but between first responders and the education and social service communities.

Many areas of concern were discussed and it became clear to me that no one program could address all of these problems. Instead of introducing a number of small bills, I’ve put together a package of legislation that contains several arguably unrelated provisions that have one thing in common—each is designed to improve homeland security at the local level.

In West Virginia and across the Nation, the numbers of volunteer first responders have been dwindling due to a number of factors—National Guard and Reserve call-ups and changing American lifestyles that leave little time for the serious commitment necessary to be a first responder. It is believed that many more people would volunteer, or would continue in their service as volunteers, if there were a way to carve out time for the training involved. In addition to basic training, West Virginia and other states require additional training for first responders who choose to serve in units specializing in Weapons of Mass Destruction (WMD) to familiarize themselves with mitigation equipment and training materials. In fact, Secretary Ridge has cited West Virginia's homeland security plan, including development of highly trained Regional Response Teams, as an example for other states to follow.

The problem is, earning the right to participate is one thing in common—each is designed to motivate and secure a trained workforce and training must be a sustainable program to be developed within the Department of Homeland Security. The Homeland Security Act adds the Secretary of Homeland Security to assess the critical needs of the first responder community. It proposes to expand it with a new research grant program to supplement the existing programs that have been conducted on human factors in homeland security, including first responder group dynamics, citizens' responses to disasters, and factors behind preparation efforts. We know that a primary goal of terrorists is to disrupt social systems, and this social disruption is often more devastating to a community than the attack itself. I have actively supported both basic and applied scientific research throughout my Senate career, and I believe science should guide policy. This research grant program will fund research on how terrorism and the threat of terrorism impacts the average citizen, how the inevitable societal disruption can be mitigated, and will help guide disaster planning and optimize the performance of first responder units.

This bill works to address these community needs in two ways. First, in the unfortunate event that a school is the scene of a disaster, or is called upon to assist a community in response to a disaster elsewhere, this bill provides that community with a reimbursement mechanism for related expenses. Second, the bill creates a sustainable program to provide school-based mental health services to all students. I am convinced that having mental health professionals in schools to assist students and faculty about disaster avoidance and preparation makes for safer, healthier schools and more stable communities.

Our institutions of higher learning are already contributing to homeland security. The Department of Homeland Security has programs of underrepresented civilizations, and this legislation proposes to expand it with a new research grant program to supplement the surprising dearth of research that has been conducted on human factors in homeland security, including first responder group dynamics, citizens' responses to disasters, and factors behind preparation efforts. We know that a primary goal of terrorists is to disrupt social systems, and this social disruption is often more devastating to a community than the attack itself. I have actively supported both basic and applied scientific research throughout my Senate career, and I believe science should guide policy. This research grant program will fund research on how terrorism and the threat of terrorism impacts the average citizen, how the inevitable societal disruption can be mitigated, and will help guide disaster planning and optimize the performance of first responder units and the systems designed to assist them.

Historically, some States have benefited more than others under regional grant systems and in response to that situation, our leading science funding organizations developed special programs to encourage the growth of research in underrepresented states. For example, the National Science Foundation designed the Experimental Program to Stimulate Competitive Research to support academic research and development across the nation and to counteract the trend that concentrated research expertise in a few states. This bill allows for a similar program to be developed within the Department of Homeland Security. Homeland security is regional and research and personnel expertise must be distributed around the country. Unfortunately, terrorist threats against the United States are not restricted to a single geographic group, or method of threat. Terrorism is possible in many parts of our country that have never had to prepare for, or respond to, such attacks. Addressing these threats requires regional and local expertise; thus, homeland security-related scientific and technological workforce and training must not be overly centralized.
Our country has worked extraor-
dinarily hard to prepare for disaster. The Local Preparation Act is designed to assist these preparation efforts by guaranteeing adequate numbers of first responders, providing them with the training and protection they need to improve the safety and security of our communities. Local preparation is the bedrock of our state-wide and national efforts. I firmly believe these goals will be achieved through the in-
novative programs contained in this bill. I applaud Summit partic-
pants as well as the men and women who have taken time out of their busy schedules to help work through the best way to design these new programs. Also, I want to thank first responders, both volunteer and career. After all, they are the original inspiration for this bill.

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

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

S. 2459
Be it enacted by the Senate and House of Rep-
resentatives of the United States of America in Congress as-
sembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Community Security Act”.

SECTION 2. TAX INCENTIVES TO FACILITATE TRAIN-
ING OR DISASTER RESPONSE BY IN-
DIVIDUALS SERVING AS VOLUNTEER FIRST RESPONDERS.

(a) FINDINGS.—Congress makes the fol-
lowing findings:

(1) Seventy percent of our Nation’s fire-
fighters are volunteers, as are many emer-
gency medical service and police personnel.

(2) States rely heavily on the services of these volunteer first responders.

(3) Many career first responders begin as volunteers.

(b) VOLUNTEER FIRST RESPONDER CREDIT.—

(1) IN GENERAL.—Subpart D of part IV of

section 51 of title 26 (relating to busi-
ness-related credits), as amended by this

Act, is amended by adding at the end the fol-
lowing:

“SEC. 45G. CREDIT TO EMPLOYERS OF VOLUN-
TEER FIRST RESPONDERS. 

“(a) GENERAL RULE.—For purposes of

section 38, the volunteer first responder em-
ployee credit determined under section

38(d) is—an amount equal to—

(1) the employment credit with respect to all qualified volunteer first responder em-
ployees of the taxpayer, plus

(2) the case of a small business em-
ployer, the replacement credit with respect
to all qualified volunteer first responder em-
ployees of the taxpayer, plus

“(b) EMPLOYMENT CREDIT.—For purposes of this

section—

“(1) IN GENERAL.—The employment credit with respect to any qualified volunteer first

responding employee of the taxpayer is an amount equal to the lesser of—

(A) the actual compensation amount with respect to such employee for such taxable year,
or

(B) $30,000.

“(2) ACTUAL COMPENSATION AMOUNT.—

“(A) IN GENERAL.—The term ‘actual com-

pensation amount’ means the amount of

compensation paid or incurred by the tax-

payer with respect to a qualified volunteer

first responder employee on any day when

such employee was absent from employment

for the purpose of participating in a qualified

activity.

“(B) COMPENSATION.—The term ‘compensa-

tion’ means any remuneration for employ-

ment, whether in cash or in kind, which is

deductible from the taxpayer’s gross income

under section 162(a)(1).

“(3) ELIGIBILITY.—No credit shall be al-

lowed under this subsection with respect to

every day that a qualified volunteer first

responding employee takes part in a quali-

fied activity which is not scheduled to work

for the reason other than to participate in a quali-

fied activity.

“(c) REPLACEMENT CREDIT.—For purposes of

this section—

“(1) IN GENERAL.—The replacement credit with respect to any qualified volunteer first

employee of the taxpayer is an amount equal to the

sum of—

(A) the qualified compensation with re-

spect to each qualified replacement em-

ployee of the taxpayer during the taxable year,

(B) the qualified overtime wages paid by the

taxpayer during the taxable year.

“(2) QUALIFIED ACTIVITY.—The term ‘quali-

fied activity’ means an activity relating to an em-

ergency preparedness or disaster response.

“(3) QUALIFIED COMPENSATION.—The term

‘qualified compensation’ means—

(A) compensation which is normally con-

tingent on the qualified replacement em-

ployee’s presence for work and which is de-

ductible from the gross income of the tax-

payer under section 162(a)(1).

“(B) compensation which is not character-

ized by the taxpayer as vacation or holiday

pay, as sick leave or pay, or as any other

form of pay for a non-specific leave of

absence,

(C) group health plan costs (if any) with

respect to the qualified replacement em-

ployee.

“(d) QUALIFIED REPLACEMENT EMPLOYEE.—

The term ‘qualified replacement employee’

means an individual who—

“(1) is hired to replace the

qualified volunteer first responder employee

of the taxpayer, but only with respect to the

period during which the qualified volunteer

first responder employee is an

employee of the taxpayer;

“(2) is hired to replace a

qualified volunteer first responder employee (other than a

qualified replacement employee) for duties normally performed by a qualified volunteer

first responder employee, but only with re-

spect to the period during which such quali-

fied volunteer first responder employee par-

ticipates in a qualified activity, including

time spent in travel status.

“(e) QUALIFIED OVERTIME WAGES.—For pur-

poses of this section, the term ‘quali-

fied overtime wages’ means the overtime

wages paid to an employee of the taxpayer (other than a

qualified replacement employee) for

duties normally performed by a qualified volunteer

first responder employee, but only with re-

spect to the period during which such quali-

fied volunteer first responder employee par-

ticipates in a qualified activity, including

time spent in travel status.

“(f) COORDINATION WITH OTHER CREDITS.—

The amount of credit otherwise allowable

under sections 51(a) and 1396(a) with respect to

any employee shall be reduced by the

credit allowed by reason of paragraph (1)(A)

with respect to such employee.

“(g) SELF-EMPLOYMENT CREDIT.—For pur-

poses of this section—

“(1) IN GENERAL.—The self-employment

credit with respect to a qualified volunteer

first responder employee is an amount equal to the amount paid or incurred by such taxpayer with respect to a qualified self-

employment replacement employee.

“(2) QUALIFIED VOLUNTEER FIRST RE-

SPONDER SELF-EMPLOYMENT TAXER.—The

term ‘qualified volunteer self-

employed taxpayer’ means an individual who—

“(A) has self-employment income (as de-

fined in section 1402) for the taxable year,

(B) holds a volunteer position as a fire-

fighter, law enforcement official, or emer-

gency medical service provider.

“(h) DEFINITIONS AND OTHER RULES.—For

purposes of this section—

“(1) QUALIFIED VOLUNTEER FIRST RE-

SPONDER EMPLOYER.—The term ‘qualified

volunteer first responder employee’ means an

individual who—

“(A) has been an employee of the taxpayer

for the 91-day period immediately preceding

the period during which the qualified employee

participates in a qualified activity, and

“(B) holds a volunteer position as a fire-

fighter, law enforcement official, or emer-

gency medical service provider.

“(2) QUALIFIED ACTIVITY.—The term ‘quali-

fied activity’ means—

“(A) training with respect to duties per-

formed in connection with the volunteer

position of the qualified volunteer first

responder employee or qualified volunteer first

responding employee, and

“(B) performance of duties in connec-

tion with the volunteer position of the quali-

fied volunteer first responder employee or

qualified volunteer first responder self-

employed taxpayer, but only to the extent that

such duties take not less than 1 day to per-

form.

“(3) SMALL BUSINESS EMPLOYER.—

“(A) IN GENERAL.—For purposes of this

section—

“(B) CONTROLLED GROUPS.—For purposes of

subsection (a), all persons treated as a

single employer under subsection (b), (c),

or (d) of section 414 shall be treated as a

single employer.

“(2) CREDIT MADE PART OF GENERAL BUSINESS

CREDIT.—Section 36(b) of the Internal Rev-

enue Code of 1986 is amended by striking

“plus” at the end of paragraph (14), by strik-

ing the period at the end of paragraph (15)

and inserting “, plus”, and by adding at the end

the following new paragraph—

“(15) the volunteer first responder em-

ployee credit determined under section

45G.

“(3) TRANSITION RULE.—Section 36(d) of the

Internal Revenue Code of 1986 is amended by

adding at the end the following new para-

graph:

“NO CARRYBACK OF VOLUNTEER FIRST

RESPONDER EMPLOYEE CREDIT BEFORE ENACT-

MENT.—No portion of the unused business

credit for any taxable year which is attributable to the volunteer first responder employee credit determined under section 45G may be carried back to a taxable year beginning before January 1, 2004.

(4) DENIAL OF DOUBLE BENEFIT.—Section 280C(a) of the Internal Revenue Code of 1986 (relating to rule for employment credits) is amended by inserting after "45G," the following new section:

"(20) VOLUNTEER FIRST RESPONDER TRAINING EXPENSES.—The deduction allowed by section 22A.

(C) CONFORMING AMENDMENT.—The table of sections for part VII of chapter B of chapter 2 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 22A and inserting the following:

"Sec. 22A. Certain expenses of volunteer first responders.

"Sec. 225, Cross reference."

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

SEC. 3. CRITICAL NEED GRANTS FOR FIRST RESPONDERS.

(a) FINDINGS.—Congress finds the following:

(1) According to a report by the Council on Foreign Relations Independent Task Force, first responders in the United States are underfunded and unprepared for future natural, technological, and terrorist disasters.

(2) Local firefighters, police officers, and emergency medical personnel are responsible for disaster prevention, mitigation, and response.

(3) It is essential that first responders have basic safety equipment that is in good working order and customized, if appropriate, to do their jobs safely and effectively as possible.

(b) PURPOSE.—The purpose of this section is to establish a competitive grant program within the Department of Homeland Security to enhance the basic preparedness of first responders with the basic equipment needed to accomplish their homeland security goals.

(c) LOCAL CRITICAL NEED HOMELAND SECURITY GRANTS FOR FIRST RESPONDERS.—Title V of the Homeland Security Act of 2002 (6 U.S.C. 311 et seq.) is amended by adding at the end the following:

"SEC. 516. LOCAL CRITICAL NEED HOMELAND SECURITY GRANTS FOR FIRST RESPONDERS.

(a) DEFINITIONS.—As used in this section, the following definitions shall apply:

(1) BASIC PERSONAL EQUIPMENT.—The term "basic personal equipment" means equipment necessary to achieve the standard of basic preparedness established by the Under Secretary for Emergency Preparedness and Response under subsection (d) when compared to the standard of basic preparedness established under subsection (a).

(2) COMMUNICATIONS ENHANCEMENT.—The term "communications enhancement" means improvements to local first responder communications systems that are necessary to achieve the standard of basic preparedness established by the Under Secretary for Emergency Preparedness and Response under subsection (d), including—

(A) a dedicated telephone line;

(B) a computer with a high-speed connection to the Internet; and

(C) public information for shift supervisors, their commanders, and all first responders in a work unit.

(b) PURPOSE.—The purpose of this section is to provide grants to States and local educational agencies—

(1) to prepare for and respond to disasters or terrorism in or impacting schools; and

(2) to prevent avoidable disasters, such as in-school or school-related violence;

(3) to establish community-sustainable mental health programs in schools; and

(4) to train school personnel on mental health issues, including disaster and terrorism prevention, response, and mitigation.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, for each of fiscal years 2003 through 2007, such sums as may be necessary to carry out this section, which shall remain available until expended.

SEC. 4. SAFE SCHOOLS THROUGH MENTAL HEALTH PROGRAM.

(a) GRANTS AUTHORIZED.—Subpart 2 of part A of title IV of the Elementary and Secondary Education Act (20 U.S.C. 1001 et seq.) is amended by adding at the end the following:

"SEC. 4131. MENTAL HEALTH PROGRAMS.

(a) PURPOSE.—The purpose of this section is to provide grants to States and local educational agencies—

(1) to prepare for and respond to disasters or terrorism in or impacting schools; and

(2) to prevent avoidable disasters, such as in-school or school-related violence; and

(3) to establish community-sustainable mental health programs in schools; and

(4) to train school personnel on mental health issues, including disaster and terrorism prevention, response, and mitigation.

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

(1) Schools occupy a unique place in the community. In addition to their main mission of educating children, they serve a public education role and a role in community organization.

(2) Schools have new responsibilities in the homeland security era and in terms of disaster response. Schools often serve as community meeting places, centers of operation for disaster response, and shelters, and have a place in preventing some disasters from happening. Schools may also be called upon to play a role in the life of a disaster, such as keeping children safe after normal school hours.
“(3) Some disasters, such as in-school violence, are largely preventable. Mental health professionals in schools may be able to anticipate and prevent school-related disasters and are better positioned to mitigate disaster effects.

“(4) After any disaster, people benefit from returning to their normal routine to whatever extent possible. Schools may be in the position to mitigate disaster-related stress.

“(c) Definition.—In this section, the term ‘eligible entity’ means a public school or a local educational agency.

“(d) Safe Schools through Mental Health Program.—

“(1) Grants Authorized.—From funds made available to carry out this subpart under section 4003(2), the Secretary shall award grants to eligible entities to pay the Federal share of the cost of carrying out the activities described in paragraph (3).

“(2) Application.—An eligible entity that desires to receive a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

“(3) Use of Funds.—An eligible entity that receives a grant under this subsection shall use the grant funds to reimburse elementary and secondary schools for costs incurred by such schools—

“(A) during a disaster response; and

“(B) for school mental health counseling for a period of 13 months beginning on the date of the disaster.

“(2) Federal share of the cost of carrying out the activities described in paragraph (3) shall be not more than—

“(1) in paragraph (6), by striking ‘and’; and

“(2) in paragraph (7), by striking the period at the end and inserting ‘; and’; and

“(3) by adding at the end the following:

“(b) Provide annual reports on the progress and achievements of the Program to the Secretary.

“(d) Annual Report.—Not later than March 15 of each year, the Under Secretary for Science and Technology shall submit a report to Congress on the implementation of the Program.

“(e) Authorization of Appropriations.—There are authorized to be appropriated—

“(1) $5,000,000 for fiscal year 2005 to carry out subsection (c)(3); and

“(2) such sums as may be necessary for fiscal year 2006 to carry on the authority provided in this section.”

SEC. 5. HOMELAND SECURITY RESEARCH AND DEVELOPMENT GRANT PROGRAM.

(a) Findings.—Congress finds the following:

(1) The Department of Homeland Security is responsible for funding the intramural and extramural research and development to address the Department’s scientific and technological needs and requirements.

(2) Funding has been appropriated to the Department of Homeland Security to carry out significant scientific and technology development, and this funding will likely increase in the future.

(b) Purpose.—The purpose of this section is to establish a competitive grant program for homeland security research and development.

(c) Homeland Security Research and Development Grant Program.—Title III of the Homeland Security Act of 2002 (6 U.S.C. 181 et seq.) is amended by adding at the end the following:

“SEC. 314. COMPETITIVE RESEARCH GRANT PROGRAM.

“(a) Establishment.—The Secretary, in consultation with the Under Secretary for Science and Technology, shall establish a Homeland Security Competitive Research Grant Program (referred to in this section as the ‘Program’) to more equitably distribute Federal research and development funds by awarding competitive grants to universities and colleges in eligible States to conduct research projects relating to homeland security.

“(b) Eligible States.—During fiscal years 2005 and 2006, colleges and universities located in States and territories that qualify for the National Science Foundation’s EPSCoR program or the National Institutes of Health IDEA program shall be eligible for funding under the Program.

“(c) Responsibilities.—The Under Secretary for Science and Technology shall—

“(1) ensure that not less than 15 percent of the Program’s extramural research funding is allocated to universities and colleges in eligible States;

“(2) establish a cofunding mechanism for States with academic facilities that have not fully developed security-related science and technology to support burgeoning research efforts by the faculty or link them to established investigators;

“(3) provide for conferences, workshops, outreach, and technical assistance to researchers and academic institutions in eligible States on topics related to developing science and technology expertise in areas of high interest and relevance to the Department;

“(4) monitor the efforts of States to develop programs that support the Department’s mission;

“(5) implement a merit review program, consistent with program objectives, to ensure the quality of research conducted with Program funding; and

“(6) provide annual reports on the progress and achievements of the Program to the Secretary.

“(d) Annual Report.—Not later than March 15 of each year, the Under Secretary for Science and Technology shall submit a report to Congress on the implementation of the Program.

“(e) Authorization of Appropriations.—There are authorized to be appropriated—

“(1) $5,000,000 for fiscal year 2005 to carry out subsection (c)(3); and

“(2) such sums as may be necessary for fiscal year 2006 to carry on the authority provided in this section.”

SEC. 6. HOMELAND SECURITY RESEARCH EXPANSION GRANT PROGRAM.

(a) Findings.—Congress finds the following:

(1) The Department of Homeland Security should fund research, which explores the innovative human dimensions of homeland security.

(2) Infrastructure and transportation systems, and the systems designed to protect them, are only as effective as their operators allow.

(3) Because communication before, during, and after disasters is critical, the understanding of behavioral, psychological, and sociological sciences in this area is vital to the department’s mission.

(4) Several areas of social science are relevant to homeland security, including—

(A) theories and data regarding threat communication and the psychological impacts of such threats;

(B) citizen response to disaster;

(C) group behavior in response to a threat or actual disaster;

(D) theories and data about the impact of sustained attention and vigilance on reasoning; and

(E) risk analysis and decision-making and their application to homeland security.

(5) Since the primary goal of terrorism is to disrupt social systems, the Department of Homeland Security should support research on how attitudes and beliefs about terrorism influence—

(A) consumer confidence;

(B) population mobility;

(C) decisions about childbirth;

(D) behavioral and cultural norms; and

(E) attitudes toward immigrants, political institutions, and leaders.

“VERDATE MAR 15 2010 22:17 JAN 29, 2014 JKT 081600 PO 00000 E:\2004SENATE\S20MY4.REC S20MY4maher on DSKCGSP4G1 with SOCIALSECURITY
(6) Homeland security efforts would benefit from research on—
(A) the selection, management, and training of security personnel and first responders;
(B) the impact of stereotyping and marginalization of groups;
(C) hate crimes;
(D) the endurance and maintenance of fundamentalist, extremist, and antigovernment groups within the United States; and
(E) protection against the acts inspired by the group profiled in subparagraph (D).
(b) PURPOSE.—The purpose of this section is to establish a program to award research grants to examine the social dimensions of terrorism.
(c) RESEARCH EXPANSION GRANTS.—Title III of the Homeland Security Act of 2002 (6 U.S.C. 181 et seq.), as amended by section 5, is further amended by adding at the end the following:

"SEC. 315. RESEARCH EXPANSION GRANTS.
(a) IN GENERAL.—The Secretary shall award research grants to colleges and universities to—
"(1) analyze group dynamics during periods of extreme stress, including how first responders react during such periods;
"(2) help mitigate the stress and social disruption that often accompanies emergency situations;
"(3) analyze the social and cultural factors that may affect the performance of first responders;
"(4) expand human factors research to all modes of transportation including the use of infrastructure and transportation systems under evacuation circumstances;
"(5) develop and demonstrate compliance with operability standards for new technologies designed by human factors experts in conjunction with developers; and
"(6) examine the decision making of voluntary first responders under extended periods of disaster, including whether volunteer first responders would report to their primary jobs or their first responder positions if simultaneously called to both; and
"(b) APPLICATION.—Each college and university desiring a grant under this section shall submit a grant application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.
"(c) XTERNAL REPORTS.—(1) REPORT TO SECRETARY.—Grant recipients shall submit an annual report to the Secretary containing specific research findings that may be used to improve emergency preparedness and response efforts.
"(2) REPORT TO CONGRESS.—The Secretary shall submit an annual report to Congress on the grant program authorized by this section.
"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $40,000,000 for each of the fiscal years 2005 through 2007.".

By Mr. DOMENICI:
S. 2460. A bill to provide assistance to the State of New Mexico for the development of comprehensive State water plans, and for other purposes; to the Committee on Energy and Natural Resources.
Mr. DOMENICI. Mr. President, water is the life’s blood for New Mexico. When the water dries up in New Mexico, so will many of its communities.

As such, the scarcity of water in New Mexico is a dire situation. Unfortunately, the New Mexico Office of the State Engineer (NM OSE) lacks the tools necessary to undertake the Herculean task of effectively managing New Mexico’s water resources.

Today, I introduce today would create a standing authority for the State of New Mexico to seek and receive technical assistance from the Bureau of Reclamation and the United States Geological Survey. It would also provide the NM OSE the sum of $12.5 million in federal assistance to perform hydrologic models of New Mexico’s most important water systems. This bill would provide the NM OSE with the best resources available when making crucial decisions about how best preserve our limited water stores.

Ever decreasing water supplies in New Mexico have reached critical levels and require immediate action. The Congress cannot sit idly by as water shortages cause death to New Mexico’s communities. I hope the Senate will give this legislation its every consideration.

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. 2690

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 "New Mexico Water Planning Assistance Act".

SEC. 2. DEFINITIONS. In this Act:

(a) IN GENERAL.—On the request of the Governor of the State and subject to subsections (b) through (e), the Secretary shall—

(1) provide to the State technical assistance and grants for the development of comprehensive State water plans;

(2) conduct water resources mapping in the State; and

(3) conduct a comprehensive study of groundwater resources (including potable, brackish, and saline water resources) in the State; assess the quantity, quality, and interaction of groundwater and surface water resources;

(b) TECHNICAL ASSISTANCE.—Technical assistance is provided under subsection (a) may include—

(1) acquisition of hydrologic data, groundwater characterization, database development, and data distribution;

(2) expansion of climate, surface water, and groundwater monitoring networks;

(3) assessment of existing water resources, surface water storage, and groundwater storage potential;

(4) numerical analysis and modeling necessary to provide an integrated understanding of water resources and water management options;

(5) participation in State planning forums and planning groups;

(6) coordination of Federal water management planning efforts;

(7) technical review of data, models, planning scenarios, and water plans developed by the State; and

(8) provision of scientific and technical specialists to support State and local activities.

(c) ALLOCATION.—In providing grants under subsection (a), the Secretary shall, subject to the availability of appropriations, allocate—

(1) $5,000,000 to develop hydrologic models and acquire associated equipment for the New Mexico Rio Grande main stem sections and the Taos and Rio, Río Nambe, Pojoaque and Tesque, Río Chama, and Lower Río Grande tributaries;

(2) $1,500,000 to complete the hydrographic survey development of hydrologic models and acquire associated equipment for the San Juan River and tributaries;

(3) $1,000,000 to complete the hydrographic survey development of hydrologic models and acquire associated equipment for Southwest New Mexico, including the Animas Basin, the Gila River, and tributaries;

(4) $4,500,000 for statewide digital orthophotography mapping; and

(5) such sums as are necessary to carry out additional projects consistent with subsection (b).

(d) NON-REIMBURSABLE AND NO-COST-SHARING.—Any assistance or grants provided to the State under this Act shall be made on a non-reimbursable basis and without a cost-sharing requirement.

(e) AUTHORIZED TRANSFERS.—On request of the State, the Secretary shall directly transfer to 1 or more Federal agencies any amounts made available to the State to carry out this Act.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS. This Act is authorized to be appropriated to carry out this Act $2,500,000 for each of fiscal years 2005 through 2009.

By Mr. DEWINE (for himself and Mr. KENNEDY):
S. 2461. A bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products; to the Committee on Health, Education, Labor, and Pensions.
Mr. DEWINE. Mr. President, today I join our colleague from Massachusetts, Senator KENNEDY, to introduce a bill
designed to help protect consumers—especially children—from the dangers of tobacco. Simply, our bill would finally give the Food and Drug Administration (FDA) the authority it needs to effectively regulate the manufacture and sale of tobacco products. I say finally, because there are some tobacco proponents who would have you believe that the Master Settlement Agreement, which was signed in 1998 by 46 States, resolved the issue of youth tobacco use by imposing advertising restrictions. Right now, the FDA requires the printed ingredients for chewing gum, lipstick, bottled water, and ice cream, but not for cigarettes—a product that causes 20% of all heart disease deaths and is responsible for the preventable death in the United States.

Think about this: If a company wants to market a food product as “fat-free” or “reduced-fat” or “lite,” that company is required to meet certain standards regarding the number of calories or the amount of fat grams in that product. Yet, cigarette companies can call a cigarette a “light” or “mild” and not reveal a thing about the amount of tar or nicotine or arsenic in that supposed “safer” cigarette. Not having access to all the information about this deadly product just makes no sense, and it is something that needs to change. By introducing this bill, we are finally saying that we are going to make sure the smoke companies and tobacco manufacturers have free reign over their markets and consumers any more.

Today, we are taking a step toward making sure the public gets adequate information about whether to continue smoking or to stop smoking in the first place. With this bill, we are not just saying “buyer beware.” We are saying “tobacco companies be honest.” We are saying “tobacco companies stop marketing to innocent children.” We are saying “tobacco companies tell consumers about what they are really buying.”

The legislation that Senator Kennedy and I are introducing would do just that.

One of the most dramatic changes our bill makes is that tobacco products will now have to be approved before they reach consumer hands. It just makes sense that tobacco products should not be able to imply that they may be safer or less harmful to consumers because they use descriptors such as “light” or “mild” or “low” to characterize the level of a substance in a product. The National Cancer Institute has found that many smokers misinterpret a brand labeled as a “light” or “mild” or “low-nicotine” brand, and these “light” cigarettes cause fewer health problems than other cigarettes. Our bill would require specific approval by the FDA to use those words, so that consumers could be informed.

Think about this: Right now, the Food and Drug Administration (FDA) requires Philip Morris/Altria to print the ingredients in its Kraft “Macaroni and Cheese,” but not the ingredients in its cigarettes—a product that contributes to the deaths of more than 440,000 people a year.

Today, the FDA requires Philip Morris-own Nabisco to print the ingredients contained in “Oreo Cookies” and “Ritz Crackers,” but not the ingredients in its cigarettes—even though cigarettes cause one-third of all cancer deaths and 90 percent of lung cancer deaths. It is unfathomable to me that we would require the listing of ingredients on these products, yet not require the listing of ingredients for one of the leading causes of death and disease.

Our bill has the support of Campaign for Tobacco Free Kids. Our bill has the support of Philip Morris. Our bill has the support of the American Heart Association, the American Lung Association, and the American Cancer Society. Our bill is a bill that I am proud of, that is worthy of the Senate’s consideration, and that will provide the FDA—finally—with strong and effective authority over the regulation of tobacco products.

I realize full well that tobacco users and non-users, alike, recognize and understand that tobacco products are hazardous to their health. We all know that smoking is not a healthy habit. But, that’s an obvious point in comparison to the fact that right now, many consumers, including smokers, are surprised to learn that no Federal agency has the authority to require tobacco companies to list the ingredients that are in their products—things like traces of toxic formaldehyde, hydrocarbons, and ammonia. And, no Federal agency has the authority to inspect tobacco manufacturers—how the cigarette and smokeless tobacco products are made, whether the manufacturers’ machines and equipment are clean, etc. While simply listing the ingredients toxic as they may be, might not seem like much to some, think of it this way: Current law makes sure we know about is the harm caused by or the amount of fat grams in that product. Yet, cigarette companies can call a cigarette a “light” or “mild” and not reveal a thing about the amount of tar or nicotine or arsenic in that supposed “safer” cigarette.

Tobacco companies are able to make these implied health claims about their products because they are not regulated. Rather than really helping smokers quit entirely, they are often misled into thinking that the “light” or “mild” or “low-nicotine” cigarettes they smoke are safer. In addition, people may begin to start smoking again because they think some of these products are “safer” cigarettes have not significantly decreased the disease risk. In fact, the use of these cigarettes may be partly responsible for the increase in long-term smokers who have switched to the low-tar, low-nicotine brands. Finally, switching to these cigarettes may provide smokers with a false sense of reduced risk, when the actual amount of tar and nicotine consumed may be the same as, or more than, the previously unknown, higher yield brand.

So the products that tobacco companies develop and market as being “safer” are not safer. Rather than people quitting smoking entirely, they are often misled into thinking that the “light” or “mild” or “low-nicotine” cigarettes they smoke are safer. In addition, people may begin to start smoking again because they think some of these products aren’t so bad for them—that the products have been made safer or better for them somehow and are okay to smoke.

Tobacco companies are able to make these implied health claims about their products because they are not regulated. Consumers have no choice but to trust the tobacco companies to reveal the ingredients and marketing claims about their products. That is just absurd to me. These are all things that should be examined, reviewed, and commented on by the Food and Drug
Administration to determine whether it is appropriate for these products to be marketed as “reduced-risk” products, so the public knows what they are choosing to consume.

Tobacco advertising is in magazines and on television, and it is through the Internet. Tobacco advertising is in convenience stores, along the aisles and at the checkout counter right beside the candy where children are likely to see it. Tobacco advertising is at sporting events, part of promotional items, where advertisements “buy 1 get 1 free.” Tobacco advertising is on the Internet and in the daily delivery of mail.

Our bill would make changes regarding tobacco advertising. It would give the FDA authority to restrict tobacco industry marketing—consistent with the First Amendment—that targets our children. Our bill would require advertisements to be in black and white text only and would define adult publications in terms of readership.

An issue that is related to advertising and marketing of tobacco products has to do with the flavored tobacco products, which clearly target our children. We have probably all seen the cigarettes—flavored like strawberry, chocolate, and wild rum. The scent of strawberry filters through the unopened pack of cigarettes. And guess what, the cigarettes smell like candy. A recent New York Times article described the scent of chocolate-flavored cigarettes as if “someone had lifted the lid on a Whitman Sampler.”

I can’t speak for every parent, but I know my 8 grandchildren like candy, and they like the smell of chocolate, and they would be curious to try something that smells or tastes like candy. Cigarettes shouldn’t be flavored and marketed in such a way to attract children and to encourage children to smoke. Our bill bans the use of flavors such as cherry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, coffee and other flavorings that would attract children to the product.

Despite the fact that 40 million Americans use tobacco products, many of them do not know what is inside the cigarette or the tobacco product they ingest. They do not know the ingredients or the constituents, like tar or nicotine, that are in the products they use. Consumers do not know what additives are included in the product. Additives—such as propylene glycol or urea, both of which may make the tobacco product more addictive because they increase the delivery of nicotine. Tobacco companies do not disclose the specific ingredients in their products because they don’t have to. Tobacco products are unregulated.

Our legislation would give consumers more information about what’s in tobacco products. Specifically, the bill would provide the FDA with the ability to publish the ingredients of tobacco products.

It would require a listing of all ingredients, substances, and compounds added by the manufacturer to the tobacco, paper, or filter. It would require a description of the content, delivery, and form of nicotine in each tobacco product.

It would require information on the health, behavioral, and physiologic effects of the tobacco products.

I think it is equally important that I mention what our bill does not do. Here are some of the areas where authority is not conferred to FDA: Our bill does not allow FDA to ban tobacco products or to eliminate nicotine from a tobacco product. The bill ensures that FDA will not have the power to use its “performance standard” authority to ban cigarettes, smokeless tobacco or any other category of tobacco products, or to reduce their nicotine yields to zero.

Our bill does not allow FDA to establish a minimum smoking age higher than 18. The bill explicitly forbids FDA from establishing a minimum age higher than 18 years of age to purchase tobacco products.

Our bill treats all tobacco retailers equally. Our bill specifically provides that FDA can’t prohibit the sale of tobacco products in any particular category of retail outlet. Our bill forbids FDA from creating a more permissive set of advertising rules for adult-only establishments. This provision protects retailers and convenience store owners.

I think it is appropriate for following good manufacturing practices—a product that is never regulated for far too long—a product that for the past century has gone unregulated. It is a product that has under the minimum legal age to purchase tobacco products, or to reduce their nicotine yields to zero.

The bill that Senator KENNEDY and I introduce today gives the FDA the authority to regulate a product that has gone unregulated for far too long—a product that for the past century has not revealed its ingredients to the consumer—a product whose manufacturing facilities are not inspected or accountable for following good manufacturing practices. It is a product that is never reviewed or approved before reaching the hands of 40 million consumers, many of whom are just children. Congress needs to put an end to this. Congress should put an end to the marketing of tobacco products to children. Congress should put an end to the ability of tobacco companies to make claims, whether they are implied claims or direct claims, about their products. Congress should put an end to tobacco companies putting any ingredient they choose in their products, without disclosing it to the consumer. It is time Congress give the FDA authority to it needs to fix these problems.
public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under Article I, Section 8 of the Constitution, the Congress is vested with the responsibility for regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities that substantially affect interstate commerce because they are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce because they are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(12) It is in the public interest for Congress to cooperate with the Food and Drug Administration with the authority to regulate tobacco products and the advertising and promotion of such products. The benefits to society from enacting such legislation would be significant in human and economic terms.

(13) Tobacco use is the foremost preventable cause of death in America. It causes over 400,000 deaths in the United States each year and approximately 8,600,000 Americans have chronic illnesses related to smoking.

(14) Reducing the use of tobacco by minors by 50 percent would prevent well over 6,500,000 of today's children from becoming regular, daily smokers, saving over 2,000,000 of them from premature death due to tobacco induced disease. Such a reduction in youth smoking would also result in approximately 75,000,000,000 in savings attributable to reduced health care costs.

(15) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products and these efforts have resulted in increased use of such products by youth.Past efforts to oversee these activities have not been successful in adequately preventing such use.

(16) In 2001, the tobacco industry spent more than $11,000,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(17) Tobacco product advertising often misleads the use of tobacco products by including tobacco products in such regulated, and the advertising and promotion of, tobacco products contained in such regulations are substantially related to accomplishing the public health goals of this Act.

(31) The regulations described in paragraph (30) will directly and materially advance the Federal Government's substantial interest in reducing the number of children and adolescents who use cigarettes and smokeless tobacco and in preventing the life-threatening health consequences associated with tobacco use.

(32) The regulations described in paragraph (30) do not impose no more extensive restrictions on communication by tobacco manufacturers and sellers than are necessary to reduce the number of children and adolescents who use cigarettes and smokeless tobacco and to prevent the life-threatening health consequences associated with tobacco use. Such regulations are narrowly tailored to restrict those advertising and promotional practices which are most likely to be seen or heard by young people and are not effective in reducing the problems addressed by such regulations. The reasonable restrictions on advertising and promotion of tobacco products contained in such regulations will lead to a significant decrease in the number of minors using and becoming addicted to tobacco products.

(33) Tobacco dependence is a chronic disease, one that typically requires repeated interventions to achieve long-term or permanent abstinence.

(34) Because the only known safe alternative to smoking is cessation, interventions should target all smokers to help them quit completely.

(35) Tobacco products have been used to facilitate and finance criminal activities both domestic and international. The illicit trade of tobacco products has been linked to organized crime and terrorist groups.

(36) It is essential that the Food and Drug Administration review products sold or distributed for use to reduce risks or exposures associated with tobacco products and that it be authorized to require any advertising and labeling for such products. It is also essential that manufacturers, prior to marketing such products, be required to demonstrate that the advertising and promotion of the product meets stringent criteria, and will benefit the health of the population as a whole, taking into account both users of tobacco products and persons who do not currently use tobacco products.

(37) Unless tobacco products that purport to reduce the risks to the public of tobacco use are actually reduced, such products can cause substantial harm to the public health to the extent that the individuals, who would otherwise not consume tobacco products, would use such products less, use tobacco products purporting to reduce risk, those who use products sold or distributed as modified risk products who do not in fact reduce risk or those who reduce their use of tobacco products, have a substantially increased likelihood of suffering disability and premature death.

(38) As the National Cancer Institute has found, many smokers mistakenly believe that "light" and "light" cigarettes cause fewer health problems than other cigarettes.

(39) Recent studies have demonstrated that there has been no reduction in risk on a population basis using "light" and "light" cigarettes.

(40) The dangers of products sold or distributed as modified risk products who do not in fact reduce risk are so high that there is a compelling governmental interest in insuring that statements about modified risk tobacco products are complete, accurate, and relate to the overall disease risk of the product.

(41) As the Federal Trade Commission has found, consumers have interpreted advertising in which one product is claimed to be less harmful than a comparable product, even in the presence of disclosures and warnings intended to provide clarification.

(42) Permitting manufacturers to make unsubstantiated statements concerning modified risk tobacco products, whether express or implied, even if accompanied by disclaimers would be detrimental to the public health.

(43) The only way to effectively protect the public health from the health harms of tobacco induced disease is to reduce the risks to the public of tobacco products by permitting the Food and Drug Administration to require that products that tobacco manufacturers sell or distribute are subject to the reduction of risks to the public that is achieved by modified risk tobacco products is to reduce the risks to the public of tobacco products sold or distributed.
support approval of these products is rigorous.

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to vest authority to the Food and Drug Administration to regulate tobacco products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), by recognizing it as the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products;

(2) to ensure that the Food and Drug Administration has the authority to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(3) to authorize the Food and Drug Administration to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(4) to provide new and flexible enforcement authority to ensure that there is effective oversight of the tobacco industry’s efforts to develop, introduce, and promote less harmful tobacco products;

(5) to vest the Food and Drug Administration with the authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(6) in order to ensure that consumers are better informed, to require tobacco product manufacturers to disclose research which has not previously been made available, as well as research generated in the future, relating to the health and dependency effects or safety of tobacco products;

(7) to continue to permit the sale of tobacco products to adults in conjunction with measures to assure that they are not sold or accessible to underage purchasers;

(8) to impose appropriate regulatory controls on the tobacco industry; and

(9) to strengthen legislation against illicit trade in tobacco products.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—Nothing in this Act (or an amendment made by this Act) shall be construed—

(1) to establish a precedent with regard to any other industry, situation, circumstance, or legal action or proceeding pending in Federal, State, or Tribal court, or any agreement, consignment decree, or contract of any kind.

(b) AGRICULTURAL ACTIVITIES.—The provisions of this Act and any amendment made by this Act which authorize the Secretary to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

SEC. 5. SEVERABILITY.

If any provision of this Act, the amendments made by this Act, or the application of any provision of this Act to any person or circumstance is held to be invalid, the remainder of this Act, the amendments made by this Act, and the application of the provisions of this Act to any other person or circumstance shall not be affected and shall continue to be enforced to the fullest extent possible.

TITLE I—AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION

SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) DEFINITION OF TOBACCO PRODUCTS.—Section 2(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

"(t) The term ‘tobacco product’ means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product other than tobacco used in manufacturing a component, part, or accessory of a tobacco product.

(b) The term ‘tobacco product’ does not mean—

"(A) a product in the form of conventional food (including water and chewing gum), a product for use in manufacturing a conventional food, or a product that is intended for ingestion in capsule, tablet, softgel, or liquid form; or

"(B) an article that is approved or is regulated as a drug by the Food and Drug Administration.

(c) The products described in paragraph (2)(A) shall be subject to chapter IV or chapter V of this Act and the articles described in paragraph (2)(B) shall be subject to chapter V of this Act.

"(d) A tobacco product may not be marketed in combination with any other article or product regulated under this Act (including a drug, biologic, cosmetic, medical device, or a dietary supplement)."

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesigning chapter IX as chapter X;

(2) by redesigning sections 901 through 907 as sections 901 through 907; and

(3) by inserting after section 803 the following:

"CHAPTER IX—TOBACCO PRODUCTS"

SEC. 900. DEFINITIONS.

"(a) In this chapter—

"(1) ADDITIVE.—The term ‘additive’ means any substance the intended use of which results or may reasonably be expected to result in its becoming a component or otherwise affecting the character of any tobacco product (including any substances intended for use as a flavoring, coloring or in producing, manufacturing, packaging, processing, preparing, treating, packaging, transporting, or holding), except that such term does not include tobacco or a pesticide residue in or on raw tobacco or a pesticide chemical.

"(2) BRAND.—The term ‘brand’ means a variety of tobacco product distinguished by the tobacco product’s characteristic content, flavoring used, size, fill, or packaging, logo, registered trademark or brand name, identifiable pattern of colors, or any combination of such characteristics; or

"(3) CIGARETTE.—The term ‘cigarette’ has the meaning given that term by section 3(1) of the Federal Cigarette Labeling and Adverting Act (15 U.S.C. 321(3)(2012)), but includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filter, or nicotine content, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

"(4) CIGARETTE TOBACCO.—The term ‘cigarette tobacco’ means any tobacco product that consists of cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity.

"(5) COMMERCE.—The term ‘commerce’ has the meaning given that term by section 3(7) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 332(c)(7)).

"(6) COUNTERFEIT TOBACCO PRODUCT.—The term ‘counterfeit tobacco product’ means a tobacco product (or the container or labeling of such product) that traffickers, knowing or having reason to know that the product does not bear the trademark, trade name, or other identifying mark, imprint or device, or any likeness thereof, of a tobacco product listed in a registration under section 905(d)(1).

"(7) DISTRIBUTOR.—The term ‘distributor’ as used in this chapter includes any person who distributes a tobacco product to any person who furnishes the distribution of a tobacco product, whether domestic or imported, at any point from the original place of manufacture to the person who sells or otherwise distributes the product for personal consumption. Common carriers are not considered distributors for purposes of this chapter.

"(8) ILLICIT TRADE.—The term ‘illicit trade’ means any practice or conduct prohibited by law which relates to production, shipment, receipt, possession, distribution, sale, or purchase of tobacco products including any practice or conduct intended to facilitate such activity.

"(9) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given that term by section 3(7) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(c)).

"(10) LITTLE CIGAR.—The term ‘little cigar’ has the meaning given that term by section 3(7) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 332(c)(7)).


"(12) PACKAGE.—The term ‘package’ means a pack, box, carton, or container of any kind or nature containing tobacco (including cellophane), in which a tobacco product is offered for sale, sold, or otherwise distributed to consumers.

"(13) RETAILER.—The term ‘retailer’ means any person who sells tobacco products to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products is permitted.

"(14) ROLL-YOUR-OWN TOBACCO.—The term ‘roll-your-own tobacco’ means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

"(15) SMOKE CONSTITUENT.—The term ‘smoke constituent’ means any chemical or chemical compound in mainstream or sidestream smoke tobacco that either transfers from any component of the cigarette to the smoke or that is formed during the combustion or heating of tobacco, additives, or other component of the tobacco product.

"(16) SMOKELESS TOBACCO.—The term ‘smokeless tobacco’ means any tobacco product that consists of cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity.

"(17) STATE.—The term ‘State’ means any State of the United States and, for purposes of this chapter, includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

"(18) TOBACCO PRODUCT MANUFACTURER.—The term ‘tobacco product manufacturer’ means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product; or

(B) imports a finished cigarette or smokeless tobacco product for sale or distribution in the United States.

"(19) UNITED STATES.—The term ‘United States’ means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef,
"(a) IN GENERAL.—Tobacco products shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of other chapters—

(1) such products are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease (within the meaning of section 190.2(r) of chapter II or section 201(h)(2)); or

(2) a claim is made for such products under section 201(g)(1)(C) or 201(h)(3); or other than modified risk tobacco products approved under section 911.

(b) APPLICABILITY.—This chapter shall apply to all tobacco products subject to the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act, and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

(c) Scope.—

(1) IN GENERAL.—Nothing in this chapter, or any policy issued or regulation promulgated thereunder, or the Family Smoking Prevention and Tobacco Control Act shall be construed to affect the Secretary’s authority over, or the regulation of, products under this Act that are not tobacco products under another chapter.

(2) LIMITATION OF AUTHORITY.—

(A) IN GENERAL.—The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of a manufacturer of tobacco products, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, or shall any employee of the Food and Drug Administration have any authority to enter onto a farm owned by a producer of tobacco leaf without the written consent of the producer.

(B) EXCEPTION.—Notwithstanding any other provision of this subparagraph, if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer’s capacity as a manufacturer.

(3) A listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand.

(4) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine in accordance with regulations promulgated by the Secretary in accordance with section 4(a)(4) of the Federal Cigarette Labeling and Advertising Act.

(5) A listing of all constituents, including smoke constituents as applicable, identified by the Secretary as harmful or potentially harmful to health in each tobacco product of which the manufacturer, importer, or agent shall comply with regulations promulgated under section 915 in reporting information under this paragraph, where applicable.

(6) The methods used in, or the facilities or controls used for, its manufacture, packaging or storage are not in conformity with applicable requirements under section 906(e)(1) of this title, as described by an application described by an order under section 906(e)(2); or

(7) it is in violation of section 911.

"SEC. 903. MISBRANDED TOBACCO PRODUCTS.

(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

(1) if its labeling is false or misleading in any particular;

(2) if in package form unless it bears a label containing—

(A) the name and place of business of the tobacco product manufacturer, packer, or distributor;

(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count;

(C) an accurate statement of the percentage of the tobacco used in the product that is domestically grown tobacco and the percentage that is foreign grown tobacco; and

(d) the statement required under section 921(a), except that under subparagraph (B) reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

(3) if any word, statement, or other information required by this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in a size as required by the Secretary by regulation;

(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless its labeling conforms in all respects to such regulations;

(6) if it is manufactured, prepared, purposed, processed, or if it does not bear such symbols from the Secretary by regulation; or

(7) if it has an established name, unless it bears, to the exclusion of any other nonproprietary name, its established name prominently printed in a size as required by the Secretary by regulation.

(b) PRIOR APPROVAL OF LABEL STATEMENTS.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product. No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement, except for modified risk tobacco products as provided in section 911. No advertisement of a tobacco product published after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall, with respect to the labeling of the product, be published under section 4 of the Cigarette Labeling and Advertising Act and section 3 of the Comprehensive Tobacco Control Act.

"SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

(a) REQUIREMENT.—Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, each tobacco product manufacturer, importer, or agent shall submit to the Secretary the following information:

(1) A listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand. Effective beginning 2 years after the date of enactment of this chapter, the manufacturer, importer, or agent shall comply with regulations promulgated by the Secretary in accordance with section 915 in reporting information under this paragraph, where applicable.

(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine in accordance with regulations promulgated by the Secretary in accordance with section 4(a)(4) of the Federal Cigarette Labeling and Advertising Act.

(3) A listing of all constituents, including smoke constituents as applicable, identified by the Secretary as harmful or potentially harmful to health in each tobacco product of which the manufacturer, importer, or agent shall comply with regulations promulgated under section 915 in reporting information under this paragraph, where applicable.

(4) All documents developed after the date of enactment of the Family Smoking Prevention and Tobacco Control Act that relate to health, toxicological, behavioral, or economic effects of smokeless tobacco products, their constituents (including smoke constituents), ingredients, compounds, and additives, if applicable.

(b) DATA SUBMISSION.—At the request of the Secretary, each tobacco product manufacturer or importer of tobacco products, or any agent, shall submit to the Secretary any documents (including underlying scientific information) relating to
shall publish a public notice requiring each tobacco product manufacturer to list all harmful and potentially harmful constituents, including smoke constituents, ingredients, components, and additives.

(2) Any or all documents (including underlying scientific or financial information) relating to marketing research involving the use of tobacco products or marketing practices and the effectiveness of such practices used by tobacco manufacturers and distributors.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

(1) IN GENERAL.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market at the time of enactment of the Family Smoking Prevention and Tobacco Control Act, the manufacturer of such product shall provide the information required under this subsection.

(2) DISCLOSURE OF ADDITIVE.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive or increases the quantity of an existing tobacco additive, the manufacturer shall, except as provided in paragraph (3), at least 90 days prior to such action so advise the Secretary in writing.

(3) DISCLOSURE OF OTHER ACTIONS.—If at any time a tobacco product manufacturer eliminates or decreases an existing additive, or adds or increases an additive that has been regulated by the Secretary as an additive that is not a human or animal carcinogen, or otherwise harmful to health under intended conditions of use, the manufacturer shall within 60 days of such action so advise the Secretary in writing.

(1) IN GENERAL.—Not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall publish in a format that is understandable and not misleading to a lay person, and place on public display (in a manner determined by the Secretary) the list established under subsection (e).

(2) CONSUMER RESEARCH.—The Secretary shall conduct periodic consumer research to ensure that the list published under paragraph (1) is not misleading to lay persons. Not later than 5 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall submit to the appropriate committees of Congress a report on the results of such research, together with recommendations on whether such publication should be continued or modified.

(3) DATA COLLECTION.—Not later than 12 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a list of harmful and potentially harmful constituents that are known to constitute a health risk from each tobacco product by brand and by quantity in each brand and subbrand. The Secretary shall publish a public notice requesting by Internet submission of scientific and other information concerning the health and potentially harmful constituents in tobacco products and tobacco smoke.

SEC. 905. ANNUAL REGISTRATION.

(1) MANUFACTURE, PREPARATION, COMPOUNDING, AND PROCESSING.—The term ‘manufacture, preparation, compounding, or processing’ shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product in any manner to further the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery for sale to the ultimate consumer or user.

(2) NAME.—The term ‘name’ shall include in the case of a partnership the name of each partner, the name of each corporate officer and director, and the State of incorporation.

(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person.

(c) REGISTRATION OF NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

(d) REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins to manufacture, prepare, compound, or process tobacco products or tobacco products.

(e) UNIFORM PRODUCT IDENTIFICATION SYSTEM.—The Secretary may by regulation prescribe a uniform system for the identification of tobacco products and may require that persons who are required to list such tobacco products shall require such establishment to list such tobacco products in accordance with such system.

(f) PUBLIC ACCESS TO REGISTRATION INFORMATION.—The list filed under this section (i) shall list each tobacco product manufactured, prepared, compounded, or processed for commercial distribution for which such notice of discontinuance was reported, notice of such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such notice of discontinuance and such resumption to the Secretary under this subparagraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

(A) A list of each tobacco product standard which has been established under section 907 and which is subject to section 910, a reference to the authorizing enactment for the marketing of such tobacco product;

(B) A list of any other tobacco product contained in an applicable list with respect to which a tobacco product standard has been established under section 907 and which is subject to section 910, a reference to the authorizing enactment for the marketing of such tobacco product; and

(C) A list of each tobacco product contained in an applicable list with respect to which a tobacco product standard has been established under section 907 and which is subject to section 910, a reference to the authorizing enactment for the marketing of such tobacco product.

(g) BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENT.—A list of each tobacco product registered under this section and at least once in every 2-year period beginning with the date of registration, the date of last such inspection, the place of business, and the State of incorporation of each tobacco product standard which has been established under this section and at least once in every 2-year period beginning with the date of registration, the date of last such inspection, the place of business, and the State of incorporation of each tobacco product standard which has not been included in any list of tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which has not been included in the list filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration.

(h) FOREIGN ESTABLISHMENTS SHALL REGISTER.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, shall register under this section under regulations promulgated by the Secretary. Such regulations may include such such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such notice of discontinuance and such resumption to the Secretary under this subparagraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

(A) A list of each tobacco product standard which has been established under section 907 and which is subject to section 910, a reference to the authorizing enactment for the marketing of such tobacco product; and

(B) A list of each tobacco product standard which has been established under section 907 and which is subject to section 910, a reference to the authorizing enactment for the marketing of such tobacco product.

(i) ANNUAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the Secretary under this section shall report to the Secretary on the date of June of each year ending during the month of December of each year the following:

(A) A list of each tobacco product introduced into the registrant's distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (2); and

(B) A list of each tobacco product which is being manufactured, prepared, compounded, or processed for commercial distribution to which such notice of discontinuance, the date of such discontinuance, and the identity of such tobacco product.

(j) MULTIPLE REGISTRATION NOT REQUIRED.—Nothing in this subparagraph shall be construed to require the registration of any tobacco product for which a registration was filed under paragraph (2) before such time of registration. Each tobacco product to which a registration was filed under paragraph (2) before such time of registration shall be subject to inspection, the date of last such inspection, the place of business, and the State of incorporation of each tobacco product standard which has not been included in any list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of such tobacco product.

(k) EXPEDITED REGISTRATION.—If the Secretary finds that an establishment or a tobacco product is needed for public health purposes, the Secretary may by regulation expedite the registration of such establishment or such tobacco product. The Secretary may by regulation require such establishment to list any additional tobacco products which have not been included in any list of tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which such resumption to the Secretary under this subparagraph or paragraph (2) before such time of registration.

(l) ANNUAL LIST.—The Secretary shall publish in a format that is understandable and not misleading to a lay person, and place on public display (in a manner determined by the Secretary) the list established under subsection (e).

(m) REPORTS TO CONGRESS.—The Secretary shall submit to the appropriate committees of Congress a report on the results of such research, together with recommendations on whether such publication should be continued or modified.

(n) DATA COLLECTION.—Not later than 12 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a list of harmful and potentially harmful constituents that are known to constitute a health risk from each tobacco product by brand and by quantity in each brand and subbrand. The Secretary shall publish a public notice requesting by Internet submission of scientific and other information concerning the health and potentially harmful constituents in tobacco products and tobacco smoke.
“(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

(i) REPORT PRECEDING INTRODUCTION OF CERTAIN POST JUNE 1, 2003 TOBACCO PRODUCTS INTO INTERSTATE COMMERCE.—

(1) IN GENERAL.—Each person who is required to register under this section and who proposes to begin the introduction of delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of June 1, 2003, shall, at least 90 days prior to making such introduction or delivery, respond to the Secretary (in such form and manner as the Secretary shall prescribe)—

(A) the basis for such person's determination that the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States after June 1, 2003, that is in compliance with the requirements of this Act; and

(B) action taken by such person to comply with any other requirements under section 907 that are applicable to the tobacco product.

(2) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—A report under this subsection with respect to a tobacco product that was not introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after June 1, 2003, shall be submitted to the Secretary at least 90 days after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall be submitted to the Secretary not later than 15 months after such date of enactment.

(3) EXEMPTIONS.—

(A) IN GENERAL.—The Secretary may by regulation prescribe the requirements of this subsection tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if the Secretary determines that—

(i) such modification would be a minor modification of a tobacco product authorized for sale under this Act;

(ii) a report under this subsection is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health; and

(iii) an exemption is otherwise appropriate.

(B) REGULATIONS.—Not later than 9 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations to implement this paragraph.

SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

(a) IN GENERAL.—Any requirement established under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of such requirement to the tobacco product has been changed by action taken under section 907, section 910, section 911, or subsection (d) of this section, and any requirement established under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, section 911, or subsection (d) of this section shall not apply to such tobacco product.

(b) INFORMATION ON PUBLIC ACCESS AND COMMITTEE—

(1) PROPOSED RULEMAKING.—In connection with proposed rulemaking under section 907, 908, 909, 910, or 911 or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any provision of this chapter, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities, and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices.

(2) EXEMPTIONS; VARIANCES.—

(A) PERSONS SUBJECT TO ANY REQUIREMENT.—A person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or temporary exemption or variance from such requirement, but such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall include—

(i) the date the petition was submitted to the Secretary under subparagraph (A); or
“(ii) the day after the petition was referred to the Tobacco Products Scientific Advisory Committee, whichever occurs later, the Secretary shall by order either deny the petition or approve it.

“(C) APPROVAL.—The Secretary may approve—

“(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this chapter;

“(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, controls, and facilities prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this chapter.

“(D) DISPOSITIONS.—An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product as the Secretary approves to assure that the product will be in compliance with this chapter.

“(E) HEARING.—After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

“(F) COMPLIANCE.—Compliance with requirements under this subsection shall not be required before the period ending 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act.

“(1) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes without regard to section 332(a) and (b) of title 31, United States Code, and section 5 of title 41, United States Code.

“SEC. 107. TOBACCO PRODUCT STANDARDS.

“(a) IN GENERAL.—

“(1) PETITION FOR CIGARETTES.—A cigarette or any of its component parts (including the tobacco, filter, or paper) shall not contain, as a constituent (including a smoke constituent), an artificial or natural flavor (other than tobacco or menthol) or any herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke. Nothing in this subparagraph shall be construed to limit the Secretary’s authority to take action under this section or other sections of this Act applicable to menthol or any artificial or natural flavor, herb, or spice not specified in this subparagraph.

“(2) REVISION OF TOBACCO PRODUCT STANDARDS.—The Secretary may revise the tobacco product standards in paragraph (1) in accordance with subparagraph (b).

“(3) TOBACCO PRODUCT STANDARDS.—The Secretary may adopt tobacco product standards in addition to those in paragraph (1) if the Secretary determines that a tobacco product standard is appropriate for the protection of the public health. This finding shall be determined with respect to the risks and benefits to the public health, including users and non-users of the tobacco product, and taking into account—

“(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

“(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

“(4) CONTENT OF TOBACCO PRODUCT STANDARDS.—A tobacco product standard established under this section for a tobacco product—

“(A) shall include provisions that are appropriate for the protection of the public health, including provisions, where appropriate—

“(i) for the reduction of nicotine yields of the product;

“(ii) for the reduction or elimination of other constituents, including smoke constituents, or harmful components of the product;

“(iii) relating to any other requirement under (B);

“(B) shall, where appropriate for the protection of the public health, include—

“(i) provisions respecting the construction, components, ingredients, additives, constituents, including smoke constituents, and properties of the tobacco product;

“(ii) provisions respecting the contents of the tobacco product (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

“(iii) provisions for the measurement of the tobacco product characteristics of the tobacco product;

“(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

“(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of the tobacco product may be under a regulation under section 906(d); and

“(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product.

“(5) PERIODIC RE-EXAMINATION OF TOBACCO PRODUCT STANDARDS.—The Secretary shall provide for periodic evaluation of tobacco product standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (4)(B) by any person.

“(6) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall endeavor to—

“(A) use personnel, facilities, and other technical support available in other Federal agencies;

“(B) consult with other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities; and

“(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, agricultural, or other organizations who in the Secretary’s judgment may make a significant contribution.

“(b) ESTABLISHMENT OF STANDARDS.—

“(1) NOTICE.—

“(A) IN GENERAL.—The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any tobacco product standard.

“(B) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a tobacco product standard for a tobacco product shall—

“(i) set forth a finding with justifying that the tobacco product standard or amendment is appropriate for the protection of the public health;

“(ii) set forth proposed findings with respect to the risk of illness or injury that the proposed tobacco product standard is intended to reduce or eliminate; and

“(iii) invite interested persons to submit an existing tobacco product standard for the tobacco product, including the proposed tobacco product standard, for consideration by the Secretary.

“(2) STANDARD.—Upon a determination by the Secretary that an additive, constituent (including smoke constituent), or other component of the product that is the subject of the proposed tobacco product standard is harmful, it shall be the burden of any party challenging the proposed standard to prove that the proposed standard will not reduce or eliminate the risk of illness or injury.

“(D) FINDING.—A notice of proposed rulemaking for the revocation of a tobacco product standard shall set forth a finding with justifying notation that the tobacco product standard is no longer appropriate for the protection of the public health.

“(E) CONSIDERATION BY SECRETARY.—The Secretary shall consider any petition submitted in connection with a proposed standard, including information concerning the countervailing effects of the tobacco product standard on the health, economic loss to, and disruption to other tobacco products, public health, economic loss to, and disruption to other tobacco products that do not meet the requirements of this chapter and the significance of such demand, and shall issue the standard if the Secretary determines that the standard so issued would be appropriate for the protection of the public health.

“(F) COMMENT.—The Secretary shall provide for a comment period of not less than 60 days.

“(2) PROMULGATION.—

“(A) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a tobacco product standard and after consideration of such comments and any report from the Tobacco Products Scientific Advisory Committee, the Secretary shall—

“(B) promulgate a regulation establishing a tobacco product standard and publish in the Federal Register findings on the matters referred to in paragraph (1) or any report from the Tobacco Products Scientific Advisory Committee, and the Secretary shall—

“(C) take such action as necessary to eliminate the use or sale of tobacco products that do not meet the requirements of this chapter and the significance of such demand, and shall issue the standard if the Secretary determines that the standard so issued would be appropriate for the protection of the public health.

“(F) EFFECTIVE DATE.—A regulation establishing a tobacco product standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before 1 year after the date of its publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade.

“(3) POWER RESERVED TO CONGRESS.—Because of the importance of a decision of the Secretary to issue a regulation establishing a tobacco product standard or amendment of a tobacco product standard for a tobacco product—

“(A) banning all cigarettes, all smokeless tobacco products, all little cigars, all cigars other than little cigars, all pipe tobacco, or all tobacco products;

“(B) requiring the reduction of nicotine yields of a tobacco product to zero,
Congress expressly reserves to itself such power.

"(4) AMENDMENT, REVOCATION.—

(A) AUTHORITY.—The Secretary, upon the Secretary's own initiative or upon petition of an interested person, may promulgate, amend, or revoke a tobacco product standard.

(B) EFFECTIVE DATE.—The Secretary may declare a proposed amendment of a tobacco product standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary determines that making it so effective is in the public interest.

"(5) REFERENCE TO ADVISORY COMMITTEE.—The Secretary may—

(A) on the Secretary's own initiative, refer a proposed regulation to the Tobacco Products Scientific Advisory Committee, for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment. If a proposed regulation is referred under this paragraph to the Tobacco Products Scientific Advisory Committee, the Secretary shall provide the advisory committee with the data and information on which such proposed regulation is based. The Tobacco Products Scientific Advisory Committee shall, within 60 days after the referral of a proposed regulation and after independent study of the data and information submitted to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reasons or basis for the recommendation. A copy of such report and recommendation shall be made public by the Secretary.

"SEC. 908. NOTIFICATION AND OTHER REMEDIES.—

(a) NOTIFICATION.—If the Secretary determines that—

(1) a tobacco product which is produced or delivered for introduction into interstate commerce for commercial distribution presents a risk of substantial harm to the public and health; and

(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk;

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section does not relieve a person from liability under Federal or State law.

In awarding damages for economic loss in an action brought for the enforcement of any such order, the value to the plaintiff of any such remedy or of any other remedy provided under such order shall be taken into account.

"(6) RECALL.—

(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or design defect, or that a tobacco product on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the manufacturer (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product and shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, to determine by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

(A) IN GENERAL.—If, after providing an opportunity for a informal hearing under paragraph (1) the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall amend the order under subparagraph (B), and order the amendment to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

(B) NOTICE.—An amended order under subparagraph (A) shall—

(i) include recall of a tobacco product from individuals, and

(ii) provide for notice to persons subject to the risks associated with the use of such tobacco products.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

"(3) REMEDIES NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a) of this section.

"SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.—

(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product, shall establish and maintain such records, make such reports, and provide such information, as the Secretary may by regulation reasonably require to assure that (i) such person is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

(1) may require any tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

(2) shall require reporting of other significant adverse product experiences as determined by the Secretary to be necessary to be reported;

(3) shall not impose requirements unduly burdensome on the tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information;

(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information;

(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have regard for the professional ethics of the medical profession and the interests of patients. The Secretary may apply to records, reports, and information concerning any individual who has been a patient or user only to determine whether or when he or she ceases to be a patient.

(b) REPORTS OF REMOVALS AND CORRECTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

(A) to reduce a risk to health posed by the tobacco product; or

(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

(c) EXCEPTION.—No corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a).

"SEC. 910. APPLICATION FOR REVIEW OF CERTAIN TOBACCO PRODUCTS.—

(a) IN GENERAL.—

(1) NEW TOBACCO PRODUCT DEFINED.—For purposes of this section the term new tobacco product means—

(A) any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of June 1, 2003; or

(B) any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after June 1, 2003.

(2) MARKET APPROVAL REQUIRED.—

(A) NEW PRODUCTS.—Approval under this section of an application for premarket approval for any new tobacco product is required unless—

(i) the manufacturer has submitted a report under section 905(j); and
`(ii) the Secretary has issued an order that the tobacco product—`

`(i) is substantially equivalent to a tobacco product commercially marketed (other than as a new tobacco product) in the United States as of June 1, 2003; and`

`(ii) is not a substantially equivalent product under section 907(c)(3).`

`(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—`

`'(i) that was first introduced or delivered for introduction into interstate commerce for distribution to the public by the Secretary within 30 days of the date of the order issued under section 907(c)(3).`

`(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—`

`'(i) that was first introduced or delivered for introduction into interstate commerce for distribution to the public by the Secretary within 30 days of the date of the order issued under section 907(c)(3).`

`(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—`

`'(i) that was first introduced or delivered for introduction into interstate commerce for distribution to the public by the Secretary within 30 days of the date of the order issued under section 907(c)(3).`

`(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—`

`'(i) that was first introduced or delivered for introduction into interstate commerce for distribution to the public by the Secretary within 30 days of the date of the order issued under section 907(c)(3).`

`(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—`

`'(i) that was first introduced or delivered for introduction into interstate commerce for distribution to the public by the Secretary within 30 days of the date of the order issued under section 907(c)(3).`

`(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—`

`'(i) that was first introduced or delivered for introduction into interstate commerce for distribution to the public by the Secretary within 30 days of the date of the order issued under section 907(c)(3).`

`(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—`

`'(i) that was first introduced or delivered for introduction into interstate commerce for distribution to the public by the Secretary within 30 days of the date of the order issued under section 907(c)(3).`

`(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—`

`'(i) that was first introduced or delivered for introduction into interstate commerce for distribution to the public by the Secretary within 30 days of the date of the order issued under section 907(c)(3).`

`(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—`

`'(i) that was first introduced or delivered for introduction into interstate commerce for distribution to the public by the Secretary within 30 days of the date of the order issued under section 907(c)(3).`

`(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—`

`'(i) that was first introduced or delivered for introduction into interstate commerce for distribution to the public by the Secretary within 30 days of the date of the order issued under section 907(c)(3).`
evidence before the Secretary when the application was approved, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading, and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact;

(2) If, on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that such tobacco product is not shown to conform in all respects to a tobacco product standard which is in effect under section 907, with compliance with any condition of approval or to the application, and that there is a lack of adequate information to justify the deviation from such standard.

(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of tobacco products, if an approved application would cause serious, adverse health consequences or death, that is greater than ordinarily caused by tobacco products, the Secretary shall by order temporarily suspend the approval of the application under section 907. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

(1) in person by any officer or employee of the department designated by the Secretary;

(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant’s last known address in the records of the Secretary.

(f) RECORDS.—

(1) ADDITIONAL INFORMATION.—In the case of any tobacco product for which an approval of an application under subsection (b) is in effect, the applicant shall establish and maintain such records, and make such reports to the Secretary, as the Secretary may by regulation require with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination of, whether there is or may be grounds for withdrawing or temporarily suspending such approval.

(2) ACCESS TO RECORDS.—Each person required under this section to maintain records, and each person in charge of or custody thereof, shall, upon request of an officer or employee of the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

(g) TOBACCO PRODUCT EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from the provisions of this chapter under such conditions as the Secretary may by regulation prescribe.

(h) MODIFIED RISK TOBACCO PRODUCTS.—

(1) DEFINITIONS.—In this section:

(A) The holder of an application subject to an order issued under paragraph (1) withdrawing approval of the application may, by petition filed on or before the 30th day after the date upon which such holder receives notice of such withdrawal, obtain review thereof in accordance with subsection (e).

(B) MODIFIED RISK TOBACCO PRODUCT.—The term ‘modified risk tobacco product’ means any tobacco product that is sold or distributed for use to reduce risk or exposure and relating to tobacco-related disease associated with commercially marketed tobacco products.

(2) SOLID OR DISTRIBUTED.—

(A) In respect to a tobacco product, the term ‘sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products’ means a tobacco product—

(i) the tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products;

(ii) the tobacco product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or

(iii) the tobacco product or its smoke does not contain or is free of a substance:

(1) the label, labeling, or advertising of which represents explicitly or implicitly that—

(ii) the product as actually used by consumers will not be misled into believing that the product is substantially different in character or composition from one of similar types of tobacco products then on the market or that consumers will not expose them to higher levels of substances.

(3) TEMPORARY SUSPENSION.—Except as provided in paragraph (2), the Secretary may by order temporarily suspend the approval of a modified risk tobacco product pursuant to paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that such product—

(i) significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and

(ii) benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

(4) SPECIAL RULE FOR CERTAIN PRODUCTS.—

(A) IN GENERAL.—The Secretary may approve an application for a tobacco product that has not been modified risk tobacco product pursuant to paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that such product—

(i) the approval of the application would be appropriate to promote the public health;

(ii) any aspect of the label, labeling, and advertising for such product that would cause the tobacco product to be a modified risk tobacco product under paragraph (b)(2) is limited to an explicit or implicit representation that such tobacco product or its smoke contains or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke.

(B) ADDITIONAL REQUIREMENTS.—In order to approve an application under subparagraph (A) the Secretary must also find that the applicant has demonstrated that—

(i) the magnitude of the overall reductions in exposure to the substance or substances which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;

(ii) the product as actually used by consumers will not be misled into believing that the product is substantially different in character or composition from one of similar types of tobacco products then on the market or that consumers will not expose them to higher levels of substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the anticipated overall impact of use of the product results in a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;

(C) PUBLIC AVAILABILITY.—The Secretary shall maintain a public record as described in subsection (d) publicly available (except matters in the application which are trade secrets or otherwise confidential commercial information) and shall provide by inter-ested persons on the information contained in the application and on the label, labeling, and advertising accompanying such application.

(5) ADVISORY COMMITTEE.—

(A) IN GENERAL.—The Secretary shall refer to an advisory committee under paragraph (1), the advisory committee shall report its recommendations on the application to the Secretary.

(B) APPROVAL.—

(1) MODIFIED RISK PRODUCTS.—Except as provided in paragraph (2), the Secretary may by order approve an application for a modified risk tobacco product pursuant to paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that such product—

(i) significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and

(ii) benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

(2) SPECIAL RULE FOR CERTAIN PRODUCTS.—

(A) IN GENERAL.—The Secretary may approve an application for a tobacco product that has not been modified risk tobacco product pursuant to paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that such product—

(i) the approval of the application would be appropriate to promote the public health;

(ii) any aspect of the label, labeling, and advertising for such product that would cause the tobacco product to be a modified risk tobacco product under paragraph (b)(2) is limited to an explicit or implicit representation that such tobacco product or its smoke contains or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke.

(B) ADDITIONAL REQUIREMENTS.—In order to approve an application under subparagraph (A) the Secretary must also find that the applicant has demonstrated that—

(i) the magnitude of the overall reductions in exposure to the substance or substances which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;

(ii) the product as actually used by consumers will not be misled into believing that the product is substantially different in character or composition from one of similar types of tobacco products then on the market or that consumers will not expose them to higher levels of substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the anticipated overall impact of use of the product results in a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;

(C) PUBLIC AVAILABILITY.—The Secretary shall maintain a public record as described in subsection (d) publicly available (except matters in the application which are trade secrets or otherwise confidential commercial information) and shall provide by inter-
(1D) presents or has been demonstrated to present less of a risk of disease than 1 or more other commercially marketed tobacco products; and

(1v) the approval of the application is expected to benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not use tobacco products.

(1C) CONDITIONS OF APPROVAL.—

(1I) IN GENERAL.—Applications approved under this paragraph shall be limited to a term of not more than 5 years, but may be renewed upon a finding by the Secretary that the requirements of this paragraph continue to be satisfied based on the filing of a new application.

(1II) AGREEMENTS BY APPLICANT.—Applications approved under this paragraph shall be conditioned on the applicant’s agreement to conduct post-market surveillance and studies and to submit to the Secretary the results of such surveillance and studies to determine the impact of the application approval on consumer perception, behavior, and health and to enable the Secretary to review the accuracy of the determinations upon which the approval was based in accordance with a protocol approved by the Secretary.

(1III) ANNUAL SUBMISSION.—The results of such post-market surveillance and studies described in clause (ii) shall be submitted annually.

(1III) BASIS.—The determinations under paragraphs (1) and (2) shall be based on—

(A) the scientific evidence submitted by the applicant; and

(B) scientific evidence and other information that is available to the Secretary.

(1IV) SCIENTIFIC BASES OF INDIVIDUALS AND OF POPULATION AS A WHOLE.—In making the determinations under paragraphs (1) and (2), the Secretary shall take into account—

(A) health risks to individuals of the tobacco product that is the subject of the application;

(B) the increased or decreased likelihood that existing users of tobacco products who would otherwise stop using such products will switch to the tobacco product that is the subject of the application;

(C) the increased or decreased likelihood that persons who do not use tobacco products will start using the tobacco product that is the subject of the application; and

(D) the risks and benefits to persons from the use of the tobacco product that is the subject of the application as compared to the use of products for smoking cessation approved under chapter V to treat nicotine dependence; and

(E) comments, data, and information submitted by interested persons.

(1V) ADDITIONAL CONDITIONS FOR APPROVAL.—

(1IV) MODIFIED RISK PRODUCTS.—The Secretary shall require for the approval of an application under this section that any advertising or labeling concerning modified risk products enable the public to comprehend the information concerning modified risk and to understand the relative significance of such information in the context of total health and in relation to all of the diseases and health-related conditions associated with the use of tobacco products.

(2) COMPARATIVE CLAIMS.—

(A) IN GENERAL.—The Secretary may require for the approval of an application under this section that any advertising or labeling concerning a tobacco product to 1 or more other commercially marketed tobacco products shall compare the tobacco product to a commercially marketed tobacco product that is representative of that type of tobacco product on the market (for example the average value of the top 3 brands of an established regular tobacco product).

(B) QUANTITATIVE COMPARISONS.—The Secretary may also require, for purposes of subparagraph (A), the amount of the substance claimed to be reduced shall be stated in immediate proximity to the most prominent claim.

(C) LABEL DISCLOSURE.—

(A) IN GENERAL.—The Secretary may require that the label of the other substances in the tobacco product, or substances that may be produced by the combustion of the tobacco product, that may affect a disease or health-related condition may increase the risk of other diseases or health-related conditions associated with the use of tobacco products.

(B) CONDITIONS OF USE.—If the conditions of use of the tobacco product may affect the risk of the product to human health, the Secretary may require the labeling of conditions of use.

(1D) TIME.—The Secretary shall limit an approval under subsection (g)(1) for a specified period of time.

(E) ADVERTISING.—The Secretary may require that an applicant, whose application has been approved under this subsection, shall, upon being notified to do so, make a reasonable effort to advertise and promote the tobacco product.

(F) POSTMARKET SURVEILLANCE AND STUDIES.—

(1) IN GENERAL.—The Secretary shall require that an applicant under subsection (g)(1) conduct post market surveillance and studies of a tobacco product for which an application has been approved to determine the impact of the application approval on consumer perception, behavior, and health, to enable the Secretary to review the accuracy of the determinations upon which the approval was based, and to provide information that the Secretary determines is otherwise necessary regarding the use or health risks involving the tobacco product. The results of post-market surveillance and studies shall be submitted to the Secretary on an annual basis.

(2) SURVEILLANCE PROTOCOL.—Each applicant required to conduct a surveillance of a tobacco product under paragraph (1) shall, within 30 days after receiving notice that the applicant is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The protocol shall be revised on an annual basis.

(3) REVISION.—The regulations or guidance issued under paragraph (1) shall be revised on a regular basis as new scientific information becomes available.

(3) REVISION.—The regulations or guidance issued under paragraph (1) shall be revised on a regular basis as new scientific information becomes available.

(4) NEW TOBACCO PRODUCTS.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations or guidance (or any combination thereof) on the scientific evidence required for assessment and ongoing review of modified risk tobacco products. Such regulations or guidance shall—

(A) establish minimum standards for scientific studies needed prior to approval of a tobacco product that would reasonably be expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than other or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.
“(A) the promulgation of a regulation under section 907 establishing, amending, or revoking a tobacco product standard; or

(B) a denial of an application for approval under section 906, 907, 908, 909, 910, or 916; and

any person adversely affected by such regulation or denial may file a petition for judicial review of such regulation or denial with the United States Court of Appeals for the District of Columbia for the circuit in which such person resides or has their principal place of business.

(2) REQUIREMENTS.

(A) COPY OF PETITION.—A copy of the petition filed under paragraph (1) shall be transmitted by the clerk of the court involved to the Secretary.

(B) RECORD OF PROCEEDINGS.—On receipt of a petition under subparagraph (A), the Secretary shall file in the court in which such petition was filed—

(i) the record of the proceedings on which the regulation or order was based; and

(ii) a statement of the reasons for the issuance of such a regulation or order.

(C) DEFINITION OF RECORD.—In this section, the term 'record' means—

(i) all notices and other matter published in the Federal Register with respect to the regulation or order reviewed;

(ii) all information submitted to the Secretary with respect to such regulation or order;

(iii) proceedings of any panel or advisory committee with respect to such regulation or order;

(iv) any hearing held with respect to such regulation or order; and

(v) any other information identified by the Secretary, in the administrative proceeding, held with respect to such regulation or order, as being relevant to such regulation or order.

(b) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided for in such chapter. A regulation or denial described in subsection (a) shall be reviewed in accordance with section 706(2)(A) of title 5, United States Code.

(c) FINALITY OF JUDGMENT.—The judgment of the court reviewing a regulation or order under this section shall be final, subject to review by the Supreme Court of the United States upon certification of a proper case.

SEC. 915. CONGRESSIONAL REVIEW PROVISIONS.

In accordance with section 801 of title 5, United States Code, Congress shall review, and may disapprove, any rule under this Act that is subject to section 801. This section shall apply to rules referred to in section 102 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333)."
agency responsible for the enforcement of
products as requested by the Secretary.
below which nicotine yields do not produce
nicotine yields from tobacco products;
the Secretary—
(2) direct the Commissioner to consider
redundant considering other nicotine re-
ment products, such as for craving relief or
additional indications for nicotine replace-
the treatment of tobacco dependence;
placement therapies already on the market;
reduction of the panel or committee. Each
make and maintain a transcript of any pro-
''(2) on the effects of the alteration of the
''(4) on its review of other safety, depend-
activities described in subsection (b) for each
water fees collected pursuant to this section
are payable, in each fiscal year, for the
costs of the activities of the Food and Drug
Administration related to the regulation
of tobacco products under this chapter.
''(c) ASSESSMENT OF USER FEE.—
''(1) Amount of fee—Except as provided in
paragraph (4), the total user fees assessed
each year pursuant to this section shall be
sufficient, and shall not exceed what is
necessary, to pay for the costs of the ac-
tivities described in subsection (b) for each
fiscal year.
''(2) ALLOCATION OF ASSESSMENT BY CLASS
OF TOBACCO PRODUCTS.—
''(A) IN GENERAL.—Subject to paragraph
(3), the total user fees assessed each fiscal
year with respect to each class of importers
and manufacturers shall be equal to an
amount that is the applicable percentage
of the total costs of activities of the Food and
Drug Administration described in subsection
(b).
''(B) APPLICABLE PERCENTAGE.—For pur-
poses of subparagraph (A) the applicable
percentage for a fiscal year shall be the fol-
lowing:
(i) 92.07 percent shall be assessed on man-
ufacturers and importers of cigarettes;
(ii) 0.05 percent shall be assessed on man-
ufacturers and importers of little cigars;
(iii) 7.15 percent shall be assessed on man-
ufacturers and importers of cigars other
than little cigars;
(iv) 0.43 percent shall be assessed on man-
ufacturers and importers of smoke-
less tobacco;
(v) 0.10 percent shall be assessed on man-
ufacturers and importers of chewing tobacco;
(vi) 0.05 percent shall be assessed on man-
ufacturers and importers of pipe tobacco;
and
(vii) 0.14 percent shall be assessed on man-
ufacturers and importers of roll-your-
own tobacco.
''(3) DISTRIBUTION OF FEES SHARED MANU-
FACTURERS AND IMPORTERS EXEMPT FROM
user fee with respect to each fiscal year, shall
be calculated in accordance with this section,
upon each manufacturer and importer of tobacco
products subject to this chapter.
''(4) ANNUAL LIMIT ON ASSESSMENT.—The
total assessment under this section—
(A) for fiscal year 2004 shall be $85,000,000;
(B) for fiscal year 2005 shall be $175,000,000;
(C) for fiscal year 2006 shall be $300,000,000;
(D) for each subsequent fiscal year, shall
not exceed the limit on the assessment im-
posed during the previous fiscal year, as ad-
duced by the Federal Register (as published in the Federal Register) to reflect the greater of—
(i) the total percentage change that oc-
curred in the Consumer Price Index for all
urban consumers (all items; United States
city average) for the 12-month period ending
on June 30 of the preceding fiscal year for
which fees are being established; or
(ii) the total percentage change for the
previous fiscal year in basic pay under the
General Schedule in accordance with section
5332 of title 5, United States Code, as ad-
justed by any locality-based comparability
payment pursuant to section 5384 of such
title for Federal employees stationed in the
District of Columbia.
''(5) TIMING OF USER FEE ASSESSMENT.—The
Secretary shall notify each manufacturer
and importer of tobacco products, subject to
this section of the amount of the quarterly
assessment imposed on such manufacturer or
importer under subsection (a) for each
quarter of each fiscal year. Such notifica-
tions shall occur not earlier than 3 months
prior to the end of the quarter for which such
assessment is made. All assessments shall be
made not later than 60 days after each such notification.
''(6) DETERMINATION OF USER FEE BY COM-
pany Market Share.—
''(1) IN GENERAL.—The user fee to be paid
by each manufacturer or importer of a given
class of tobacco products shall be determined in
fiscal year 2004 by multiplying the percentage
(A) such manufacturer’s or importer’s
market share of such class of tobacco prod-
ucts;
(B) the portion of the user fee amount
for the current quarter to be assessed on man-
ufacturers and importers of such class of to-
bacco products as determined under sub-
section (e).
''(2) NO FEE IN EXCESS OF MARKET SHARE.—
No manufacturer or importer of tobacco
products shall be required to pay a user fee in
excess of the market share of such manufac-
turer or importer.
''(e) DETERMINATION OF VOLUME OF DOMES-
TIC DOMESTIC VOLUME.—
''(1) IN GENERAL.—The calculation of gross
domestic volume of a class of tobacco prod-
ct by a manufacturer or importer, and by
all manufacturers and importers as a group,
shall be made by the Secretary using infor-
mation provided by manufacturers and im-
porters pursuant to subsection (f), as well as
any other relevant information provided to
or obtained by the Secretary.
''(2) MEASUREMENT.—For purposes of the
calculations under this subsection and the
provisions provided for pursuant to section
(1) by the Secretary, gross domestic volume shall be
measured by—
(A) in the case of cigarettes, the number of
cigarettes sold;
(B) in the case of little cigars, the number
of little cigars sold;
(C) in the case of large cigars, the number
of cigars weighing more than 3 pounds per
thousand sold; and
(D) in the case of other classes of tobacco
products, in terms of number of pounds, or
fraction thereof, of such products sold.
''(f) MEASUREMENT OF GROSS DOMESTIC
VOLUME.—
''(1) IN GENERAL.—Each manufacturer
and importer of tobacco products shall submit to the
Secretary a certified copy of each of the returns or forms described by this paragraph
that are required to be filed with a Govern-
ment agency on the same date that those
returns or forms are filed, or required to be
filed, with such agency. The returns and
forms described by this paragraph are those
returns and forms related to the release of
tobacco products into domestic commerce,
as defined by section 5702(k) of the Internal
Revenue Code of 1986, and the repayment of the
Tobacco Transition Revenue Act from such
Code (ATF Form 500.24 and United States
Customs Form 7501 under currently applica-
table conditions).
''(2) PENALTIES.—Any person that know-
ingly fails to provide information required
under this subsection or that provides false information under this subsection shall be subject to the penalties described in section 1003 of title 18, United States Code. In addition, any such person may be subject to a civil penalty in an amount not to exceed 2 percent of the value of the kind of tobacco products manufactured or imported by such person during the applicable quarter, as determined by the Secretary.

“(b) EFFECTIVE DATE.—The user fees prescribed by this subsection shall be assessed in fiscal year 2004, based on domestic sales of tobacco products during fiscal year 2003 and shall be assessed in each fiscal year thereafter.

SEC. 102. INTERIM FINAL RULE.

(a) CIGARETTES AND SMOKELESS TOBACCO.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall publish in the Federal Register an interim final rule regarding cigarettes and smokeless tobacco, which is hereby deemed to be in compliance with the Administrative Procedures Act and other applicable law.

(2) CONTENTS OF RULE.—Except as provided in this section, the interim final rule published under paragraph (1), shall be identical in its provisions to part 897 of the regulations promulgated by the Secretary of Health and Human Services in the August 26, 1996, issue of the Federal Register (61 Fed. Reg. 4615–4618). Such rule shall—

(A) provide for the designation of jurisdictional authority that is in accordance with this subsection;

(B) strike Subpart C—Labeling and section 897.320(c); and

(C) become effective not later than 1 year after the date of enactment of this Act.

(3) AMENDMENTS TO RULE.—Prior to making amendments to such rule published under paragraph (1), the Secretary shall promulgate a proposed rule in accordance with the Administrative Procedures Act.

(4) RULE OF CONSTRUCTION.—Except as provided in paragraph (3), nothing in this section shall be construed to limit the authority of the Secretary to amend, in accordance with the Administrative Procedures Act, the regulation promulgated pursuant to this section.

(b) LIMITATION ON ADVISORY OPINIONS.—As of the date of enactment of this Act, the following documents issued by the Food and Drug Administration shall not constitute advisory opinions under section 10.85(d)(1) of title 21, Code of Federal Regulations, except as they apply to tobacco products, and shall not be cited by the Secretary of Health and Human Services, the Federal Food and Drug Administration as binding precedent:

(1) The preamble to the proposed rule in the document entitled “Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents” (60 Fed. Reg. 4314–43372 (August 11, 1995)).

(2) The document entitled “Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act” (60 Fed. Reg. 41455–41787 (August 11, 1995)).

(3) The preamble to the final rule in the document entitled “Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents” (61 Fed. Reg. 44396–44615 (August 26, 1996)).

(4) The document entitled “Nicotine in Cigarettes and Smokeless Tobacco is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act” (61 Fed. Reg. 44615–45318 (August 26, 1996)).
(1) by inserting "tobacco product," after "device," each place it appears; and
(2) by inserting "tobacco products," after "devices," each place it appears.

SEC. 100.—Section 709 (21 U.S.C. 375d) is amended—

(1) in subsection (a)(1)(A), by inserting "tobacco products," after "devices," each place it appears;
(2) in subsection (a)(1)(D), by inserting "or tobacco product" after "restricted devices" each place it appears;
(3) in subsection (b), by inserting "tobacco product," after "device,"
(4) in subsection (b)(1), by inserting "tobacco products," after "devices," each place it appears; and
(5) in subsection (g), by striking "drugs or devices" each place it appears; and
(6) by adding at the end the following:
"(1) requiring its employees to verify age of consumer; and
(2) providing that a person may not be charged with a violation at a particular retail outlet, that outlet will not consider to have been the site of repeated violations when the next violation occurs; and
(3) providing that good faith reliance on the presentation of a false government issued photographic identification that contains the bearer’s date of birth does not constitute a violation when the age requirement for the sale of tobacco products if the retailer has taken effective steps to prevent such violations, including—
(A) adopting and maintaining a written policy against sales to minors;
(B) informing its employees of all applicable laws;
(C) establishing disciplinary sanctions for employee noncompliance; and
(D) requiring its employees to verify age by way of photographic identification or electronic scanning device.

TITLE II—TOBACCO PRODUCT WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

SEC. 201. CIGARETTE LABEL AND ADVERTISING REQUIREMENTS—

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

"SEC. 4. LABELING—

"(a) LABEL REQUIREMENTS.—

"(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution in the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

"WARNING: Tobacco smoke can harm your children'.
"WARNING: Cigarettes cause lung disease'.
"WARNING: Cigarettes cause cancer'.
"WARNING: Smoking during pregnancy can harm your baby'.
"WARNING: Smoking can now greatly reduce serious risks to your health'.

"(2) TYPOGRAPHY, ETC.—Each label statement shall be in a typeface pro rata to the following requirements:

45-point type for a whole-page advertisement; 30-point type for a half-page advertisement; 22.5-point type for a double page spread advertisement; 18-point type for a whole-page magazine advertisement; or in a typeface pro rata to the following requirements:

27-point type for a full-page newspaper advertisement; 22.5-point type for a double page spread advertisement; 18-point type for a whole-page newspaper advertisement.

"(b) ADVERTISING REQUIREMENTS.—

"(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise to cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a) of this section.

"(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) of this section in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word ‘WARNING’ shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and yellow if the background is black, under the plan submitted under paragraph (4) of this subsection. The label statements shall be enclosed by a rectangular border that shall be the same color as the letters of the statements and that is the width of the first downstroke of the capital ‘W’ of the word ‘WARNING’ in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements:

45-point type for a whole-page advertisement; 30-point type for a half-page advertisement; 22.5-point type for a double页 spread advertisement; 18-point type for a whole-page magazine advertisement; or in a typeface pro rata to the following requirements:

27-point type for a single page advertisement; 22.5-point type for a double page spread advertisement; 18-point type for a whole-page advertisement.

"(c) FORMAT.—Each label statement required by subsection (a) of this section in cigarette advertising shall appear in a space that is at least five inches wide and two inches high. The label statement shall be in English, except that in the case of—

"(A) an advertisement that appears in a newspaper, magazine, or other publication that is in English, the statements shall appear in the predominant language of the publication; and
"(B) the case that is not in English, the statements shall appear in the same language as that principally used in the advertisement.
"(3) MATCHBOOKS.—Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of tobacco products to advertise such tobacco products, each such matchbook required by subsection (a) may be printed on the inside cover of the matchbook.

(4) ADJUSTMENT BY SECRETARY.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section or the text, format, and type sizes for any other requirements under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.). The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2) of this subsection. The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear herein shall fit within such area.

(5) MARKETING REQUIREMENTS.—

(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each advertising, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with the plan submitted by the tobacco product manufacturer, importer, distributor, or retailer, and approved by the Secretary.

(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer, and approved by the Secretary.

(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

(1) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

(2) assures that all of the labels required under this section will be displayed by the tobacco products manufacturer, importer, distributor, or retailer at the same time.

(6) APPLICABILITY TO RETAILERS.—This subsection applies to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that is not labeled in accordance with the requirements of this subsection.

SEC. 202. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 201, is further amended by adding the following:

(3) CHANGE IN REQUIRED STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label statements required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.

SEC. 203. STATE REGULATION OF CIGARETTE ADVERTISING AND PROMOTION.

Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335, as amended by adding a the end the following:

"(C) EXCEPTION.—Notwithstanding subsection (b), a State or locality may enact statute, ordinance, or regulation prohibiting or restricting the placement, time, and manner, but not content, of the advertising or promotion of any cigarettes.

SEC. 204. SMOKELESS TOBACCO LABELS AND ADVERTISING AND PROMOTION.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

SEC. 3. SMOKELESS TOBACCO WARNING.

(1) GENERAL RULE.—

(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, administer, and advertise any smokeless tobacco product unless the product package bears, in accordance with the requirements of this section, one of the following labels:

"WARNING: This product can cause mouth cancer."

"WARNING: This product can cause gum disease and tooth loss."

"WARNING: Smokeless tobacco is addictive."

(2) Each label statement required by paragraph (1) shall be—

(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 30 percent of each such display panel; and

(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b), 31 percent or more of the area specified by subparagraph (A) such text may appear in a smaller type size, so long as at least 60 percent of such area is occupied by the label statement.

(3) The label statements required by paragraph (1) shall be—

(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 30 percent of each such display panel; and

(B) each one of the following statements or disclosures shall be required in accordance with the requirements of this paragraph. In place of any required statement relating to tar, nicotine, or other constituent yield shall—

(i) comprise at least 20 percent of the area of the advertising, and the warning shall be delineated by a dividing line of contrasting color from the advertisement; and

(ii) the word ‘WARNING’ shall appear in capital letters and each label statement shall appear in conspicuous and legible type. Each such label shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

(4) The word ‘WARNING’ shall appear in capital letters and each label statement shall appear in conspicuous and legible type. Each such label shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

(5)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer, and approved by the Secretary.

(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer, and approved by the Secretary.

(6) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

(7) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements required under this section, unless the retailer displays in a location open to the public, an advertisement that is not labeled in accordance with the requirements of this subsection.

(8) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.

SEC. 205. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 203, is further amended by adding at the end the following:

(4) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label statements required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.

May 20, 2004
SEC. 206. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 (a)), as amended by section 201, is further amended by adding at the end the following:

"(4) There shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary’s sole discretion) whether cigarette and tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b), or on each tobacco label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodologies established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

"(B) Any differences between the requirements established by the Secretary under subparagraph (A) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

"(C) In addition to the disclosures required by subparagraph (A) of this paragraph, the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product constituent including any smoke constituent. Any such disclosure requirement may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette packaging or advertisement insert, or by any other means, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

"(D) This paragraph applies to a retailer or manufacturer of tobacco products, including cigarettes and roll-your-own tobacco, as well as each person who transports, distributes, sells, or offers for sale, tobacco products.

"(E) Nothing in this subsection shall prohibit a manufacturer of tobacco products from including any information required by subparagraph (D) that was not included in the tobacco products information disclosed pursuant to paragraph (a).

"(F) For purposes of this subsection, the term ‘knowledge’ as applied to a manufacturer or distributor means—

"(1) the actual knowledge that the manufacturer or distributor had; or

"(2) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(2) INSPECTION.—In promulgating the regulations described in paragraph (1), the Secretary shall consider which records are needed for inspection to monitor the movement of tobacco products from manufacture through distribution to retail outlets to assist in investigating potential illicit trade, smuggling or counterfeiting of tobacco products.

"(3) CODES.—The Secretary may require codes on the labels of tobacco products or other designs or devices for the purpose of tracking the movement of tobacco products through the distribution system.

"(4) SIZE OF BUSINESS.—The Secretary shall take into account the size of a business in promulgating regulations under this section.

"(5) RECORDKEEPING BY RETAILERS.—The Secretary shall not require any retailer to maintain records relating to individual purchasers of tobacco products for personal consumption.

"(C) RECORDS INSPECTION.—If the Secretary has a reasonable belief that a tobacco product is part of an illicit trade or smuggling or is a counterfeit product, each person who manufactures, processes, transports, distributes, receives, holds, packages, exports, or imports tobacco, at any step in the supply chain, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times and within reasonable limits, to search and copy records relating to such article that are needed to assist the Secretary in investigating potential illicit trade, smuggling or counterfeiting of tobacco products.

"(D) KNOWLEDGE OF ILLEGAL TRANSACTION.—If the manufacturer or distributor of a tobacco product reasonably supports the conclusion that a tobacco product manufactured or distributed by such manufacturer or distributor has left the control of such person may be or has been—

"(1) imported, exported, distributed or offered for sale in interstate commerce by a person without paying duties or taxes required by law; or

"(2) imported, exported, distributed or diverted for possible illicit marketing.

"(E) KNOWLEDGE DEFINED.—For purposes of this subsection, the term ‘knowledge’ as applied to a manufacturer or distributor means—

"(1) the actual knowledge that the manufacturer or distributor had; or

"(2) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(2) ORIGIN LABELING.—The label, packaging, and shipping containers of tobacco products for introduction or delivery for introduction into interstate commerce shall bear the statement ‘sale only allowed in the United States.’

"(B) REGULATIONS CONCERNING RECORD-KEEPING FOR TRACKING AND TRACING.—

"(1) IN GENERAL.—Not later than 9 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall promulgate regulations regarding the establishment and maintenance of records by any person who manufactures, processes, transports, distributes, receives, packages, holds, exports, or imports tobacco products.

"(2) Inspections.—In promulgating the regulations described in paragraph (1), the Secretary shall consider which records are needed for inspection to monitor the movement of tobacco products from manufacture through distribution to retail outlets to assist in investigating potential illicit trade, smuggling or counterfeiting of tobacco products.

"(3) CODES.—The Secretary may require codes on the labels of tobacco products or other designs or devices for the purpose of tracking the movement of tobacco products through the distribution system.

"(4) SIZE OF BUSINESS.—The Secretary shall take into account the size of a business in promulgating regulations under this section.

"(5) RECORDKEEPING BY RETAILERS.—The Secretary shall not require any retailer to maintain records relating to individual purchasers of tobacco products for personal consumption.

"(C) RECORDS INSPECTION.—If the Secretary has a reasonable belief that a tobacco product is part of an illicit trade or smuggling or is a counterfeit product, each person who manufactures, processes, transports, distributes, receives, holds, packages, exports, or imports tobacco, at any step in the supply chain, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times and within reasonable limits, to search and copy records relating to such article that are needed to assist the Secretary in investigating potential illicit trade, smuggling or counterfeiting of tobacco products.

"(D) KNOWLEDGE OF ILLEGAL TRANSACTION.—If the manufacturer or distributor of a tobacco product reasonably supports the conclusion that a tobacco product manufactured or distributed by such manufacturer or distributor has left the control of such person may be or has been—

"(1) imported, exported, distributed or offered for sale in interstate commerce by a person without paying duties or taxes required by law; or

"(2) imported, exported, distributed or diverted for possible illicit marketing.

"(E) KNOWLEDGE DEFINED.—For purposes of this subsection, the term ‘knowledge’ as applied to a manufacturer or distributor means—

"(1) the actual knowledge that the manufacturer or distributor had; or

"(2) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(3) ORIGIN LABELING.—The label, packaging, and shipping containers of tobacco products for introduction or delivery for introduction into interstate commerce shall bear the statement ‘sale only allowed in the United States.’

"(B) REGULATIONS CONCERNING RECORD-KEEPING FOR TRACKING AND TRACING.—

"(1) IN GENERAL.—Not later than 9 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall promulgate regulations regarding the establishment and maintenance of records by any person who manufactures, processes, transports, distributes, receives, packages, holds, exports, or imports tobacco products.
designed to appeal to children wherever it will be seen by children. This legislation will give FDA the ability to stop tobacco advertising which glamorizes smoking from appearing where it will be seen by significant numbers of children. Given FDA full authority to regulate tobacco advertising "consistent with and to the full extent permitted by the First Amendment." 

FDA authority must also extend to the sale of tobacco products. Nearly every State, as if it illegal to sell cigarettes to children under 18, but surveys show that those laws are rarely enforced and frequently violated. FDA must have the power to limit the sale of cigarettes to face-to-face transactions in which the age of the purchaser can be verified by identification. This means an end to self-service displays and vending machine sales. There must also be serious enforcement efforts with real penalties for those caught selling tobacco products to children. We must be sure that children under 18 are not able to buy cigarettes.

The FDA conducted the longest rule-making proceeding in its history, studying which regulations would most effectively reduce the number of children who smoke. Seven hundred thousand public comments were received in the course of that rule-making. At the conclusion of its proceeding, the Agency promulgated rules on the manner in which cigarette packages are advertised and sold. Due to litigation, most of those regulations were never implemented. If we are serious about curbing youth smoking as much as possible, as soon as possible; it makes no sense to require FDA to reinvent the wheel by conducting a new multi-year rule-making process on the same issues. This legislation will give the youth access and advertising restrictions already developed by FDA the immediate force of law, as if they had been issued under the new statute.

The legislation also provides for stronger warnings on all cigarette and smokeless tobacco packages, and in all print advertisements. These warnings will be more explicit in their description of the medical problems which can result from tobacco use. The FDA is given the authority to change the text of these warning labels periodically, to keep their impact strong.

Nicotine is highly addictive. Medical experts say that it is as addictive as heroin or cocaine. Yet for decades, tobacco companies have vehemently denied the addictiveness of their products. No one can forget the parade of tobacco executives who testified under oath before Congress that smoking cigarettes is not addictive. Overwhelming evidence in industry documents obtained through the discovery process proves that the companies knew nicotine is addictive for decades, but actually relied on it as the basis for their marketing strategy. As we now know, cigarette manufacturers chemically manipulated the nicotine in their products to make it even more addictive.

The tobacco industry has a long, dishonorable history of providing misleading information about the health consequences of smoking. These companies have repeatedly sought to characterize their products as far less hazardous than they are. They made minor innovations in product design seem far more significant for the health of the user than they actually were. It is essential that FDA have clear and unambiguous authority to prevent such misrepresentations in the future. The largest disinformation campaign in the history of the corporate world must end.

Given the addictiveness of tobacco products, it is essential that the FDA regulate them for the protection of the public health. Over forty million Americans are currently addicted to cigarettes. No responsible public health official believes that cigarettes should be banned to the only way to ensure that any million people without a way to satisfy their drug dependency. FDA should be able to take the necessary steps to help addicted smokers overcome their addiction, and to make the product less toxic for those who are unable or unwilling to stop. To do so, FDA must have the authority to reduce or remove hazardous ingredients from cigarettes, to the extent that it becomes scientifically feasible. The inherent risk in young smoking should not be unnecessarily compounded.

Recent statements by several tobacco companies make clear that they plan to develop what they characterize as "reduced risk" cigarettes. This legislation will require manufacturers to submit such "reduced risk" products to the FDA for analysis before they can be marketed. No health-related claims will be permitted until they have been verified to the FDA's satisfaction. These safeguards are essential to prevent deceptive industry marketing campaigns, which could lull the public into a false sense of health safety.

Smoking is the number one preventable cause of death in America. Congress must vest FDA not only with the responsibility for regulating tobacco products, but with full authority to do the job effectively.

This legislation will give the FDA the legal authority it needs—to reduce youth smoking by preventing tobacco advertising which targets children—to prevent the sale of tobacco products to minors—to help smokers overcome their addiction—to make tobacco products less toxic for those who continue to use them—and to prevent the tobacco industry from misleading the public about the dangers of smoking.

We believe that there is an excellent chance of enacting this bill this year. The interest of tobacco-state members in passing a tobacco farmers' quota buyout provides a golden opportunity. By joining a strong FDA bill with relief for tobacco farmers, we can assemble a broad, bipartisan coalition to accomplish both of these goals during this session. This approach is supported by the public health community and by farmers' organizations. Most importantly, it is the right thing to do for America's children.

By Mr. WARNER (for himself, Mr. LIEBERMAN, Mr. ROBERTS, and Mr. ALLEN):

S. 2462. A bill to provide additional assistance to recipients of Federal Pell Grants who are pursuing programs of study in engineering, mathematics, science, or foreign languages; to the Committee on Health, Education, Labor and Pensions.

Mr. WARNER. Mr. President, I rise today to introduce an important bill related to education and our national, homeland, and economic security. I am pleased to be joined in this bipartisan effort with Senators LIEBERMAN, ROBERTS, and ALLEN, and I am grateful to each of them for working closely with me in crafting this legislation.

Some 50 plus years ago, I was a high school drop-out. I left school at the age of 17 to enlist in the Navy to serve this country in World War II. In the military, I earned the rank of 3rd Class, electronic technician's mate. And, it was in this role that I earned my first bit of technical education.

In return for my service, I was lucky enough to earn a GI Bill that helped me go to college at Washington & Lee University, where I earned a degree in engineering. Subsequently, I joined the Marines and earned a second GI Bill that allowed me to attend the University of Virginia where I earned my law degree.

Without the GI bill, I certainly might not have earned the education that I was fortunate enough to receive, and I certainly would not be standing here today in the United States Senate. That is why I feel so very strongly that grants support education in this country. Today's generation of students should have at least the same opportunity to earn their education that I had, if not more.

We are fortunate in America that we have several important Federal programs to help make education more affordable for today's generation. Whether it is the GI Bill, the Americorp stipend, subsidized and unsubsidized Stafford loans, or any number of other Federal educational programs, Americans today who wish to obtain higher education have access to a variety of educational programs. I support strengthening these programs to increase access to higher education.

Of all the educational grant programs, the Pell Grant program is the largest source of grant aid to help students pay for the costs associated with higher education. Eligibility for Pell Grants is based on financial need, and this year alone, Pell Grants helped 5.3 million undergraduate students attain higher education.

Now, I am a strong supporter of the Pell Grant program. The $13.1 billion
that is being spent by the Federal Gov-
erment on Pell Grants in fiscal year 2004 gives students access to higher
education that otherwise might not
have such access. But, I also recognize
that the Pell Grant program was cre-
ated in 1972 when the world was en-
tirely different.

Our world today is much more dan-
gerous than it was back then, and
much more dangerous than when I
served this country with brief tours of
duty in World War II and the Korean
War.

Today, while we’re sleeping, people
in other parts of the world are contriving
every possible way to take our busi-
ness, our economy, our security, and
our freedoms away from us. September
11, 2001, should remind us of this.

Once, great oceans protected this Na-
tion. But now, with the advent of the
Internet and other modern tech-
ologies, the world is more connected
than ever, and America is more vulner-
able than ever, and even the small-
est virus can cost our economy billions
dollars.

Simply put, in today’s day and age,
our country faces new challenges like
never before. I ask—are we prepared to
meet these challenges?

Unfortunately, our institutions of
higher learning are not producing
enough American graduates with cer-
tain majors to meet our new chal-
 lenges. In engineering, math, computer
sciences, hard sciences, and certain for-
eign languages—America is coming up
short.

The statistics are alarming: the
Third International Math and Science
Study reports that U.S. 12th graders scored
6th percentile in math worldwide, and only the 3rd per-
centile in science. This is near the bot-
tom among major industrialized na-
tions. The National Science Founda-
tion reports that the fraction of U.S.
Bachelor degrees in science and engi-
eering have been declining for nearly 2
decades when compared to the rest of
the world. While nearly two-thirds of
Bachelor degrees in China and Singa-
pore are science or engineering, they account for only about 17 percent in
the United States. In fact, we currently
rank 61st out of the 63 countries sur-
vveyed. Similarly, the National Science
Board reports that the fraction of for-
eign born scientists and engineers in
the U.S. workforce rose to an all-time
high by 2000. Amazingly, 38 percent of
all people working in the United States
with doctorate degrees in science or en-
geineering are now foreign born.

The effects of these educational
trends are already being felt in vari-
ants. For example: the American Physical Society reports
that the proportion of articles by
American authors in the Physical Re-
view, one of the most important re-
search journals in the world, has hit an
time low of 29 percent, down from 61
percent in 1983. And the U.S. produc-
tion of patents, probably the most di-
rect link between research and eco-
nomic benefit, has declined steadily
while within a long period of decades, and now stands at only 52 per-
cent of the total.

Despite these statistics, up to now,
this country has been able to meet its
new challenges by importing brain po-
wer, from all over the world. We are
fortunate to have so many smart minds
from other countries willing to come to
the United States to fill critical science and engineering positions.
However, the need for home-grown tal-
ent is becoming more and more appar-
ent.

First, international competition for
this foreign brain power has become in-
tense. As the National Science Board
notes, “Governments throughout the
world compete for the talent S&E
workforce is essential for economic
strength. Countries beyond the United
States have been taking action to . . .
attract foreign students and workers,
and raise the attractiveness to their
own citizens of staying home or re-
turning from abroad to serve growing
national economies and research enter-
pises.” This increased global competi-
tion for science and engineering work-
ers “comes at a time when demand for
their skills is projected to rise signifi-
cantly—both in the United States and
throughout the global economy.”

Without action on our part, though,
America will lose out in the competi-
tion for these technically talented
workers. According to the National
Science Board, by 2010, if current
trends continue, significantly less than
10 percent of all physical scientists and
engineers in the world will be working
in America.

Increased global competition is not
the only reason, though, that we have
to promote a home-grown S&E work-
force in America. In the post 9/11 era, it
is more important than ever from a se-
curity perspective to have American
citizens performing certain tasks.

The National Science Board put it
best when they said, “The ready avail-
ability of outstanding science and engi-
eineering talent from other countries is
no longer assured, as international
competition for the science and engi-
eineering workforce grows. Threats to
world peace and domestic security cre-
ate additional constraints on employ-
ment of foreign nationals in the United
States.”

I think the message is clear: Our S&E
workforce is in crisis. If we do not act
to encourage more American citizens
to enter the high shortage areas in en-
geineering, math, and science, then
America may lose its historical advan-
tage as the world’s innovator.

The consequences of this trend are
also significant from a national secu-

ity perspective. The defense-related
research that goes into giving our men
and women in the Armed Forces the
best technology and equipment re-
quires the special skills of engineers,
scientists and computer scientists. Our
military has always recognized these
facts, and historically has been a tre-
mendous supporter of science and engi-
neering, putting billions of dollars in
research to the most pure and esoteric
of pursuits.

Let me quote some numbers which
make clear what a huge investment our
defense community makes in
science and engineering: According to
the National Science Foundation, the
Defense Department is by far the larg-
est single supporter of science and
technology in the Federal Government,
accounting for about half of the total
research dollars spent; the proportion of
defense funding for University re-
search in critical disciplines is very
significant. For example, 90 percent of
basic astronomical research is defense-
funded. And, as you all must realize,
the national security perspective to have
American scientists performing certain
tasks is becoming more and more appar-
ent.

Second, America has been taking
action to increase the attractiveness of
this country to foreign students and
workers, and raise the attractiveness to
their own citizens of staying home or re-
turning from abroad to serve growing
national economies and research enter-
pises.” This increased global competi-
tion for science and engineering work-
ers “comes at a time when demand for
their skills is projected to rise signifi-
cantly—both in the United States and
throughout the global economy.”

Without action on our part, though,
America will lose out in the competi-
tion for these technically talented
workers. According to the National
Science Board, by 2010, if current
trends continue, significantly less than
10 percent of all physical scientists and
engineers in the world will be working
in America.

Increased global competition is not
the only reason, though, that we have
to promote a home-grown S&E work-
force in America. In the post 9/11 era, it
is more important than ever from a se-
curity perspective to have American
citizens performing certain tasks.

The National Science Board put it
best when they said, “The ready avail-
ability of outstanding science and engi-
eineering talent from other countries is
no longer assured, as international
competition for the science and engi-
eineering workforce grows. Threats to
world peace and domestic security cre-
ate additional constraints on employ-
ment of foreign nationals in the United
States.”

I think the message is clear: Our S&E
workforce is in crisis. If we do not act
to encourage more American citizens
to enter the high shortage areas in en-
geineering, math, and science, then
America may lose its historical advan-
tage as the world’s innovator.

The consequences of this trend are
also significant from a national secu-

ity perspective. The defense-related
research that goes into giving our men
and women in the Armed Forces the
best technology and equipment re-
quires the special skills of engineers,
scientists and computer scientists. Our
military has always recognized these
facts, and historically has been a tre-
mendous supporter of science and engi-
neering, putting billions of dollars in
research to the most pure and esoteric
of pursuits.

Let me quote some numbers which
make clear what a huge investment our
defense community makes in
science and engineering: According to
the National Science Foundation, the
Defense Department is by far the larg-
est single supporter of science and
technology in the Federal Government,
accounting for about half of the total
research dollars spent; the proportion of
defense funding for University re-
search in critical disciplines is very
significant. For example, 90 percent of
basic astronomical research is defense-
funded. And, as you all must realize,
the national security perspective to have
American scientists performing certain
tasks is becoming more and more appar-
ent.

Second, America has been taking
action to increase the attractiveness of
this country to foreign students and
workers, and raise the attractiveness to
their own citizens of staying home or re-
turning from abroad to serve growing
national economies and research enter-
pises.” This increased global competi-
tion for science and engineering work-
ers “comes at a time when demand for
their skills is projected to rise signifi-
cantly—both in the United States and
throughout the global economy.”

Without action on our part, though,
America will lose out in the competi-
tion for these technically talented
workers. According to the National
Science Board, by 2010, if current
trends continue, significantly less than
10 percent of all physical scientists and
engineers in the world will be working
in America.

Increased global competition is not
the only reason, though, that we have
to promote a home-grown S&E work-
force in America. In the post 9/11 era, it
is more important than ever from a se-
curity perspective to have American
citizens performing certain tasks.

The National Science Board put it
best when they said, “The ready avail-
ability of outstanding science and engi-
eineering talent from other countries is
no longer assured, as international
competition for the science and engi-
eineering workforce grows. Threats to
world peace and domestic security cre-
ate additional constraints on employ-
ment of foreign nationals in the United
States.”

I think the message is clear: Our S&E
workforce is in crisis. If we do not act
to encourage more American citizens
to enter the high shortage areas in en-
geineering, math, and science, then
America may lose its historical advan-
tage as the world’s innovator.

The consequences of this trend are
also significant from a national secu-

ity perspective. The defense-related
research that goes into giving our men
and women in the Armed Forces the
best technology and equipment re-
quires the special skills of engineers,
scientists and computer scientists. Our
military has always recognized these
facts, and historically has been a tre-
mendous supporter of science and engi-
neering, putting billions of dollars in
research to the most pure and esoteric
of pursuits.

Let me quote some numbers which
make clear what a huge investment our
defense community makes in
science and engineering: According to
the National Science Foundation, the
Defense Department is by far the larg-
est single supporter of science and
technology in the Federal Government,
accounting for about half of the total
research dollars spent; the proportion of
defense funding for University re-
search in critical disciplines is very
significant. For example, 90 percent of
basic astronomical research is defense-
funded. And, as you all must realize,
the national security perspective to have
American scientists performing certain
tasks is becoming more and more appar-
ent.
from the same financial background are eligible for the same grant even though one chooses to major in the liberal arts while the other majors in engineering or science.

While I believe studying the liberal arts is an important component to meeting a student's educational objectives, I also believe that given the unique challenges we are facing in this country, it is appropriate for us to add an incentive to the Pell Grant program to encourage individuals to pursue courses of study where we desperately need more trained workers. That is an indisputable fact. And, the Pell Grant program, as it stands now, have over $13 billion that is readily available to help meet this demand.

In closing, our world is vastly different today than it was when the Pell Grant program was created in 1972. My legislation is a commonsense modification of the Pell Grant program that will help America meet its new challenges. I hope my colleagues will join me in this endeavor.

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. 2462

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 "21st Century Federal Pell Grant Plus Act." 

SEC. 2. RECIPIENTS OF FEDERAL PELL GRANTS WHO ARE PURSUING PROGRAMS OF STUDY IN ENGINEERING, MATHEMATICS, OR FOREIGN LANGUAGES.

Section 401(b)(2) of the Higher Education Act of 1965 (20 U.S.C. 1070a(b)(2)) is amended by adding at the end the following:

"(C)(i) Notwithstanding subparagraph (A) and subject to clause (ii), in the case of a student who is eligible under this part and who is pursuing a program with a major in a foreign language, a certificate or program of study relating to, mathematics, science (such as physics, chemistry, or computer science), or a foreign language program, that program shall be included in a list described in clause (ii), the amount of the Federal Pell Grant shall be the amount calculated for the student under subparagraph (A) for the academic year involved, multiplied by 2.

"(ii) The Secretary, in consultation with the Secretary of Education, the Secretary of the Department of Homeland Security, and the Director of the National Science Foundation, shall publish within 1 year after the enactment of this Act and every 2 years, and publish in the Federal Register, a list of engineering, mathematics, and science degrees, majors, certificates, or programs that if pursued by a student, may enable the student to receive the increased Federal Pell Grant amount under clause (i).

"(III) The Secretary, in consultation with the Secretary of Defense, the Secretary of the Department of Homeland Security, and the Secretary of State, shall develop, update every 2 years, and publish in the Federal Register, a list of engineering, mathematics, and science degrees, majors, certificates, or programs that if pursued by a student, may enable the student to receive the increased Federal Pell Grant amount under clause (i).

"(IV) A student who received an increased Federal Pell Grant amount under clause (i) to pursue a degree, major, certificate, or program described in a list published under clause (II) or clause (III) shall continue to be eligible for the increased Federal Pell Grant amount under clause (i).

"(V) If a student who received an increased Federal Pell Grant amount under clause (i) to pursue a degree, major, or program described in a list published under clause (I), (II), or (III) continues to pursue the same degree, major, certificate, or program and is awarded a domestic degree, major, or completed certificate, the Secretary shall consider the following:

"(aa) The foreign language needs of the United States, homeland security, and economic security needs of the United States;

"(bb) Whether institutions of higher education in the United States are currently producing enough graduates with degrees to meet the national security, homeland security, and economic security needs of the United States;

"(cc) The future expected workforce needs of the United States required to help ensure the Nation's national security, homeland security, and economic security;

"(dd) Whether institutions of higher education in the United States are expected to produce enough graduates with degrees to meet the future national security, homeland security, and economic security needs of the United States;

"(EE) Whether institutions of higher education in the United States are currently producing enough graduates with degrees to meet the national security, homeland security, and economic security needs of the United States;

"(FF) The Secretary shall reduce the Federal Pell Grant amount under clause (i) for the student by the number of academic years the student received an increased Federal Pell Grant amount under clause (i), and deducting the result from the amount of Federal Pell Grant assistance the student is eligible to receive in subsequent academic years equal to the number of academic years the student received an increased Federal Pell Grant amount under clause (i)."

Mr. LIEBERMAN. Mr. President, I rise today to join my esteemed colleague from the State of Virginia, Senator WARNER, in introducing The 21st Century Pell Grant Plus Act. This bill is intended to provide an immediate and direct response to the urgent need in this country to encourage greater numbers of graduates in the critical areas of math and science and foreign languages. Specifically, it would provide financial incentives to American college students, via enhanced Pell grants, to pursue degrees in science, engineering, mathematics, and key foreign languages. These subject areas are critical for meeting our nation's economic and homeland security needs.

Although the number of jobs requiring scientific and technical skills is projected to grow over the next decade, the last ten years have witnessed a significant decline in the number of relevant baccalaureate degrees awarded by U.S. institutions of higher education. Recent reports have highlighted the decline in science and engineering graduates in our country, which has threatened the United States' worldwide dominance in science and innovation. Foreign advances in basic science now often exceed those in the U.S., and to exacerbate the matter, future demographics signal that many of the presently employed engineers and scientists who entered the workforce in the 1960s and 1970s will retire during the next decade. Unfortunately, their children are not following them into the same professions.

Many of our competitors in the world market are not experiencing these same problems. The universities in Europe and some Asian countries are attracting science and engineering majors at much higher rates than the universities in the United States. For example, China graduated three times as many engineering graduates than the United States did in 1970, but by 2010, there were 24 nations who awarded a higher percentage of science and engineering degrees than the United States did. In that same year, the percentage of students earning science degrees in Finland was 2.5 times higher than the United States. Graduate education trends are no better. According to National Science Foundation indicators,
between 1986 and 1999, China produced science and engineering doctorates at an average annual growth rate of 36.5 percent. By comparison, the United States had an average annual growth rate of just 2.2 percent during the same period. We must also keep in mind that of all the science and engineering doctoral degrees earned in the United States in 1999, 48.6 percent of them were earned by non-U.S. citizens.

I noted in my recent offshore outsourcing study, now posted on my website, that as global competition for technical talent intensifies, our economic security depends on producing U.S.-born science and engineering graduates. Not being able to fill the jobs in this country with U.S. citizens is also a threat to our national security. Thus, it is imperative that our higher education system, which is the best in the world, train more individuals in science and technology.

Our bill provides a simple and efficient solution to this problem. Under our proposal, any student who qualifies for a Pell Grant and majors in science, engineering, mathematics, or certain foreign languages would be eligible to receive a grant that is double the size of the original award. Every two years, after completing at least half-time study, the Secretary of Education, in consultation with the Secretaries of Defense and Homeland Security, and the director of the National Science Foundation will develop a list of engineering, science, and foreign language majors, degrees, certificates, or programs that if pursued by a student, may enable that student to receive the increased Federal Pell Grant amount.

Science, engineering, technology, and innovation are key to our economic growth, prosperity, and security. The 21st Century Federal Pell Grant Plus Act aims to strengthen our technical workforce, and thus our economic and national security. I urge more of our college students to study science, engineering, mathematics, and foreign languages. I urge my colleagues to act favorably on this measure.

I would also like to take this opportunity to pay tribute to a man who some have appropriately described as a true gentleman as well as an outstanding leader in engineering and science. Dr. John H. Hops was on May 14, 2004, at the age of 75. He advised my office on our nation’s science talent issues for the past three years, and I want to dedicate today’s new bill to him. At the time of his death, he was serving as Deputy Under Secretary of Defense for Research and National Laboratories, and Deputy Director of Defense Research and Engineering. He accepted this dual position out of a desire to停车位 our nation’s science and technology workforce. Among his many achievements, including many in University education and at NSF, I would note that Dr. Hops was the author of numerous scholarly and scientific papers, and was recognized as one of the top African Americans in Technology 2002. I might also mention that in addition to his intellectual prowess, he was passionate about athletics—a winning combination. As we introduce this bill to highlight the importance of his profession, I thought it was appropriate to recognize Dr. Hops, and thank my colleagues for this opportunity.

By Mr. COLEMAN (for himself and Mrs. FEINSTEIN)
S. 2464. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the sale of prescription drugs through the Internet; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COLEMAN:
S. 2465. A bill to amend the Controlled Substances Act with respect to the seizure of shipments of controlled substances, and for other purposes; to the Committee on the Judiciary.

Mr. COLEMAN. Mr. President, I rise to introduce two bills that expand Federal authority to prevent controlled substances from flooding into the United States, authorizing states to shut down illegitimate virtual pharmacies, and bar Internet drug stores from dispensing drugs to consumers who are provided a prescription by a doctor who has never met the customer. These bills are designed to address this problem in three steps. First, the bill bans the selling or dispensing of prescription drugs over the Internet without a valid prescription by a provider who has known the patient for a minimum of two years. It also requires Internet pharmacies to display information identifying the business, pharmacist, and physician associated with the site.

Second, the bill bars the selling or dispensing of a prescription drug via the Internet when the website has referred the customer to a doctor who then writes a prescription without ever seeing the patient.
Third, the bill provides States with new enforcement authority modeled on the Federal Telemarketing Sales Act that will allow a state attorney general to shut down a rogue site across the country, rather than only bar sales to consumers within the state.

I am proud to say that the Ryan Haight Internet Pharmacy Consumer Protection Act is supported by the Federation of State Medical Boards, the National Community Pharmacists Association, and the American Pharmacists Association.

The second bill I am introducing enables Customs and Border Protection to immediately seize and destroy any package containing a controlled substance that is illegally imported into the U.S. without having to fill out duplicative forms and other unnecessary administrative paperwork. The Act will allow Customs to focus on interdicting and destroying potentially addictive and deadly controlled substances. Dedicated to Todd Rode, a young man who died after overdosing on imported drugs.

Todd Rode had the heart and soul of a musician. He graduated from college magna cum laude with a major in psychology and a minor in music. The University named him the outstanding senior in the Psychology Department. He worked in this field for a number of years, but he constantly fought bouts of depression and anxiety.

Unfortunately Todd ordered controlled drugs from a pharmacy and doctor in another country. These drugs included Venlafaxine, Propoxyphene, and Codeine. All were controlled substances and all were obtained from overseas pharmacies without any safeguards. To obtain these controlled substances all Todd had to do was to fill out an online questionnaire and with the click of a mouse they were shipped directly to his front door.

In October 2004, Todd’s family found him dead in his apartment.

A six-month investigation by the Permanent Subcommittee on Investigations has revealed that tens of thousands of dangerous and addictive controlled substances are streaming into the U.S. on a daily basis from overseas Internet pharmacies. For example, on March 15 and 17, 2004, at JFK airport, home to the largest International Mail Branch in the U.S., at least 11,200 packages originated from a single vendor in the Netherlands containing hydrocodone and Diazepam (Valium) were seized by Customs and Border Protection (Customs).

In fact, senior Customs inspectors at JFK estimate that 40,000 parcels containing drugs are imported on a daily basis. During last summer’s FDA-Customs blitz, 28 percent of the drugs tested were controlled substances. Extrapolating these figures, 11,200 drug parcels containing controlled substances is estimated through JFK daily, 78,400 weekly, 313,600 monthly and 3,763,200 annually. Top countries of origin include Brazil, India, Pakistan, Netherlands, Spain, Portugal, Canada, Mexico, and Romania.

Likewise, as of March 2003, senior Customs officials at the Miami International Airport indicated that as much as 30,000 packages containing drugs were seized in a daily basis. A large percentage of these are controlled substances as well. Customs is simply overwhelmed. At Mail facilities across the U.S., Customs regularly seize shipments of oxycodone, hydroquinone, tranquilizers, steroids, codeine, laced products, GHB, date rape drug, and morphine.

In order to comply with paperwork requirements, Customs is forced to devote investigators solely to opening, counting, and analyzing drug packages, and logging into a computer all of the seized controlled substances. It takes Customs at least one hour to process a single shipment of a controlled substance. This minimizes the availability of interspecific controlled substance packaging. In fact, currently at JFK, there are 20,000 packages of seized controlled substances waiting processing. Customs acknowledges that, because of the sheer volume of product, bureaucratic regulations, manpower, the vast majority of controlled substances that are illegally imported are simply missed and allowed into the U.S. stream of commerce.

The Act to Prevent the Illegal Importation of Controlled Substances is a simple bill to address this burgeoning and potentially lethal problem.

I am confident that, if enacted as stand-alone measures, each of these bills will make on-line drug purchasing safer. However, I am working with Senator Gregg to ensure these safety features are included in his comprehensive reimportation bill and urge my colleagues to help make sure that this important piece of legislation becomes law this year.

Mrs. FEINSTEIN. Mr. President, I rise today along with my colleague Senator Coleman to introduce the Internet Pharmacy Consumer Protection Act also called the “Ryan Haight Act”, a bill which is vital to protect the safety of Americans who choose to purchase their prescription drugs legally over the Internet.

This legislation is necessary because of a growing problem of illegal prescription drug abuse of prescription drugs. Coupled with the ease of access to the Internet, it has led to an environment where illegitimate pharmacy websites can bypass traditional regulations and established safeguards for the sale of prescription drugs. Internet websites that allow consumers to obtain prescription drugs without the existence of a bona fide physician-patient relationship pose an immediate threat to public health and safety.

To address this problem, the Internet Pharmacy Consumer Protection Act makes several critical steps to ensure safety and to assist regulatory authorities in shutting down “rogue” Internet pharmacies.

First, this bill establishes disclosure standards for Internet pharmacies.

Second, this bill prohibits the dispensing or sale of a prescription drug based solely on communications via the Internet such as the completion of an online medical questionnaire.

Third, it allows a State Attorney General to bring a civil action in a federal district court for the pharmacy operation and to enforce compliance with the provisions of this law.

Under this bill, for a domestic website to sell prescription drugs legally, the website would have to display identifying information such as the names, addresses, and medical licensing information for pharmacists and physicians associated with the website.

Let me illustrate the situation facing our country today. If a physician’s office prescribed and dispensed prescription drugs the same way Internet pharmacies currently can and do, it would look something like this: A physician overlooks a physical or electronic questionnaire to fill out a medical history questionnaire in the lobby and gives his or her credit card information to the office manager. There is no nurse, and therefore no one to take the patient’s height, weight, blood pressure, verify his or her medical history, and so forth and no one to answer the patient’s questions regarding their health.

The questionnaire is then slipped through a hole in the window; the office manager takes the questionnaire and, or person acting as the physician, who then writes the prescription and hands it to the pharmacist, or person acting as the pharmacist, in the next room. Once the patient signs his credit card, he is on his way out the door, drugs in hand.

No examination is performed, no questions asked, and no verification or clarification of the answers provided on the medical history questionnaire.

This illustration is not an exaggeration. It occurs every day all across the United States. The National Association of Boards of Pharmacy estimates
that there are around 500 identifiable rogue pharmacy websites operating on the Internet.

According to the Federation of State Medical Boards, approximately 29 states and the District of Columbia either have laws or medical board initiatives addressing Internet medical practice. Of the other 21 States, 13 have medical or osteopathic medical boards that have taken disciplinary action against a physician for prescribing medication online.

Many States have already enacted laws defining acceptable practices for qualifying medical relationships between doctors and patients and this bill would not affect any existing State laws.

For example, California law was changed in 2000 to say:

No person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished dangerous drugs or dangerous devices [defined as any drug or device unsafe for self-use] on the Internet for delivery to any person in this state, without a good faith prior examination and medical indication . . .

I believe California’s law is a perfect example of why this legislation is needed. The law only applies to persons living in California. As we all know, however, the Internet is not bound by State or even country borders.

This legislation makes a critical step forward by providing additional authority for State Attorneys General to file an injunction in Federal court to shut down Internet sites operating in another State that violates the provisions in the bill.

Under current law, in order to close down an Internet website selling prescription drugs prosecutors must take enforcement actions in every State where the Internet pharmacy operates, requiring a tremendous amount of resources in an environment where the location of the website is difficult, if not impossible, to determine or keep track of.

This bill will allow a State Attorney General to bring a civil action in a Federal district court to enjoin a pharmacy operation and to enforce compliance with the provisions of the law in every jurisdiction where the pharmacy is operating.

While this legislation pertains to domestic Internet pharmacies, the practice of international pharmacies selling low-cost drugs to U.S. consumers who use valid prescriptions from their doctors deserves to be discussed and debated on the Senate floor. It is my hope that the Senate will act this year on prescription drug importation legislation.

In closing, I want to share with you the story of Ryan T. Haight of La Mesa, CA, in whose memory this bill is named.

Ryan was an 18-year old honor student from La Mesa, CA, when he died in his apartment on February 12, 2001. His parents found a bottle of Vicodin in his room with a label from an out-of-state pharmacy.

It turns out that Ryan had been ordering addictive drugs online and paying with a debit card his parents gave him to buy baseball cards on eBay.

Without a physical exam or his parents’ consent, Ryan had been obtaining controlled substances from an Internet site in Oklahoma. It only took a few months before Ryan’s life was ended by an overdose on a cocktail of painkillers.

Ryan’s story and others like it force us to ask why anyone in the U.S. would be able to access such highly addictive and dangerous drugs over the Internet with such ease?

Why was there no physician or pharmacist on the other end of this teenager’s computer verifying his age, his medical history and that there was a valid prescription?

That is why I support this legislation. It makes sensible requirements of Internet pharmacy websites that will not impact access to convenient, often-time-saving, much-needed medications.

With simple disclosure requirements for Internet sites such as names, addresses and medical or pharmacy licensing information, patients will be better off and state medical and pharmacy boards will ensure that pharmacists and doctors are properly licensed.

Lastly, this bill will give State Attorneys General the authority they need to shut down rogue Internet pharmacies operating in other States. I urge my colleagues to support this bill.

By Mr. BROWNBACK (for himself, Mr. ALEXANDER, Mr. BUNNING, Mr. BURNS, Mr. COLEMAN, Mr. CRAPO, Mr. DEWINE, Mr. ENSIGN, Mr. ENZI, Mr. FITZGERALD, Mr. GRAHAM of South Carolina, Mr. GRASSLEY, Mr. HATCH, Mr. KYL, Mr. MCCONNELL, Mr. MILLER, Mr. NICKLES, Mr. PYGOTT, Mr. SANTORUM, Mr. SESSIONS, Mr. SHELBY, Mr. TALENT, Mr. CHAMBLISS, and Mr. ENHOFER):

S. 2466. A bill to ensure that women seeking an abortion are fully informed regarding the pain experienced by their unborn child; to the Committee on Health, Education, Labor and, and Behavioral Indicators that are Correlated with Pain in Children and Adults. Unborn children can experience pain.

This is why unborn children are often administered anesthesia during in utero surgeries.

Think about the pain that unborn children can experience, and then think about the painful abortion procedures. Of course, we have heard about Partial Birth Abortion, but also consider the D&E abortion procedures. During this procedure, commonly performed after 20-weeks—when there is medical evidence that an experience severe pain—the child is torn apart limb from limb. Think about how that must feel to a young human.

We would never allow a dog to be treated this way. Yet, the creature we are talking about is a young, unborn child.

Fortunately, the issue of pain experienced by unborn children has been covered by the news media during the ongoing Partial Birth Abortion Ban trials. Take for instance an April 7, 2004 Associated Press news article covering the trials. And I quote: “A type of abortion banned under a new federal law would cause “severe and excruciating” pain to 20-week-old fetuses, a medical expert testified yesterday. ‘I believe the fetus is conscious,’ said Dr. Kanwaljeet ‘Sonny’ Anand, a pediatrcian at the University of Arkansas for Medical Sciences . . . said yesterday that fetuses show increased heart rate, blood flow, and hormone levels in response to pain. ‘The physiological responses have been very clearly studied,’ he said. ‘The fetus cannot talk . . . so this is the best evidence we can get.’

Today I introduce a bill that would require those who perform abortions on unborn children 20 weeks after fertilization to inform the woman seeking an abortion of the medical evidence that the unborn child feels pain: (a) through a verbal statement given by the abortion provider, and also (b) by providing a brochure—developed by the Department of Health and Human Services—that goes into more detail than the verbal statement on the medical evidence of pain experienced by an unborn child 20 weeks after fertilization.

The bill would also ensure that the woman, if she chooses to continue with
the abortion procedure after being given the medical information, has the option of choosing anesthesia for the child, so that the unborn child’s pain is less severe.

Women should not be kept in the dark about the risks of abortion. Women should be aware of what their unborn child experiences during an abortion. After being presented with the medical and scientific information on the development of the unborn child 20 weeks after fertilization, the woman is more aware of the pain experienced by the child during an abortion procedure, and able—at the very least—to make an informed decision. It is simply not fair to keep women in the dark.

Unborn children do not have a voice, but they are young members of the human family. It is time to look at the reality of a young human, who can feel pain and should be treated with care. It is time to look at the human family. It is time to look at the women in the dark.

The abortion procedure, and able—at the very least—to make an informed decision. It is simply not fair to keep women in the dark.

The abortion procedure, and able—at the very least—to make an informed decision. It is simply not fair to keep women in the dark.

Senator CARPER, to introduce the Post
Collins-Carper bill keeps those public policy decisions in congressional hands.

The existing Postal Rate Commission would be transformed into the Postal Regulatory Commission with greatly enhanced authority. Under current law, the Rate Commission has very narrow authority. We wanted to ensure that the Postal Service management has both greater latitude and stronger oversight. Among other things, the Postal Regulatory Commission will have the authority to regulate rates for non-competitive products and services; ensure financial transparency; establish limits on the accumulation of retained earnings by the Postal Service; obtain information from the Postal Service, if need be, through the use of new subpoena power; and review and act on complaints filed by those who believe the Postal Service has exceeded its authority. Members of the Postal Regulatory Board will be selected solely on their demonstrated experience and professional standing. Senate confirmation of all Board Members will be required.

The Governmental Affairs Committee dedicated two hearings to the examination of the Committees' workforce-related recommendations. The Postal Service is a highly labor-intensive organization, using $3 out of every $4 to pay the wages and benefits of its employees. Their workforce is composed of 700,000 private letter carriers, clerks, mail handlers, postmasters, and others, who place great value on their right to collectively bargain. Our bill reaffirms that right. This bill only makes changes to the bargaining process that have been agreed to by both the Postal Service and the four major unions. We replace the rarely used fact-finding process with mediation, and shorten statutory deadlines for certain phases of the bargaining process.

Additionally, the Collins-Carper bill corrects what I believe to be an anomaly in the Federal workers’ compensation law that results in high costs for the Postal Service. Under the Federal Employees Compensation Act (FECA), Federal employees with dependents are eligible for 75 percent of their take-home pay, tax free, plus cost of living allowances. In addition, there is no maximum dollar cap on FECA payments. As a result, employees often opt not to retire, staying on to more generously workers’ compensation program permanently.

According to a March 2003 audit issued by the Postal Service’s Office of Inspector General, the Postal Service’s workers’ compensation rolls include 81 cases that originated 40 to 50 years ago, with the oldest recipient being 102 years old. The IG’s office found 778 cases that originated 30 to 40 years ago; and 1,189 cases that originated 20 to 29 years ago.

The Collins-Carper bill works to protect the financial resources of the Postal Service by converting workers’ compensation benefits for total or partial disability to a retirement annuity when the affected employee reaches 65 years of age. This change would reflect the fact that disabled postal employees would likely retire at some point were they not receiving workers’ compensation. I would like to note that the average postal employee retires far earlier than age 65, so this is still a generous program. It is important to point out that the Postal Service has reduced their workplace injury rate by twenty-eight percent over the past three years.

The Collins-Carper bill also puts into place a three-day waiting period before an employee is eligible to receive 45 days of continuation of pay. This is consistent with every state’s workers’ compensation program that requires a three- to seven-day waiting period before benefits are paid.

Our bill has reached an important compromise on the issue of workers’ compensation. Some have raised concerns that the Collins-Carper bill includes a health contribution to overhead, but while this may have occurred in a handful of instances, those mailers are still covering their attributable costs, and will likely see a healthy contribution to overhead. The language in our bill sets a policy that the Postal Service will not create new discounts greater than the cost avoided by the Postal Service. The only exception is that the mailers will be held in an escrow account. Repeal of Public Law 108–18 which requires that other similarly situated mailers cover all attributable costs, and will likely result in greater contribution to overhead. In addition, our bill requires that other similarly situated mailers will be able to enter into such agreements with the Postal Service.

Finally, our bill would repeal a provision of Public Law 108–18 which requires that money owed to the Postal Service due to an overpayment into the Civil Service Retirement System Fund be held in an escrow account. Repealing this provision would essentially “free up” $70 billion over a period of 60 years. These savings would be used to not only pay off debt to the U.S. Treasury and to fund health care liabilities, but to mitigate rate increases as well. In fact, failure to release these escrow funds would mean, for mailers, a double-digit rate increase in 2006—an expense most American businesses and many consumers are ill-equipped to afford.

The bill would also return to the Department of Justice the responsibility for funding CSRS pension benefits relating to the military service of postal retirees. No other agency is required to make this payment. Rate-payers should not be held responsible for this $27 billion obligation.

The Postal Service has reached a critical juncture. If we are to save and strengthen this vital service upon which so many Americans rely for communication and their livelihoods, the time to act is now.

Our bill has the strong endorsements of the National Rural Letter Carriers Association, the National Association of Letter Carriers, the National Association of Postmasters of the United States, and the Coalition for a 21st Century Postal Service—which represents thousands of the major mailers, employee groups, small businesses, and other users of the mail. I am also very pleased to add Senators Ted Stevens, George Voinovich and John Sununu as originated cosponsors of this bill.

I look forward to working with all of my colleagues in the Senate, and House, Government Reform and Oversight Committee Chairman Tom Davis, who just last week passed a postal reform bill out of his committee by a vote of 40-0.

I ask unanimous consent that the text of the bill be printed in the Record, along with a letter sent to me from David Walker, Comptroller General of the General Accounting Office, addressing the need for comprehensive postal reform.

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

S. 2468

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 “Postal Accountability and Enhancement Act”.

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

TITLE I—DEFINITIONS; POSTAL SERVICES

Sec. 101. Definitions.
Sec. 102. Postal services.

TITLE II—MODERN RATE REGULATION

Sec. 201. Provisions relating to market-dominant products.
Sec. 204. Reporting requirements and related provisions.
Sec. 205. Complaints; appellate review and enforcement.

TITLE III—MODERN SERVICE STANDARDS

Sec. 301. Establishment of modern service standards.
Sec. 302. Postal service plan.

TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

Sec. 401. Postal Service Competitive Products Fund.
Sec. 402. Assumed Federal income tax on competitive products income.
Sec. 403. Unfair competition prohibited.
Sec. 404. Suits by and against the Postal Service.

TITLE V—GENERAL PROVISIONS

Sec. 501. Qualification and term requirements for Governors.
TITLE VI—ENHANCED REGULATORY COMMISSION

Sec. 601. Reorganization and modification of certain provisions relating to the Postal Regulatory Commission.
Sec. 602. Authority for Postal Regulatory Commission to issue subpoenas.
Sec. 603. Appropriations for the Postal Regulatory Commission.
Sec. 604. Redesignation of the Postal Rate Commission.
Sec. 605. Financial transparency.

TITLE VII—EVALUATIONS

Sec. 701. Assessments of ratemaking, classification, and other provisions.
Sec. 702. Report on universal postal service and the postal monopoly.
Sec. 703. Study on equal application of laws to competitive products.

TITLE VIII—POSTAL SERVICE RETIREMENT AND HEALTH BENEFITS FUNDING

Sec. 801. Short title.
Sec. 802. Civil Service Retirement System.
Sec. 803. Health insurance.
Sec. 804. Requirement of deposit of savings provision.
Sec. 805. Effective dates.

TITLE IX—COMPENSATION FOR WORK INJURIES

Sec. 901. Temporary disability; continuation of pay.
Sec. 902. Disability retirement for postal employees.

TITLE I—DEFINITIONS; POSTAL SERVICES

SEC. 101. DEFINITIONS. Section 102 of title 39, United States Code, is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following:

"(5) "postal service" refers to the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, or other services ancillary thereto;

(6) "product" means a postal service with a distinct cost or market characteristic for which a rate is applied;

(7) "rates", as used with respect to products, includes fees for postal services;

(8) "market-dominant product" or "product in the market-dominant category of mail" means a product subject to subchapter I of chapter 36; and

(9) "competitive product" or "product in the competitive category of mail" means a product subject to subchapter II of chapter 36; and

(10) "year", as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.

SEC. 102. POSTAL SERVICES.

(a) In GENERAL.—Section 404 of title 39, United States Code, is amended—

(1) in subsection (a), by striking "and" at the end of paragraph (6) and (7) through (9) as paragraphs (6) through (8), respectively; and

(2) by adding at the end the following:

"(c) Nothing in this title shall be considered to permit or require that the Postal Service provide any special nonpostal or similar services."


(2) Section 2003(b)(1) of title 39, United States Code, is amended by striking "and nonpostal".

TITLES II—MODERN RATE REGULATION

SEC. 201. PROVISIONS RELATING TO MARKET- Dominant PRODUCTS.

(a) IN GENERAL.—Chapter 36 of title 39, United States Code, is amended by striking sections 3621, 3622, and 3623 and inserting the following:

* § 3621. Applicability; definitions

(a) APPLICABILITY.—This subchapter shall apply with respect to:

(1) first-class mail letters;

(2) first-class mail cards;

(3) periodicals;

(4) standards roll;

(5) single-piece parcel post;

(6) media mail;

(7) bound printed matter;

(8) library mail;

(9) special services; and

(10) single-piece international mail.

(b) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter and this title, have the meaning given to such mail matter under the mail classification schedule.

§ 3622. Modern rate regulation

(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 12 months after the date of the enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

(b) OBJECTIVES.—Such system shall be designed to achieve the following objectives:

(1) To reduce the administrative burden and increase the transparency of the rate-making process.

(2) To create predictability and stability in rates.

(3) To maximize incentives to reduce costs and increase efficiency.

(4) To enhance mail security and deter terrorism by promoting secure, sender-identified mail.

(5) To allow the Postal Service pricing flexibility of the advance notice to users of its intent to use pricing practices to promote intelligent mail and encourage increased mail volume during nonpeak periods.

(6) To assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards established under section 3691.

(7) To allow the Postal Service to reflect the total institutional costs of the Postal Service equitably between market-dominant and competitive products.

(c) REQUIREMENTS.—In establishing or revising such system, the Postal Regulatory Commission shall—

(1) the establishment and maintenance of a fair and equitable schedule for rates and classification system;

(2) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;

(3) the direct and indirect postal costs attributed to the delivery of mail service plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

(4) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

(5) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

(6) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

(7) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

(8) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

(9) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

(10) the desirability of special classifications from the point of view of both the user and of the Postal Service;

(11) the educational, cultural, scientific, and informational value to the recipient of mail matter; and

(12) the policies of this title as well as such other factors as the Commission deems appropriate.

(d) REQUIREMENTS.—The system for regulating rates and classes for market-dominant products shall—

(1) require the Postal Rate Commission to provide a public notice of the adjustment;

(2) provide an opportunity for review by the Postal Rate Commission;

(3) provide for the Postal Rate Commission to notify the Postal Service of any noncompliance by the Commission with the limitation under paragraph (1); and

(4) require the Postal Service to respond to the notice provided under subparagraph (3) to describe the actions to be taken to comply with the limitation under paragraph (1).

(4) notwithstanding any limitation set under paragraphs (1) and (3), establish procedures whereby rates may be adjusted on an expedited basis due to unexpected and extraordinary circumstances.

(e) WORKSHARE DISCOUNTS.—

(1) DEFINITION.—In this subsection, the term "workshare discount" refers to rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission under subsection (a).

(2) REGULATIONS.—As part of the regulations established under subsection (a), the Postal Regulatory Commission shall establish rules for workshare discounts that ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless—

(A) the discount is associated with a new postal service or with a change to an existing postal service; and
“(ii) necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service; “(B) a reduction in the discount would— “(i) cause the cost of providing postal services to exceed the revenue generated therefrom; or “(ii) be unfair or unjustified with respect to the provision of postal services under terms, conditions, and rates that are functionally equivalent to those available to similarly situated mailers on the free market or that are provided by the Postmaster General, as determined by the Postal Regulatory Commission.”

“(3) REPORT.—Whenever the Postal Service establishes or maintains a workshare discount, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report and explanation of the Postal Service's reasons for establishing or maintaining the rate, setting forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate.

“(f) TRANSITION RULE.—Until regulations under this section take effect, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of the enactment of this section.

“§ 3623. Service agreements for market-dominant products

“(a) IN GENERAL.—

“(1) AUTHORITY.—The Postal Service may enter into service agreements with a customer or group of customers that provide for the provision of postal services under terms, conditions, and rates that differ from those that would apply under the otherwise applicable classification of market-dominant mail.

“(2) LIMITATIONS.—An agreement under this section may involve—

“(A) performance by the contracting mailer of any function of the Postal Service; “(B) the performance of additional mail preparation, processing, transportation, or other functions; or “(C) other terms and conditions that meet the requirements of subsections (b) and (c).

“(b) REQUIREMENTS.—A service agreement under this section may be entered into only if each of the following conditions is met:

“(1) The total revenue generated under the agreement— “(A) will cover all Postal Service costs attributable to the postal services covered by the agreement; and “(B) will result in no less contribution to the institutional costs of the Postal Service than would have been if such service had been provided by the Postal Service.

“(2) Rates or fees for other mailers will not increase as a result of the agreement.

“(3) The agreement pertains exclusively to products in the market-dominant category of mail.

“(4) The agreement will not preclude or materially hinder similarly situated mail users from entering into agreements with the Postal Service on the same, or substantially the same, terms and the Postal Service remains willing and able to enter into such.

“(c) LIMITATIONS.—A service agreement under this section shall—

“(1) be for a term not to exceed 3 years; and “(2) provide that such agreement shall be subject to the cancellation authority of the Commission under section 3662.

“(d) NOTICE REQUIREMENTS.—

“(1) In general.—30 days before a service agreement under this section is to take effect, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register the following information with respect to such agreement:

“(A) A description of the postal services the agreement involves. “(B) A description of the functions the customer is to perform under the agreement. “(C) A description of the functions the Postal Service is to perform under the agreement. “(D) The rates and fees payable by the customer during the term of the agreement. “(E) With respect to each condition under subsection (b), a statement that demonstrates the bases for the view of the Postal Service that such condition would be met.

“(2) AGREEMENTS LESS THAN NATIONAL IN SCOPE.—In the case of a service agreement under this section that is less than national in scope, the information described under paragraph (1) shall also be published by the Postal Service in a manner designed to afford reasonable notice to persons within any geographic area to which such agreement (or any portion thereof) pertains.

“(e) EQUAL TREATMENT REQUIRED.—If the Postal Service enters into a service agreement with a mailer under this section, the Postal Service shall make such agreement available to similarly situated mailers on functionally equivalent terms and conditions consistent with the regulatory system established under section 3622 without unreasonable distinctions based on mailer profiles, provided that such distinctions, if ignored, would not result in a subsequent agreement uneconomic or impractical.

“(f) COMPLAINTS.—Any person who believes that a service agreement under this section is not in conformance with the requirements of this section, or who is aggrieved by a decision of the Postal Service not to enter into an agreement under this section, may file a complaint with the Postal Regulatory Commission in accordance with section 3662.

“(g) POSTAL REGULATORY COMMISSION RULE.—

“(1) REGULATIONS.—The Postal Regulatory Commission may promulgate such regulations regarding service agreements as the Commission determines necessary to implement the requirements of this section.

“(2) REVIEW.—The Postal Regulatory Commission may review any agreement or proposed agreement under this section, and may suspend, cancel, or prevent such agreement if the Commission finds that the agreement does not meet the requirements of this section.

“(h) INTERPRETATION.—The determination of whether the revenue generated under the agreement meets the requirements of subsection (b) is to be made on the basis of whether the revenue generated under such agreement is in effect before the date of the enactment of this section.

“(i) domestic mail.

“(j) SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS

“§ 3631. Applicability; definitions and updates

“(a) APPLICABILITY.—This subchapter shall apply with respect to—

“(1) priority mail; “(2) expedited mail; “(3) bulk priced mail; “(4) bulk international mail; and in the case of a service agreement (as defined in this section) with respect to any product entered into under this section, may file a complaint with the Postal Regulatory Commission in accordance with section 3662.

“(b) DEFINITION.—For purposes of this subchapter, the term 'service agreement', as used with respect to a product, means the direct and indirect postal costs attributable to such product.

“(c) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under such mail classification, as defined in that classification, by the Postal Service.

“(d) LIMITATION.—Notwithstanding any other provision of this section, nothing in this subchapter shall be considered to apply to products in the market-dominant category of mail.

“§ 3632. Action of the Governors

“(a) AUTHORITY TO ESTABLISH RATES AND CLASSES.—The Governors, with the written concurrence of a majority of all of the Governors then holding office, shall establish rates and classes for products in the competitive category of mail in accordance with the requirements of this subchapter and regulations promulgated under section 3681.

“(b) PROCEDURES.—

“(1) IN GENERAL.—Rates and classes shall be established in writing, complete with a statement of explanation and justification, and the date as of which each such rate or class takes effect.

“(c) PUBLIC NOTICE; REVIEW; AND COMPLIANCE.—Not later than 30 days before the date of implementation of any adjustment in rates under this section—

“(1) the Governors shall provide public notice of the adjustment and an opportunity for review by the Postal Regulatory Commission: “(2) the Postal Rate Commission shall notify the Governors of any noncompliance of the adjustment with section 3633; and “(C) the Governors shall respond to the notice provided under subparagraph (B) and describe the actions to be taken to comply with section 3633.

“(c) TRANSITION RULE.—Until regulations promulgated under section 3681 take effect, rates and classes for competitive products shall remain subject to modification in accordance with the provisions of this chapter and section 3625, and 3628 of title 39, United States Code, as amended by section 202.
$3633. Provisions applicable to rates for competitive products

"The Postal Regulatory Commission shall, within 180 days after the date of the enactment of this section (as applicable and may from time to time thereafter revise) regulations to—

(1) prohibit the subsidization of competitive products by market-dominant products; and
(2) ensure that each competitive product covers its costs attributable; and
(3) ensure that all competitive products file with the Postal Regulatory Commission a market test pursuant to the Institutional costs of the Postal Service."
SEC. 204. REPORTING REQUIREMENTS AND RELATED PROVISIONS.

(a) Redesignation.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by subsection (b)) is amended—

(1) by striking the heading for subchapter IV and inserting the following:

"SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS."

(2) by inserting after subchapter III the following:

"SUBCHAPTER VI—GENERAL."

(b) Report to the Commission.—Chapter 36 of title 39, United States Code, is amended by inserting after subchapter III the following:

"SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS.

§ 3651. Annual reports by the Commission

"(a) In General.—The Postal Regulatory Commission shall submit an annual report to the President and the Congress concerning the operations of the Commission under this title, including an overview to which regulations are achieving the objectives under sections 3622, 3633, and 3691.

"(b) Primacy of the Postal Service.—The Postal Service shall provide the Postal Regulatory Commission with such information as may, in the judgment of the Commission, be necessary for the Commission to prepare its reports under this section.

§ 3652. Annual reports to the Commission

"(a) Costs, Revenues, Rates, and Service.—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex to the report as the Commission may require under subsection (e))—

"(1) which shall analyze costs, revenues, rates, and quality of service in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; and

"(2) which shall, for each market-dominant product provided in such year, provide—

"(A) the total information, including mail volumes; and

"(B) measures of the service afforded by the Postal Service in connection with such product, including—

"(i) the level of service (described in terms of speed of delivery and reliability) provided; and

"(ii) the degree of customer satisfaction with the service provided.

Before submitting a report under this subsection (including any annex to the report and the information required under subsection (b)), the Postal Service shall have the information contained in such report (and annex) audited by the Inspector General, and any such audit shall be submitted along with the report to which it pertains.

"(b) Information Relating to Workshare Discounts.—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:

"(1) The per-item cost avoided by the Postal Service by virtue of such discount.

"(2) The effect of such per-item cost avoided that the per-item workshare discount represents.

"(3) The per-item contribution made to administrative costs.

"(c) Service Agreements and Market Tests.—In carrying out subsections (a) and (b) with respect to service agreements (including service agreements entered into under section 3623) and experimental products offered through market tests under section 3641 in a given year, the Commission—

"(1) may report summary data on the costs, revenues, and quality of service by service agreement and market test; and

"(2) shall, as the Commission determines is appropriate, report such data as the Postal Regulatory Commission requires.

"(d) Supporting Matter.—The Postal Regulatory Commission shall have access, in accordance with the Commission's policies, to the working papers and any other supporting matter of the Postal Service and the Inspector General in connection with any information submitted under this section.

"(e) Content and Form of Reports.—

"(1) In General.—The Postal Regulatory Commission shall, by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating to the report) to be provided by the Postal Service under this section. In carrying out this subsection, the Commission shall give due consideration to—

"(A) providing the public with timely, adequate information to assess the lawfulness of rates charged;

"(B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and

"(C) protecting the confidentiality of commercially sensitive information.

"(2) Revised Requirements.—The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the content and form of Postal Service data required by the Commission under this subsection whenever it shall appear that—

"(A) the presentation of costs or revenues to products has become significantly inaccurate or can be significantly improved;

"(B) the quality of service data has become significantly inaccurate or can be significantly improved; or

"(C) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

"(f) Confidential Information.—

"(1) In General.—If the Postal Service determines that any document or portion of a document (or any document or information provided to the Postal Regulatory Commission in a nonpublic annex under this section or under subsection (d) contains information which is described in section 552(b)(2) or exempt from public disclosure under section 552(b)(4) of title 5, the Postal Service shall, at the time of providing such information to the Commission, notify the Commission of its determination, in writing, and describe with particularity the documents (or portions of documents) or other matter for which confidentiality is sought and the reasons therefore.

"(2) Treatment.—Any information or other matter described in paragraph (1) to which the Commission gains access under this section shall be subject to paragraphs (2) and (3) of section 501(g) in the same way as if the Commission had received notification with respect to such matter under section 501(g)(1).

"(g) Other Reports.—The Postal Service shall submit to the Postal Regulatory Commission an annual report (which the Postal Service is required to make under this section in a year, copies of its then most recent—

"(1) comprehensive statement under section 2401(e); and

"(2) strategic plan under section 2802;

"(3) performance plan under section 2803; and

"(4) program performance reports under section 2804.

§ 3653. Annual determination of compliance with the opportunity for public comment.

After receiving the reports required under section 3652 for any year, the Postal Regulatory Commission shall promptly provide an opportunity for the Postal Service and affected parties, other interested persons, and the public to comment on such reports by users of the mails, affected parties, and an officer of the Commission who shall be required to represent the interests of the general public.

"(b) Determination of Compliance or Noncompliance.—Not later than 90 days after receiving the submissions required under section 3652 with respect to a year, the Postal Regulatory Commission shall make a written determination as to—

"(1) whether any rates or fees in effect during such year (for products individually or collectively) were not in compliance with applicable provisions of this chapter (or regulations promulgated thereunder); or

"(2) whether any service standards in effect during such year were not met.

If, with respect to a year, no instance of noncompliance is found under this subsection to have occurred in such year, the written determination shall be that no such violation was found.

"(c) If Any Noncompliance Is Found.—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take any appropriate remedial action authorized by section 3652(c).

"(d) Rebuttable Presumption.—A timely written determination described in the last sentence of subsection (b) shall, for purposes of any proceeding under section 3652, create a rebuttable presumption of compliance by the Postal Service with respect to the matters described in paragraphs (1) through (3) of subsection (b) during the year to which such determination relates.

SEC. 205. COMPLAINTS, APPELLATE REVIEW AND ENFORCEMENT.

Chapter 36 of title 39, United States Code, is amended by striking sections 3662 and 3663 and inserting the following:

"§ 3662. Rate and service complaints

"(a) In General.—Interested persons (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believe the Postal Service is not operating in conformance with the requirements of chapter 1, 4, or 6, or this chapter (or regulations promulgated under any of those chapters) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

"(b) Prompt response required.—

"(1) In General.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a), either—

"(A) begin proceedings on such complaint; or

"(B) issue an order dismissing the complaint together with a statement of the reasons therefore.

"(2) Treatment of complaints not timely acted on.—For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed under paragraph (1) at the last day allowable for the issuance of such order under paragraph (1).

"(c) Action required if complaint found to be justified.—If the Postal Regulatory Commission finds the complaint to be justified, it shall order that the Postal Service
take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance including, where appropriate, a plan for lawful rates to be adjusted to lawful levels, ordering the cancellation of market tests, ordering the Postal Service to discontinue providing loss-making products, and agreeing the Postal Service to make up for revenue shortfalls in competitive products.

(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incident of noncompliance. Fines resulting from the provision of competitive products shall be paid out of the Competitive Products Fund established in section 2011. All revenues from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

§3663. Appellate review

‘‘A person, including the Postal Service, adversely aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings therefor by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.’’. 

SEC. 206. CLERICAL AMENDMENT.

Chapter 36 of title 39, United States Code, is amended by striking the heading and analysis for this chapter and inserting the following:

‘‘CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES

SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS

Sec.

3621. Applicability; definitions.

3622. Modern rate regulation.

3623. Service agreements for market-dominant products.

[a] 3624. Repealed.]

[b] 3625. Repealed.]

[c] 3626. Reduced Rates.


[f] 3629. Reduced rates for voter registration products.

SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

3631. Applicability; definitions and updates.


3633. Provisions applicable to rates for competitive products.

3634. Assumed Federal income tax on competitive products.

SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS

3641. Market tests of experimental products.

3642. New products and transfers of products between the market-dominant and competitive categories of mail.

SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

3651. Annual reports by the Commission.

3652. Annual reports to the Commission.

3653. Annual approval of the Postal Service Reorganization Plan.

SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW

3661. Postal Services.

3662. Rate and service complaints.

3663. Appellate review.

3664. Enforcement of orders.

SUBCHAPTER VI—GENERAL

3661. Establishment of modern service standards.

TITLE III—MODERN SERVICE STANDARDS

SEC. 301. ESTABLISHMENT OF MODERN SERVICE STANDARDS.

Chapter 36 of title 39, United States Code, as amended by this Act, is further amended by adding at the end the following:

SUBCHAPTER VII—MODERN SERVICE STANDARDS

§3691. Establishment of modern service standards

(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 12 months after the date of enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products consistent with sections 101(a) and (b) and 403.

(b) OBJECTIVES.—Such standards shall be designed to achieve the following objectives:

(1) To enhance and preserve the value of postal services to both senders and recipients.

(2) To provide a system of objective external performance measurements for each market-dominant product as a basis for measurement of Postal Service performance.

(3) To guarantee Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.

(c) FACTORS.—Establishing or revising such standards, the Postal Regulatory Commission shall take into account—

(1) the actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section;

(2) the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail;

(3) mail volume and revenues projected for future years;

(4) the projected growth in the number of addresses the Postal Service will be required to serve in future years;

(5) the current and projected future cost of serving Postal Service customers;

(6) the effect of changes in technology, demographics and population distribution on the efficiency and reliable operation of the postal delivery system; and

(7) the policies of this title as well as such other factors as the Commission determines appropriate.

SEC. 302. POSTAL SERVICE PLAN.

(a) IN GENERAL.—Within 6 months after the establishment of the service standards under section 3691 of title 39, United States Code, as added by this Act, the Postal Service shall, in consultation with the Postal Regulatory Commission, develop and submit to Congress a plan for meeting those standards.

(b) CONTENT.—The plan under this section shall—

(1) outline performance goals;

(2) describe any changes to the Postal Service’s processing, transportation, delivery, and retail networks necessary to allow the Postal Service to meet the performance goals; and

(3) describe any changes to planning and performance management documents previously submitted to Congress to reflect new performance goals.

(c) POSTAL FACILITIES.—The Postal Service plan shall include a description of its long-term vision for rationalizing its infrastructure and workforce and how it intends to implement that vision, including—

(1) a strategy for how it intends to rationalize the postal facilities network and remove excess processing capacity and space from the network, including estimated timeframes, criteria and processes to be used for making changes to the facilities network, and the process for engaging policy makers and the public in related decisions;

(2) an update on how postal decisions related to mail changes, automation initiatives, worksharing, information technology systems, and other areas will impact network rationalization plans;

(3) a discussion of how to impact any facility changes may have on the postal workforce and whether the Postal Service has sufficient flexibility to make needed workforce changes; and

(4) an identification of anticipated costs, cost savings, and other benefits associated with the infrastructure rationalization alternate visions discussed in this subsection.

(d) ALTERNATE RETAIL OPTIONS.—The Postal Service plan shall include plans to expand and market retail access to postal services, in addition to post offices, including—

(1) vending machines;

(2) the Internet;

(3) Postal Service employees on delivery routes; and

(4) retail facilities in which overhead costs are shared with private businesses and other government agencies.

(e) REEMPLOYMENT ASSISTANCE AND RETIREMENT BENEFITS.—The Postal Service plan shall include—

(1) a plan under which reemployment assistance shall be afforded to employees displaced as a result of the automation or privatization of any of its functions or the closing and consolidation of any of its facilities; and

(2) a plan, developed in consultation with the Office of Personnel Management, to offer early retirement benefits.

(f) INSPECTOR GENERAL REPORT.—

(1) IN GENERAL.—Before submitting the plan under this section to Congress, the Postal Service shall submit the plan to the Inspector General of the United States Postal Service in a timely manner to carry out this subsection.

(2) REPORT.—The Inspector General shall prepare a report describing the extent to which the Postal Service—

(A) is consistent with the continuing obligations of the Postal Service under title 39, United States Code; and

(B) provides for the Postal Service to meet the service standards established under this section.

(3) SUBMISSION OF REPORT.—The Postal Service shall submit the report of the Inspector General under paragraph (2) to Congress within 30 days after the Postal Service submits to Congress the plan under subsection (a).
TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION

SEC. 401. POSTAL SERVICE COMPETITIVE PRODUCTS FUND.

(a) Provisions relating to Postal Service competitive products fund and related matters.—;

(1) In general.—Chapter 20 of title 39, United States Code, is amended by adding at the end the following:

```
§ 2011. Provisions relating to competitive products

(a) There is established in the Treasury of the United States a revolving fund, to be called the Postal Service Competitive Products Fund, which shall be available to the Postal Service without fiscal year limitation for the payment of—

(1) costs attributable to competitive products; and

(2) all other costs incurred by the Postal Service, to the extent allocable to competitive products.

For purposes of this subchapter, the term ‘costs attributable’ has the meaning given such term by section 3634.

(b) There shall be deposited in the Competitive Products Fund, subject to withdrawal by the Postal Service—

(1) proceeds from the sale of competitive products; and

(2) amounts received from obligations issued by the Postal Service under subsection (e);

(c) Interest and dividends earned on investments of the Competitive Products Fund; and

(d) any other receipts of the Postal Service (including from the sale of assets), to the extent allocable to competitive products.

(c) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, it may sell such obligations to the Federal Financing Bank.

(2) all other costs incurred by the Postal Service in the provision of competitive products, be paid out of the Competitive Products Fund.

(d) The Postal Service may, in its sole discretion, provide that moneys of the Competitive Products Fund be deposited in a Federal Reserve bank or a depository for public funds.

(e) Subject to the limitations specified in section 2009(a), the Postal Service is authorized to borrow money and to issue and sell such obligations as it determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund, except that the Postal Service may pledge only assets related to the provision of competitive products (as determined under subsection (h) or, for purposes of any period before accounting practices and principles under subsection (b) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(f) The Secretary of the Treasury and the Inspector General of the Postal Service, in consultation with the independent, certified public accounting firm and such other advisors as it considers appropriate, shall develop recommendations regarding—

(A) the accounting practices and principles under which the Postal Service accounts for the Postal Service with the objectives of identifying the capital and operating costs incurred by the Postal Service in providing competitive products, and preventing over- or underutilization of such products by market-dominant products; and

(B) the substantive and procedural rules that should be followed in determining the Postal Service’s assumed Federal income tax on competitive products income for any year (within the meaning of section 3634).

Such recommendations submitted to the Postal Regulatory Commission no later than 12 months after the effective date of this section.

(2)(A) Upon receiving the recommendations of the Postal Service under paragraph (1), the Commission shall give interested parties, including the Postal Service, opportunities to present their views on such recommendations through submission of data, oral presentations, or without opportunity for oral presentation, or in such other manner as the Commission considers appropriate.

(i) provide for the establishment and application of the accounting practices and principles which shall be followed by the Postal Service;

(ii) provide for the establishment and application of the substantive and procedural rules described in paragraph (1); and

(iii) provide for the submission by the Commission to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may consider necessary.

Final rules under this subparagraph shall be issued no later than 12 months after the date on which the Postal Service makes its submission under this paragraph and ending at the close of the 5-year period which begins on the date on which the Postal Service makes its submission under this subsection.

(B) In the case of a law enacted after this subparagraph takes effect, the Commission shall so plainly state; and

(C) the Federal Financing Bank may elect to purchase such obligations under such terms, including rates of interest, as the bank and the Postal Service may agree, but at a rate of yield that is less than the prevailing yield on outstanding marketable securities of comparable maturity issued by entities with the same credit rating as the Postal Service which are described in section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products).

(C) shall be determined taking into account only those assets and activities of the Postal Service which are described in section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(i) the quality of the information furnished in such reports has become significantly inaccurate or can be significantly improved;

(ii) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

(ii) The receipts of the Competitive Products Fund shall be accounted the same budgetary treatment as is accorded to receipts and disbursements of the Postal Service Fund under section 2009a.

(g) A judgment against the Postal Service or the Government of the United States (or settlement of a claim) shall, to the extent that it arises out of activities of the Postal Service in the provision of competitive products, be paid out of the Competitive Products Fund.

(h) The Postal Service, in consultation with an independent, certified public accounting firm and such other advisors as it considers appropriate, shall develop recommendations regarding—

(i) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(ii) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(iii) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(iv) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(v) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(vi) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(vii) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(viii) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(ix) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(x) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(xi) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(xii) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(xiii) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(xiv) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(xv) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(xvi) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(xvii) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(xviii) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(xix) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(xx) shall be developed and applied, the best information available from the Postal Service, including the audited statements required by section 3634(a)(2) (relating to the Postal Service’s assumed taxable income from competitive products); and

(1) the quality of the information furnished in such reports has become significantly inaccurate or can be significantly improved; or

(2) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

(D) A copy of each report described in paragraph (1) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.

(E) The Commission is authorized to promulgate regulations revising such rules.

(F) The Commission is authorized to promulgate regulations revising such rules.

(G) Reports described in subparagraph (B) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.

(H) The Commission may, on its own motion or upon request of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data under such subparagraph whenever it shall appear that—

(i) the quality of the information furnished in such reports has become significantly inaccurate or can be significantly improved; or

(ii) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

(I) A copy of each report described in subparagraph (B) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.

(J) The Commission may, on its own motion or upon request of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data under such subparagraph whenever it shall appear that—

(K) Reports described in subparagraph (B) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.

(L) The Commission may, on its own motion or upon request of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data under such subparagraph whenever it shall appear that—

(M) Reports described in subparagraph (B) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.

(N) The Commission may, on its own motion or upon request of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data under such subparagraph whenever it shall appear that—

(O) Reports described in subparagraph (B) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.
“(1) The Postal Service shall render an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund, in which it shall address such activities of the Postal Service and the Internal Revenue Service as the Postal Service considers appropriate. The report shall be submitted by the Postal Service to the Secretary of the Treasury no later than the year following the year in which the amendment first applies.

(b) COMPUTATION AND TRANSFER REQUIREMENTS.—The Postal Service shall, for each year beginning with the year in which occurs the deadline for the Postal Service’s first report under this section, compute its assumed Federal income tax on competitive products income for such year, and transfer such amount to the Postal Regulatory Commission under section 3635(g).

(2) CRITICAL AMENDMENT.—The analysis for chapter 20 of title 39, United States Code, is amended by adding after the item relating to section 2010 the following:


(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 2001 of title 39, United States Code, is amended by striking “and” and “and” at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

“(2) ‘Competitive Products Fund’ means the Postal Service Competitive Products Fund established by section 2011; and”.

(c) CAPITAL OF THE POSTAL SERVICE.—Section 2002(b) of title 39, United States Code, is amended by striking “Fund,” and inserting “Fund and the balance in the Competitive Products Fund.”.

(3) POSTAL SERVICE FUND.—

(A) PURPOSES FOR WHICH AVAILABLE.—Section 2003(a) of title 39, United States Code, is amended by striking “title” and inserting “title (other than any of the purposes, functions, or powers for which the Postal Service Fund is available)”.

(B) DEPOSITS.—Section 2003(b) of title 39, United States Code, is amended by striking “Fund,” and inserting “Fund and the balance in the Competitive Products Fund.”.

(4) RELATIONSHIP BETWEEN THE TREASURY AND THE POSTAL SERVICE.—Section 2006 of title 39, United States Code, is amended—

(A) in subsection (b), by adding at the end the following:

“Nothing in this chapter shall be construed to require the Secretary of the Treasury to purchase any obligations of the Postal Service other than those issued under section 2005;”;

and

(B) in subsection (c), by inserting “under section 2003(b)” before “shall be obligations.”

SEC. 402. UNFAIR COMPETITION PROHIBITED.

(a) SPECIFIC LIMITATIONS.—Chapter 4 of title 39, United States Code, is amended by adding after section 401 the following:

“§ 404a. Specific limitations.

“(a) Except as specifically authorized by law, the Postal Service may not—

(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair advantage for itself or any entity funded (in whole or in part) by the Postal Service;

(2) compel the disclosure, transfer, or licensing of information to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or

(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any postal service that uses or provides (or seeks to provide) any product, marks, trade secrets, and proprietary information, that information, unless substantially the same information is obtained (or obtainable) from an independent source or is otherwise obtained (or obtainable).

(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has failed to comply with this section may bring a complaint in accordance with section 3662.

(b) CONFORMING AMENDMENTS.—

(1) GENERAL POWERS.—Section 401 of title 39, United States Code, is amended by striking “Fund” and inserting “‘Fund and the balance in the Competitive Products Fund’.

(2) SPECIFIC POWERS.—Section 404(a) of title 39, United States Code, is amended by striking “(without)” and inserting “(without)”.

(3) This subsection shall not apply with respect to any product, mark, trade secret or other information that such section 404(a) and the provisions of section 404a, the "Postal Service Act of 1949" (15 U.S.C. 1051 and following); and

(4) TECHNICAL AND CONFORMING AMENDMENTS.—The analysis for chapter 20 of title 39, United States Code, is amended by adding after the item relating to section 2010 the following:


(a) The Act of July 5, 1946 (commonly referred to as the ‘Universal Service Act of 1946’ (15 U.S.C. 1051 and following)); and

(b) the provisions of section 5 of the Federal Communications Act (sections 5 and 6 of the Act), to the extent that such section 5 applies to unfair or deceptive acts or practices.

(1) To the extent that the Postal Service engages in conduct with respect to any product which is not reserved to the United States under section 1696 of title 39, the Postal Service or other Federal agency (as the case may be)—

(2) May not be immune under any doctrine of sovereign immunity from suit in Federal court by any person for any violation of Federal law by such agency or any officer or employee thereof; and

(3) Shall be considered to be a person (as defined in subsection (a) of the first section of the Clayton Act) for purposes of—

(i) the antitrust laws (as defined in such subsection); and

(ii) section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

For purposes of the preceding sentence, any person carrying on mail service by virtue of section 601 shall not be considered a service reserved to the United States under section 1696 of title 39.

(2) No damages, interest on damages, costs or attorney’s fees may be recovered under the antitrust laws (as so defined) from the Postal Service or any officer or employee thereof acting in an official capacity for any conduct with respect to a product in the market-dominant category of mail.

(b) This subsection shall apply only with respect to conduct occurring before the date of the enactment of this subsection.

(3) To the extent that the Postal Service engages in conduct with respect to the provision of competitive products, it shall be considered a person for the purposes of the Federal bankruptcy laws.

(g) Each building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, to conform with any applicable nationally recognized standards, model building codes and with other applicable nationally recognized codes.

(2) Each building constructed or altered by the Postal Service that is constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable environmental laws, and subdivisions of a State which would apply to the building if it were a building constructed or altered by an establishment of the Government of the United States.

(3) For purposes of meeting the requirements of paragraphs (1) and (2) with respect to a building, the Postal Service shall—

(A) prepare plans for the building, consult with appropriate officials of the State or political subdivision, or both, in the building will be located, and

(B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

(c) PERMIT INSPECTION.—By such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Postal Service—

(i) a copy of such schedule before construction of the building is begun; and

(ii) a reasonable time of notification to conduct any inspection before conducting such inspection.
Nothing in this subsection shall impose an obligation on any State or political subdivision to take any action under the preceding sentence, nor shall anything in this subsection interfere with the ability of any of its contractors to pay for any action taken by a State or political subdivision to carry out this subsection (including reviewing plans, on-site inspections, issuing building permits, and making recommendations).

"(4) Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of paragraphs (1) and (2). Such officials' recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendations.

"(5) In addition to consulting with local and State officials under paragraph (3), the Postal Service shall establish procedures for soliciting, assessing, and incorporating local community input on real property and land use decisions.

"(6) For purposes of this subsection, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"(7) Notwithstanding any other provision of law, legal representation may not be furnished by the Department of Justice to the Postal Service in any action, suit, or proceeding arising in whole or in part, under any of the following:

"(A) Subsection (d) or (e) of this section.

"(B) Subsection (f) or (g) of section 504 relating to administrative subpoenas by the Postal Regulatory Commission.

"(C) Section 3683 (relating to appellate review).

The Postal Service may, by contract or otherwise, employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice under this paragraph.

"(2) In any circumstance not covered by paragraph (1), the Department of Justice shall, under section 411, furnish the Postal Service a representation as to whether it may require, except that, with the prior consent of the Attorney General, the Postal Service may, in any such circumstance, employ attorneys otherwise than in litigation brought by or against the Postal Service or its officers or employees in matters affecting the Postal Service.

"(3) The Department of Justice shall, under such terms and conditions as the Commission and the Attorney General shall consider appropriate, furnish to the Postal Service a representation as to whether it may require, in connection with any such action, suit, or proceeding, except that, with the prior consent of the Attorney General, the Commission may contract with attorneys by contract or otherwise for that purpose.

"(A) A judgment against the Government of the United States arising in whole or in part under any of the provisions of law referred to in subparagraph (B) or (C) of paragraph (1) in which the United States is not otherwise a party, the Commission shall be permitted to appear as a party on its own motion and as of right.

"(B) The Department of Justice shall, under such terms and conditions as the Commission and the Attorney General shall consider appropriate, furnish to the Postal Service a representation as to whether it may require, in connection with any such action, suit, or proceeding, except that, with the prior consent of the Attorney General, the Commission may contract with attorneys by contract or otherwise for that purpose.

"(1) A judgment against the Government of the United States arising in whole or in part under any of the provisions of law referred to in subparagraph (B) or (C) of paragraph (1) in which the United States is not otherwise a party, the Commission shall be permitted to appear as a party on its own motion and as of right.

"(a) QUALIFICATIONS.—

"(1) IN GENERAL.—Section 202(a) of title 39, United States Code, is amended by striking "Except as provided in section 3628 of this title," and inserting "Except as otherwise provided in this title, ".

"TITLE V—GENERAL PROVISIONS

SEC. 501. QUALIFICATION AND TERM REQUIREMENTS.

(a) QUALIFICATIONS.—

"(1) IN GENERAL.—Section 202(a) of title 39, United States Code, is amended by striking "(a)'' and inserting "(a)'' in the fourth sentence and inserting the following: "The Governors shall represent the public interest generally, and shall be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size. The Governors shall not be representatives of any interest using the Postal Service, and may be removed only for cause.

"(2) APPLICABILITY.—The amendment made by paragraph (1) shall not affect the appointment or tenure of any person serving as a Governor of the United States Postal Service under an appointment made before the date of the enactment of this Act however, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment.

"(h)(1) Notwithstanding any other provision of law, legal representation may not be furnished by the Department of Justice to the Postal Service in any action, suit, or proceeding arising, in whole or in part, under any of the following:

"(A) The United States Postal Service in any action, suit, or proceeding arising, in whole or in part, under any of the following:

"(B) Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

"(2) APPLICABILITY.—The amendments made by paragraph (1) shall not affect the appointment or tenure of any person serving as a Governor of the United States Postal Service on the date of enactment of this Act with respect to the term which that person is serving at that date. Such person may continue to serve the remainder of the applicable term, after which the amendments made by paragraph (1) shall apply.

"SEC. 502. OBLIGATIONS.

(a) PURPOSES FOR WHICH OBLIGATIONS MAY BE ISSUED.—The first sentence of section 2005(a)(1) of title 39, United States Code, is amended by striking "title," and inserting "title, other than any of the purposes for which the corresponding authority is available to the Postal Service under section 2011."

"(b) INCREASE RELATING TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS.—Section 2005(a)(1) of title 39, United States Code, is amended by striking the third sentence.

"(c) AMOUNTS WHICH MAY BE PLEDGED.—

"(1) OBLIGATIONS TO WHICH PROVISIONS APPLY.—The first sentence of section 2005(b) of title 39, United States Code, is amended by striking "such obligations," and inserting "obligations issued by the Postal Service under this section."

"(2) ASSETS, REVENUES, AND RECEIPTS TO WHICH PROVISIONS APPLY.—Subsection (b) of section 2005 of title 39, United States Code, is amended by striking "(b)(1)" and inserting "(b)(1)", and by adding at the end the following:

"(2) Notwithstanding any other provision of this section, the following:

"(A) the authority to pledge assets of the Postal Service under this subsection shall be available only to the extent that such assets are not related to the provision of competitive products (as determined under section 2011(h) or, for purposes of any period before accounting practices and principles under section 2011(h) have been prescribed and applied, the best information available from the Postal Service, including the audited statements required by section 2006(e)); and

"(B) any authority under this subsection relating to the pledging or other use of revenues or receipts of the Postal Service shall be available only to the extent that they are not used for purposes or projects of the Competitive Products Fund."

"SEC. 503. PRIVATE CARRIAGE OF LETTERS.

(a) IN GENERAL.—Section 601 of title 39, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) A letter may also be carried out of the mails when—

"(1) the amount paid for the private carriage of the letter is at least the amount equal to 6 times the rate then currently charged for the 1st ounce of a single-piece first-class letter.

"(2) the letter weighs at least 12 ounces; or

"(3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 2001) that purport to permit private carriage by suspension of the operation of this section (as then in effect).

"(c) Any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.

"(d) This section shall take effect on the date as of which the regulations promulgated under section 3633 of
Sec. 601. Reorganization and modification of certain provisions relating to the Postal Regulatory Commission.

(a) Transfer and redesignation.—Title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations within the United States Postal Service, and any collective bargaining agreement.

(2) Free mailing privileges continue unchanged.—Nothing in this Act shall affect any free mailing privileges accorded under section 3327 or subsection (f).

(b) Noninterference with collective bargaining agreements.

(1) In the case of a bargaining unit whose agreement expires within 90 days after the date upon which it is proposed to make such termination or modification not less than 90 days prior to the expiration date thereof, or not less than 90 days prior to the commencement of collective bargaining, the Director of the Federal Mediation and Conciliation Service shall within 10 days after the date of the agreement in effect, or the date it is proposed to make such termination or modification, notify the Federal Mediation and Conciliation Service of the existence of such a situation, and in such event, the Director may enter, and shall meet and negotiate in good faith at such times and places that the mediator, in consultation with the parties, shall direct.

(c)(1) If no agreement is reached within 60 days after the expiration or termination of the agreement or the date on which the agreement became subject to modification under section 3602(j), the Director, in the exercise of his functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this chapter, or to adopt a procedure for a binding resolution of a dispute by the expiration date of the agreement in effect, or the date of the proposed termination or modification not less than 90 days prior to the expiration date thereof, or not less than 90 days prior to the commencement of collective bargaining, the Director of the Federal Mediation and Conciliation Service shall notify the Federal Mediation and Conciliation Service of the existence of such a situation, and in such event, the Director may enter, and shall meet and negotiate in good faith at such times and places that the mediator, in consultation with the parties, shall direct.

(2) The arbitration board shall give the parties a full and fair hearing, including an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel or by other representatives as they may elect. Any findings of the arbitration board shall be conclusive and binding upon the parties. The arbitration board shall render its decision within 45 days after its appointment.

(3) Costs of the arbitration board and mediation shall be shared equally by the Postal Service and their bargaining representative, or as the parties agree.

(4) In the case of a bargaining unit whose recognized collective-bargaining representative does not have an agreement with the Postal Service, if the parties fail to reach an agreement within 90 days of the commencement of collective bargaining, a mediator shall be appointed in accordance with the terms in subsection (b) of this section, unless the parties have previously agreed to another procedure for a binding resolution of their differences. If the parties fail to reach agreement within 180 days of the commencement of collective bargaining, and if they have not agreed to another procedure for binding resolution, an arbitration board shall be established to provide conclusive and binding arbitration in accordance with the terms of subsection (c) of this section.

(4) The Commissioners shall serve for terms of 6 years.

(5) Any Commissioner may continue to serve an appointment or tenure of any person serving as a Commissioner on the Postal Regulatory Commission (as so redesignated by section 604) under an appointment made before the date of the enactment of this Act or any appointment made before the date when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment.

§ 501. Establishment

"The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States."
or otherwise at the request of the Commission in connection with any proceeding or other purpose under this title, contains information which is described in section 410(c) of this title, except that from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).

"(2) Except as provided in paragraph (3), no officer or employee of the Commission may, with respect to any information as to which the Commission has been notified under paragraph (1)—

"(A) use such information for purposes other than the purposes for which it is supplied; or

"(B) permit anyone who is not an officer or employee of the Commission to have access to any such information.

"(3)(A) Paragraph (2) shall not prohibit the Commission from publicly disclosing relevant information in furtherance of its duties under this title, provided that the Commission has adopted regulations under section 553 of title 5, that establish a procedure for advance notice confidentiality in good faith by the Postal Service under paragraph (1). In determining the appropriate degree of confidentiality to be accorded by the Commission under section 8G(f) of the Inspector General Act of 1978, the Commission shall—

"(A) consider the nature and extent of the likely commercial injury to the Postal Service from revealing confidential information identified by the Postal Service under paragraph (1). In determining the appropriate degree of confidentiality to be accorded by the Commission under section 8G(f) of the Inspector General Act of 1978, the Commission shall—

"(B) provide by law for the Postal Service to review the report and any comments timely received from the Postal Service to the Commission in accordance with paragraph (5), and the Postal Service to submit written comments on the report. Any comments timely received from the Postal Service under the preceding sentence shall be attached to the report submitted under subsection (a).

SEC. 702. REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY.

(a) REPORT BY THE POSTAL SERVICE.—

"(1) In General.—Not later than 12 months after the date of enactment of this Act, the Postal Regulatory Commission shall submit a report to the President and Congress concerning—

"(a) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

"(d) and the scope and standards of universal service and the postal monopoly; (e) any changes under current law (including sections 101 and 408 of title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service; and

"(e) an analysis of the likely benefit of the Postal Service to the public, including all types of mail users, the Nation and its urban and rural areas; and

"(f) the postal monopoly, including how the scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas.

(b) RECOMMENDED CHANGES TO UNIVERSAL SERVICE AND THE POSTAL MONOPOLY.—The Postal Regulatory Commission shall include in the report under subsection (a), and in all reports submitted under section 701 of this Act—

"(a) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

"(b) an analysis of the likely benefit of the Postal Service to sustain the current scope and standards of universal service and the postal monopoly to the ability of the Postal Service to sustain the current scope and standards of universal service, financial condition, rates, and security of mail provided by the Postal Service.

"(2) With respect to each recommended change described under paragraph (1), the Postal Regulatory Commission shall include in the report submitted under subsection (a)—

"(A) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

"(B) an analysis of the likely benefit of the Postal Service to maintain the current scope and standards of universal service, financial condition, rates, and security of mail provided by the Postal Service.

"(C) and the scope and standards of universal service and the postal monopoly; (d) any changes under current law (including sections 101 and 408 of title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service; and

"(e) an analysis of the likely benefit of the Postal Service to the public, including all types of mail users, the Nation and its urban and rural areas; and

"(f) the postal monopoly, including how the scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas.

"(b) RECOMMENDED CHANGES TO UNIVERSAL SERVICE AND THE POSTAL MONOPOLY.—The Postal Regulatory Commission shall include in the report under subsection (a), and in all reports submitted under section 701 of this Act—

"(a) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

"(b) an analysis of the likely benefit of the Postal Service to maintain the current scope and standards of universal service, financial condition, rates, and security of mail provided by the Postal Service.

"(2) With respect to each recommended change described under paragraph (1), the Postal Regulatory Commission shall include in the report submitted under subsection (a)—

"(A) an estimate of the costs of the Postal Service attributable to the obligation to provide universal service under current law; and

"(B) an analysis of the likely benefit of the Postal Service to maintain the current scope and standards of universal service, financial condition, rates, and security of mail provided by the Postal Service.
(III) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

"(2)(A) Not later than June 30, 2006, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2005. If that result is a surplus, the amount of the surplus will be transferred to the Postal Service Retirement Health Benefits Fund established under section 8909a. If the result is a supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing September 30, 2006, which provides for the liquidation of such liability by September 30, 2043.

"(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2006, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C), and any prior amortization schedule for payments shall be terminated. If the result is a supplemental liability, the Office shall establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2034.

"(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a supplemental liability, the Office shall transfer to the Postal Service Retirement Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

"(4) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

"(5) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

"(6) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based on the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.

"(7) The amount of the amortization schedule established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

"(8) After consultation with the United States Postal Service, the Office shall promptly determine any regulations the Office determines necessary under this subsection.

"(9) TECHNICAL AND CONFORMING AMENDMENT.—(A) The table of sections for chapter 89 of title 5, United States Code, is amended—

"(a) by inserting after the item relating to section 8909a the following:

"8909a. Postal Service Retirement Health Benefits Fund

"(b) The Fund is available without fiscal year limitation for payments required under section 8909a.

"(c) The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

"(d) Not later than December 31, 2006, and by December 31 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8909a and attributable to the service of Postal Service employees during the most recently ended fiscal year.

"(e) The Office shall compute, and by December 31 of each succeeding year, the Office shall reconcile the difference between the net present value determined under subparagraph (A), including interest at the rate used in that computation, and the net present value determined under subparagraph (D).

"(f) Not later than January 31, 2007, and by January 31 of each succeeding year, the United States Postal Service shall pay into such Fund:

"(1) the net present value of the excess of future payments required under section 8909a and attributable to the service of Postal Service employees during the most recently ended fiscal year.

"(g) The Office shall compute, and by December 31 of each succeeding year, the Office shall reconcile the difference between the net present value determined under subparagraph (A), including interest at the rate used in that computation, and the net present value determined under subparagraph (D).

"(h) The annual installment computed under paragraph (2)(B).

"(i) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

"(j) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.

SEC. 804. REPEAL OF DISPOSITION OF SAVINGS PROVISION.

Section 3 of the Postal Service Retirement System Funding Reform Act of 2003 (Public Law 108–18) is repealed.

SEC. 805. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided under subsection (b), this title shall take effect on October 1, 2005.

(b) TERMINATION OF EMPLOYER CONTRIBUTIONS.—The amendment made by paragraph (1) of section 802(a) shall take effect on the
first day of the first pay period beginning on or after October 1, 2005.

TITLE IX—COMPENSATION FOR WORK INJURIES

SEC. 901. TEMPORARY DISABILITY; CONTINUATION OF PAY.

(a) TIME OF ACCRUAL OF RIGHT.—Section 8117 of title 5, United States Code, is amended—

(1) by striking “An employee” and inserting “An employee other than a Postal Service employee”; and

(2) by adding at the end the following:

“(b) PARTIAL DISABILITY.—Section 8106 of title 5, United States Code, is amended to read as follows:

“(1) in subsection (a), by adding at the end

“(A) the term ‘employee’ is not entitled to compensation or continuation of pay for the first 3 days of temporary disability.

(2) by adding at the end the following:

“(c) TECHNICAL AND CONFORMING AMENDMENTS.—Section 8118(b)(1) of title 5, United States Code, is amended to read as follows:

“(1) ‘without a break in time, except as provided under section 8117’.

SEC. 902. DISABILITY RETIREMENT FOR POSTAL EMPLOYEES.

(a) TOTAL DISABILITY.—Section 8106 of title 5, United States Code, is amended—

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

“(B) a Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability.

(2) by adding at the end the following:

“(B) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability.

(b) PARTIAL DISABILITY.—Section 8106 of title 5, United States Code, is amended—

(1) in subsection (b), by adding at the end the following:

“(B) The term ‘employee’ means—

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

“(B) The term ‘employee’ means—

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

“(B) The term ‘employee’ means—

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

“(B) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability.

(2) by adding at the end the following:

“(B) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—Section 8118(b)(1) of title 5, United States Code, is amended to read as follows:

“(1) ‘without a break in time, except as provided under section 8117’.

(2) by adding at the end the following:

“(B) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability.

(3) by adding at the end the following:

“(B) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability.

(4) by adding at the end the following:

“(B) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability.

(5) by adding at the end the following:

“(B) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability.

(6) by adding at the end the following:

“(B) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability.

The following key trends serve to reinforce our view that enactment of postal reform legislation is needed:

Declining mail volume: Total mail volume declined in fiscal year 2003 for the third year in a row—a historical first for the Service, which has had mail volume to help cover rising costs and mitigate rate increases. First-Class Mail volume declined by a record 3.2 percent in fiscal year 2003 and is projected to decline by 3.7 percent in fiscal year 2004. This decline is due to technology advances (e.g., E-mail, digital phones, faxes, and electronic bill payments) and a shift to online delivery. This trend is particularly significant because First-Class Mail covers more than two-thirds of the Service’s institutional costs.

Increased competition from private delivery companies: Private delivery companies dominate the market for parcels greater than 2 pounds and appear to be making inroads into the market for small parcels. Priority Mail volume fell 13.9 percent in fiscal year 2003 and over the last 3 years has declined about 5 percent annually. This growth in high-margin, low-cost services also means that the Service’s overall statutory framework, regulations that the Postal Service can take with

The key areas of the Service’s statutory framework that need to be addressed include:

Clarifying the Service’s mission and role by defining the scope of universal service and the postal monopoly and by clarifying the Service’s responsibilities; the postal reform legislation that includes the Service’s overall statutory framework, reso-
The Commission's recommendations would focus on some of the more extreme reform proposals floated in the past, such as postal privatization. While the Commission did make a handful of recommendations that I believe go too far, I was pleased to see that its work largely mirrored the provisions of the various House reform bills we have seen in recent years.

I'd like to begin, then, by thanking Congressman McHugh and his colleagues on the Government Reform Committee for its visionary leadership on postal reform over the years. I'd also like to thank the members of the President's Commission, especially co-chairs James A. Johnson and Harry J. Pearce, for their service. Postal reform is a difficult issue. It is also a vitally important issue for every American who depends on the Postal Service every day. Their willingness to listen to all sides of the debate and to craft what is, for the most part, a balanced bill is admired and appreciated. The work they have done has brought to light a number of the key issues facing the Postal Service and has made it possible to get a bipartisan postal reform bill signed into law this year.

Senator Collins also deserves our thanks and applause for her hard work on this issue. Under her leadership, the Governmental Affairs Committee held a series of eight excellent hearings on postal reform over the past few months. She and I and our staffs have held countless meetings with the various stakeholders for more than a year now. Everyone with an interest in the Postal Service was given an opportunity to have their say, and I think that's reflected in the balanced bill we're introducing today.

It's always a pleasure working with Senator Collins. We've worked together on a number of issues over the past few years: homeland security and the future of passenger rail in our country. Her dedication to bipartisanship, and simply doing the right thing, is rare these days. It's a honor to be introducing this historic bill with her today.

Let me also express to Senator Lieberman, our Committee's Ranking Member, my appreciation for giving me the opportunity as a freshman Senator to work so closely on one of the most important issues facing the current Congress: the Governmental Affairs. The support he and his staff have offered us throughout this process has been invaluable.

Some of our colleagues may wonder why we need postal reform. They probably receive few complaints about the service their constituents get from the Postal Service and its employees. In fact, a survey conducted by the President's Commission indicated that the American people like the Postal Service just the way it is. We must keep in mind, however, that the fact that the mailing industry, and the economy as a whole, have changed radically over the years, the Postal Service has, for the most part, remained unchanged for more than three decades now.

In the early 1970s, Senator Stevens and others led the effort in the Senate to create the Postal Service out of the failing Post Office Department. At the time, the Post Office Department received about 20 percent of its revenue from taxpayer subsidies. Service was suffering and there was little money available to expand.

As we celebrate the Postal Service's successes, however, we need to be thinking about what needs to be done to make them just as successful in the years to come. When the Postal Service was created in 1970, it had success in fax machines, cell phones and pagers. No one imagined that we would ever enjoy conveniences like e-mail and electronic bill payment. Most of the mail I receive from my constituents these days arrives via fax and e-mail instead of hard copy mail, a marked change from my days in the House and even from my more recent days as Governor of Delaware.

This continuing electronic diversion of mail, coupled with economic recession and terrorism, has made for some rough going at the Postal Service in recent years. In 2001, as Postmaster General Potter came onboard, the Postal Service was projecting its third consecutive year of deficit. They lost $159 million in fiscal year 2000 and $1.68 billion in fiscal year 2001. They were projecting losses of up to $4 billion in fiscal year 2002. Mail volume was falling, revenues were below projections and the Postal Service was estimating that it needed to spend $4 billion on security enhancements in order to prevent a repeat of the tragic anthrax attacks that took several lives. The Postal Service was also perilously close to its $15 billion debt ceiling and had been forced to raise rates three times in less than two years in order to pay for its operations, further eroding mail volume.

Good things have happened since 2001, though. First, General Potter has led a commendable effort to make the Postal Service more efficient. Billions of dollars in costs and have been taken out of the system. Thousands of positions have been eliminated through attrition. Successful automation programs have yielded great benefits. Perhaps most notably, the Postal Service also learned that an unfunded pension liability they once believed was an high as $32 billion was actually
$5 billion. Senator Collins and I responded with legislation, the Postal Civil Service Retirement System Fund- ing Reform Act, signed into law by President Bush last year, which cuts the amount the Postal Service must pay into the Civil Service Retirement System each year by nearly $3 billion. This has freed up money for debt reduc- tion and prevented the need for an- other rate increase until at least 2006. Aggressive cost cutting and a lower pension forecast, then, have put off the emergency that would have come if the Postal Service had reached its debt limit. But cost cutting can only go so far and will not solve the Postal Service’s long-term challenges. These long- term challenges were laid out in stark detail earlier this year when Postmaster General Potter and Postal Board of Governors Chairman David Fineman testified before the House Government Reform Committee’s Special Panel on Postal Reform. Chairman Fineman said that the Postal Service’s total volume of mail delivered by the Postal Service has declined by more than 5 billion pieces since 2000. Over the same period, the number of homes and businesses the Postal Service deli- vers to has dropped by more than 25 million. First Class mail, the largest contributor to the Postal Service’s bottom line, is leading the decline in vol- ume. Some of those disappearing First Class letters are being replaced by ad- vertising mail, which earns signifi- cantly less. Many First Class letters have likely been lost for good to the fax machine, e-mail and electronic bill pay.

Despite electronic diversion the Postal Service continues to add about 1.7 million new delivery points each year, creating the need for thousands of new routes and thousands of new letter carriers to work them. In addition, faster-growing parts of the country will place increased demands on postal facili- ties in the coming years. As more and more customers turn to electronic forms of communication, letter carri- ers are bringing fewer and fewer pieces of mail to each address they serve. The rate increases that will be needed to maintain the Postal Ser- vice’s current infrastructure, finance re- tirement obligations to its current em- ployees, pay for new letter carriers and build facilities in growing part of the country will only further erode mail volume.

As I’ve mentioned, the Postal Service has been trying to improve on its own. They are making progress, but there is only so much they can do. Even if the economy begins to recover more quickly and the Postal Service begins to see volume and revenues improve, we will still need to make fundamental changes in the way the Postal Service operates in order to make them as suc- cessful in the 21st Century as they were in the 20th Century, which earns signifi- cantly more flexibility in setting prices and streamline today’s burdensome ratemaking process. To provide stability, predictability and fairness for the Postal Service’s customers, ratepayer’s rates remain within an inflation- based cap to be developed by the Com- mission.

In addition, the new rate system will allow the Postal Service to negotiate service agreements with individual mailers. The Postal Rate Commission in recent years did approve a service agreement the Postal Service nego- tiated with Capital One, but the proc- ess for considering the agreement took almost a year and the Postal Service’s authority to such agree- ments is not clearly spelled out in law. The Postal Accountability and En- hancement Act allows the Postal Ser- vice to enter into agreements if the rev- enue generated from them covers all costs attributable to the Postal Service and meets the contribution to the institutional costs of the Postal Service than would have been gen- erated had the agreement not been en- tered into. No agreement would be per- mitted if it resulted in higher rates for large mailers or any mailers of a similarly situated mailer from negoti- ating a similar agreement.

The new rate system also includes some important safeguards meant to prohibit worksharing discounts that exceed costs avoided by the Postal Service. Now, worksharing on the part of mailers has been an important part of the productivity improvements at the Postal Service in recent years. Mailers should get credit in the form of a discount on their postage costs for additional mail, such as presorting and barcoding or transporting mail deeper into the postal system. The discounts they re- ceive, however, should have some ra- tional relation to the benefit the Post- al Service gets from the worksharing. The Postal Service should continue to be free to use discounts to incent mail- ers to be more efficient. They also should not be forced to impose large rate increases on workshared mail in order to prohibit on discounts in excess of costs avoided. Discounts in excess of costs avoided, however, should be temporary and reasonable. Our worksharing lan- guage strikes a good balance in that it prohibits the Postal Service from out- sourcing work that could be performed cheaper in house while maintaining pricing flexibility.

The second major provision in the Postal Accountability and Enhance- ment Act requires the Postal Regu- latory Commission to set strong serv- ice standards for the Postal Service’s Market Dominant products, a category made up mostly of those products, like First Class mail, that are part of the postal monopoly. The Postal Service currently sets its own service standards, which allows them to pursue eff- orts like the elimination of Saturday delivery, a proposal floated three years ago. The reason the Commission will aim to improve serv- ice and will be used by the Postal Serv- ice to establish performance goals, ra- tionalize its physical infrastructure and streamline its workforce.

The rate system developed under the Postal Accountability and Enhance- ment Act must, I believe it is espe- cially important that the Regulatory Commission, not the Postal Service, be charged with determining the appro- priate level of service postal customers should receive. This will prevent the Postal Service form cutting service as a way to keep rates below the cap. The Postal Service should be forced to look to productivity enhancements, not post-trial quality settings.

Third, the Postal Accountability and Enhancement Act ensures that the Postal Service competes fairly. The bill prohibits the Postal Service from issuing anti-competitive regulations. It also provides for the Federal Trade Commission to issue new ratelaws, requires them to pay an assumed Federal income tax on products like packages and Express Mail that private firms also offer and requires that these firms also offer a comparable rate of the Postal Service’s institutional costs. The Federal Trade Commission will further study any additional legal benefits the Postal Service enjoys that its private sector competitors do not.

The Regulatory Commission will then find a way to use the rate system to level the playing field. Fourth, the Postal Accountability and Enhancement Act improves Postal Service accountability, mostly by providing for membership on the Regulatory Commission would be stronger than those for the Rate Commission so that Commissioners would have a background in finance or economics. Com- missioners would also have the power to demand information from the Postal Service, including by subpoena, and have the power to punish them for vio- lating rate and service regulations. In addition, the Commission will make an annual determination as to whether the Postal Service is in compliance with rate law and meeting service standards and will have the power to punish them for any transgressions.

Fifth, the Postal Accountability and Enhancement Act revises two provi- sions from the Postal Civil Service Re- tirement System Funding Reform Act in an effort to shore up the Postal Service’s finances in the years to come. As our colleagues may be aware, that bill requires the Postal Service, begin- ning this year, to establish an escrow account that享受s it by virtue of lower pension pay- ments into an escrow account. In this bill, we eliminate that requirement in
order to allow the Postal Service to spend the money that would have gone into escrow according to the plan submitted by the Postal Service in September of last year, which called for using most of the savings to begin paying down the Postal Service’s $100 billion retiree health obligation. The bill Senator COLLINS and I are introducing today also reverses the provision in the Postal Civil Service Retirement System Funding Reform Act that made the Postal Service the only Federal agency shouldered with the burden of paying the additional pension benefits owed to their employees by virtue of past military service.

Finally, and most importantly, the bill preserves universal service and the postal monopoly and forces the Postal Service to concentrate solely on what it does best—processing and delivering the mail to all Americans. Our bill limits the Postal Service, for the first time, to being a “postal service.” The meaning they would be prohibited from engaging in other lines of business, such as e-commerce, that draw time and resources away from letter and package delivery. It also explicitly preserves the requirement that the Postal Service “serve every address, every day. In addition, the bill maintains the prohibition on closing post offices solely because they operate at a deficit, ensuring that rural and urban customers continue to enjoy full access to retail postal services.

The President’s Commission, while calling for the preservation of universal service and the postal monopoly, opened the door for future changes by recommending that the Regulatory Commission engage in the activities that would make them themselves. While I believe that Congress will find it difficult to roll back universal service or limit the postal monopoly in the future if it is deemed necessary to do so, I believe the recommendation from the President’s Commission would give too much power to a relatively small, political body. In order to keep Congress focused on the Postal Service’s future, however, our bill asks the Regulatory Commission to provide a report every three years on the state of universal service and the postal monopoly. When necessary, they would also make recommendations to Congress when they feel like one is necessary.

We have a once-in-a-generation opportunity this year to enact meaningful postal reform legislation. The House Government Reform Committee marked up its version of the Postal Accountability and Enhancement Act last week and passed it unanimously by voice vote. The Senate has indicated its support for a bill, releasing a set of postal reform principles at the end of last year calling on Congress to make some key changes to the way the Postal Service operates. We now have everyone from the National Association of Letter Carriers to former opponents of reform like UPS supporting our efforts, as well as those in the House. I know there are still some concerns about certain provisions of the bill, but I look forward to working with Senator COLLINS and each of our colleagues in the coming weeks to continue this momentum and get a bill through Congress that can be signed into law this year.

It’s amazing to think that the Postal Service, something Senator STEVENS was able to put together at the beginning of his career, could have lasted so long and had such an impact on every American. I’m hopeful that the model Senator COLLINS and I have set out in this bill today can last at least that long and have just as positive an impact on our nation and our economy as the Postal Service did so many years ago.

Mr. STEVENS. Mr. President, I am pleased to join Chairman COLLINS and Senator CARPER as an original cosponsor of S. 2468, the Postal Accountability and Enhancement Act. In 2002, the President formed a Commission to evaluate the operations of the United States Postal Service. Earlier this year, the President’s Commission issued a comprehensive report filled with suggestions on how to improve the Postal Service. Senator COLLINS and I were asked to take part in the issue of postal reform and held a series of hearing on postal reform in June of this year. This bill is the product of the postal reform hearings held before the Government Affairs Committee.

I expect I will have suggestions on this legislation as the bill moves through the legislative process. However, I support Senator COLLINS’s commitment to postal reform. I look forward to working with her and Senator CARPER to hold hearings on the Senate floor to ensure the success of this legislation.

Mr. AKAKA. Mr. President, I am pleased to join with Senator COLLINS and Senator CARPER, who today have introduced the Postal Accountability and Enhancement Act. I commend both of my Governmental Affairs Committee colleagues for their leadership in crafting a postal reform bill.

For some time, the General Accounting Office has warned that the long-term financial outlook for the U.S. Postal Service was at risk without significant changes. At the request of the Governmental Affairs Committee, the U.S. Postal Service developed a transformation plan that offered its vision for the future. Late in 2002, a Presidential Postal Commission was convened, which issued a number of recommendations in 2003.

Over the past 6 months, I have participated in a series of hearings chaired by Senator COLLINS, which examined the recommendations of the Postal Commission. I commend Senator COLLINS for guaranteeing that the divergent views were seriously considered throughout our eight hearings. I also wish to commend my colleague from Delaware, Senator CARPER, for his strong and early commitment to postal reform.

I support modernizing the U.S. Postal Service to ensure that its mission of providing 6 days a week universal service at an affordable rate is preserved. Although the legislation introduced today responds to many of the recommendations and concerns we heard in our hearings, it wisely rejects others. However, like most bills, there are provisions that trouble me. I am particularly concerned with the sections relating to worksharing and changes to the Federal Employees’ Compensation Act (FECA). I will continue to work with the bill’s sponsors to address these provisions, which I believe do not promote cost savings for the Postal Service or fairness for postal workers.

Mr. STEVENS. Mr. President, today, I join my colleagues, Senators HARKIN, DURBIN, TALENT, GRASSLEY, COLEMAN, FITZGERALD, and PRYOR to introduce bi-partisan legislation to provide transportation efficiency and environmental sustainability on the Mississippi and Illinois Waterway System; to the Committee on Environment and Public Works.

Mr. BOND. Mr. President, today, I wish to commend my colleague from Delaware, Senator CARPER, for his leadership throughout our eight hearings. I also want to commend my colleagues, Senators HARKIN, DURBIN, TALENT, GRASSLEY, COLEMAN, FITZGERALD, and PRYOR to introduce bi-partisan legislation to provide transportation efficiency and environmental sustainability on the Mississippi and Illinois Waterway System.

As the world becomes more competitive, we must also. In the heartland, the efficiency, reliability, capacity, and safety of our transportation options are critical—often make-or-break. As we look 50 years into the future, and as we anticipate and try to promote commercial and economic growth, we have to ask ourselves a fundamental question: should we have a system that permits and promotes growth, or should we be satisfied to restrict our growth to the confines of a transportation straight jacket designed not for 2050, but for 1987?

Further, we must ask ourselves if dramatic investments should be made to address environmental problems and opportunities that exist on these great waterways.

In both cases, the answer is, ‘Of course we should modernize and improve.’

We have a system which is in environmental and economic decline. Jobs and markets and the availability of habitat for fish and wildlife are at stake.
We cannot be for increased trade, commercial growth, and job creation without supporting the basic transportation infrastructure necessary to move goods from buyers to sellers. New efficiency helps give our producers an edge that can make or break opportunities in the international marketplace.

Seventy years ago, some argued that a transportation system on the Mississippi River was not justified. Congress decided that its role was not to try to predict the future but to shape the future and decided to invest in a system despite the naysayers. Over 80 million tons per year later, it is clear that the decision was wise.

Now, that system that was designed for paddlewheel boats and to last 50 years is nearly 70 years old and we must make decisions that will shape the next 50-70 years. As we look ahead, we must promote growth policies that help Americans who produce and employ.

We must work for policies that promote economic growth, job creation, and environmental sustainability. We know that trade and economic growth can be fostered or it can be discouraged by policies and other realities which include the quality of our transportation infrastructure.

So in 20 and 30 and 40 and 50 years, where will the growth in transportation occur to accommodate the growth in demand for commercial shipping? The Department of Transportation suggests that congestion on our roads and rails will double in the next quarter-century. The fact of the matter is that the great untapped capacity is on our water.

This is good news because water transportation is efficient, it is safe, it conserves fuel, and it protects the air and the environment. One medium-sized barge can carry the freight of 870 trucks. Yet, it alone speaks volumes to the benefits of water. If we can, would we rather have 870 diesel engines on the roads of downtown St. Louis, or two diesel engines on the water watching the traffic buildup and smog glide by?

The veteran Chief Economist at USDA testified that transportation efficiency and the ability of farmers to win markets at higher prices are “fundamentally related.” He predicts that corn exports over the next 10 years will rise 45 percent, 70 percent of which will rise 45 percent, 70 percent of which will travel down the Mississippi.

Over the past 35 years, waterborne commerce on the Upper Mississippi River has more than tripled. The system currently carries 60 percent of our Nation’s corn exports and 40 percent of our Nation’s soybean exports and it does so at two-thirds the cost of rail—when rail is available.

Over the previous 11 years, the U.S. Army Corps of Engineers budgeted the future of commercial shipping on the Upper Mississippi River and Illinois waterways, and there have been 44 meetings of the Navigation and Environmental Coordination Committee. Additionally, there have been 130 briefings for special interest groups, 21 newsletters, and six sets of public meetings in 46 locations with over 4,000 people in attendance. To say the least, this has been a very long, very transparent, and very representative process.

However, while we have been studying, our competitors have been building. Given the extraordinary delay so far, and given the reality that large scale construction takes not weeks or months, but decades, further delay is no longer an option.

This is why I am pleased to be joined by a bipartisan group of Senators who agree that we must improve the efficiency and the environmental sustainability of our great resources. Today, I wish to introduce the initial recommendations of the Corps of Engineers and their public and private partners to increase the lock capacity on the Upper Mississippi and Illinois Rivers and the begin an ambitious program of ecosystem restoration.

This plan gets the Corps back in the business of building the future, rather than just haggling about predicting the future. More will need to be done later on ecosystem and environmental restoration efforts. But this begins the improvement schedule underway.

In this legislation, we authorize $1.46 billion for ecosystem restoration—two times the federal share of lock capacity expansion which we authorize on locks 20-25 on the Mississippi River and Peoria and LaGrange on the Illinois. The new 1,200 foot locks on the Mississippi River will provide equal capacity in the bottleneck region below the 1,200 foot lock 19 at Keokuk above locks 26 and 27 near St. Louis. Half the cost of the new locks will be paid for by private users who pay into the Inland Waterways Trust Fund. Additional funds will be provided for mitigation and small scale and nonstructural measures to improve efficiency.

As we look ahead, the locks at 14-18 will have to be addressed as will further investments to ecosystem restoration efforts. This effort is supported by a broad-based coalition of the States, farm groups, shippers, labor, and those who pay taxes into the Trust Fund for improvements.

I thank my colleagues for their work together on this bipartisan effort. 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. 2470. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
(17) the current 600-foot lock system was designed for steamboats, at a time when 4,000,000 tons moved on the Mississippi River and a total of 2,000,000,000 bushels of corn were produced nationally, compared to today, when 100,000,000 to 125,000,000 tons are shipped and the national production of corn exceeds 10,000,000,000 bushels;

(18) the 600-foot locks at Locks and Dam Nos. 20, 21, 22, 24, and 25 on the Upper Mississippi River and LaGrange and Peoria on the Illinois Waterway are operating at 80 percent utilization and are unable to provide for or process effectively the volatile growth of traditional export grain markets;

(19) the current construction schedule of new locks and dams on the inland system, lock modernization will need to take place over 30 years, starting immediately, as an imperative to avoid lost export grain sales and diminished national competitiveness;

(20) the Corps of Engineers has been studying the needs for national investments on the Upper Mississippi River System for the last 15 years and has based initial recommendations on the best available information and science;

(21) the Upper Mississippi and Illinois Rivers ecosystem consists of hundreds of thousands of acres of bottomland forests, islands, backwaters, and wetlands;

(22) the river ecosystem is home to 270 species of birds, 57 species of mammals, 45 species of amphibians and reptiles, 113 species of fish, and 244 species of aquatic and wetland plants;

(23) more than 40 percent of migratory waterfowl and shorebirds in North America depend on the river for food, shelter, and habitat during migration;

(24) the annual operation of the Upper Mississippi River Basin needs to take into consideration opportunities for ecosystem restoration and development since the 1930's has altered and reduced the biological diversity of the large flood plain river systems of the Upper Mississippi and Illinois Rivers;

(25) Congress recognizes the need for significant Federal investment in the restoration of the Upper Mississippi and Illinois River ecosystems;

(26) the Upper Mississippi River System provides important economic benefits from recreational and tourist uses, resulting in the highest number of visitation annually by more National Parks, with the ecosystems and wildlife being the main attractions;

(27) the Upper Mississippi River System includes 284,688 acres of National Wildlife Refuge land that is managed as habitat for migratory birds, fish, threatened and endangered species, and a diverse assortment of other species and related habitats; and

(B) provides many recreational opportunities.

SEC. 2. ENHANCED NAVIGATION CAPACITY IMPROVEMENTS AND ECOSYSTEM RESTORATION PLAN FOR THE UPPER MISSISSIPPI RIVER AND ILLINOIS WATERWAY SYSTEM.

(a) DEFINITIONS.—In this section:


(2) SECRETARY.—The term "Secretary," means the Secretary of the Army.

(3) UPPER MISSISSIPPI RIVER AND ILLINOIS WATERWAY SYSTEM.—The term "Upper Mississippi River and Illinois Waterway System" means the projects for navigation and ecosystem restoration authorized by Congress for:

(A) the segment of the Mississippi River from the confluence with the Ohio River, River Mile 0.0, to Upper St. Anthony Falls Lock in Minneapolis-St. Paul, Minnesota, River Mile 854.0;

(B) the Illinois Waterway from its confluence with the Mississippi River at Grafton, Illinois, River Mile 0.0, to T.J. O'Brien Lock in Chicago, Illinois, River Mile 327.0;

(c) AUTHORIZATION OF CONSTRUCTION OF NAVIGATION IMPROVEMENTS.—

(1) SMALL SCALE AND NONSTRUCTURAL MEASURES.—From the general fund of the Treasury, to be matched in an equal amount from the Inland Waterways Trust Fund (which is paid by private users), the Secretary shall construct new locks and develop the Upper Mississippi River and Illinois Waterway System to address the cumulative environmental impacts of operation of the existing Upper Mississippi River and Illinois River System, consistent with requirements to avoid any adverse effects on the Upper Mississippi River System for the last 15 years and has based initial recommendations on the best available information and science;

(b) SECURITY.—In this section for fiscal years 2006 through 2020; and

(d) AUTHORIZATION.—Not later than June 30, 2005, and every 4 years thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Environment and Infrastructure of the House of Representatives an implementation report that—

(1) includes baselines, benchmarks, goals, and priorities for ecosystem restoration projects; and

(2) measures the progress in meeting the goals.

(d) ADVISORY PANEL.—

(1) IN GENERAL.—The Secretary shall appoint and convene an advisory panel to provide independent guidance in the development of each implementation report under subparagraph (A).

(2) PANELISTS.—Panelists shall include—

(A) 1 representative of each of the State resource agencies (or the Governor of the State) from each of the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin;

(B) 1 representative of the Department of Agriculture;

(C) 1 representative of the Department of Transportation;

(D) 1 representative of the United States Geological Survey;

(E) 1 representative of the United States Fish and Wildlife Service;

(F) 1 representative of the Environmental Protection Agency;

(G) 1 representative of affected landowners;

(H) 2 representatives of conservation and environmental advocacy groups; and

(I) 2 representatives of industry advocacy groups.

(C) COST SHARING.—

(1) IN GENERAL.—Except as provided in clause (ii), the Federal share of the cost of carrying out an ecosystem restoration project under this paragraph shall be 65 percent.

(ii) EXCEPTION FOR CERTAIN RESTORATION PROJECTS.—In the case of a project under this paragraph for ecosystem restoration, the Federal share of the cost of carrying out the project shall be 100 percent if the project is located below the ordinary high water mark of a connected waterway; modifies the operation or structures for navigation; or is located on federally owned land.

(D) LAND ACQUISITION.—The Secretary may acquire land or an interest in land for an ecosystem restoration project from a willing owner through conveyance of—

(i) fee title to the land; or

(ii) a flood plain conservation easement.

(E) SPECIFIC PROJECTS.—

(A) IN GENERAL.—Subject to subparagraph (B), the ecosystem restoration projects described in paragraph (2) shall be carried out at a cost of $370,000,000,000.

(B) LIMITATION ON AVAILABLE FUNDS.—Of the amounts made available under subparagraph (A), not more than $5,000,000,000 for each project shall be available for land acquisition under paragraph (2)(D).

(F) IMPLEMENTATION REPORTS.—

(A) IN GENERAL.—Not later than June 30, 2005, and every 4 years thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Environment and Infrastructure of the House of Representatives an implementation report that—

(i) includes baselines, benchmarks, goals, and priorities for ecosystem restoration projects; and

(ii) measures the progress in meeting the goals.

(G) ADVISORY PANEL.—

(1) IN GENERAL.—The Secretary shall appoint and convene an advisory panel to provide independent guidance in the development of each implementation report under subparagraph (A).

(2) PANELISTS.—Panelists shall include—

(A) 1 representative of each of the State resource agencies (or the Governor of the State) from each of the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin;

(B) 1 representative of the Department of Agriculture;

(C) 1 representative of the Department of Transportation;

(D) 1 representative of the United States Geological Survey;

(E) 1 representative of the United States Fish and Wildlife Service;

(F) 1 representative of the Environmental Protection Agency;

(G) 1 representative of affected landowners;

(H) 2 representatives of conservation and environmental advocacy groups; and

(I) 2 representatives of industry advocacy groups.

(C) COST SHARING.—

(1) IN GENERAL.—Except as otherwise provided in this section—

(i) there are authorized to be appropriated such sums as are necessary to carry out this section for fiscal years 2006 through 2020; and

(ii) after fiscal year 2020—
May 20, 2004

CONGRESSIONAL RECORD — SENATE

S6005

(A) funds that have been made available under this section, but have not been expended, may be expended; and
(B) funds that have been authorized to be appropriated under this section, but have not been made available, may be made available.

Mr. HARKIN. Mr. President, I rise to discuss a bipartisan measure on which I have worked closely with my colleague from Missouri, Senator BOND.

I have worked closely with my colleagues HARKIN and GRASSLEY in introducing this legislation. The purpose of this bill is to expand the transportation infrastructure and improve the ecosystem of the upper Mississippi River.

I have been deeply involved with Mississippi navigation issues because of their enormous importance to farmers in Iowa. Efficient river transportation is critical to Iowa corn, soybeans, livestock, and the abundant plant life, too.

The purpose of this bill is to expand the transportation infrastructure and improve the ecosystem of the upper Mississippi River.

I have been deeply involved with Mississippi navigation issues because of their enormous importance to farmers in Iowa. Efficient river transportation is critical to Iowa corn, soybeans, livestock, and the abundant plant life, too.

I have worked closely with my colleague from Missouri, Senator BOND.

I have worked closely with my colleagues HARKIN and GRASSLEY in introducing this legislation. The purpose of this bill is to expand the transportation infrastructure and improve the ecosystem of the upper Mississippi River.

I have been deeply involved with Mississippi navigation issues because of their enormous importance to farmers in Iowa. Efficient river transportation is critical to Iowa corn, soybeans, livestock, and the abundant plant life, too.

The locks and dams along the upper Mississippi, making it twice as expensive as the rail alternative, is not acceptable. We need to modernize the system.

We understand that this bill is going to have to authorize construction of new locks and dams in the 21st Century.

We are all aware of the problems that have plagued the Corps' past work on the Mississippi River. But the Corps has pledged to dramatically step up its emphasis on environmental protection. We need to work with the Corps to ensure that all updates and renovations of locks and dams are done with keen concern for the environment and for the fish and wildlife that depend on the Mississippi River habitat. At the same time, we need to give the Corps the authorization and funding it needs to accomplish real ecosystem restoration, and not just make up for the lost habitat of specific identified species.

The legislation we are proposing accomplishes this.

We understand that this bill is going to have to authorize construction of new locks and dams in the 21st Century.

We are all aware of the problems that have plagued the Corps' past work on the Mississippi River. But the Corps has pledged to dramatically step up its emphasis on environmental protection. We need to work with the Corps to ensure that all updates and renovations of locks and dams are done with keen concern for the environment and for the fish and wildlife that depend on the Mississippi River habitat. At the same time, we need to give the Corps the authorization and funding it needs to accomplish real ecosystem restoration, and not just make up for the lost habitat of specific identified species.

The legislation we are proposing accomplishes this.

We understand that this bill is going to have to authorize construction of new locks and dams in the 21st Century.

We are all aware of the problems that have plagued the Corps' past work on the Mississippi River. But the Corps has pledged to dramatically step up its emphasis on environmental protection. We need to work with the Corps to ensure that all updates and renovations of locks and dams are done with keen concern for the environment and for the fish and wildlife that depend on the Mississippi River habitat. At the same time, we need to give the Corps the authorization and funding it needs to accomplish real ecosystem restoration, and not just make up for the lost habitat of specific identified species.

The legislation we are proposing accomplishes this.

We understand that this bill is going to have to authorize construction of new locks and dams in the 21st Century.

We are all aware of the problems that have plagued the Corps' past work on the Mississippi River. But the Corps has pledged to dramatically step up its emphasis on environmental protection. We need to work with the Corps to ensure that all updates and renovations of locks and dams are done with keen concern for the environment and for the fish and wildlife that depend on the Mississippi River habitat. At the same time, we need to give the Corps the authorization and funding it needs to accomplish real ecosystem restoration, and not just make up for the lost habitat of specific identified species.

The legislation we are proposing accomplishes this.

We understand that this bill is going to have to authorize construction of new locks and dams in the 21st Century.

We are all aware of the problems that have plagued the Corps' past work on the Mississippi River. But the Corps has pledged to dramatically step up its emphasis on environmental protection. We need to work with the Corps to ensure that all updates and renovations of locks and dams are done with keen concern for the environment and for the fish and wildlife that depend on the Mississippi River habitat. At the same time, we need to give the Corps the authorization and funding it needs to accomplish real ecosystem restoration, and not just make up for the lost habitat of specific identified species.

The legislation we are proposing accomplishes this.

We understand that this bill is going to have to authorize construction of new locks and dams in the 21st Century.

We are all aware of the problems that have plagued the Corps' past work on the Mississippi River. But the Corps has pledged to dramatically step up its emphasis on environmental protection. We need to work with the Corps to ensure that all updates and renovations of locks and dams are done with keen concern for the environment and for the fish and wildlife that depend on the Mississippi River habitat. At the same time, we need to give the Corps the authorization and funding it needs to accomplish real ecosystem restoration, and not just make up for the lost habitat of specific identified species.

The legislation we are proposing accomplishes this.

We understand that this bill is going to have to authorize construction of new locks and dams in the 21st Century.

We are all aware of the problems that have plagued the Corps' past work on the Mississippi River. But the Corps has pledged to dramatically step up its emphasis on environmental protection. We need to work with the Corps to ensure that all updates and renovations of locks and dams are done with keen concern for the environment and for the fish and wildlife that depend on the Mississippi River habitat. At the same time, we need to give the Corps the authorization and funding it needs to accomplish real ecosystem restoration, and not just make up for the lost habitat of specific identified species.

The legislation we are proposing accomplishes this.

We understand that this bill is going to have to authorize construction of new locks and dams in the 21st Century.

We are all aware of the problems that have plagued the Corps' past work on the Mississippi River. But the Corps has pledged to dramatically step up its emphasis on environmental protection. We need to work with the Corps to ensure that all updates and renovations of locks and dams are done with keen concern for the environment and for the fish and wildlife that depend on the Mississippi River habitat. At the same time, we need to give the Corps the authorization and funding it needs to accomplish real ecosystem restoration, and not just make up for the lost habitat of specific identified species.

The legislation we are proposing accomplishes this.
this competitive advantage vital to their ability to operate their business. Over 400,000 full and part-time jobs in our basin are connected to the river. Without modernization, Midwest producers will not be able to compete in anticipated world grain export growth.

Furman's recent study estimates the loss of 30,000 jobs nationwide, $562 million annually in lost farm income and $185 million annually in lost State and local tax receipts if the lock and dam system is not upgraded. Providing U.S. agricultural producers every opportunity to export their products to world markets is essential for their financial well-being and future viability.

While it is important to consider economic benefits, we must also protect the ecosystem of the river. A cooperative solution can meet the needs of farmers and waterway users while at the same time improve the environment and stem the decline of the Rivers ecosystem. As my colleagues have joined Senator BOND as a cosponsor to this bill because our country's agriculture and business interests have waited far too long for these improvements. This bill brings the Upper Mississippi and Illinois Rivers Waterway System into the 21st century.

Mr. COLEMAN. Mr. President, the Mississippi River is a national treasure and this legislation authorizes programs that will help restore water quality and rehabilitate wildlife and wildlife habitat on the river.

The annual operation of the Upper Mississippi River Basin needs to take into consideration opportunities for ecosystem restoration. The Upper Mississippi River ecosystem consists of hundreds of thousands of acres of bottomland forest, islands, backwaters, side channels and wetlands. The Upper Mississippi River system includes 284,688 acres of National Wildlife Refuge land that is managed as habitat for migratory birds, fish, threatened and endangered species and a diverse assortment of other species and related habitats.

I am very pleased that this bill gives ecosystem restoration the attention that it deserves.

The Department of Transportation projects that water transportation will play an increasing role in moving freight due to congestion on roads and railways. More efficient use of river transportation will help the environment reducing traffic congestion and emissions on our Nation's highways. For example, a 15 barge tow can carry as much as 860 semi-tractor trailer truck tractors worth of freight on rail transportation is 2.5 times that of rail transport and nearly 10 times that of truck transport.

Improving navigation efficiency on the upper Mississippi and Illinois Rivers has been a high priority issue for Midwest farmers for years. Our agricultural competitive position in accessing world markets is greatly impacted by the efficiency of our transportation system. Farmers depend on the lock system to move grain efficiently to market. They also depend on the locks for the movement of crop production inputs up the Mississippi River.

Our entire U.S. as commercial barge traffic moves not only agricultural products, but also aggregate, cement, salt, and other important items efficiently, safely and in an environmentally sound manner.

The Upper Mississippi River Eco-system Restoration and navigation bill also represents a landmark opportunity to address environmental and economic ramifications of the entire lock and dam system, rather than the previous piecemeal approaches. The Corps of Engineers has responded to critics who called for a comprehensive evaluation, coupling an assessment of the economic need for navigation improvements and the ecosystem restoration priorities to protect our region in the process. As outlined in this legislation, the $1.46 billion ecosystem restoration package includes the construction of fish passes, floodplain restoration on thousands of acres and side channel restoration, along with other measures.

This is indeed a new approach to improving our economy, by providing construction jobs and boosting our waterway users and, at the same time, improve the environment and stem the decline of the Mississippi and Illinois Rivers ecosystems. This legislation strikes a good balance by upgrading the lock system while protecting the ecosystem of the rivers.

I recommend Senator BOND for introducing this important legislation and am pleased to join him in cosponsoring this bill. Illinois farmers and other producers have waited far too long for these improvements. This bill brings the Upper Mississippi and Illinois Rivers Waterway System into the 21st century.

By Mr. NELSON of Florida: S. 2472. A bill to require that notices to consumers of health and financial services include information on the outsourcing of sensitive personal information abroad, to require relevant Federal agencies to prescribe regulations to ensure the privacy and security of sensitive personal information outsourced abroad, to establish requirements for foreign call centers, and for other purposes; to the Committee on the Judiciary.

Mr. NELSON of Florida. Mr. President, I rise today to express my deep concern about an issue that illustrates the continuing erosion of Americans' privacy rights. My concern is related to the practice of outsourcing. When American companies provide sensitive customer information for processing overseas, they may be outsourcing our privacy rights along with it.

We all know that recently it has become popular for American companies to send internal paperwork to be done in other countries, by foreign companies.

When a U.S. company allows a foreign company to process customer data, the foreign company may be given access to the most sensitive types of customer information. Our health records, bank account numbers, social security numbers, tax forms, and credit card numbers are now being
shipped abroad—without the knowledge of the customer and beyond the reach of U.S. privacy laws.

This phenomenon means that consumers are almost powerless to stop foreign scam artists from misusing their sensitive information. What types of abuses can occur under this scenario?

In one recent shocking example, a U.S. hospital hired a medical transcriptionist in Pakistan through a subcontractor to work with sensitive patient health information. Later, the foreign worker claimed that she had not been paid for her work.

So, you know what she did? She threatened to post patients’ medical records online unless she was paid. Luckily, she got her paycheck and doesn’t seem to have posted anything online.

But this situation shows us the potential for gross violations of consumer privacy. The U.S. hospital said that it never knew that the foreign transcriptionist had been hired through a subcontractor and it therefore had never bound her contractually to follow any privacy or security standards.

Another potential abuse of offshoring sensitive data is identity theft. The illegal theft of someone’s identity is a profoundly disturbing and costly problem in this information age.

Moreover, illegal misuse of sensitive information also can have national security implications. For example, data about some of our Nation’s power grids allegedly has been outsourced to companies overseas. Imagine the harm that terrorists might do if they got hold of that type of confidential information.

As our global economy expands at such a rapid pace, we simply cannot tolerate the outsourcing of America’s privacy rights overseas. We need to be proactive on this potentially explosive issue. Make no mistake, the Pakistani transcriptionist is not the last time that sensitive customer information becomes endangered in a foreign country. The time to act is now, instead of reacting only after our privacy issues are beyond the reach of U.S. privacy laws.

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

Second, U.S. companies in the health care industry and the financial industry must promise their customers that they are complying with U.S. privacy laws, which are designed to keep sensitive customer information secure even when it is outsourced.

Third, U.S. companies in the health care industry and financial industry must make sure that each foreign company that is handling sensitive customer information has agreed by contract to meet U.S. privacy standards and to keep sensitive customer information secure.

Fourth, U.S. companies may examine the business operations of the foreign company to make sure the foreign company is meeting privacy standards and is keeping sensitive customer information secure.

Fifth, a foreign company must notify the U.S. company of any data security breach. The U.S. company must then notify the U.S. regulatory agency, which can then hold the U.S. company accountable for the actions of the foreign company.

Finally, an employee of a foreign call center must tell a U.S. customer where the employee is located, if the U.S. customer asks for this information.

I strongly believe that we need to act now, before the privacy issues raised by offshoring begin to explode.

Let me emphasize that I see this bill as both pro-consumer and pro-business.

Consumers will be informed about how their sensitive information is handled and they can learn when security breaches occur. Additionally, foreign companies that handle customer data will be held accountable to the U.S. company that gives them their work. And U.S. companies will be upfront in informing their customers about offshoring sensitive data before customer backlash occurs.

With this sort of system in place, we hopefully can change the culture of customer data being misused, and allow U.S. companies to play on a level playing field where all interested parties know the rules of the game.

I have a strong desire to solve consumer issues in ways that are not needlessly burdensome to U.S. businesses. That is why my office, as well as Senator Feinstein’s office, has met several times with industry representatives during the development of this bill.

I was interested to find ways for businesses to protect consumer privacy rights without having to sharply raise prices or limit products and services. I believe that the INFO Act has achieved those goals.

Consumer privacy has always been one of my top priorities. Now, as always, I look forward to working with all interested parties to resolve this consumer privacy issue in a timely and effective manner.

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

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

SEC. 2. HEALTH PRIVACY.

(a) FOREIGN-BASED BUSINESS ASSOCIATE.—In this section, the term ‘‘business associate’’ means a business associate, as defined under the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note), whose operation is based outside the United States and that receives protected health information and processes such information outside the United States.

(b) NOTICES.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ‘‘Secretary’’) shall revise the regulations prescribed pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) to require a covered entity (as defined under such regulations and referred to in this section as a ‘‘covered entity’’), that outsources protected health information (as defined under such regulations and referred to in this section as ‘‘protected health information’’), outside the United States to include in such entity’s notice of privacy protections the following:

(A) The following information in simple language:

(i) Notification that the covered entity outsources protected health information to foreign-based business associates.

(ii) Any risks and consequences to the privacy and security of protected health information that arise as a result of the processing of such information outside the United States.

(iii) Additional measures the covered entity is taking to protect the protected health information outsourced for processing outside the United States.

(B) A certification that the covered entity has taken reasonable steps to ensure that the handling of protected health information will be done in compliance with applicable laws in all instances where protected health information is processed outside the United States, including the reasons for the certification.

(2) EFFECTIVE DATE.—A covered entity shall be required to include in such entity’s notice of privacy protections the information described in paragraph (1) for notices issued on or after the date on which the Secretary prescribes regulations pursuant to this section or the date that is 365 days after the date of enactment of this Act, whichever date is earlier. Nothing in this subsection shall be construed to require a covered entity to revise notices issued before the date on which the Secretary prescribes regulations pursuant to this section or the date that is 365 days after the date of enactment of this Act, whichever date is earlier, to include in such notices the information and certification described in paragraph (1).

(c) RULEMAKING.—

(1) IN GENERAL.—(A) REGULATORY AUTHORITY.—The Secretary shall—

(i) prescribe such regulations consistent with paragraph (2) as may be necessary to carry out this section with respect to foreign outsourcing; and

(ii) determine the appropriate penalties to impose upon a covered entity for viola-
(B) PROCEDURES AND DEADLINES.—The regulations described in subparagraph (A) shall be prescribed in accordance with all applicable legal requirements and shall be issued in final form not later than 365 days after the date of enactment of this Act.

(2) NECESSARY REGULATIONS.—The Secretary shall prescribe regulations—

(A) to determine between a covered entity and such entity’s foreign-based business associate contain a provision that provides such entity with the right to audit such foreign-based business associate, as needed, to monitor performance under the contract; and

(B) requiring that foreign-based business associates and subcontractors of covered entities be contractually bound by Federal privacy standards and security safeguards.

3. BREACH OF SECURITY.—

(1) BREACH OF SECURITY OF THE SYSTEM.—In this subsection, the term ‘breach of security of the system’ means the compromise of the security, confidentiality, or integrity of nonpublic personal information that was provided to a financial institution and such institution’s foreign-based business associates or subcontractors, if the nonpublic personal information is not used or subject to further unauthorized disclosure.

(B) DATABASE SECURITY.—

(A) COVERED ENTITY.—A covered entity—

(i) that owns or licenses electronic data containing nonpublic personal information that is processed outside the United States; and

(ii) that received notice of notification under subparagraph (B) of a breach, shall notify the Secretary of such breach.

(B) OTHER PARTIES.—

(i) THIRD PARTY.—The Secretary shall require that a contract between a covered entity and such entity’s foreign-based business associate contain a provision that if the foreign-based business associate (or any subcontractor of such associate) owns or licenses electronic data containing nonpublic personal information and such association through the covered entity, the associate (or subcontractor) shall, following the discovery of a breach of security of the system containing such data, notify the Secretary or such system.

(ii) EFFECTIVE DATE.—This subsection shall take effect on the expiration of the date that is 365 days after the date of enactment of this subsection.

3. FINANCIAL PRIVACY.—

(1) IN GENERAL.—Section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809) is amended by adding at the end the following:

‘‘(12) FOREIGN-BASED BUSINESS.—The term ‘foreign-based business’ means a non-affiliated third party whose operation is based outside the United States and that receives nonpublic personal information and processes such information outside the United States.’’.

3. FINANCIAL NOTICES.—

(B) PROCEDURES AND DEADLINES.—The regulations described in subparagraph (A) shall be prescribed in accordance with all applicable legal requirements and shall be issued in final form not later than 365 days after the date of enactment of this subsection.

(2) NECESSARY REGULATIONS.—The regulatory agencies shall prescribe regulations—

(A) requiring that a contract between a financial institution and such institution’s foreign-based business contain a provision that provides such institution with the right to monitor performance under the contract; and

(B) requiring that foreign-based business associates or subcontractors of financial institutions be contractually bound by Federal privacy standards and security safeguards.

3. PROCEDURES AND DEADLINES.—The regulations described in subparagraph (A) shall be prescribed in accordance with all applicable legal requirements and shall be issued in final form not later than 365 days after the date of enactment of this subsection.

3. EFFECTIVE DATE.—This subsection shall take effect on the expiration of the date that is 365 days after the date of enactment of this subsection.

3. FINANCIAL PRIVACY.—

(1) IN GENERAL.—Section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809) is amended by adding at the end the following:

‘‘(12) FOREIGN-BASED BUSINESS.—The term ‘foreign-based business’ means a non-affiliated third party whose operation is based outside the United States and that receives nonpublic personal information and processes such information outside the United States.’’.

3. FINANCIAL NOTICES.—

(B) PROCEDURES AND DEADLINES.—The regulations described in subparagraph (A) shall be prescribed in accordance with all applicable legal requirements and shall be issued in final form not later than 365 days after the date of enactment of this subsection.

3. EFFECTIVE DATE.—This subsection shall take effect on the expiration of the date that is 365 days after the date of enactment of this subsection.
of such business) owns or licenses electronic data containing nonpublic personal information that was provided to the business through the financial institution, the business shall, following the discovery of a breach of security of the system containing such data—

(i) notify the entity from which it received the nonpublic personal information of such breach; and

(ii) provide a description to the entity from which it received the nonpublic personal information of such breach until the notification reaches the foreign-based business which shall, in turn, notify the financial institution of such breach.

(ii) Notification Process.—Each entity that notifies a consumer under clause (i) shall notify the entity from which it received the nonpublic personal information of such breach until the notification reaches the foreign-based business which shall, in turn, notify the financial institution of such breach.

(C) Timeliness of Notification.—All notifications required under subparagraphs (A) and (B) shall be made as expediently as possible and without unreasonable delay following—

(i) the discovery of a breach of security of the system; and

(ii) any measures necessary to determine the scope of the breach, prevent further disclosure, and restore the reasonable integrity of the data system.

(3) Effective Date.—This subsection shall take effect on the expiration of the date that is six months after the date of enactment of this section.

SEC. 4. FOREIGN CALL CENTERS.

(a) Foreign Call Center Defined.—In this section, the term "foreign call center" means a foreign-based service provider or a foreign-based subcontractor of such provider that—

(1) is unaffiliated with the entity that utilizes such provider or subcontractor; and

(2) provides customer-based service and sales or technical assistance and expertise to individuals located in the United States via the telephone, the Internet, or other telecommunications and information technologies.

(b) Requirement.—A contract between a foreign call center and an entity that utilizes such foreign call center to initiate telephone calls or receive telephone calls from individuals shall include a requirement that each employee of the foreign call center disclose the physical location of such employee to the requestor of such service or information.

(c) Certification Requirement.—An entity described in subsection (b) shall submit an annual certification to the Federal Trade Commission on whether or not the entity and its subsidiaries, and the foreign call center employees and its subsidiaries, have complied with subsection (b). Such annual certifications shall be made available to the public.

(d) Noncompliance.—An entity described in subsection (b) shall be subject to such civil penalties as the Federal Trade Commission prescribes under subsection (e).

(e) Information Access.—Not later than 365 days after the date of enactment of this Act, the Federal Trade Commission shall prescribe such regulations as are necessary for effective monitoring and compliance with this section. Such regulations shall include appropriate civil penalties for noncompliance with this section.

Mr. LEVIN. Mr. President, I rise to introduce, along with my colleagues, Senator BILL NELSON, the Increasing Notice of Foreign Outsourcing Act, or the INFO Act. This legislation will help safeguard Americans' most important and sensitive personal information when it is sent abroad for processing to countries that may have lax security and privacy standards.

The bill will ensure that American companies notify consumers of breaches of their online information. It will require American companies to certify the adequacy of their outsourcing protections. And it will require American companies to hold their foreign business partners accountable for protecting Americans' privacy.

In order to protect the information of Americans that is now vulnerable abroad, this bill calls for the following key safeguards:

First, the bill requires American health and financial companies to notify consumers when sending their information abroad, and to certify the safety of the overseas processing. We drafted provisions carefully to minimize the burden on businesses, so they will only apply to entities that already make services already make under Federal law.

Second, American companies processing health or financial data must include clauses in contracts with their foreign partners that allow audits of their foreign information processors and to enforce American privacy standards.

Third, the bill creates a system to inform American companies and Federal regulators of issues involving American health or financial information at facilities operated outside the United States.

And fourth, the bill gives Americans the right to have workers at foreign call centers disclose where they are calling from.

The bill also gives Federal agencies the power to enforce these provisions. It is important to emphasize that this bill is drafted to minimize the burdens on businesses, by expanding on existing privacy data and security laws.

While many are concerned about how outsourcing abroad hurts American workers, outsourcing also poses risks to the security and privacy of American citizens' personal data. The recent wave of international outsourcing means that we are flooding the entire world with our most sensitive information.

Once sent abroad, the information is at risk because our Federal laws do not apply to foreign companies operating overseas. Another reason is because many foreign countries have far weaker security laws than our own. For instance, India still has no laws to protect personal and private data. And still another reason is because it is extremely difficult for Americans to use foreign courts to sue foreign companies that misuse American data.

These factors leave the most intimate details of the lives of uncountable Americans vulnerable to lax security and to malicious identity thieves. And there is even more at stake. Information outsourcing poses a direct risk to national security. We are painfully aware that some people want to steal the identity of individual Americans in order to evade our homeland defenses and harm us all.

International information outsourcing has skyrocketed in recent years. Consider the following:

Tax returns for about 200,000 Americans were prepared in India this year. To put this number in context, India workers processed only about 1,000 U.S. returns 2 years ago. Tax returns have American names, Social Security numbers, income, employers, addresses, and other details.

The American Association of Medical Technology estimates that 10 percent of all medical transcription of doctors' notes is being done abroad.

An executive from Trans Union, one of the major credit agencies in the United States, told The San Francisco Chronicle that:

A hundred percent of our mail regarding consumer disputes is going to go to India at some point.

If anyone doubts the risk that international outsourcing poses to Americans, consider these incidents:

Recently, a low-paid translator in Pakistan was working as a subcontractor to the University of California Medical Center in San Francisco. That foreign worker threatened to post confidential patient information on the Internet unless the university coaxed him into paying some of her bills.

Three weeks later, a strikingly similar incident occurred with a worker in Bangalore, India.

In another incident, in Noida, India, an employee working at a call center used an American's credit card information to buy electronics equipment from Sony.

Also in India, there is a burgeoning black market in personal identity information. According to one report, strikingly similar incident occurred with a worker in Bangalore, India. Americans that is now vulnerable.

And there is even more at stake. In one incident, 100 million other times workers have done similar things. And that is a big part of the problem. It is not merely that Americans' identities are vulnerable when sent abroad. The problem is that American companies often do not know how much they are doing it, and when and doing it.

For example, according to the San Jose Mercury News, a worker at a call center dealing with State benefits refused to identify her location. The supervisor, when she picked up the call, refused to say anything more than that she worked for Citicorp.

In essence, the problem of obscurity is so bad that we can list only a few incidents reported by the media. How many security breaches has taken place? Have consumers been informed when their information is abroad and at risk? How much money has this cost consumers? We don't know.
And so far, American regulatory agencies have been unable to say despite their oversight of these industries. And American companies have stayed mum. We need to break the silence.

The fact is, our Government is simply not doing enough to protect consumers. Earlier this month I received a letter from John D. Hawke, Jr., who is the U.S. Comptroller of the Currency. He heads one of the agencies that regulates U.S. financial institutions and banks.

Mr. Hawke wrote to me that the Office of the Comptroller of the Currency, known as the OCC, does not directly regulate foreign contractors that work for U.S. banks. Specifically, he wrote:

"[The OCC] focuses its supervisory reviews regarding foreign servicing relationships on whether the serviced banks have adequate procedures in place. . . ."

That means the OCC is focusing on the American companies, not the foreign ones. I also learned from the OCC that it already suggests certain safeguards for American banks to use when they hire foreign information processors. The OCC asks U.S. banks to use contract provisions to make sure that foreign companies use secure methods to process data, and to let the U.S. companies audit the foreign companies.

But the OCC only suggests that companies adopt these safeguards. The legislation we are introducing today would take safeguards like the OCC’s a step further, and make them mandatory.

Now is the time to act. We know that there are criminal syndicates, such as in Nigeria, that have fraudulently obtained bank information to steal untold fortunes. We can hardly imagine the damage such organizations can do with a vast new source of sensitive financial data from international information outsourcing.

In short, this bill accomplishes four goals crucial to protecting Americans’ sensitive data sent abroad. It requires companies to give notice that they send consumers’ sensitive data abroad. It establishes a system to ensure that foreign and U.S. companies will report security breaches to the U.S. Government. And it allows American consumers to demand to know where foreign call centers are located.

This bill helps to protect outsourced information while minimizing burdens on American businesses. I urge my colleagues to join us in this effort.

**SUBMITTED RESOLUTIONS**

**SENATE RESOLUTION 366—SUPPORTING MAY 2004 AS NATIONAL BETTER HEARING AND SPEECH MONTH AND COMMENDING THOSE STATES THAT HAVE IMPLEMENTED ROUTINE HEARING SCREENINGS FOR EVERY NEWBORN BEFORE THE NEWBORN LEAVES THE HOSPITAL**

Mr. COLEMAN submitted the following resolution, which was considered and agreed to:

S. Res. 366

Whereas the National Institute on Deafness and Other Communication Disorders reports that approximately 28,000,000 people in the United States experience hearing loss or have a hearing impairment; Whereas 1 out of every 3 people in the United States over the age of 65 have hearing loss; Whereas the overwhelming majority of people in the United States with hearing loss would benefit from the use of a hearing aid and fewer than 7,000,000 people in the United States use a hearing aid; Whereas 515,000 people in the United States suffering from hearing loss cite financial constraints as an impediment to hearing aid use; Whereas hearing loss is among the most common congenital birth defects; Whereas a delay in diagnosing the hearing loss of a newborn can affect the social, emotional, and academic development of the child; Whereas the average age at which newborns with hearing loss are diagnosed is between the ages of 6 to 25 months; and Whereas May 2004 is National Better Hearing and Speech Month, providing Federal, State, and local governments, members of the private and nonprofit sectors, hearing and speech professionals, and all people in the United States an opportunity to focus on preventing, mitigating, and treating hearing impairments: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of May 2004 as National Better Hearing and Speech Month;

(2) commends those States that have implemented routine hearing screenings for every newborn before the newborn leaves the hospital; and

(3) encourages all people in the United States to have their hearing checked regularly.

**SENATE RESOLUTION 367—HONORING THE LIFE OF MILDRED M. WILLIAMS ‘MILLIE’ JEFFREY (1910–2004) AND HER CONTRIBUTIONS TO HER COMMUNITY AND TO THE UNITED STATES**

Ms. STABENOW (for herself and Mr. LEVIN) submitted the following resolution; which was considered and agreed to:

S. Res. 367

Whereas Mildred McWilliams—‘Millie’ Jeffrey, a social justice activist, a retired UAW Director of the Consumer Affairs Department, and a Governor Emerita of Wayne State University, died peacefully surrounded by her family on March 24, 2004, in the Metro Detroit, Michigan area at the age of 93; Whereas in 2000, President Clinton awarded Millie the Medal of Freedom, the highest civilian award bestowed by the United States Government; Whereas in seeking world peace by ensuring equality for all, Millie spent a lifetime working on labor, civil rights, education, health care, youth employment, and recreation issues; Whereas Millie brought inspiration and humor to the many people she touched and did so with optimism and undaunted spirit; Whereas Millie, a woman who had a full and of great moral character, was always a voice of conscience and reason; Whereas Millie provided a voice for those that could not be heard and hope for those that no longer believed, and because of this her legacy will continue to live on for generations to come; Whereas Millie’s list of accomplishments and awards is long but what she is most remembered for is her zest for organizing, in-chapter mentoring legions of women and men in the labor, civil rights, women’s rights, and peace movements; Whereas President Clinton stated that “her impact will be felt for generations, and her example never forgotten”; Whereas Millie was born in Alton, Iowa on December 28, 1910, and was the oldest of 7 children; Whereas in 1932 Millie graduated from the University of Minnesota with a bachelor’s degree in psychology and in 1934 Millie received her master’s degree in social economy and social research from Bryn Mawr College; Whereas Millie became an organizer for the Amalgamated Clothing Workers of America in Philadelphia, Pennsylvania, and later became Educational Director of the Pennsylvania Joint Board of Shirt Workers; Whereas in 1936, Millie married fellow Amalgamated Clothing Workers of America organizer Homer Newman Jeffrey, and they traveled throughout the South and East organizing textile workers; Whereas during World War II, the Jeffreys worked in Washington, D.C., as consultants to the War Labor Board, where they became close friends with Walter, Victor, and Roy Reuther; Whereas the Jeffreys moved to Detroit, Michigan in 1944 when Victor Reuther offered Millie a job as director of the newly formed UAW Women’s Bureau; Whereas Millie’s commitment to equal rights fueled her career at the UAW; Whereas Millie organized the first UAW women’s conference in response to the massive postwar layoffs of women production workers, who were replaced by returning veterans; Whereas from 1949 until 1954, Millie ran the UAW’s radio station; Whereas Millie moved on to direct the Community Relations Department of the UAW; Whereas Millie served as Director of the Consumer Affairs Department of the UAW from 1968 until her retirement in 1976; Whereas Millie joined the NAACP in the 1940s and marched in the South with Dr. Martin Luther King, Jr.; Whereas Former Executive Secretary of the Detroit Branch of the NAACP, Arthur Johnson, said that “in the civil rights movement, she knew how to fight without being disagreeable”; Whereas Millie ran for public office in 1974 and was elected by the people of Michigan to the Wayne State University Board of Governors, an office she held for 16 years (1974–1990); Whereas Millie joined the NAACP in the 1940s and marched in the South with Dr. Martin Luther King, Jr.; Whereas Former Executive Secretary of the Detroit Branch of the NAACP, Arthur Johnson, said that “in the civil rights movement, she knew how to fight without being disagreeable”; Whereas Millie ran for public office in 1974 and was elected by the people of Michigan to the Wayne State University Board of Governors, an office she held for 16 years (1974–1990); Whereas Millie served 3 terms as chair of the Wayne State University Board of Governors; Whereas Millie loved Wayne State University and was a long-time resident on campus; Whereas Millie never influenced visitors around her “neighborhood”—the Adamy Undergraduate Library, the
Hilberry Theatre, and the Walter P. Reuther Library of Wayne State University; 

Whereas Millie thrived in the academic environment enriched by Wayne State University's Math Corps or strategizing at the United Nations Conferences on Women about the plight of sweatshop workers, Millie's capacity for connecting with people was unmatched; 

Whereas Millie was inducted into the Michigan Women's Hall of Fame and was an original member of the board of the Michigan Women's Foundation; 

Whereas Millie served in various leadership roles in a wide variety of national and State organizations; 

Whereas Millie served on the peer review board of ... in full, and therefore be it 

Resolved, That the Senate— 

(1) honors the life of Mildred McWilliams “Millie” Jeffrey: 

“Millie” Jeffrey and her contributions to the bill S. 2400, supra; which was ordered to lie on the table. 

SA 3236. Mr. TALENT submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table. 

SA 3237. Mr. CAMPBELL submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table. 

SA 3238. Mr. GRAHAM, of South Carolina submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table. 

TEXT OF AMENDMENTS 

SA 3225. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table. 

AMENDMENTS SUBMITTED AND PROPOSED 

SA 3225. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table. 

SA 3226. Mr. CRAPO proposed an amendment to the amendment SA 3170 proposed by Mr. GRAHAM of South Carolina to the bill S. 2400, supra. 

SA 3227. Mr. GRAHAM, of South Carolina submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table. 

SA 3228. Mr. GRAHAM, of South Carolina submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table. 

SA 3229. Mr. COLLINS submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table. 

SA 3230. Mr. GRAHAM of Florida submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table. 

SA 3231. Mr. GRAHAM, of Florida (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table. 

SA 3232. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table. 

SA 3233. Mr. LOTT (for himself and Mr. GRAHAM, of South Carolina) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table. 

SA 3234. Mr. NELSON, of Florida (for himself, Mrs. DULE, Mr. CORZINE, Mr. NELSON, of Nebraska, Mr. LEAHY, Mrs. MURRAY, and Mr. GRAHAM, of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table. 

SA 3235. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table. 

SA 3236. Mr. TALENT submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table. 

SA 3237. Mr. CAMPBELL submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table. 

SA 3238. Mr. GRAHAM, of South Carolina submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table. 

TEXT OF AMENDMENTS 

SA 3225. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table. 

On page 147, after line 21, insert the following: 

SEC. 717. REPORTING OF SERIOUS ADVERSE HEALTH EXPERIENCES. 

(a) In General.—The Secretary of Defense may not permit a dietary supplement containing a stimulant to be sold on a military installation unless the manufacturer of such dietary supplement submits any report of a serious adverse health experience associated with such dietary supplement to the Secretary of Health and Human Services, who shall make such reports available to the Surgeon Generals of the Armed Forces. 

(b) EFFECT OF SECTION.—Notwithstanding section 201(ff)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(ff)) or paragraph (3) of subsection (i) of section 201(ff) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(ff)), the term “dietary supplement” shall have the meaning given the term in section 201(ff)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(ff)). 

(i) DEFINITION.—In this section— 

(A) death; 

(i) life-threatening condition; 

(iii) inpatient hospitalization or prolongation of hospitalization; 

(iv) a persistent or significant disability or incapacity; or 

(v) a congenital anomaly, birth defect, or other effect regarding pregnancy, including premature labor or low birth weight; or 

(B) requires medical or surgical intervention to prevent 1 of the outcomes described in clauses (i) through (v) in subparagraph (A). 

(3) The term “stimulant” means a dietary ingredient that has a stimulant effect on the cardiovascular system or the central nervous system of a human by any means, including— 

(A) speeding metabolism; 

(B) increasing heart rate; 

(C) constricting blood vessels; or 

(D) causing the body to release adrenaline. 

SA 3226. Mr. GRAHAM proposed an amendment to an amendment SA 3170 proposed by Mr. GRAHAM of South Carolina to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table. 

On page 147, after line 21, insert the following: 

SEC. 1068. RECEIPT OF PAY BY RESERVES FROM CIVILIAN EMPLOYERS WHILE ON AC- TIVE DUTY IN CONNECTION WITH A CONTINGENCY OPERATION. 

Section 209 of title 18, United States Code, is amended by adding at the end the following new subsection: 

“(b) This section does not prohibit a member of the reserve components of the armed forces on active duty pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10 from receiving from a civilian employer the same pay the member was receiving prior to being called to active duty under such provision of law, provided that the civilian employer has not been discharged from the obligation of paying the member the same pay for the time the member was called to active duty if the civilian employer was not interrupted by such call or order to active duty.”. 

SA 3228. Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the
bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year, and for other purposes, which is ordered to lie on the table; as follows:

At the end of subtitle B of title II, add the following:

SEC. 217. INFRASTRUCTURE SYSTEM SECURITY ENGINEERING DEVELOPMENT FOR THE NAVY.

(a) INCREASE IN AMOUNT FOR RESEARCH, DEVELOPMENT, TESTING AND EVALUATION, NAVY.—The amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation, Navy, is hereby increased by $3,000,000.

(b) AVAILABILITY OF AMOUNT FOR INFRASTRUCTURE SYSTEM SECURITY ENGINEERING DEVELOPMENT.—Of the amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation, Navy, as increased by subsection (a), $3,000,000 shall be available for infrastructure system security engineering development of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes, which is ordered to lie on the table; as follows:

At the end of subtitle B of title III, add the following:

SEC. 313. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) CONTRACTS AUTHORIZED.—The Secretary of Defense may enter into an energy savings performance contract under this section for services that provide energy savings and benefits ancillary to that purpose. The Secretary may incur obligations under the contract to finance energy conservation measures so long as guaranteed savings exceed the debt service requirements.

(b) TERMS AND CONDITIONS.

(1) CONTRACT PERIOD.—Notwithstanding any other provision of law, an energy savings performance contract may be for a period of up to 25 years beginning on the date on which the first payment by the contractor to the Secretary pursuant to the contract is due. The contract need not include funding of cancellation charges (if any) before cancellation, if the contract is in a competitive manner, using procedures and methods established under this section;

(2) The Secretary determines that funds are available and adequate for payment of the costs of the contract for the first fiscal year;

(3) The contract is governed by part 17.1 of the Federal Acquisition Regulation; and

(4) The contract contains a clause setting forth a cancellation ceiling in excess of $10,000,000, the Secretary provides notification to Congress of the proposed contract and the proposed cancellation ceiling at least 30 days before the award of the contract.

(c) COSTS AND SAVINGS.—An energy savings performance contract shall require the contractor to incur the costs of implementing energy savings measures, including at least the cost (if any) incurred in making energy savings equipment, such as such equipment, and training personnel, in exchange for a share of any energy savings directly resulting from implementing such measures during the term of the contract.

(3) OTHER TERMS AND CONDITIONS.—An energy savings performance contract shall require an annual financial audit and specify the terms and conditions of any Government payments and performance guarantees. Any such performance guarantee shall provide that either the Government or the contractor is responsible for maintenance and repair services for any energy related equipment, including computer software systems. The contract shall include the following:

(c) ANNUAL PAYMENTS.—Aggregate annual payments by the Secretary to a contractor for energy, operations, and maintenance under an energy savings performance contract shall not exceed the amount that the Department of Defense would have paid for energy, operations, and maintenance in the absence of the contract. Any savings that, if the procedures developed pursuant to this section) during term of the contract. The contract shall provide for a guarantee of savings to the Department of Defense with payment of schedules reflecting such guarantee, taking into account any capital costs under the contract.

(d) RULEMAKING.—Not later than 90 days after the date of the enactment of this Act, the Secretary, with the concurrence of the Federal Acquisition Regulatory Council, shall issue final rules to establish the procedures and methods for use by the Department of Defense to select, monitor, and terminate energy savings performance contracts in accordance with laws governing Federal procurement that will achieve the intent of this section in a cost-effective manner. In establishing the procedures and methods, the Secretary, with the concurrence of the Federal Acquisition Regulatory Council, shall determine which existing regulations are inconsistent with the intent of this section and shall formulate substitute regulations consistent with laws governing Federal procurement.

SA 3229.

Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 60, after line 23, insert the following:

SEC. 42. EXCLUSION OF SERVICE ACADEMY PERMANENT AND CAREER PROFESSORS FROM A LIMITATION ON CERTAIN MINIMUM FRACTIONS

Section 523(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(9) allow a firm not designated as qualified for an energy savings services based on technical and price proposals and any other relevant information;"

(7) allow the Secretary to permit receipt of unsolicited proposals from contractors for performance contracting services from a firm that the Department of Defense has determined is qualified to provide such services under the procedures established pursuant to subsection (d) and require facility managers to place a notice in the Commerce Business Daily announcing they have received such proposal and invite other similarly qualified firms to submit competing proposals;

(8) allow the Secretary to enter into an energy savings performance contract with a firm designated under paragraph (4), consistent with the procedures and methods established pursuant to subsection (d); and

(9) allow a firm not designated as qualified to provide energy savings services under paragraph (4) to request a review of such decision to be conducted in accordance with procedures, substantially equivalent to procedures established under section 759(f) of title 40, United States Code, to be developed by the board of contract appeals of the General Services Administration.

SA 3230.

Ms. COLLINS submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize ap-
additional task orders pursuant to such contract and may make whatever contract modifications the parties to such contract agree are necessary to conform to the provisions in any instance.

(g) PILOT PROGRAM FOR NONBUILDING APPLICATIONS.-(1) GENERAL.—The Secretary may carry out a pilot program to enter into up to 10 energy savings performance contracts for the purpose of achieving energy savings, secondary savings, and benefits incident to those purposes, in nonbuilding applications.

(2) SELECTION.—The Secretary shall select the contract projects to demonstrate the application of energy savings performance contracting to a range of nonbuilding applications.

(3) REPORT.—Not later than three years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the progress and results of the pilot program. The report shall include a description of projects undertaken, the energy savings, secondary savings, and other benefits that resulted from such projects; and recommendations on whether the pilot program should be extended, expanded, or authorized.

(h) DEFINITIONS.—In this section:

(1) ENERGY SAVINGS.—The term "energy savings" means a reduction in the cost of energy, from a base cost established through a methodology set forth in the energy savings performance contract projects to demonstrate the application of energy savings performance contracting to a range of nonbuilding applications.

(2) SECONDARY SAVINGS.—The term "secondary savings" means additional energy or cost savings, secondary savings and other benefits that resulted from such projects; and recommendations on whether the pilot program should be extended, expanded, or authorized.

(3) NONBUILDING APPLICATION.—The term "nonbuilding application" means—

(A) may provide for appropriate software licenses, agreements, or standard procedures; or

(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than electric power generated, utilized in an existing federally owned building or buildings or other federally owned facilities as a result of—

(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, increased capacity or payroll, or other services on an existing or new facility; or

(B) any Federally owned equipment used to generate electricity or transport water.

(4) SECONDARY SAVINGS.—The term "secondary savings" means—

(a) any class of vehicles, devices, or equipment that is transportable under its own power and that consumes energy from any fuel source for the purpose of such transportability, or to maintain a controlled environment within such vehicle, device, or equipment; or

(b) any Federally owned equipment used to generate electricity or transport water.

(a) INCREASE IN AMOUNTS FOR PROCUREMENT, NAVY.—(1) The amount authorized to be appropriated by section 102(a)(1) for aircraft procurement, Navy, is hereby increased by $3,850,000.

(2) The amount authorized to be appropriated by section 102(a)(6) for other procurement, Navy, as increased by subsection (a)(1), $3,850,000 shall be available for the development of rotary wing night vision goggle (NVG) training.

(3) O F F S E T .—Of the amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, the amount available for the development of rotary wing night vision goggle training is hereby reduced by $1,000,000.

SA 3232. M R. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table, as follows:

At end of subtitle B of title III, add the following:

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

(1) From the inception of our Nation, many African Americans have given their lives in service to this country in order that Americans could enjoy freedom and prosperity.

(2) The history of African Americans is a story of oppression and envision a future society that would be fully inclusive of all citizens, regardless of their race; and

(3) It is important to recognize the extraordinary contributions of African American soldiers enlisted in the Armed Forces during the era of segregation, when these brave soldiers fought valiantly to ensure freedom and democracy for Americans that they were not in as many instances.

(4) In September 1945, Secretary of War Robert P. Patterson appointed a board of 3 general officers, which became known as the Patterson Board, to investigate the military policy of the United States Army with respect to African Americans and to prepare a new policy that would provide for the efficient use of African Americans in the Army.

(5) The April 1946 Gillem Board report, titled "Utilization of Negro Manpower in the Army Policy," stated that the future policy of the Army should be to "eliminate, at the earliest practicable moment, any special consideration based on race, color, creed or national origin in..."
(a) FINDINGS.—Congress makes the following findings:

(1) The budget for fiscal year 2005, as submitted to Congress by the President, provides $970 million for the Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program of the Navy.

(2) The Advanced Shipbuilding Enterprise is an innovative program to encourage greater efficiency in the national technology and industrial base.

(3) The leaders of the United States shipbuilding industry have embraced the Advanced Shipbuilding Enterprise as a method for exploring and collaborating on innovation in shipbuilding and ship repair that collectively benefits all components of the industry.

(b) SENSE OF THE SENATE.—It is the sense of the Senate—

(1) that the Senate—

(A) strongly supports the innovative Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program as an enterprise between the Navy and industry that has yielded new processes and techniques that reduce the cost of building and repairing ships in the United States; and

(B) determined that the future-years defense program of the Department of Defense that was submitted to Congress for fiscal year 2005 does not reflect any funding for the Advanced Shipbuilding Enterprise after fiscal year 2005; and

(2) that the Secretary of Defense should continue to provide in the future-years defense program for funding the Advanced Shipbuilding Enterprise at a sustaining level in order to support additional research to further improve the design of designing, building, and repairing ships.

SA 3233. Mr. NELSON of Florida (for himself, Mr. Dole, Mr. Corzine, Mr. Nelson of Nebraska, Mr. Leahy, Mrs. Murray, and Mr. Graham of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table, as follows:

On page 35, between lines 6 and 7, insert the following:

SEC. 232. SENSE OF THE SENATE REGARDING FUNDING OF THE ADVANCED SHIPBUILDING ENTERPRISE UNDER THE NATIONAL SHIPBUILDING RESEARCH PROGRAM OF THE NAVY.
(a) FINDINGS.—Congress makes the following findings:

(1) The budget for fiscal year 2005, as submitted to Congress by the President, provides $970 million for the Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program of the Navy.

(2) The Advanced Shipbuilding Enterprise is an innovative program to encourage greater efficiency in the national technology and industrial base.

(3) The leaders of the United States shipbuilding industry have embraced the Advanced Shipbuilding Enterprise as a method for exploring and collaborating on innovation in shipbuilding and ship repair that collectively benefits all components of the industry.

(b) SENSE OF THE SENATE.—It is the sense of the Senate—

(1) that the Senate—

(A) strongly supports the innovative Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program as an enterprise between the Navy and industry that has yielded new processes and techniques that reduce the cost of building and repairing ships in the United States; and

(B) determined that the future-years defense program of the Department of Defense that was submitted to Congress for fiscal year 2005 does not reflect any funding for the Advanced Shipbuilding Enterprise after fiscal year 2005; and

(2) that the Secretary of Defense should continue to provide in the future-years defense program for funding the Advanced Shipbuilding Enterprise at a sustaining level in order to support additional research to further improve the design of designing, building, and repairing ships.

SA 3235. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table, as follows:

On page 280, after line 22, insert the following:

SEC. 232. SENSE OF THE SENATE REGARDING FUNDING OF THE ADVANCED SHIPBUILDING ENTERPRISE UNDER THE NATIONAL SHIPBUILDING RESEARCH PROGRAM OF THE NAVY.
(a) FINDINGS.—Congress makes the following findings:

(1) The budget for fiscal year 2005, as submitted to Congress by the President, provides $970 million for the Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program of the Navy.

(2) The Advanced Shipbuilding Enterprise is an innovative program to encourage greater efficiency in the national technology and industrial base.

(3) The leaders of the United States shipbuilding industry have embraced the Advanced Shipbuilding Enterprise as a method for exploring and collaborating on innovation in shipbuilding and ship repair that collectively benefits all components of the industry.

(b) SENSE OF THE SENATE.—It is the sense of the Senate—

(1) that the Senate—

(A) strongly supports the innovative Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program as an enterprise between the Navy and industry that has yielded new processes and techniques that reduce the cost of building and repairing ships in the United States; and

(B) determined that the future-years defense program of the Department of Defense that was submitted to Congress for fiscal year 2005 does not reflect any funding for the Advanced Shipbuilding Enterprise after fiscal year 2005; and

(2) that the Secretary of Defense should continue to provide in the future-years defense program for funding the Advanced Shipbuilding Enterprise at a sustaining level in order to support additional research to further improve the design of designing, building, and repairing ships.

SA 3234. Mr. NELSON of Florida (for himself, Mr. Dole, Mr. Corzine, Mr. Nelson of Nebraska, Mr. Leahy, Mrs. Murray, and Mr. Graham of Florida) submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table, as follows:

At the end of subtitle B of title III, add the following:

(c) CLAIMS NOT AUTHORIZED.—This section shall not be construed to authorize any claim against the United States and shall not be construed as a settlement of any claim against the United States.

SEC. 313. FAMILY READINESS PROGRAM OF THE NATIONAL GUARD.
(a) AMOUNT FOR PROGRAM.—The amount authorized to be appropriated by section 301(1) for operation and maintenance for the Army National Guard is hereby increased by $10,000,000 for the Family Readiness Program of the National Guard.

(b) OFFSET.—The amount authorized to be appropriated by section 301(1) for operation and maintenance for the Army is hereby reduced by $10,000,000 due to excessive unbudgeted balances.

SEC. 315. ACCEPTANCE OF FREQUENT TRAVELER MILES, CREDITS, AND TICKETS TO FACILITATE THE AIR OR SURFACE TRAVEL OF MEMBERS OF THE ARMED FORCES AND THEIR FAMILIES.
Section 6014 of title 10, United States Code, is amended—

(1) by redesignating subsections (g) through (k) as subsections (h) through (i), respectively; and

(2) by inserting after subsection (f) the following new subsection:

(g) OPERATION HERO MILES.—(1) The Secretary of Defense may use the authority of subsection (a) to accept the donation of frequent traveler miles, credits, and tickets for air or surface transportation issued by any air carrier or surface carrier that is the source of the miles, credits, or tickets and shall be used only for the following purposes:

(A) To facilitate the travel of a member of the armed forces who—

(i) is deployed on active duty outside the United States away from the permanent duty station of the member in support of a contingency operation; and

(ii) is granted, during such deployment, restoration and recuperative leave, emergency leave, convalescent leave, or another form of leave authorized for the member.

(B) In the case of a member of the armed forces recuperating from an injury or illness incurred or aggravated in the line of duty during deployment, to facilitate the travel of family members of the member to be reunited with the member.

(C) For the use of miles, credits, or tickets under paragraph (2) by family members of a member of the armed forces, the Secretary may, as the Secretary determines appropriate, limit—

(i) eligibility to family members who, because of a relationship with the member, are directly or indirectly related to the member; or

(ii) otherwise, are sufficiently close in relationship to the member of the armed forces to justify the travel assistance.

(2) The number of family members who may travel; and

(C) the number of trips that family members may take.

(3) in subparagraph (A), by striking ‘‘(i)’’; and

(4) in subparagraph (B), by striking ‘‘(ii)’’.

SEC. 653. ACCEPTANCE OF FREQUENT TRAVELER MILES, CREDITS, AND TICKETS TO FACILITATE THE AIR OR SURFACE TRAVEL OF FAMILY MEMBERS OF THE ARMED FORCES AND THEIR FAMILIES.

(1) by redesignating subsections (g) through (k) as subsections (h) through (i), respectively; and

(2) by inserting after subsection (f) the following new subsection:

(g) OPERATION HERO MILES.—(1) The Secretary of Defense may use the authority of subsection (a) to accept the donation of frequent traveler miles, credits, and tickets for air or surface transportation issued by any air carrier or surface carrier that is the source of the miles, credits, or tickets and shall be used only for the following purposes:

(A) To facilitate the travel of a member of the armed forces who—

(i) is deployed on active duty outside the United States away from the permanent duty station of the member in support of a contingency operation; and

(ii) is granted, during such deployment, restoration and recuperative leave, emergency leave, convalescent leave, or another form of leave authorized for the member.

(B) In the case of a member of the armed forces recuperating from an injury or illness incurred or aggravated in the line of duty during deployment, to facilitate the travel of family members of the member to be reunited with the member.

(C) For the use of miles, credits, or tickets under paragraph (2) by family members of a member of the armed forces, the Secretary may, as the Secretary determines appropriate, limit—

(i) eligibility to family members who, because of a relationship with the member, are directly or indirectly related to the member; or

(ii) otherwise, are sufficiently close in relationship to the member of the armed forces to justify the travel assistance.

(2) The number of family members who may travel; and

(C) the number of trips that family members may take.

(3) in subparagraph (A), by striking ‘‘(i)’’; and

(4) in subparagraph (B), by striking ‘‘(ii)’’.

(5) the Secretary of Defense shall encourage air carriers and surface carriers to participate in, and to facilitate through minimization of restrictions and otherwise, the donation, acceptance, and use of frequent traveler miles, credits, and tickets under this section.
“(6) The Secretary of Defense may enter into an agreement with a nonprofit organization to use the services of the organization—
(A) to promote the donation of frequent traveler miles, credits, and tickets under subsection (a), except that amounts appropriated to the Department of Defense may not be expended for this purpose; and
(B) to administer the collection, distribution, and use of donated frequent traveler miles, credits, and tickets.

“(7) Members of the armed forces, family members, and other persons who receive air or surface transportation using frequent traveler miles, credits, or tickets donated under this subsection are deemed to recognize no income. Donated frequent traveler miles, credits, or tickets under this subsection are deemed to be taxable income and are not subject to tax.

“In this subsection, the term ‘family member’ has the meaning given that term in section 114(h)(1)(B) of title 37.”

SA 3238. Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 221, between the matter following line 17 and line 18, insert the following:

SEC. 915. AUTHORITIES OF THE JUDGE ADVOCATE GENERAL.

(a) DEPARTMENT OF THE ARMY.—(1) Section 3019(b)(1) of title 10, United States Code, is amended by inserting “The General Counsel” and inserting “Subject to sections 806 and 3037 of this title,” after “of the Judge Advocate General.”

(b) DEPARTMENT OF THE NAVY.—(1) Section 5019(b)(1) of title 10, United States Code, is amended by striking “The General Counsel” and inserting “Subject to sections 806 and 5148 of this title,” after “of the Judge Advocate General.”

(c) DEPARTMENT OF THE AIR FORCE.—(1) Section 8019(b)(1) of title 10, United States Code, is amended by striking “The General Counsel” and inserting “Subject to sections 806 and 8037 of this title,” after “of the Judge Advocate General.”

SA 3237. Mr. CAMPBELL submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 86, between lines 9 and 10, insert the following:

SEC. 543. REQUIREMENTS FOR AWARD OF COMBAT INFANTRYMAN BADGE AND COMBAT MEDICAL BADGE WITH RESPECT TO SERVICE IN KOREA AFTER JULY 28, 1953.

(a) STANDARDIZATION OF REQUIREMENTS WITH OTHER GEOGRAPHIC AREAS.—(1) Chapter 357 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 3575. Korea defense service: Combat Infantryman Badge; Combat Medical Badge

“The Secretary of the Army shall establish procedures to provide for the implementation of section 3757 of title 10, United States Code, as added by subsection (a), with respect to service in the Republic of Korea after July 28, 1953, and the date of the enactment of this Act. Such procedures shall include a requirement for submission of an application for award of the Combat Infantryman Badge or the Combat Medical Badge by a member of the armed forces for service elsewhere without regard to specific duties; and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 221, between the matter following line 17 and line 18, insert the following:

SEC. 915. AUTHORITIES OF THE JUDGE ADVOCATE GENERAL.

(a) DEPARTMENT OF THE ARMY.—(1) Section 3019(b)(1) of title 10, United States Code, is amended by inserting “The General Counsel” and inserting “Subject to sections 806 and 3037 of this title,” after “of the Judge Advocate General’s Corps. The term of office is four years, but may be sooner terminated or extended by the President, The Judge Advocate General, while so serving, has the grade of lieutenant general.

(b) APPOINTMENT.—(1) The Judge Advocate General: appointed as the Assistant Judge Advocate General: appointment; duties.

(4) as paragraphs (3), (4), and (5), respectively, and
(5) shall perform such other legal duties as the Secretary may specify.

SA 3238. Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 221, between the matter following line 17 and line 18, insert the following:

SEC. 915. AUTHORITIES OF THE JUDGE ADVOCATE GENERAL.

(a) DEPARTMENT OF THE ARMY.—(1) Section 3019(b)(1) of title 10, United States Code, is amended by inserting “The General Counsel” and inserting “Subject to sections 806 and 3037 of this title,” after “of the Judge Advocate General’s Corps. The term of office is four years, but may be sooner terminated or extended by the President, The Judge Advocate General, while so serving, has the grade of lieutenant general.

(b) APPOINTMENT.—(1) The Judge Advocate General: appointed as the Assistant Judge Advocate General: appointment; duties.

(4) as paragraphs (3), (4), and (5), respectively, and
(5) shall perform such other legal duties as the Secretary may specify.

SA 3238. Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 221, between the matter following line 17 and line 18, insert the following:

SEC. 915. AUTHORITIES OF THE JUDGE ADVOCATE GENERAL.

(a) DEPARTMENT OF THE ARMY.—(1) Section 3019(b)(1) of title 10, United States Code, is amended by inserting “The General Counsel” and inserting “Subject to sections 806 and 3037 of this title,” after “of the Judge Advocate General’s Corps. The term of office is four years, but may be sooner terminated or extended by the President, The Judge Advocate General, while so serving, has the grade of lieutenant general.

(b) APPOINTMENT.—(1) The Judge Advocate General: appointed as the Assistant Judge Advocate General: appointment; duties.

(4) as paragraphs (3), (4), and (5), respectively, and
(5) shall perform such other legal duties as the Secretary may specify.

SA 3238. Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 221, between the matter following line 17 and line 18, insert the following:

SEC. 915. AUTHORITIES OF THE JUDGE ADVOCATE GENERAL.

(a) DEPARTMENT OF THE ARMY.—(1) Section 3019(b)(1) of title 10, United States Code, is amended by inserting “The General Counsel” and inserting “Subject to sections 806 and 3037 of this title,” after “of the Judge Advocate General’s Corps. The term of office is four years, but may be sooner terminated or extended by the President, The Judge Advocate General, while so serving, has the grade of lieutenant general.

(b) APPOINTMENT.—(1) The Judge Advocate General: appointed as the Assistant Judge Advocate General: appointment; duties.

(4) as paragraphs (3), (4), and (5), respectively, and
(5) shall perform such other legal duties as the Secretary may specify.

SA 3238. Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 221, between the matter following line 17 and line 18, insert the following:

SEC. 915. AUTHORITIES OF THE JUDGE ADVOCATE GENERAL.

(a) DEPARTMENT OF THE ARMY.—(1) Section 3019(b)(1) of title 10, United States Code, is amended by inserting “The General Counsel” and inserting “Subject to sections 806 and 3037 of this title,” after “of the Judge Advocate General’s Corps. The term of office is four years, but may be sooner terminated or extended by the President, The Judge Advocate General, while so serving, has the grade of lieutenant general.

(b) APPOINTMENT.—(1) The Judge Advocate General: appointed as the Assistant Judge Advocate General: appointment; duties.

(4) as paragraphs (3), (4), and (5), respectively, and
(5) shall perform such other legal duties as the Secretary may specify.
The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, May 20, 2004, at 10:30 a.m. in Dirksen Senate Building, room 226.

I. Nominations

Henry W. Saad to be U.S. Circuit Judge for the Sixth Circuit; Jonathan W. Duss to be Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office

II. Legislation

S. 1735, Gang Prevention and Effective Deterrence Act of 2003 [Hatch, Feinstein, Grassley, Graham, Chambliss, Cornyn, Schumer, Biden];

S. 1933, Enhancing Federal Obsecenity Reporting and Copyright Enforcement (ENFORCE) Act of 2003 [Hatch, Feinstein, Cornyn];

S. 1635, A bill to amend the Immigration and Nationality Act to ensure the integrity of the L-1 visa for intracompany transferees [Chambliss];


S. 3, Satellite Home Viewer Extention Act of 2004 [Hatch, Leahy, DeWeine, Kohl];

S. Res. 362, a resolution expressing the sense of the Senate on the dedication of the National World War II Memorial on May 29, 2004, in recognition of the duty, sacrifices, and valor of the members of the Armed Forces of the United States who served in World War II [Graham (FL), Boren, Chambliss, Durbin, Feingold, Grassley, Hatch, Corrigan, DeWeine, Graham (MO)]

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet to conduct a hearing on "Oversight of the Extended Custodial Inventory Program."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, May 20, 2004, at 10:15 a.m. on spam.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet for a hearing entitled "Prescription Drug Reimportation" during the session of the Senate on Thursday, May 20, 2004, at 10:00 a.m. in SD-430.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, May 20, 2004, at 10:00 a.m. in Room 482 of the Russell Senate Office Building to conduct a hearing on S. 2382, the Native American Connectivity Act.

The purpose of this Act is to direct the Secretary of the Interior to issue a small

ALBUQUERQUE BIOLOGICAL PARK TITLE CLARIFICATION ACT

On Wednesday, May 19, 2004, the Senate passed S. 213, as follows:

S. 213

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 "Albuquerque Biological Park Title Clarification Act".

SEC. 2. PURPOSE.

The purpose of this Act is to direct the Secretary of the Interior to issue a small
deed conveying any right, title, and interest the United States may have in and to Tingley Beach or San Gabriel Park to the City, thereby removing the cloud on the City’s title to those lands.

SEC. 3. DEFINITIONS.

In this Act:

(1) CITY.—The term “City” means the City of Albuquerque, New Mexico.

(2) MIDDLE RIO GRANDE CONSERVANCY DISTRICT.—The terms “Middle Rio Grande Conservancy District” and “MRGCD” mean a political subdivision of the State of New Mexico, created in 1929 to provide and maintain flood protection and drainage, and maintenance of ditches, canals, and distribution systems for irrigation and water delivery and operations in the Middle Rio Grande Valley.

(3) MIDDLE RIO GRANDE PROJECT.—The term “Middle Rio Grande Project” means the works associated with water deliveries and operations in the Rio Grande basin as authorized by the Flood Control Act of 1948 (Public Law 80–858; 62 Stat. 1179) and the Flood Control Act of 1958 (Public Law 81–316; 64 Stat. 170).

(4) SAN GABRIEL PARK.—The term “San Gabriel Park” means the tract of land containing 40.2236 acres, more or less, situated within Section 12 and Section 13, T13N, R2E, N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico, and described by New Mexico State Plane Grid Bearings (Central Zone) and ground distances in a Special Warranty Deed conveying the property from MRGCD to the City, dated November 25, 1997.

(5) TINGLEY BEACH.—The term “Tingley Beach” means the tract of land containing 25.2056 acres, more or less, situated within Section 13, T13N, R2E, N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico, and described by New Mexico State Plane Grid Bearings (Central Zone) and ground distances in a Special Warranty Deed conveying the property from MRGCD to the City, dated November 25, 1997.

SEC. 4. CLARIFICATION OF PROPERTY INTEREST.

(a) REQUIRED ACTION.—The Secretary of the Interior shall issue a quiet-title deed conveying any right, title, and interest the United States may have in and to Tingley Beach and San Gabriel Park to the City.

(b) Required payment.—The Secretary shall carry out the action in subsection (a) as soon as practicable after the date of enactment of this title and in accordance with all applicable law.

(c) No ADDITIONAL PAYMENT.—The City shall not be required to pay any additional costs to the United States for the value of San Gabriel Park and Tingley Beach.

SEC. 5. OTHER RIGHTS, TITLE, AND INTERESTS UNAFFECTED.

(a) IN GENERAL.—Except as expressly provided in section 4, nothing in this Act shall be construed to affect any right, title, or interest in and to any land associated with the Middle Rio Grande Project.

(b) REVENUES.—Nothing contained in this Act shall be construed to allow or otherwise interfere with any position set forth by any party in the lawsuit pending before the United States District Court for the District of New Mexico, No. CV 99–1320 JP/RLP-ACE, entitled Rio Grande Silverly Minnow v. John W. Keys, III, concerning San Gabriel Park or interest in and to any property associated with the Middle Rio Grande Project.

HAWAII WATER RESOURCES ACT OF 2004

On Wednesday, May 19, 2004, the Senate passed S. 960, as follows:

S. 960

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 “Hawaii Water Resources Act of 2004”.

SEC. 2. HAWAII RECLAMATION PROJECTS.

(a) IN GENERAL.—The Reclamation Water and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.) is amended by adding at the end the following:

“SEC. 1637. HAWAII RECLAMATION PROJECTS.

“(a) AUTHORIZATION.—The Secretary may:

“(1) in cooperation with the Board of Water Supply, City and County of Honolulu, Hawaii, participate in the design, planning, and construction of a project in Kalaheo, Hawaii, to desalinate and distribute seawater for direct potable use within the service area of the Board;

“(2) in cooperation with the County of Hawaii Department of Environmental Management, Hawaii, participate in the design, planning, and construction of a project in Kailua, Hawaii, to desalinate and distribute seawater for direct potable use within the service area of the Board;

“(b) COST SHARE.—The Federal share of the cost of a project described in subsection (a) shall not exceed 25 percent of the total cost of the project.

“(c) LIMITATION.—Funds provided by the Secretary shall not be used for the operation and maintenance of a project described in subsection (a).

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

“(e) CONFORMING AMENDMENT.—The table of sections in section 2 of the Reclamation Projects Authorization and Adjustment Act of 1992 (43 U.S.C. 391) is amended by inserting after the item relating to section 1636 the following:

“Sec. 1637. Hawaii reclamation projects.”

SEC. 3. RECREATION FEE AUTHORITY.

This Act may be cited as the “Recreational Fee Authority Act of 2004”.

On Wednesday, May 19, 2004, the Senate passed S. 1107, as follows:

S. 1107

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

SEC. 1. SHORT TITLE.

This Act may be cited as the “Recreational Fee Authority Act of 2004”.

SEC. 2. RECREATION FEE AUTHORITY.

(a) IN GENERAL.—Beginning on January 1, 2006, the Secretary of the Interior (“Secretary”) may establish, modify, change, and collect fees for admission to a unit of the National Park System and the use of National Park Service (“Service”) administered areas, lands, sites, facilities, and services (including reservations) by individuals and/or groups. Fees shall be based on an analysis by the Secretary of:

(1) the benefits and services provided to the visitor;

(2) the cumulative effect of fees;

(3) the coalition of use elsewhere and by other public agencies and by nearby private sector operators;

(4) the direct and indirect cost and benefit to the government;

(5) public policy or management objectives served;

(6) economic and administrative feasibility of fee collection; and

(7) other factors or criteria determined by the Secretary.

(b) NUMBER OF FEES.—The Secretary shall establish the minimum number of fees and shall avoid the collection of multiple or layered fees for a wide variety of uses, activities or programs.

(c) ANALYSIS.—The results of the analysis together with the Secretary’s determination of appropriate fee levels shall be transmitted to Congress at least three months prior to publication of such fees in the Federal Register. New fees and any increases or decreases in established fees shall be published in the Federal Register and no new fee or change in the amount of fees shall take place until at least 12 months after the date the notice is published in the Federal Register.

(d) ADDITIONAL AUTHORIZATIONS.—Beginning on January 1, 2006, the Secretary may enter into agreements, including contracts to provide reasonable commissions or reimbursement with any public or private entity for visitor reservation services, fee collection and/or processing services.

(e) ADMINISTRATION.—The Secretary may pursuant to law, modify the Federal Public Lands and Public Waters Act (43 U.S.C. 20a) to modify the Federal Public Lands Fee and other Acts, water, or use, may modify the National Park Passport, established pursuant to Public Law 105–391, and shall provide information to the public about the various fee programs and the costs and benefits of each program.

(f) STATE AGENCY ADMISSION AND SPECIAL USE FAKES.—Effective January 1, 2006, and notwithstanding the Administrative Agreements Act, the Secretary may enter into revenue sharing agreements with State agencies to accept their annual passes for use in the National Park System that participate in an active revenue sharing agreement with a State under Section 2(f) of this Act, not less than 90 percent of the annual passes collected from the sale of the National Park Passport shall be retained by the Secretary and may be expended as follows:

(1) 80 percent of amounts collected at a specific area, site, or project as determined by the Secretary, shall remain available for use at the specific area, site, or project, except for those units of the National Park System that participate in an active revenue sharing agreement with a State under Section 2(f) of this Act, not less than 90 percent of the annual passes collected at a specific area, site, or project shall remain available for use.

(2) The balance of the amounts collected shall remain available for use by the Service on a Service-wide basis as determined by the Secretary.

(3) Monies generated as a result of revenue sharing agreements established pursuant to Paragraph (2) may provide for a specific agreement arrangement. The Service shares of fees shall be distributed equally to all units of the National Park System in the specific States that are parties to the revenue sharing agreement.

(4) Not less than 50 percent of the amounts collected from the sale of the National Park Passport shall be retained at the specific area, site, or project at which the fees were collected and the balance of the
S6018

CONGRESSIONAL RECORD — SENATE
May 20, 2004

receipts shall be distributed in accordance with paragraph 2 of this Section.

SEC. 4. EXPENDITURES.

(a) USE OF FEES AT SPECIFIC AREA, SITE, OR PROJECT.—Amounts available for expenditure at a specific area, site or project shall be accounted for separately and may be used for:

(1) repair, maintenance, facility enhancement, media services and infrastructure including projects and expenses relating to visitor enjoyment, visitor access, environmental compliance, and health and safety;

(2) interpretation, visitor information, visitor service, visitor needs assessments, monitoring, and signs;

(3) that enhancement, resource assessment, preservation, protection, and restoration related to recreation use; and

(4) law enforcement relating to public use and recreation.

(b) The Secretary may use more than not fifteen percent of total revenues to administer the recreation fee program including direct operating or capital costs, cost of fee collection, notification of fee requirements, direct infrastructure, fee program management costs, bonding of volunteers, start-up costs, and analysis and reporting on program accomplishments and effects.

SEC. 5. REPORTS.

On January 1, 2009, and every three years thereafter the Secretary shall submit to the Congress a report detailing the status of the Recreation Fee Program conducted in units of the National Park System including an evaluation of the Recreation Fee Program conducted at each unit of the National Park System; a description of projects that were funded, work accomplished, and future projected programs for funding with fees, and any recommendations for changes in the overall fee system.

BEND PINE NURSERY LAND CONVEYANCE ACT AMENDMENTS

On Wednesday, May 19, 2004, the Senate passed S. 1848, as follows:

S. 1848

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

SECTION 1. MODIFICATION OF BEND PINE NURSERY LAND CONVEYANCE ACT.

(a) DESIGNATION OF RECIPIENTS AND CONSIDERATION.—Section 3 of the Bend Pine Nursery Land Conveyance Act (Public Law 106–126; 114 Stat. 2512) is amended—

(1) in subsection (a) by striking paragraph (1) and redesignating paragraphs (2) through (7) as paragraphs (1) through (6), respectively.

(2) in subsection (c)—

(A) by striking “this section” both places it appears and inserting “subsection (a)”; and

(B) in paragraph (1), by striking “Subject to paragraph (3), the” and inserting “The”;

and

(C) by striking paragraph (3); and

(3) by adding at the end the following: “(g) BEND PINE NURSERY CONVEYANCE.—“(1) CONVEYANCE TO PARK AND RECREATION DISTRICT.—Upon receipt of consideration in the amount of $3,503,676 from the Bend Metro Park and Recreation District in Deschutes County, Oregon, the Secretary shall convey to the Bend Metro Park and Recreation District to pay to the United States an amount equal to the fair market value of the property at the time of conversion, less the consideration paid under this paragraph.

“(2) RECOGNITION OF PORTION TO SCHOOL DISTRICT.—As soon as practicable after the receipt by the Bend Metro Park and Recreation District of the real property described in paragraphs (1) and (2) of this section or after the Bend Metro Park and Recreation District shall convey to the Administrative School District No. 1, Deschutes County, Oregon, without consideration, a parcel of real property located in the northwest corner of the real property described in paragraph (1) and consisting of approximately 15 acres. The deed of conveyance shall contain a covenant requiring that the real property conveyed to the School District be used only for public education purposes.”.

(b) CONFORMING AMENDMENT.—Section 3(a) of such Act is amended by striking “section 3(a)” and inserting “section 3”.

TAX ADMINISTRATION GOOD GOVERNMENT ACT

On Wednesday, May 19, 2004, the Senate passed H.R. 1528, as follows:

H.R. 1528

Resolved, That the bill from the House of Representatives (H.R. 1528) entitled “An Act to amend the Internal Revenue Code of 1986 to protect taxpayers and ensure accountability of the Internal Revenue Service.”, do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the “Tax Administration Good Government Act”;

(b) AMENDMENT OF 1986 CODE.—Except as otherwise provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

Sec. 1. Short title; etc.

TITLE I—IMPROVEMENTS IN TAX ADMINISTRATION AND TAXPAYER SAFEGUARDS

Subtitle A—Improvements in Efficiency and Safeguards in Internal Revenue Service Collection

Sec. 101. Waiver of user fee for installment agreements using automated withdrawals.

Sec. 102. Authorization for IRS to enter into installment agreements that provide for partial payment.

Sec. 103. Termination of installment agreements.

Sec. 104. Office of Chief Counsel review of offers-in-compromise.

Sec. 105. Authorization for IRS to require increased electronic filing of returns prepared by paid return preparers.

Sec. 106. Threshold on tolling of statute of limitations during review by Taxpayer Advocate Service.

Sec. 107. Increase in penalty for bad checks and money orders.

Sec. 108. Extension of time limit for contesting IRS levy.

Sec. 109. Individuals held harmless on improper levy on individual retirement plan.

Sec. 110. Authorization for Financial Management Service retention of transaction fees from levied amounts.

Sec. 111. Elimination of requirement for setting refunds from former residents.

Subtitle B—Processing and Personnel

Sec. 112. Information regarding statute of limitations.

Sec. 113. Annual report on IRS performance measures.

Sec. 114. Disclosure of tax information to facilitate combined employment tax reporting.

Sec. 115. Extension of declaratory judgment procedures to non-501(c)(3) tax-exempt organizations.

Sec. 116. Amendment to Treasury auction reforms.

Sec. 117. Revisions relating to termination of employment of IRS employees for misconduct.

Sec. 118. Expansion of IRS Oversight Board Authority.

Sec. 119. IRS Oversight Board approval of use of critical pay authority.

Sec. 120. Low-income tax credits.

Sec. 130. Taxpayer access to financial institutions.

Sec. 131. Enrolled agents.

Sec. 132. Establishment of disaster response teams.

Sec. 133. Study of accelerated tax refunds.

Sec. 134. Study on clarifying recordkeeping responsibilities.

Sec. 135. Streamline reporting process for National Taxpayer Advocate.

Sec. 136. IRS Free File program.

Sec. 137. Modification of TIGTA reporting requirements.

Sec. 138. Study of IRS accounts receivable.

Sec. 139. Electronic Commerce Advisory Group.

Sec. 140. Study on modifications to schedules L and M-1.

Sec. 141. Regulation of Federal income tax return preparers and refund anticipation loan providers.

Sec. 142. Joint task force on offers-in-compromise.

Subtitle C—Other Provisions

Sec. 151. Penalty for failure to report interests in foreign financial accounts.

Sec. 152. Repeal of application of below-market loan rates to amounts paid to certain continuing care facilities.

Sec. 153. Public support by Indian tribal governments.

Sec. 154. Payroll agents subject to penalty for failure to collect and pay over tax, or attempt to evade or defeat tax.

TITLE II—REFORM OF PENALTY AND INTEREST

Sec. 201. Individual estimated tax.


Sec. 203. Increase in large corporation threshold for estimated tax payments.

Sec. 204. Abatement of interest.

Sec. 205. Deposits made to suspend running of interest where Secretary fails to contact taxpayer.

Sec. 206. Freeze of provisions regarding suspension of interest where Secretary fails to contact taxpayer.

Sec. 207. Clarification of application of Federal tax deposit penalty.

Sec. 208. Frivolous tax returns and submissions.

Sec. 209. Extension of notice requirements with respect to interest and penalty calculations.

TITLE III—UNITED STATES TAX COURT MODERNIZATION

Subtitle A—Tax Court Procedure
Sec. 301. Jurisdiction of Tax Court over collection due process cases.
Sec. 302. Amendment of special trial judges to hear and decide certain employment status cases.
Sec. 303. Confirmation of authority of Tax Court to apply doctrine of equitable reimbursement.
Sec. 304. Tax Court filing fee in all cases commenced by filing petition.
Sec. 305. Amendments to appoint employees.
Sec. 306. Expanded use of Tax Court practice fee for pro se taxpayers.

Subtitle B—Tax Court Pension and Compensation
Sec. 311. Annuities for survivors of Tax Court judges who are assassinated.
Sec. 312. Cost-of-living adjustments for Tax Court judicial survivor annuities.
Sec. 313. Life insurance coverage for Tax Court judges.
Sec. 314. Cost of life insurance coverage for Tax Court judges age 65 or over.
Sec. 315. Modification of timing of lump-sum payment of judges’ accrued annual leave.
Sec. 316. Participation of Tax Court judges in the Thrift Savings Plan.
Sec. 317. Exemption of teaching compensation of retired judges from limitation on outside earned income.
Sec. 318. General provisions relating to magistrate judges of the Tax Court.
Sec. 319. Annuities to surviving spouses and dependent children of magistrate judges of the Tax Court.
Sec. 320. Retirement and annuity program.
Sec. 321. Incumbent magistrate judges of the Tax Court.
Sec. 322. Provisions for recall.
Sec. 323. Effective date.

TITLE IV—CONFIDENTIALITY AND DISCLOSURE
Sec. 401. Clarification of definition of church tax inquiry.
Sec. 402. Collection activities with respect to joint return disclosed to either spouse based on oral request.
Sec. 403. Taxpayer representatives not subject to tax collection on sole basis of representation of taxpayers.
Sec. 404. Prohibition of disclosure of taxpayer identification information with respect to disclosure of accepted offers-in-compromise.
Sec. 405. Compliance by contractors with confidentiality safeguards.
Sec. 406. Higher standards for requests for and consents to disclosure.
Sec. 407. Civil damages for unauthorized disclosure or inspection.
Sec. 408. Expansion of disclosure in emergency circumstances.
Sec. 409. Disclosure of taxpayer identity for tax refund purposes.
Sec. 410. Disclosure to State officials of proposed actions related to section 501(c) organizations.
Sec. 411. Treatment of public records.
Sec. 412. Employee identity disclosures.
Sec. 413. Taxpayer identification number matching.
Sec. 414. Form 8300 disclosures.
Sec. 415. Disclosure to law enforcement agencies regarding terrorist activities.

TITLE V—SIMPLIFICATION
Subtitle A—Uniform Definition of Child
Sec. 501. Uniform definition of child, etc.
Sec. 502. Modifications of definition of head of household.
Sec. 503. Modifications of dependent care credit.

Sec. 504. Modifications of child tax credit.
Sec. 505. Modifications of earned income credit.
Sec. 506. Modifications of deduction for personal exemption for dependents.
Sec. 507. Technical and conforming amendments.
Sec. 508. Effective date.

Subtitle B—Simplification Through Elimination of Inoperative Provisions
Sec. 511. Simplification through elimination of inoperative provisions.

TITLE VI—REVENUE PROVISIONS
Subtitle A—Provisions Related to the Thrift Savings Plan
Sec. 601. Penalty for failing to disclose reportable transactions.
Sec. 602. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.
Sec. 603. Modifications of substantial understatement penalty for nonreportable transactions.
Sec. 604. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
Sec. 605. Disclosure of reportable transactions.
Sec. 606. Disclosure of tax return for failure to register tax shelters.
Sec. 607. Modification of penalty for failure to maintain lists of investors.
Sec. 608. Modifications of action to enjoin certain conduct related to tax shelters and reportable transactions.
Sec. 609. Understatement of taxpayer’s liability by income tax return preparer.
Sec. 610. Regulation of individuals practicing before the Department of the Treasury.
Sec. 611. Penalty on promoters of tax shelters.
Sec. 612. Statute of limitations for taxable years for which required listed transactions and other reportable transactions are not reported.
Sec. 613. Denial of deduction for interest on underpayments attributable to tax motivated transactions.
Sec. 614. Authorization of appropriations for tax enforcement.

PART II—OTHER CORPORATE GOVERNANCE PROVISIONS
Sec. 621. Affirmation of consolidated return regulation authority.
Sec. 622. Declaration by or to special tax executive officer relating to Federal annual income tax return of a corporation.
Sec. 623. Denial of deduction for certain fines, penalties, and other amounts.
Sec. 624. Disallowance of deduction for punitive damages.
Sec. 625. Increase in criminal monetary penalty for individuals to the amount of the tax at issue.
Sec. 626. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangements.

PART III—EXTENSION OF IRS USER FEES
Sec. 631. Extension of IRS user fees.

PART IV—OTHER REVENUE PROVISIONS
Sec. 641. Reporting of taxable mergers and acquisitions.
Sec. 642. Modifications of definition of controlled group of corporations.

TITLE VII—IMPROVEMENTS IN TAX ADMINISTRATION AND TAXPAYER SAFEGUARDS
Subtitle A—Improvements in Efficiency and Safeguards in Internal Revenue Service Collection
Sec. 701. WAIVER OF USER FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED DRAWALS.

(a) IN GENERAL.—Section 6159 (relating to agreements for payment of tax liability in installment) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:

(‘‘(e) WAIVER OF USER FEES FOR INSTALLMENT AGREEMENTS USING AUTOMATED DRAWALS.—In the case of a taxpayer who enters into an installment agreement in which automated installment payments are agreed to, the Secretary shall waive the requirements for entering into the installment agreement.’’)

(b) EFFECTIVE DATE.—The amendments made by this subsection shall apply to agreements entered into on or after the date that is 180 days after the date of the enactment of this Act.

Sec. 102. AUTHORIZATION FOR IRS TO ENTER INTO INSTALLMENT AGREEMENTS THAT PROVIDE FOR PARTIAL PAYMENT.

(a) IN GENERAL.—Section 6159(a) (relating to authority of the Secretary to enter into installment agreements in certain cases) is amended—

(1) by striking ‘‘satisfy liability for payment of’’ and inserting ‘‘make payment on’’; and

(2) by inserting ‘‘full or partial’’ after ‘‘facilitate’’.

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

(‘‘(d) REQUIREMENT TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years with the primary purpose of determining whether the financial condition of the taxpayer has significantly changed so as to warrant an increase in the value of the payments being made.’’)

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

Sec. 103. TERMINATION OF INSTALLMENT AGREEMENTS

(a) IN GENERAL.—Section 6159(b)(4) (relating to failure to pay an installment or any other tax liability when due or to provide requested financial information) is amended by striking ‘‘or’’ at the end of subparagraph (C), redesignating subparagraph (C) as subparagraph (E), and inserting after subparagraph (B) the following:

(‘‘(E) to fail to make a Federal tax deposit under section 6302 at the time such deposit is required to be made.’’)

(b) CONFORMING AMENDMENT.—Section 6159(b)(4) is amended by striking ‘‘FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION’’ and inserting ‘‘FAILURE TO MAKE PAYMENTS OR DEPOSITS OR FILE RETURNS WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION’’.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to failures occurring on or after the date of the enactment of this Act.

Sec. 104. OFFICE OF CHIEF COUNSEL REVIEW OF OFFERS-IN-COMPROMISE

(a) IN GENERAL.—Section 7122(b) (relating to record) is amended by striking ‘‘Whenever a compromise is approved by the ‘officer of the Secretary’ and all that follows through ‘his delegate’ and inserting ‘If the Secretary determines that an opinion of the General Counsel for the Department of the Treasury, or the Secretary’s delegate, is required in respect to a compromise, there shall be placed on file in the office of the Secretary such opinion’’.”
S6020

CONGRESSIONAL RECORD — SENATE

May 20, 2004

(h) CONFORMING AMENDMENTS.—Section 7122(b) is amended by striking the second and third sentences.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers-in-compromise submitted or pending on or after the date of the enactment of this Act.

SEC. 105. AUTHORIZATION FOR IRS TO REQUIRE ELECTRONIC FILING OF RETURNS PREPARED BY PAID RETURN PREPARERS.

(a) IN GENERAL.—Section 6011(e) (relating to regulations requiring returns on magnetic media, etc.) is amended—

(1) by striking the second sentence in paragraph (1), and

(2) by striking “250” in paragraph (2)(A) and inserting “500”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 106. TRANSFER ON ROLLING OF STATUTE OF LIMITATIONS DURING REVIEW BY TAXPAYER ADVOCATE SERVICE.

(a) IN GENERAL.—Section 7811(d)(1) (relating to the duration of running of period of limitation) is amended by inserting after “such application,” the following: “but only if the date of such decision is at least 7 days after the date of the taxpayer's application.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to applications filed after the date of the enactment of this Act.

SEC. 107. INCREASE IN PENALTY FOR BAD CHECKS AND MONEY ORDERS.

(a) IN GENERAL.—Section 6637 (relating to bad checks and money orders) is amended—

(1) by striking “$750” and inserting “$1,250”, and

(2) by striking “$15” and inserting “$25”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to checks or money orders received after the date of the enactment of this Act.

SEC. 108. EXTENSION OF TIME LIMIT FOR CONTESTING IRS LEVY.

(a) EXTENSION OF TIME FOR RETURN OF PROPERTY TO SUBJECT TO LEVY.—Subsection (b) of section 6341 (relating to return of property) is amended by striking “9 months” and inserting “2 years”.

(b) PERIOD OF LIMITATION ON SUITS.—Subsection (c) of section 6522 (relating to suits by persons other than taxpayers) is amended—

(1) in paragraph (1) by striking “9 months” and inserting “2 years”.

(2) in paragraph (2) by striking “9-month” and inserting “2-year.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) levies made after the date of the enactment of this Act.

(2) levies made on or before such date if the 9-month period has not expired under section 6343(b) of the Internal Revenue Code of 1986 (without regard to this section) as of such date.

SEC. 109. INDIVIDUALS HELD HARMLESS ON IMPROPER LEVY ON INDIVIDUAL RETIREMENT ACCOUNTS.

(a) IN GENERAL.—Section 6433 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

“(f) INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC. ON INDIVIDUAL RETIREMENT PLAN.—

“(1) IN GENERAL.—If the Secretary determines that an individual retirement plan has been levied upon in a case to which subsection (b) or (d)(2)(A) applies and an amount is returned to the individual who is the beneficiary of such plan, the individual may deposit an amount equal to the sum of—

“(A) the amount of money returned by the Secretary on account of such levy, and

“(B) interest paid under subsection (c) on such amount of money, into an individual retirement plan (other than an endorsement contract) to which a rollover from the plan levied upon is permitted.

“(2) TREATMENT AS ROLOVER.—The distribution on account of the levy and any deposit under paragraph (1) with respect to such distribution shall be treated for purposes of this title as if the distribution were part of a rollover described in section 408(d)(3)(A)(i); except that—

“(A) interest paid under subsection (c) shall be treated as part of the distribution and as not includable in gross income,

“(B) the 60-day requirement in such section shall be treated as met if the deposit is made not later than the 60th day after the day on which the individual receives an amount under paragraph (1) from the Secretary, and

“(C) such deposit shall not be taken into account under section 408(d)(3)(A)(ii).

“(3) REFUND, ETC., OF INCOME TAX ON LEVY.—If any amount is includable in gross income for a taxable year by reason of a levy referred to in paragraph (1) and any portion of such amount is treated as a rollover under paragraph (2), any tax imposed by chapter 1 on such portion shall not be assessed, and if assessed shall be abated, and if collected shall be credited or refunded as an overpayment made on the due date for filing the return of tax for such taxable year.

“(4) INTEREST.—Notwithstanding subsection (d), interest paid under subsection (c) in a case in which the Secretary makes a determination described in subsection (d)(2)(A) with respect to a levy upon an individual retirement plan.

“(b) EFFECTIVE DATE.—The amendments made by this section shall apply to offers-in-compromise submitted or pending on or after the date of the enactment of this Act.

“(f) INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC. ON INDIVIDUAL RETIREMENT PLAN.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, the Financial Management Service may charge the Internal Revenue Service for such 5-year period. If the Internal Revenue Service fails to achieve one of its goals, the report shall explain why. The report shall also include data and a narrative regarding the projected level of the workload and resources of the Internal Revenue Service for such 5-year period.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to reports for fiscal years 2004 and thereafter.

SEC. 123. DISCLOSURE OF TAX INFORMATION TO FACILITATE COMBINED EMPLOYMENT TAX REPORTING.

(a) IN GENERAL.—Section 6103(d) (relating to disclosure to State tax officials and State and local law enforcement agencies) is amended to read as follows:

“(2) DISCLOSURE FOR COMBINED EMPLOYMENT TAX REPORTING.—The Secretary shall disclose taxpayer identity information and signatures to any agency, body, or commission of any State for the purpose of carrying out such agency, body, or commission a combined Federal and State employment tax reporting program approved by the Secretary, Subsections (a)(2) and (b) of section 7201 (relating to the provision of information to State tax officials).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 124. EXTENSION OF DECLARATORY JUDICIAL PROCEDURES TO NON-501(c)(3) TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Paragraph (1) of section 7201(c)(3) (relating to creation of remedy) is amended—

(1) by striking “9 months” and inserting “12 months”.

(2) by striking “(B) interest paid under subsection (c) on such amount of money,” and inserting “(B) interest paid under subsection (c) on such amount of money, into an individual retirement plan (other than an endorsement contract) to which a rollover from the plan levied upon is permitted.”.
(a) I N GENERAL.—Clause (i) of section 202(c)(4)(B) of the Government Securities Act Amendment of 1993 (31 U.S.C. 3121 note) is amended by inserting before the semicolon "(or, if earlier, at the time the Secretary releases the minutes of the meeting in accordance with paragraph (2))", (b) COURT JURISDICTION.—Subsection (a) of section 7802 is amended by inserting in the material following paragraph (2) by striking "United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia in the case of a determination or failure with respect to an issue referred to in subparagraph (A) or (B) of paragraph (1)". (c) EFFECTIVE DATE.—The amendments made by this section shall apply to pleadings filed with respect to determinations (or requests for determinations) made after December 31, 2004.

SEC. 125. AMENDMENT TO TREASURY AUDIT REFORMS.

(a) I N GENERAL.—Clause (i) of section 202(c)(4)(B) of the Government Securities Act Amendment of 1993 (31 U.S.C. 3121 note) is amended by inserting before the semicolon ("or, if earlier, at the time the Secretary releases the minutes of the meeting in accordance with paragraph (2)"). (b) EFFECTIVE DATE.—The amendment made by this section shall apply to meetings held after the date of the enactment of this Act.

SEC. 126. REVISIONS RELATING TO TERMINATION OF EMPLOYMENT OF IRS EMPLOYEES FOR MISCONDUCT.

(a) I N GENERAL.—Subchapter A of chapter 80 (relating to failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets, (2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative, (3) with respect to a taxpayer or taxpayer representative, (A) any right under the Constitution of the United States, or (B) any civil right established under— (i) title VI or VII of the Civil Rights Act of 1964, (ii) title IX of the Education Amendments of 1972, (iii) the Age Discrimination in Employment Act of 1967, (iv) the Age Discrimination in Employment Act of 1975, (v) section 501 or 504 of the Rehabilitation Act of 1973, (vi) title I of the Americans with Disabilities Act of 1990, (vii) the equal protection clause of the Constitution of the United States, or (viii) any right under any other provision of Federal law, or (C) any right under any other provision of Federal law, or (D) review and approve the Commissioner's determination of reasonable cause and not due to willful neglect, and (ii) whether an individual should be referred to the Treasury, the United States Claims Court, or the United States Court of Federal Claims for a determination by the Commissioner for a determination by the Commissioner under paragraph (1). (3) NO APPEAL.—Any determination of the Commissioner under this subsection may not be appealed in any administrative or judicial proceeding. (d) DEFINITION.—For the purposes of this section— (1) the term "qualified return preparation clinic", (2) the term "qualified return preparation clinic", (3) the term "qualified return preparation clinic", (4) the term "qualified return preparation clinic", (5) the term "qualified return preparation clinic", and (6) the term "qualified return preparation clinic", shall be paid at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code. (f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 127. EXPANSION OF IRS OVERSIGHT BOARD AUTHORITY.

(a) APPROVAL WITH RESPECT TO SENIOR EXECUTIVES.—Section 7802(d)(3)(B) (relating to management) is amended by striking "and" at the end of subparagraph (B), by striking "(A)(ii) the Internal Revenue Service (including the Internal Revenue Manual or the purpose of retaliating against, or harassing, a taxpayer or taxpayer representative," (7) willful misfeasance of the provision of section 6103 for the purpose of concealing information from a congressional inquiry, (8) failure to file any return of tax required under the date prescribed therefor (including any extensions) when a tax is due and owing, unless such failure is due to reasonable cause and not due to willful neglect, and (9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not due to willful neglect, and (d) CONTINUITY OF OFFICE.—Any member whose term expires shall serve until the earlier of the date on which the member's successor takes office or the date which is 1 year after the date of the expiration of the member's term, and if the member is not otherwise a Federal officer or employee, shall be considered an employee solely for purposes of section 89 of title 5, United States Code.

SEC. 128. DUTY AND AUTHORITY OF IRS OVERSIGHT BOARD OF DIRECTORS.

(a) DIRECTOR OF INTERNAL REVENUE SERVICE OVERSIGHT BOARD.—Subsection (e) of section 7802, as amended by subsection (d), is amended by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively, and by inserting after paragraph (2) the following new paragraph: (c) CONTINUITY IN OFFICE.—Any member whose term expires shall serve until the earlier of the date on which the member's successor takes office or the date which is 1 year after the date of the expiration of the member's term, and if the member is not otherwise a Federal officer or employee, shall be considered an employee solely for purposes of section 89 of title 5, United States Code.

SEC. 129. LOW-INCOME TAXPAYER CLINICS.

(a) GRANTS FOR RETURN PREPARATION CLINICS.—(1) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by inserting after section 7526 the following new section:

SEC. 7526A. RETURN PREPARATION CLINICS FOR LOW-INCOME TAXPAYERS.

(a) IN GENERAL.—The Secretary may, subject to the availability of appropriated funds, make grants to provide matching funds for the development, expansion, or continuation of qualified return preparation clinics.

(b) DEFINITIONS.—For purposes of this section— (1) QUALIFIED RETURN PREPARATION CLINIC.— (A) IN GENERAL.—The term "qualified return preparation clinic" means a clinic which— (i) is a clinic that provides assistance to low-income taxpayers in preparing and filing their Federal income tax returns, including schedules reporting sole proprietorship or farm income, (ii) operates programs which assist low-income taxpayers in preparing and filing their Federal income tax returns, including schedules reporting sole proprietorship or farm income, (iii) is operated by a qualified return preparation clinic, (iv) is operated by a qualified return preparation clinic, and (v) is operated by a qualified return preparation clinic, and (B) ASSISTANCE TO LOW-INCOME TAXPAYERS.—A clinic is treated as a clinic which provides assistance to low-income taxpayers under subparagraph (A)(ii) if at least 90 percent of the taxpayers assisted by the
S6022
CONGRESSIONAL RECORD — SENATE
May 20, 2004

clinic have incomes which do not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget.

(c) CLERICAL AMENDMENT.—The term ‘‘clinic’’ includes—

(1) a program at an eligible educational institution (as defined in section 528(c)(3)) which satisfies the requirements of paragraph (1) through student assistance of taxpayers in return preparation and filing, and

(2) any organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1).

(c) SPECIAL RULES AND LIMITATIONS.—

(1) Return Preparation Clinics.—Unless otherwise provided by specific appropriation, the Secretary shall not allocate more than $10,000,000 per year (exclusive of costs of administering the program) to grants under this section.

(2) OTHER APPLICABLE RULES.—Rules similar to the rules under paragraphs (2) through (7) of section 7526(c) shall apply with respect to the awarding of grants to qualified return preparation clinics.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by inserting after the item relating to section 7526 the following new item:

“Sec. 7526A. Return preparation clinics for low-income taxpayers.”.

(b) GRANTS FOR TAXPAYER REPRESENTATION AND ASSISTANCE CLINICS.

(1) USE OF AUTHORIZED GRANTS.—Section 7526(c)(1) (relating to aggregate limitation) is amended by striking “$6,000,000” and inserting “$10,000,000”.

(2) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—

(A) IN GENERAL.—Section 7526(c)(1) (relating to aggregate limitation) is amended by adding at the end the following new paragraph:

“(5) No grant made under this section shall be used for the overhead expenses of any clinic or of any institution sponsoring such clinic.”.

(B) CONFORMING AMENDMENTS.—Section 7526(c)(5) is amended—

(i) by inserting “qualified” before “low-income”, and

(ii) by striking the last sentence.

(3) PROMOTION OF CLINICS.—Section 7526(c), as amended by paragraph (2), is amended by adding at the end the following new paragraph:

“(7) PROMOTION OF CLINICS.—The Secretary is authorized to promote the benefits of and encourage the use of low-income taxpayer clinics through the use of mass communications, referrals, and other means.”.

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

SEC. 130. TAXPAYER ACCESS TO FINANCIAL INSTITUTIONS.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary is authorized to award demonstration project grants (including multi-year grants) to eligible institutions (as defined in this section) to create programs to provide financial services and assistance in connection with establishing an account in a federally insured depository institution for individuals that currently do not have such an account.

(b) ELIGIBLE ENTITIES.—

(1) IN GENERAL.—An entity is eligible to receive a grant under this section if such an entity is—

(A) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code;

(B) a federally insured depository institution,

(C) an agency of a State or local government,

(D) a community development financial institution,

(E) an Indian tribal organization,

(F) an Alaska Native Corporation,

(G) a Native Hawaiian organization,

(H) a labor organization, or

(I) a partnership comprised of 1 or more of the entities described in the preceding subparagraph.

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

(A) FEDERALLY INSURED DEPOSITORY INSTITUTION.—The term “federally insured depository institution” means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) and any insured credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(B) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term “community development financial institution” means any organization that has been certified as such pursuant to section 1805.201 of title 12, Code of Federal Regulations.

(C) ALASKA NATIVE CORPORATION.—The term “Alaska Native Corporation” has the same meaning as the term “Native Corporation” under section 3(m) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)).

(D) NATIVE HAWAIIAN ORGANIZATION.—The term “Native Hawaiian organization” means any organization that—

(i) serves and represents the interests of Native Hawaiians, and

(ii) has as a primary and stated purpose the provision of services to Native Hawaiians.

(E) LABOR ORGANIZATION.—The term “labor organization” means an organization—

(i) in which employees participate,

(ii) which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and

(iii) which is described in section 501(c)(5).

(F) PROMOTION OF CLINICS.—The Secretary is authorized to promote the benefits of and encourage the use of low-income taxpayer clinics through the use of mass communications, referrals, and other means.

(2) AUTHORIZATION OF APPROPRIATIONS.—

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

“Sec. 7529. Enrolled agents.”.

(3) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—

(A) IN GENERAL.—Section 7529(c)(1) is amended—

(i) by striking “$6,000,000” and inserting “$10,000,000”,

(ii) by striking the last sentence, and

(iii) by inserting “low-income taxpayers’’ after “such granting entities,”.

(B) PERSPECTIVE.—The term “entities” includes any organization described in section 7529(c)(1) (as amended by this paragraph).

(4) TOLL-FREE TELEPHONE NUMBER.—

(A) IN GENERAL.—The Commissioner of Internal Revenue shall establish and maintain a toll-free telephone number for taxpayers to use to receive assistance from the disaster response team.

(B) COORDINATION WITH FEDERA.—The disaster response team shall operate in coordination with the Director of the Federal Emergency Management Agency.

(C) INTERNET WEBPAGE SITE.—The Commissioner of Internal Revenue shall establish and maintain a site on the Internet webpage of the Internal Revenue Service for information for taxpayers described in paragraph (1)(A).’’.

(5) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 131. STUDY OF ACCELERATED TAX REFUNDS.

(a) STUDY.—The Secretary of the Treasury shall study the implementation of an accelerated refund program for taxpayers who—

(1) maintain the same filing characteristics from year to year, and

(2) provide the direct deposit option for any refund under the program.

(b) REPORT.—Not later than the date which is 1 year after the date of this Act, the Secretary of the Treasury shall transmit a report of the study described in subsection (a), including recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.
SEC. 134. STUDY ON CLARIFYING RECORD-KEEPING RESPONSIBILITIES.
(a) STUDY.—The Secretary of the Treasury shall conduct a study—
(1) the scope of the records required to be maintained by taxpayers under section 6001 of the Internal Revenue Code of 1986,
(2) the ability of taxpayers to maintain all records indefinitely,
(3) such requirement given the necessity to upgrade technological storage for outdated records,
(4) the number of negotiated records retention agreements requested by taxpayers and the number entered into by the Internal Revenue Service and
(5) proposals regarding taxpayer record-keeping.
(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall transmit a report of the study described in subsection (a), including recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 135. STREAMLINE REPORTING PROCESS FOR NATIONAL TAXPAYER ADVOCATE.
(a) ANNUAL REPORT.—Subparagraph (B) of section 7803(c)(2) (relating to functions of Office of National Taxpayer Advocate) is amended—
(1) by striking “and” and inserting “, and”;
(2) by inserting “and” at the end of clause (ii) and inserting “; and”, and
(3) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.
(b) ADDITIONAL REPORTS.—Section 7803(c)(2)(C) (relating to other responsibilities) is amended by striking “and” at the end of clause (iii), before adding at the end of clause (iv) and inserting “; and”, and by adding at the end the following new clause:
(v) at the discretion of the National Taxpayer Advocate, at any time before the end of any fiscal year, the National Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Office of the National Taxpayer Advocate for the fiscal year beginning in such calendar year and the activities of such Office during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—
(1) by striking “and” and inserting “; and”;
(2) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.
(c) EFFECTIVE DATE.—
(1) ANNUAL REPORTS.—The amendments made by this section shall apply to reports in calendar year 2005 and thereafter.
(2) ADDITIONAL REPORTS.—The amendments made by subsection (b) shall take effect on the date of the enactment of this Act.

SEC. 136. IRS FREE FILE PROGRAM.
(a) STUDY.—The Secretary of the Treasury shall conduct a study to determine the extent to which electronically filing Federal income tax returns is a viable option for low-income taxpayers.
(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall transmit a report of the study described in subsection (a) and such legislative recommendations, including specific reporting on penalty enforcement, stock options, and the amortization of goodwill.

SEC. 137. MODIFICATION OF TIGTA REPORTING REQUIREMENTS.
(a) STUDY.—The Commissioner of Internal Revenue shall conduct a study to determine what additional duties of the Secretary for Tax Administration are needed—
(1) by striking “ANNUAL” in the heading and inserting “BIENNIAL”;
(2) by inserting “every 2 years (beginning in 2004)” after “one of the semiannual reports” in the matter preceding subparagraph (B),
(3) by striking clause (ii) of subparagraph (A),
(4) by redesignating clauses (iii), (iv), and (v) of subparagraph (A) as clauses (ii), (iii), and (iv), respectively,
(5) by striking subparagraph (B),
(6) by striking “and” at the end of subparagraph (F),
(7) by redesigning subparagraphs (C), (D), (E), and (F) as subparagraphs (B), (C), (D), and (E), respectively, and
(8) by striking subparagraph (G) and inserting the following new subparagraph:
(“F” the number of employee misconduct and taxpayer abuse allegations received by the Internal Revenue Service, the Inspector General, and the Comptroller General, including, as applicable, the following:
(i) a summary of the status of such allegations; and
(ii) a summary of the disposition of such allegations, including the outcome of any Department of Justice action and any monies paid as a settlement of such allegations.”.
(b) CONFORMING AMENDMENTS.—Section 7803(d) is amended—
(1) by striking paragraphs (2) and (3) of section 7803(d) and by redesigning paragraph (3) as paragraph (2),
(2) by inserting “every 2 years (beginning in 2004)” in the heading of section 7803(d),
(3) by redesigning subparagraphs (C), (D), (E), and (F) as subparagraphs (B), (C), (D), and (E), respectively, and
(4) by striking subparagraph (G) and inserting the following new subparagraph:
(“G” with respect to allegations of serious employee misconduct—
(i) a summary of the status of such allegations; and
(ii) a summary of the disposition of such allegations, including the outcome of any Department of Justice action and any monies paid as a settlement of such allegations.”.
(c) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to returns filed after December 31, 2004.

SEC. 138. STUDY OF IRS ACCOUNTS RECEIVABLE.
(a) STUDY.—The Secretary of the Treasury shall conduct a study of the accounts receivable inventory of the Internal Revenue Service.
(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the status of such study.

SEC. 139. ELECTRONIC COMMERCE ADVISORY GROUP.
(a) IN GENERAL.—Section 301(2) of the Internal Revenue Code of 1986 is amended by striking “taxpayers, Federal income tax return preparers, refund anticipation loan providers, and payroll agents” and inserting “taxpayers, Federal income tax return preparers, refund anticipation loan providers, and payroll agents, and other Federal income tax return preparers”.
(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 140. MODIFICATION OF TIGTA REPORTING REQUIREMENTS, TAX RETURNS, AND VENDORS.
(a) STUDY.—The Secretary shall conduct a study to determine what additional duties of the Secretary for Tax Administration are needed—
(1) by striking “ANNUAL” in the heading and inserting “BIENNIAL”;
(2) by inserting “every 2 years (beginning in 2004)” after “one of the semiannual reports” in the matter preceding subparagraph (B),
(3) by striking clause (ii) of subparagraph (A),
(4) by redesignating clauses (iii), (iv), and (v) of subparagraph (A) as clauses (ii), (iii), and (iv), respectively,
(5) by striking subparagraph (B),
(6) by striking “and” at the end of subparagraph (F),
(7) by redesigning subparagraphs (C), (D), (E), and (F) as subparagraphs (B), (C), (D), and (E), respectively, and
(8) by striking subparagraph (G) and inserting the following new subparagraph:
(“F” the number of employee misconduct and taxpayer abuse allegations received by the Internal Revenue Service, the Inspector General, and the Comptroller General, including, as applicable, the following:
(i) a summary of the status of such allegations; and
(ii) a summary of the disposition of such allegations, including the outcome of any Department of Justice action and any monies paid as a settlement of such allegations.”.
(b) CONFORMING AMENDMENTS.—Section 7803(d) is amended—
(1) by striking paragraphs (2) and (3) of section 7803(d) and by redesigning paragraph (3) as paragraph (2),
(2) by inserting “every 2 years (beginning in 2004)” in the heading of section 7803(d),
(3) by redesigning subparagraphs (C), (D), (E), and (F) as subparagraphs (B), (C), (D), and (E), respectively, and
(4) by striking subparagraph (G) and inserting the following new subparagraph:
(“G” with respect to allegations of serious employee misconduct—
(i) a summary of the status of such allegations; and
(ii) a summary of the disposition of such allegations, including the outcome of any Department of Justice action and any monies paid as a settlement of such allegations.”.
(c) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to returns filed after December 31, 2004.

SEC. 141. REGULATION OF FEDERAL INCOME TAX RETURN PREPARERS, REFUND ANTICIPATION LOAN PROVIDERS, AND PAYROLL AGENTS.
(a) IN GENERAL.—Section 7530 of the Internal Revenue Code of 1986 is amended by striking “1 year” and inserting “3 years”.
(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 142. STUDY OF EFFICIENCY OF ADMINISTRATION OF THE INTERNAL REVENUE SERVICE.
(a) STUDY.—The Secretary shall conduct a study of the efficiency and clarity of information relating to tax book assets on the public financial disclosures.
(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the results of such study.

SEC. 143. MODIFICATION OF TIGTA REPORTING REQUIREMENTS.
(a) STUDY.—The Secretary shall conduct a study of the accounts receivable inventory of the Internal Revenue Service.
(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the results of such study.

SEC. 144. MODIFICATION OF TIGTA REPORTING REQUIREMENTS.
(a) STUDY.—The Secretary shall conduct a study of the accounts receivable inventory of the Internal Revenue Service.
(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the results of such study.

SEC. 145. MODIFICATION OF TIGTA REPORTING REQUIREMENTS.
(a) STUDY.—The Secretary shall conduct a study of the accounts receivable inventory of the Internal Revenue Service.
(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the results of such study.
pass an initial examination testing the applicant’s technical knowledge and competency to prepare individual and business Federal income tax returns.

(c) RULES OF CONDUCT.—All registrants shall be subject to rules of conduct that are consistent with the rules that govern any federally authorized tax practitioner within the meaning of section 7525(a)(1)(A).

(d) DISCLOSURE OF INFORMATION.—The Secretary shall provide guidance on the manner and timing of disclosure to taxpayers of information relating to fees and interest rates imposed in connection with loans made to taxpayers by refund anticipation loan providers.

(e) ANNUAL RENEWAL OF REGISTRATION.—(1) The regulations promulgated under subsection (a) shall require an annual renewal of registration and shall set forth the manner in which a registered Federal income tax return preparer, refund anticipation loan provider, or payroll agent must renew such registration.

(2) ANNUAL EXAMINATIONS.—As part of the annual registration, such regulations shall require that each registrant pass an annual refresher examination (including tax law updates).

(f) FEES.—(1) IN GENERAL.—The Secretary may require the payment of reasonable fees for registration and for renewal of registration under the regulations promulgated under subsection (a).

(2) Any fees described in paragraph (1) shall be available without fiscal year limitation to the Secretary for the purpose of reimbursement of the costs of administering the requirements of the regulations.

(g) FEDERAL INCOME TAX RETURN PREPARER.—For purposes of this section—

(1) IN GENERAL.—The term ‘Federal income tax return preparer’ means any individual who is an income tax return preparer (within the meaning of section 7701(a)(36)) who prepares not less than 5 returns of tax imposed by subtitle A or claims for refunds of tax imposed by subtitle A taxable year.

(2) EXCEPTION.—Such term shall not include a federally authorized tax practitioner as defined in section 7525(a)(31).

(h) REFUND ANTICIPATION LOAN PROVIDER.—For purposes of this section, the term ‘refund anticipation loan provider’ means a person who makes a loan of money or of any other thing of value to a taxpayer in connection with the taxpayer’s anticipated receipt of a Federal income tax return preparer.

(ii) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 142. JOIN TASK FORCE ON OFFERS-IN-COM-PROMISE.

(a) IN GENERAL.—The Secretary of the Treasury shall establish a joint task force—

(1) to review the Internal Revenue Service’s determinations with respect to offers which result in a compromise of Federal income tax preparers under the regulations promulgated under section 7530 of the Internal Revenue Code of 1986,

(2) to review the extent to which the Internal Revenue Service has used its authority to refer cases involving penalties and interest which have accumulated as a result of delay in determining the taxpayer’s liability,

(3) to provide recommendations as to whether the Internal Revenue Service’s determination of offers-in-compromise should include—

(A) the taxpayer’s compliance history,

(B) errors by the Internal Revenue Service with respect to the underlying tax liability,

(C) wrongful acts by a third party which gave rise to the liability,

(D) whether the taxpayer has made payments on the liability, and

(4) to annually report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (beginning in 2005) regarding such review and recommendations.

(b) MEMBERS OF JOINT TASK FORCE.—The membership of the joint task force under subsection (a) shall consist of 1 representative each from the Department of the Treasury, the Internal Revenue Service Oversight Board, the Office of the Chief Counsel for the Internal Revenue Service, the Office of the Taxpayer Advocate, the Office of Appeals, and the division of the Internal Revenue Service charged with operating the offers-in-compromise program.

(c) REPORT OF NATIONAL TAXPAYER ADVOCATE.—

(1) IN GENERAL.—Clause (i) of section 7850(a)(4) (relating to annual reports), as amended by this Act, is amended by striking “and” at the end of subclause (X), by redesignating subclause (XI) as subclause (XII), and by inserting after subclause (X) the following new subclause:

“(XII) include a list of the factors taxpayers have raised to support their claims for offers-in-compromise relief, the number of such offers submitted, accepted, and rejected, the number of such offers appealed, the period during which reviews of such offers were pending, and the efforts the Internal Revenue Service has made to correctly identify such offers, including the training of employees in identifying and entering such offers.”

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to reports in calendar year 2005 and thereafter.

SEC. 151. PENALTY FOR FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

“(3) Foreign financial agency transaction violation.

(A) Penalty Authorized.—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 5314.

(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 $50,000.

(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed 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 causing any violation of, any provision of section 5314—

(1) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

(I) $25,000, or

(II) the amount (not exceeding $100,000) determined under subparagraph (D), and

(3) subparagraph (B)(i) shall not apply.

(2) the amount determined under this subparagraph is—

(I) in the case of a violation involving a transaction, the amount of the transaction, or the balance in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation,”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 152. REPEAL OF APPLICATION OF BELOW-MARKET RATE LOANS TO AMOUNTS PAID TO CERTAIN CONTINUING CARE FACILITIES.

(a) IN GENERAL.—Section 7872(c)(1) (relating to below-market loans to which section applies) is amended—

(1) by striking subparagraph (F), and

(2) by striking “(C), or (F)” in subparagraph (E) and inserting “(C)”.

(b) FULL EXCEPTION.—Section 7872(g) (relating to the exception for certain loans to qualified continuing care facilities) is amended—

(1) by striking “made by a lender to a qualified continuing care facility pursuant to a continuing care contract” in paragraph (1) and inserting “used by a facility which on the last day of such year is a qualified continuing care facility, if such loan was made pursuant to a continuing care contract,”;

(2) by striking “increased personal care services” or in paragraph (2)(C),
(3) by adding at the end of paragraph (3) the following new flush sentence:

“The Secretary shall issue guidance which limits such term to contracts which provide to an individual or individual’s spouse only facilities, care, and services described in this paragraph which are customarily offered by continuing care facilities.”

(4) by inserting “independent living unit” after “all of” in paragraph (4)(A)(ii), (5) by striking paragraphs (2) and (5), (6) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), (7) by striking “CERTAIN” in the heading thereof.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after 2004.

SEC. 153. PUBLIC SUPPORT BY INDIAN TRIBAL GOVERNMENTS.

(a) IN GENERAL.—Section 7871(a) (relating to Indian tribal governments treated as States for certain purposes) is amended by striking “and” at the end of subsection (c) of paragraph (4) of section 6654(e) (relating to exception where tax is prepaid), in the case of any underpayment period for the 4th required installment, the 4th day following the close of the calendar quarter in which such installment underpayment period begins.

(b) COMPUTATION OF ADDITION TO TAX.—For purposes of subparagraph (A) of section 6672(a) (relating to underpayment of any tax), the term “installment underpayment period” shall be treated as underpayment period for purposes of section 6621(b), regardless of whether the Secretary determines that collection of such tax is in jeopardy.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any installment underpayment period beginning on or after the date of enactment.

SEC. 154. PAYROLL AGENTS SUBJECT TO PENALTIES FOR FAILURE TO COLLECT AND PAY OVER TAX OR ATTEMPT TO EVADE OR DEFraud Tax.

(a) IN GENERAL.—Section 6672(a) (relating to payroll agents subject to penalties for failure to collect and pay over tax) is amended by inserting “, including any payroll agent,” after “Any person”.

(b) PENALTY NOT SUBJECT TO DISCHARGE IN BANKRUPTCY.—Section 6672(c) (relating to discharge in bankruptcy) is amended by adding at the end the following new sentence: “Notwithstanding any other provision of law, no penalty imposed under this section may be discharged in bankruptcy.”

(c) CONSTRUCTION.—The amendment made by subsection (a) shall not be construed to create any inference with respect to the interpretation of section 6403 of the Internal Revenue Code of 1986 as such section was in effect on the day before the date of the enactment of this Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to failures occurring after the date of the enactment of this Act.

TITLE II—REFORM OF PENALTY AND INTEREST

SEC. 201. INDIVIDUAL ESTIMATED TAX.

(a) INCREASE IN EXCEPTION FOR INDIVIDUALS OWING SMALL AMOUNT OF TAX.—Section 6654(e)(1) (relating to exception where tax is small amount) is amended by striking “$1,000” and inserting “$500”.

(b) COMPUTATION OF ADDITION TO TAX.—Subsections (a) and (b) of section 6654 (relating to failure by individual to pay estimated taxes) are amended by adding a new subparagraph:

“(a) ADDITION TO THE TAX.—

(1) IN GENERAL.—For purposes of section 6654, the amount of the underpayment is the excess of—

(A) the sum of the amounts (if any) of estimated tax payments made on or before such due date on such required installment.

(B) the amount of the underpayment.

(2) DETERMINATION OF UNDERPAYMENT RATE.—

(A) IN GENERAL.—The underpayment rate with respect to any day in an installment underpayment period is the rate determined under section 6621 for the first day of the calendar quarter in which such installment underpayment period begins.

(B) BUSINESS ENTITY.—In the case of a business entity, the underpayment rate shall be determined on the basis and shall be based on the assumption of a large corporation.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after 2004.

SEC. 202. INCREASE IN LARGE CORPORATION THRESHOLD FOR ESTIMATED TAX PAYMENTS.

(a) IN GENERAL.—Section 6655(g)(2) (defining large corporation) is amended—

(1) by striking “$1,000,000” in subparagraph (A) and inserting “$500,000”;

(2) by striking “$1,000,000” in subparagraph (B) and inserting “$500,000”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 203. INCREASE IN CORPORATION THRESHOLD FOR ESTIMATED TAX PAYMENTS.

(a) IN GENERAL.—Section 6655(g)(2) (defining large corporation) is amended—

(1) by striking “$1,000,000” in subparagraph (A) and inserting “$1,000,000,000”;

(2) by striking “$1,000,000,000” in subparagraph (B) and inserting “$1,000,000,000,000”.

(b)(1) AMOUNT.—The amount of the underpayment for purposes of subsection (a)—

(A) The amount of the underpayment shall be the excess of—

(A) the sum of the amounts (if any) of estimated tax payments made on or before such due date on such required installment.

(B) the amount of the underpayment.

(b)(2) DETERMINATION OF UNDERPAYMENT RATE.—

(A) IN GENERAL.—The underpayment rate with respect to any day in an installment underpayment period is the rate determined under section 6621 for the first day of the calendar quarter in which such installment underpayment period begins.

(B) BUSINESS ENTITY.—In the case of a business entity, the underpayment rate shall be determined on the basis and shall be based on the assumption of a large corporation.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after 2004.

SEC. 204. ABATEMENT OF INTEREST.

(a) IN GENERAL.—Section 6603 (relating to interest on overpayments) is amended—

(1) by striking “tax described in section 6621(b), compounded daily.”

(2) by striking “for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period.”

(b) 30-DAY LETTER.—The term “30-day letter” means the letter sent by the Secretary to the taxpayer under section 6603(a)(3), or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

(d) EXECUTION OF INTEREST.

(1) IN GENERAL.—For purposes of section 6601 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period.

(2) DISPUTABLE TAX.—The term “disputable tax” means any amount of any tax attributable to a disputable item.

(e) AMOUNT TO BE PAID.—The amount to be paid shall be pursuant to section 6651(b).
SEC. 206. FREEZE OF PROVISIONS REGARDING SUBMISSIONS FOR PURPOSES OF INTEREST WAIVER.

(a) IN GENERAL.—Section 6404(q) (relating to suspension of interest and certain penalties where Secretary fails to contact taxpayer) is amended by striking “1-year period (18-month period in the case of an installment agreement)”, and inserting “18-month period”. (b) EXCEPTION FOR GROSS MISSTATEMENT.—Section 6404(q)(2) (relating to exceptions for gross misstatement) is amended by striking “or” at the end of subparagraph (C), by redesignating subparagraph (D) as subparagraph (E), and by inserting after subparagraph (E) the following new subparagraph:

“(D) any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement;”.

(c) EXCEPTION FOR REPORTABLE AND LISTED TRANSACTIONS.—Section 6404(q)(2) (relating to exceptions), as amended by subsection (b), is amended by striking “or” at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (F) the following new subparagraph:

“(E) any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction or listed transaction (as defined in section 6109(A)(c)); or”.

(d) EFFECTIVE DATES.—(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2003.

(2) EXCEPT FOR REPORTABLE OR LISTED TRANSACTIONS.—The amendments made by subsection (c) shall apply with respect to interest accruing after May 5, 2004.

SEC. 207. CLARIFICATION OF APPLICATION OF FEDERAL TAX DEPOSIT PENALTY.

Nothing in section 6656 of the Internal Revenue Code of 1986 shall be construed to permit the Secretary to disregard in the calculation of any interest (b)(1)(A)(iii) thereof to apply other than in a case where the failure is for more than 15 days.

SEC. 208. FROZEN TAX PAYMENTS AND SUBMISSIONS.

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

“SEC. 6702. FROZEN TAX PAYMENTS.

(a) Civil Penalty for Frozen Tax Returns.—A person shall pay a penalty of $5,000 if—

“(1) such person files what purports to be a return of a tax imposed by this title but which—

“(A) contains information on which the substantial correctness of the self-assessment may be judged, or

“(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

“(2) the conduct referred to in paragraph (1) is carried out after the due date for the filing of the return, unless—

“(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

“(B) reflects a desire to delay or impede the administration of Federal tax laws.

(b) CRIMINAL PENALTY FOR SPECIFIED FROZEN SUBMISSIONS.—

(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (2), any person who submits a specified frozen submission shall pay a penalty of $5,000.

(2) SPECIFIED FROZEN SUBMISSION.—For purposes of this section—

(A) SPECIFIED FROZEN SUBMISSION.—The term ‘specified frozen submission’ means a specified submission if any portion of such submission—

“(1) is based on a position which the Secretary has identified as frivolous under subsection (c), or

“(2) 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—

“(I) section 6159 (relating to notice and opportunity for hearing upon filing of notice of lien), or

“(ii) section 6330 (relating to notice and opportunity for hearing before levy), and

“(ii) a request for a hearing under—

“(I) section 6159 (relating to agreements for payment of tax in installments),

“(II) section 7122 (relating to compromises), or

“(III) section 7811 (relating to taxpayer assistance orders).

“(2) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this section. Such list shall include positions which—

“(1) are based on a position which the Secretary has identified as frivolous under subsection (a)(3)(B), and states the portion of the submission that the Secretary determined to be frivolous; and

“(2) the Secretary has identified as frivolous under subsection (a)(3)(B), and states the portion of the submission that the Secretary determined to be frivolous; and

(d) PENALTIES IN ADDITION TO OTHER PENALTIES.—

Nothing in section 6662 applies to any portion of any frivolous submission if the Secretary determines that—

“(1) the Secretary fails to contact the taxpayer by written notice within the period prescribed; or

“(2) the Secretary fails to contact the taxpayer by written notice within the period prescribed.

(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall apply to submissions made after May 5, 2004.

(f) EFFECTIVE DATES.—The amendments made by this section shall apply to submissions made after May 5, 2004.

SEC. 209. EXTENSION OF NOTICE REQUIREMENTS WITH RESPECT TO INTEREST AND PENALTY CALCULATIONS.

Sections 3306(c) and 3308(c) of the Internal Revenue Service Restructuring and Reform Act of 1998 are each amended by inserting “and during the period beginning on the date of the enactment of the Tax Administration Good Government Act, and ending before July 1, 2006,” after “July 1, 2001,”.

SEC. 210. EXPANSION OF INTEREST NETTING.

(a) IN GENERAL.—Subsection (d) of section 6621 (relating to elimination of interest on overlapping periods of tax overpayments and underpayments) is amended by inserting the following: “Sec. 6621(c) of the Internal Revenue Code of 1986,” after “1986,”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to interest accrued after December 31, 2010.

TITLE III—UNITED STATES TAX COURT MODERNIZATION

Subtitle A—Tax Court Procedure

SEC. 301. JURISDICTION OF TAX COURT OVER COLLECTION DUE PROCESS CASES.

(a) IN GENERAL.—Paragraph (1) of section 6623(d) (relating to proceeding after hearing) is amended to read as follows:

“(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to determinations made after the date which is 60 days after the date of the enactment of this Act.

SEC. 302. AUTHORITY FOR SPECIAL TRIAL JUDGES TO HEAR AND DECIDE CERTAIN EMPLOYMENT CASES.

(a) IN GENERAL.—Section 7443A(b) (relating to procedures which may be assigned to special
trial judges) is amended by striking “and” at the end of paragraph (4), by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) the following new paragraph (5):

“(5) any proceeding under section 7456(c), and”.

SEC. 306. EXPANDED USE OF TAX COURT PRACTICE AND PROCEDURES FOR TAXPAYERS.

(a) IN GENERAL.—Section 7475(b) (relating to use of fees) is amended by inserting before the period at the end “and to provide services to pro se taxpayers”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.
upon the service of the same judge, shall be re-
computed and paid as though the child whose
annuity was so terminated had not survived
such judge.

(4) SPECIAL RULE FOR ASSASSINATED JUDGES.—In the case of a survivor or survivors of a judge described in paragraph (2)(B), there shall be deducted from the annuities otherwise payable under this section an amount equal to—

"(A) the amount of salary deductions pro-
vided for by subsection (c)(1) that would have been made if such deductions had been made for 5 years of service computed as provided in sub-
section (b) before the judge's death, reduced by

"(B) the amount of such salary deductions that were actually made before the date of the judge's death;"

(5) DISTRIBUTION TO SURVIVORS.—In the case of a judge, whose death occurred after April 25, 1953, who was serving as a judge of the Tax Court or who was retired under this section is deemed to be an em-
ployee who is continuing in active employ-
ment.

(6) E F FECTIVE DATE.—The amendment made
by this section shall take effect after the date of the enactment of this Act.

SEC. 311. LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES.

(a) In General.—Section 7447 (relating to life
insurance) is amended by adding at the end the following new subsection:

"(1) LIFE INSURANCE COVERAGE.—For pur-
oposes of chapter 87 of title 5, United States Code (relating to life insurance), any individual who is serving as a judge of the Tax Court or who is retired under this section is deemed to be an em-
ployee who is continuing in active employ-
ment.

(b) EFFECTIVE DATE.—The amendment made
by this section shall take effect as of the date of the enactment of this Act.

SEC. 312. COST OF LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES AGE 65 OR OVER.

Section 7472 (relating to annuities) is amended by adding at the end the following new sentence:

"Notwithstanding any other provision of law, the Tax Court is author-
ized to pay on behalf of its judges, age 65 or over, any of its annuities to a judge who was
appointed to serve as a judge of the United States Tax Court on the date of the enactment of this Act.

SEC. 313. MODIFICATION OF LUMP-SUM PAYMENT OF JUDGES' AC-
CRUED ANNUAL LEAVE.

(a) In General.—Subsection (b) of section 7443 (relating to membership of the Tax Court) is amended by adding at the end the following new subsection:

"(1) ACRUED ANNUAL LEAVE.—In the case of a judge who is retired under this section, the provisions of sections 5551 and 6301 of title 5, United States Code, when an individual subject to the leave system provided in chapter 63 of title 5, United States Code, is entitled to receive, upon appointment to the Tax Court, a lump-sum payment from the Tax Court itself to which such judge is entitled,

(b) EFFECTIVE DATE.—The amendment made
by this section shall take effect after the date of the enactment of this Act.

SEC. 314. PARTICIPATION OF TAX COURT JUDGES IN FEDERAL EMPLOYEES' GROUP LIFE INSURANCE.

(a) In General.—Subsection (a) of section 7447 (relating to contributions for benefit of judges) is amended by adding at the end the following new sentence:

"(C) the amount of such salary deductions that were actually made before the date of the judge's death;"

(b) EFFECTIVE DATE.—The amendment made
by this section shall take effect on the date of the enactment of this Act.

SEC. 315. MODIFICATION OF LIMITATION ON OUTSIDE EARNED INCOME.

(a) IN GENERAL.—Subsection (b) of section 7447 (relating to limitations on outside earned income) is amended by adding at the end the following new sentence:

"(D) the amount of such salary deductions that were actually made before the date of the judge's death;"

(b) EFFECTIVE DATE.—The amendment made
by this section shall take effect after the date of the enactment of this Act.

SEC. 316. PARTICIPATION OF RETIRED JUDGES FROM THROUGH FEDERAL EMPLOYEES' GROUP LIFE INSURANCE.

(a) In General.—Subsection (a) of section 7447 (relating to contributions for benefit of judges) is amended by adding at the end the following new sentence:

"(E) the amount of such salary deductions that were actually made before the date of the judge's death;"

(b) EFFECTIVE DATE.—The amendment made
by this section shall take effect after the date of the enactment of this Act.

SEC. 317. EXEMPTION OF TEACHING COMPENSA-
TION OF RETIRED JUDGES FROM LIMITATION ON OUTSIDE EARNED INCOME.

(a) IN GENERAL.—Subsection (a) of section 7447 (relating to limits on outside earned income) is amended by adding at the end the following new sentence:

"(F) the amount of such salary deductions that were actually made before the date of the judge's death;"

(b) EFFECTIVE DATE.—The amendment made
by this section shall take effect after the date of the enactment of this Act.

SEC. 318. GENERAL PROVISIONS RELATING TO MAGISTRATE JUDGES OF THE TAX COURT.

(a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO MAGISTRATE JUDGE OF THE TAX COURT.—The heading of section 7443A is amended to read as follows:

"SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.

(b) APPOINTMENT, TENURE, AND REMOVAL.—Subsection (a) of section 7443A is amended to read as follows:

"(a) APPOINTMENT, TENURE, AND REMOVAL.—The chief judge may, from time to time, appoint and remove mag-
istrate judges of the Tax Court for a term of 6 years. The magistrate judges of the Tax Court
shall proceed under such rules as may be promulgated by the Tax Court.

(2) REMOVAL.—Removal of a magistrate judge of the Tax Court during the term for which elected or reappointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability, but the office of a magistrate judge of the Tax Court shall be deemed to have remained to the individual's credit when

(a) MAGISTRATE JUDGES.—'' and

(b) by striking ''special trial judges'' and inserting ''magistrate judges''.

SEC. 318. ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF MAGISTRATE JUDGES OF THE TAX COURT.

(a) DEFINITIONS.—Section 7448A (relating to definitions) is amended—

(1) in paragraph (5), by redesigning paragraphs (5), (6), (7), and (8) as paragraphs (7), (8), (9), and (10), respectively, and by inserting after paragraph (4) the following new paragraph:

(10) The term ''magistrate judge'' means a judicial officer appointed pursuant to section 744A, including any individual receiving an annuity under section 7443B or 7443B, and who has not been removed, vacated, or otherwise disqualified under section 7443C.

(b) ELECTION.—Subsection (b) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended—

(1) by striking the subsection heading and inserting—

''(1) JUDGES.—''

(2) by moving the text 2 ems to the right, and

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

''(2) MAGISTRATE JUDGES.—Any magistrate judge may by written election filed with the chief judge bring himself or herself within the purview of this section. Such election shall be filed not later than the later of 6 months after—

(a) 6 months after the date of the enactment of this paragraph,

(b) the date the judge takes office, or

(c) the date the judge marries.''

(c) CONFORMING AMENDMENTS.—

(1) The heading of section 7448 is amended by inserting ''AND MAGISTRATE JUDGES'' after ''JUDGES''

(2) The item relating to section 7448 in the table of sections for part I of chapter C of title 5, United States Code, and related provisions referred to in such section, is—

(d) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 744A is amended by striking ''SPECIAL TRIAL JUDGES'' and inserting ''MAGISTRATE JUDGES OF THE TAX COURT''

(2) Section 7443A(b) is amended by striking ''special trial judges of the court'' and inserting ''magistrate judges of the Tax Court''

(3) Subsections (c)(1) and (d) of section 7444A are amended by striking ''special trial judge'' and inserting ''magistrate judge of the Tax Court''

(4) Section 7444A(2) is amended by striking ''special trial judges'' and inserting ''magistrate judges of the Tax Court''

(5) Section 7446(a) is amended by striking ''special trial judges'' and inserting ''magistrate judges of the Tax Court''

(6) Subsection (c) of section 7471 is amended—

(A) by inserting ''and'' after subparagraph (4), and

(B) by striking ''any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code'' after ''7447(d)'', and

(C) by inserting ''or 7443B(m)(1)(B) after ''7447(f)(4)''.

(7) Section 7448(b) is amended by inserting his years of service pursuant to any appoint- ment under section 7443A, after ''the United States Tax Court''

(8) Section 3121(b)(5)(E) is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''

SEC. 320. RETIREMENT AND ANNUITY PROGRAM.

(a) RETIREMENT AND ANNUITY PROGRAM.—

(1) Part I of chapter C of chapter 76 is amended by inserting after section 744A the following new section:

``SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF THE TAX COURT.

(a) RETIREMENT BASED ON YEARS OF SERVICE.—A magistrate judge of the Tax Court to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such magistrate judge shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office.

(b) RETIREMENT UPON FAILURE OF APPOINTMENT.—A magistrate judge of the Tax Court to whom this section applies who is not reappointed following the expiration of the term of office of such magistrate judge, and who remains a magistrate judge for each full month such magistrate judge was entitled to receive, upon attaining the age of 65 years and during the remainder of such magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14.

(1) such magistrate judge has served at least 1 full term as a magistrate judge, and

(2) not earlier than 9 months before the date on which the term of office of such magistrate judge expires, and not later than 6 months before such date, such magistrate judge notified the chief judge of the Tax Court in writing that such magistrate judge was willing to accept reappointment to the position in which such magistrate judge was serving.

(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate judge of the Tax Court to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a magistrate judge shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14.

such annuity shall be reduced by 1/4 of 1 percent for each full month such magistrate judge was under the age of 65 at the time the magistrate judge left office, except that such reduction shall not exceed 20 percent.

(d) RETIREMENT FOR DISABILITY.—A magistrate judge of the Tax Court to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a magistrate judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to 49 percent of the salary being received at the time of retirement. In the case of a magistrate judge who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal, based on the number of years of service, not to exceed 14, bears to 14.
(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate judge of the Tax Court who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated in the same manner as adjustments under section 8340(b) of title 5, United States Code, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position for which the magistrate judge retired or was removed.

(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNUITY.—

(1) IN GENERAL.—A magistrate judge of the Tax Court shall be entitled to an annuity under this section if the magistrate judge elects an annuity under this section. Upon the election of the magistrate judge of the Tax Court not later than the later of—

(A) 5 years after the magistrate judge of the Tax Court begins judicial service, or

(B) 5 years after the date of the enactment of this subsection.

Such notice shall be given in accordance with procedures prescribed by the Tax Court.

(2) ANNUITY IN LIEU OF OTHER ANNUITY.—A magistrate judge who elects to receive an annuity under this section shall not be entitled to receive—

(A) any annuity to which such magistrate judge would otherwise be entitled under subchapter III of chapter 83, or under chapter 84 (except subchapters III and VII), of title 5, United States Code, for service performed as a magistrate or otherwise,

(B) an annuity or salary in senior status or retirement under section 371 or 372 of title 28, United States Code,

(C) retired pay under section 7447, or

(D) retired pay under section 7296 of title 38, United States Code.

(3) COORDINATION WITH TITLE 5.—A magistrate judge of the Tax Court who elects to receive an annuity under this section—

(A) may be credited for—

(i) the amount of any annuity under this section for the period for which such contributions may be made under this section, and

(ii) any credit for periods under this section that are attributable to service under this subparagraph.

(B) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term ‘compensation’ includes retired pay or salary received in retired status.

(4) LUMP-SUM PAYMENTS.—

(i) ELIGIBILITY.—

(A) IN GENERAL.—Subject to paragraph (2), an individual who serves as a magistrate judge of the Tax Court and—

(i) leaves office and is not reappointed as a magistrate judge of the Tax Court for at least 31 consecutive days, or

(ii) files an application with the chief judge of the Tax Court for payment of a lump-sum credit, or

(iii) is not serving as a magistrate judge of the Tax Court at the time of filing of the application, and

(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application, is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, unless that individual resumes office as a magistrate judge of the Tax Court.

(B) PAYMENT TO SURVIVORS.—Lump-sum payments authorized by paragraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the magistrate judge of the Tax Court and alive on the date title 28, United States Code, and in accordance with the last 2 sentences of paragraph (1) of that subsection.

(2) REQUIREMENTS FOR PAYMENT.—Paragraph (1) shall apply only to payments made by the chief judge of the Tax Court after the date of receipt by the chief judge of written notice of such decree, order, or agreement, and such additional information as the chief judge may prescribe.

(3) COURT DEFINED.—For purposes of this subsection, ‘any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribe or tribal organization’ includes—

(A) tribunals and courts of law in the United States and in any place subject to the jurisdiction thereof, including the Federal District Courts and the Federal Claims Court;

(B) any court of a State or political subdivision of a State;

(C) any court of Indian tribes or tribal organizations;

(D) any court of Indian Tribes or Tribal Organizations;

(E) any court of Indian Tribes or Tribal Organization.

(4) TAX COURT JUDICIAL OFFICERS’ RETIREMENT FUND.—

The amounts deducted and withheld under subsection (k), shall be credited to individual accounts in the name of each magistrate judge of the Tax Court from whom such amounts are received, for credit to the Tax Court Judicial Officers’ Retirement Fund.

(5) ANNUITIES AFFECTED IN CERTAIN CASES.—

(1) 1-YEAR FORFEITURE FOR FAILURE TO PERFORM JUDICIAL DUTIES.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who fails to perform judicial duties required of such individual by section 7443(c) shall forfeit all rights to an annuity under this section for a 1-year period which begins on the 1st day on which such individual fails to perform such duties.

(2) PERMANENT FORFEITURE OF RETIRED PAY WHERE CERTAIN NON-GOVERNMENT SERVICES PERFORMED.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who thereafter performs (or supervises or directs the performance of) legal or accounting services in the field of Federal tax administration for the individual’s client, the individual’s employer, or any of such employer’s clients, shall forfeit all rights to an annuity under this section beginning on the first day on which the individual performs (or supervises or directs the performance of) such services. The preceding sentence shall not apply to any civil office or employment under the Government of the United States.

(3) FORFEITURES NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—

(A) IN GENERAL.—If a magistrate judge of the Tax Court makes an election under this paragraph, paragraphs (1) and (2) (and section 7443(c)) shall not apply to such magistrate judge beginning on the date such election takes effect, and

(iii) the annuity payable under this section to such magistrate judge, for periods beginning on or after the date such election takes effect, shall be reduced by an amount equal to 1 percent of the annuity to which such magistrate judge would otherwise be entitled under this section, or

(iv) a portion of the annuity payable under this section to such magistrate judge, for periods beginning on or after the date such election takes effect, shall be reduced by an amount equal to 1 percent of the annuity to which such magistrate judge would otherwise be entitled under this section, for the period for which such compensation is received. For purposes of this paragraph, the term ‘compensation’ includes retired pay or salary received in retired status.

(4) EFFECTIVE DATE OF ELECTION.—Any election under subparagraph (A) shall take effect on the first day of the month following the month in which the election is made.

(2) ELECTION REQUIREMENTS.—An election under subparagraph (A)—

(i) may be made by a magistrate judge of the Tax Court who retires under this section and thereafter accepts compensation for civil office or employment under the United States Government (other than for the performance of functions as a magistrate judge of the Tax Court under section 7443(c)) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term ‘compensation’ includes retired pay or salary received in retired status.

(3) LUMP-SUM PAYMENTS.—

(A) IN GENERAL.—Subject to paragraph (2), an individual who serves as a magistrate judge of the Tax Court and—

(i) leaves office and is not reappointed as a magistrate judge of the Tax Court for at least 31 consecutive days, or

(ii) files an application with the chief judge of the Tax Court for payment of a lump-sum credit, or

(iii) is not serving as a magistrate judge of the Tax Court at the time of filing of the application, and

(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application, is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, unless that individual resumes office as a magistrate judge of the Tax Court.

(B) PAYMENT TO SURVIVORS.—Lump-sum payments authorized by paragraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the magistrate judge of the Tax Court and alive on the date title to the property arises, in the order of precedence set forth in subsection (o) of section 376 of title 28, United States Code, and in accordance with the last 2 sentences of paragraph (1) of that subsection. For purposes of the preceding sentence, the term ‘judicial official’ as used in subsection (o) of such section 376 shall be deemed to mean ‘magistrate judge of the Tax Court’ and the Administrative Office of the United States Courts and ‘Director of the Administrative Office of the United States Courts’ shall be deemed to mean ‘Chief Judge of the Tax Court’.
under this section, the lump-sum credit shall be paid.

(‘‘D‘‘ PAYMENT OF ANNUITY REMAINDER.—If all annuity rights under this section based on the service of a magistrate judge forfeited to the Tax Court terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(‘‘E‘‘) ELECTION UPON DEATH OF JUDGE DURING RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court who is receiving an annuity under this section dies, any accrued annuity benefits or any unearned paid shall be paid.

(‘‘F‘‘) PAYMENT UPON TERMINATION.—Any accrued annuity benefits remaining unpaid on the termination, except by death, of a magistrate judge who is entitled to an annuity under this section shall be paid.

(‘‘G‘‘) PAYMENT UPON ACCEPTING OTHER EMPLOYMENT.—If a magistrate judge of the Tax Court retires from the service of the Tax Court, the principal beneficiary shall receive an annuity under this section as of the date the magistrate judge is notified of the magistrate judge's application, and any former spouse of the magistrate judge to whom this subsection applies shall be entitled to receive an annuity thereunder or an offset under section 7443A(a)(2) on the sole ground of mental or physical disability.

OFFENSE.—In the case of a magistrate judge who commits an offense under this chapter, the following shall be a violation of the Federal Criminal Code:

(‘‘O‘‘) TAX COURT JUDICIAL OFFICERS’ RETIREMENT FUND.—

``(1) In General.—There are authorized to be appropriated for the payment of annuities, refunds, and other payments under this section.

(2) Estate of magistrate judge.—The amount that the magistrate judge shall have invested in interest bearing securities of the United States, such currently available portions of the Tax Court Judicial Officers’ Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(3) UNFUNDED LIABILITY.—

(‘‘A‘‘) In General.—There are authorized to be appropriated to the Tax Court Judicial Officers’ Retirement Fund to reduce to zero the unfunded liability of the Fund.

(‘‘B‘‘) UNFUNDED LIABILITY.—For purposes of subparagraph (A)(i), the term ‘‘unfunded liability’’ shall be determined, on an annual basis in accordance with the provisions of section 9503 of title 31, United States Code, of the present value of all benefits payable from the Tax Court Judicial Officers’ Retirement Fund over the sum of—

(‘‘i‘‘) the present value of deductions to be withheld under this section from the future basic pay of magistrate judges of the Tax Court, plus

(‘‘ii‘‘) the balance in the Fund as of the date the unfunded liability is determined.

(‘‘O‘‘) PARTICIPATION IN THRIFT SAVINGS PLAN.—

``(1) ELECTION TO CONTRIBUTE.—

(‘‘A‘‘) In General.—A magistrate judge of the Tax Court who retires entitled to an immediate annuity under this section or under section 321 of the Tax Administration Good Government Act may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

(‘‘B‘‘) PERIOD OF ELECTION.—An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

(‘‘O‘‘) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of chapters I and VII of title 5, United States Code, shall apply with respect to a magistrate judge who makes an election under paragraph (1).

(‘‘O‘‘) SPECIAL RULES.—

(‘‘A‘‘) A MAGNATE JUDGE CONTRIBUTED.—The amount contributed by a magistrate judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such individual's basic pay to be contributed to the Thrift Savings Fund under section 8440 of title 5, United States Code.

(‘‘O‘‘) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a magistrate judge under section 8432(c) of title 5, United States Code.

(‘‘O‘‘) APPLICABILITY OF SECTION 832(b) OF TITLE 5.—Section 832(b) of title 5, United States Code, applies with respect to a magistrate judge who makes an election under paragraph (1) and—

(‘‘O‘‘) who retires entitled to an immediate annuity under this section (including a disability annuity under subsection (d) of this section) or section 321 of the Tax Administration Good Government Act,

(‘‘O‘‘) who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under this section or section 321 of the Tax Administration Good Government Act, or

(‘‘O‘‘) who retires after attaining age 65 but is entitled to an immediate annuity, or an annuity upon attaining age 65, under this section or section 321 of the Tax Administration Good Government Act,

(‘‘O‘‘) SEPARATION FROM SERVICE.—With respect to a magistrate judge to whom this sub-section applies, retirement under this section or section 321 of the Tax Administration Good Government Act is a separation from service for purposes of subchapters III and VII of chapter 84 of title 5, United States Code.

(‘‘O‘‘) DEFINITIONS.—For purposes of this sub-section, the term ‘‘annuity’’ shall include removal from office under section 7443A(a)(2) on the sole ground of mental or physical disability.

OFFENSE.—In the case of a magistrate judge who receives a distribution from the Thrift Savings Fund and who later receives an annuity under this section, that annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount.

(‘‘O‘‘) EXCEPTION.—Notwithstanding clauses (i) and (ii) of paragraph (3)(C), if any magistrate judge retires under circumstances making such magistrate judge eligible to receive an annuity under this section or under section 4833 of title 5, United States Code, and such magistrate judge's nonforfeitable account balance is less than an amount equal to the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a lump sum payment.

(b) CONFORMING AMENDMENT.—The table of contents for part I of chapter 7 of title 76 is amended by inserting after the last entry relating to section 7443 the following new item:

``Sec. 7443B. Retirement for magistrate judges of the Tax Court.''.

SEC. 321. INCUMBENT MAGNATE JUDGES OF THE TAX COURT.

(a) RETIREMENT ANNUITY UNDER TITLE 5 AND SECTION 7443 OF THE INTERNAL REVENUE CODE OF 1986.—A magistrate judge of the United States Tax Court in active service on the date of the enactment of this Act shall, subject to subsection (b), be entitled, in lieu of the annuity otherwise provided under the amendments made by this title, to—

(1) an annuity under subsection III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be creditable service under section 8432(h)(3) and (4)

(2) an annuity calculated under subsection (b) or (c) and subsection (g) of section 7443B of the Internal Revenue Code of 1986, as added by this title, for service as a magistrate judge of the United States Tax Court or special trial judge of the United States Tax Court but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years prior to the date of the enactment of this Act (as specified in the election pursuant to subsection (b) for which deductions and deposits were made under subsections (a) or (b) of such section 7443B, as applicable, without regard to the minimum number of years of service as such a magistrate judge of the United States Tax Court, except that—

(A) in the case of a magistrate judge who retired with less than 8 years of service, the annuity under section (b) of such section 7443B shall be equal to that proportion of the salary being received at the time the magistrate judge leaves office which the years of service bears to 14, subject to a reduction in accordance with subsection (c) of such section 7443B if the magistrate judge is under age 65 at the time he or she leaves office, and

(B) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay for the magistrate judge which is in effect on the day before the retirement hereunder.

(b) FILING OF NOTICE OF ELECTION.—A mag-
shall be entitled to an annuity under this section only if the magistrate judge files a notice of that election with the chief judge of the United States Tax Court specifying the date on which service would be credited under section 7443B of the Internal Revenue Code of 1986, as added by this Act, in lieu of chapter 83 or chapter 84 of title 5, United States Code, such notice shall be received in accordance with such procedures as the chief judge of the United States Tax Court shall prescribe.

(c) LUMP-SUM CREDIT UNDER TITLE 5.—A magistrate judge of the United States Tax Court who makes an election under subsection (b) shall be entitled to a lump-sum credit under section 8342 or 8424 of title 5, United States Code, as the case may be, in lieu of any service which is credited under section 7443B of the Internal Revenue Code of 1986, as added by this Act, pursuant to that election, and with respect to which any contributions were made by the magistrate judge under the applicable provisions of title 5, United States Code.

(d) With respect to any magistrate judge of the United States Tax Court receiving an annuity under this section who is recalled to serve under section 7443C of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to service as a reemployed annuitant described in paragraph (2).

SEC. 332. PROVISIONS FOR RECALL.

(a) IN GENERAL.—Part I of subsection C of chapter 76, as amended by this Act, is amended by inserting after section 7443B the following new section:

"SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX COURT.

"(a) Recalling of Retired Magistrate Judges.—Any individual who has retired pursuant to section 7443B or the applicable provisions of title 5, United States Code, upon reaching the age and service requirements established thereunder, may be recalled under this section and shall be paid the salary or annuity under this section who is recalled to serve under this section.

"(b) Compensation.—For the year in which a period of recall occurs, the magistrate judge shall receive in addition to the annuity provided under the provisions of section 7443B or under the applicable provisions of title 5, United States Code, an amount equal to the difference between that annuity and the current salary of the office to which the magistrate judge is recalled.

"(c) Rulemaking Authority.—The provisions of this section may be implemented under such rules as may be promulgated by the Tax Court."

SEC. 233. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this section shall take effect on the date of the enactment of this Act.

TITLE IV—CONFIDENTIALITY AND DISCLOSURE

SECTION 401. CLARIFICATION OF DEFINITION OF CHURCH TAX INQUIRY.

(a) IN GENERAL.—Paragraph (1) of section 7611 (relating to application to apply for an annuity under this section who is recalled to serve under this section) and paragraphs (2) and (3) of section 7611 shall be amended by striking "or" and inserting "and" in place of such mention.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to annuities under this section.

SECTION 402. COLLECTION ACTIVITIES WITH Respect TO JOINT RETURN DISCLOSURE BASED ON ORAL REQUEST.

(a) IN GENERAL.—Paragraph (8) of section 6103(e)(6) (relating to disclosure of collection activities with respect to joint returns) is amended by striking "in writing" the first place it appears.

(b) ELIMINATION OF REPORTING REQUIREMENT.—Section 7803(d)(1) (relating to annual reporting with respect to joint returns) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), (E), (F), (G), and (H) as subparagraphs (B), (C), (D), (E), (F), and (G), respectively.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to requests made after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to requests made after the date of the enactment of this Act.

SECTION 403. TAXPAYER REPRESENTATIVES NOT SUBJECT TO JOINT RETURN DISCLOSURE ON SOLE BASIS OF REPRESENTATION OF TAXPAYERS.

(a) IN GENERAL.—Paragraph (1) of section 7610(b) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended—

(1) by striking "TREASURY—Returns and return information" and inserting "TREASURY—Returns and return information for the most recent return, for which a filing has been made, to the Secretary for the most recent tax year, for which a return has been filed, to the Secretary for the most recent tax year") and by adding at the end the following new subparagraph:

"(TAXPAYER REPRESENTATIVES.—Notwithstanding subparagraph (A), the return or return information of the representative of a taxpayer whose return is being examined by an examiner of the Department of the Treasury shall not be open to inspection by such officer or employee unless the representative has been designated as a representative pursuant to section 7610(b)(5)."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect after the date of the enactment of this Act.

SECTION 404. PROHIBITION OF DISCLOSURE OF TAXPAYER IDENTIFICATION INFORMATION WITH RESPECT TO DISCLOSURE OF ACCEPTED OFFERS-IN-COMMUNICATION.

(a) IN GENERAL.—Paragraph (1) of section 6103(p)(8) (relating to disclosure of return information for tax administrative purposes) is amended by inserting "(other than the taxpayer’s TIN)" after "Return information.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disclosures made after the date of the enactment of this Act.

SECTION 405. COMPLIANCE BY CONTRACTORS AND OTHER AGENTS WITH CONFIDENTIALITY SAFEGUARDS.

(a) IN GENERAL.—Section 6103(p) (relating to State law requirements) is amended by adding after the paragraph the following new paragraph:

"(9) DISCLOSURE TO CONTRACTORS AND OTHER AGENTS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor or other agent of a Federal, State, or local agency unless such agency, to the satisfaction of the Secretary—

"(A) has requirements in effect which require each such contractor or other agent which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)(A) to guard against the identity of such returns or return information,

"(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 1 year in duration) of each contractor or other agent to determine compliance with such requirements,

"(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (4)(E), and

"(D) submits to the Secretary for the most recent annual period that such contractor or other agent is in compliance with all such requirements.

The certification required by subparagraph (D) shall include the name and address of each contractor and other agent, a description of the contract or agreement with such contractor or other agent, and the duration of such contract or agreement. The requirements of this paragraph shall not apply to disclosures pursuant to subsection (n) for purposes of Federal tax administration.

(b) PROHIBITION OF DISCLOSURE TO CONTRACTORS AND OTHER AGENTS.—Subparagraph (B) of section 6103(p)(8) is amended by inserting "or (paragraph (9) after "paragraph (A)".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to disclosures made after the date of the enactment of this Act.

(2) CERTIFICATIONS.—The certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (a), shall be made with respect to the portion of calendar year 2004 following the date of the enactment of this Act.

SECTION 406. HIGHER STANDARDS FOR REQUESTS FOR AND CONSENTS TO DISCLOSURE.

(a) IN GENERAL.—Paragraph (c) of section 6103 (relating to disclosure of returns and return information in effect at the end of the following paragraphs:

"(2) RESTRICTIONS ON PERSONS OBTAINING INFORMATION.—The return of any taxpayer, or return information for such taxpayer, disclosed to a person or persons under paragraph (1) for a purpose specified in writing, electronically, or orally may be disclosed or used by the person or persons only for the purpose of, and to the extent necessary in, accomplishing the purpose for disclosure specified and
shall not be disclosed or used for any other purpose.

(3) REQUIREMENTS FOR FORM PRESCRIBED BY SECRETARY.—For purposes of this subsection, the Secretary shall prescribe a form for written requests and consents which shall—

(A) contain a warning, prominently displayed, to the taxpayer that the form shall not be signed unless it is completed,

(B) state that if the taxpayer believes there is an attempt to coerce him to sign an incomplete form, the taxpayer should refer the matter to the Treasury Inspector General for Tax Administration, and

(C) contain the address and telephone number of the Treasury Inspector General for Tax Administration.

(4) CROSS REFERENCE.—

For provision providing for civil damages for violation of paragraph (2), see section 7431(i).''.

(b) CIVIL DAMAGES.—Section 7431 (relating to civil damages for unauthorized inspection or disclosure of returns and return information) is amended by adding at the end the following new subsection:

"(i) DISCLOSURE OR USE OF RETURNS AND RETURN INFORMATION OBTAINED UNDER SECTION 6103(c) OTHER THAN FOR THE PURPOSE OF, AND TO THE EXTENT REASONABLE AND NECESSARY TO—

(A) COMPLY WITH THE INTERNAL REVENUE CODE; or

(B) COMPLY WITH A FEDERAL OR STATE LAW, RULE, REGULATION, OR ORDER APPLICABLE TO THE TAXPAYERS RETURN OR RETURN INFORMATION; or

(C) EXPEND IT FOR ANY OTHER PURPOSEował;

(1) Notices to taxpayer.—Subsection (e) of section 7431 (relating to notification of unlawful inspection or disclosure) is amended by adding at the end the following new subsection:

"(4) USE IN CIVIL JUDICIAL AND ADMINISTRATIVE PROCEEDINGS.—The amendments made by this Act shall apply to determinations made under this section (a) shall apply to determinations made after the date which is 180 days after the date of the enactment of this Act, the Secretary shall annually report to the Committee of Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding payments made from the United States Judgment Fund under section 6713(k) of the Internal Revenue Code of 1986.

(c) BURDEN OF PROOF FOR GOOD FAITH EXCUSE.—Section 7431(c) (relating to burden of proof for purposes of section 6103) is amended by adding at the end the following new subsection:

"(10) REPORT ON WILLFUL UNAUTHORIZED DISCLOSURE.—As part of the report required by paragraph (2)(C) for each calendar year, the Secretary shall furnish information regarding any proceeding in which the existence of good faith, the burden of proof with respect to such issue shall be on the individual who made the inspection or disclosure.

(d) PAYMENT AUTHORITY.—Section 6103 (relating to payment authority) is amended by adding at the end the following new subsection:

"(ii) for the purpose of, and only to the extent necessary in, the administration of State laws regulating such organizations. Such information may only be inspected by or disclosed to representatives of the appropriate State officer designated as the individuals who are to inspect or to receive the returns or return information under this paragraph on behalf of such officer. Such representatives shall not include any contractor or agent.

(3) NOTICE TO TAXPAYER.—Subsection (e) of section 7431 (relating to notification of unlawful inspection or disclosure) is amended by adding at the end the following new subsection:

"(5) NOTICE TO TAXPAYER.—The amendments made by this subsection shall apply to requests and consents made after the date which is 180 days after the date of the enactment of this Act.

(6) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

SEC. 407. CIVIL DAMAGES FOR UNAUTHORIZED DISCLOSURE OR INSPECTION.

(a) NOTICE TO TAXPAYER.—Subsection (e) of section 7431 (relating to notification of unlawful inspection and disclosure) is amended by adding at the end the following new subsection:

"(6) NOTICE TO TAXPAYER.—The Secretary shall provide the taxpayer a form for written requests and consents which shall—

(A) contain a warning, prominently displayed, to the taxpayer that the form shall not be signed unless it is completed,

(B) state that if the taxpayer believes there is an attempt to coerce him to sign an incomplete form, the taxpayer should refer the matter to the Treasury Inspector General for Tax Administration, and

(C) contain the address and telephone number of the Treasury Inspector General for Tax Administration.

(b) CIVIL DAMAGES.—Section 7431 (relating to civil damages for unauthorized inspection or disclosure of returns and return information) is amended by adding at the end the following new subsection:

"(i) DISCLOSURE OR USE OF RETURNS AND RETURN INFORMATION OBTAINED UNDER SECTION 6103(c).—Disclosure or use of returns or return information obtained under section 6103(c) other than for the purpose of, and to the extent reasonable and necessary to—

(A) COMPLY WITH THE INTERNAL REVENUE CODE; or

(B) COMPLY WITH A FEDERAL OR STATE LAW, RULE, REGULATION, OR ORDER APPLICABLE TO THE TAXPAYERS RETURN OR RETURN INFORMATION; or

(C) EXPEND IT FOR ANY OTHER PURPOSE.
similar to that for tax administration proceedings under section 6103(h)(4).

"5) No disclosure if impairment.—Returns and return information shall not be disclosed under this section or in any proceeding described in paragraph (4), to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration.

"6) Definitions.—For purposes of this section—

"(a) Return and return information.—The terms ‘return’ and ‘return information’ have the respective meanings given to such terms by section 6103(b).

"(b) Appropriate state officer.—The term ‘appropriate state officer’ means—

"(i) any other state official charged with overseeing organizations of the type described in section 421(a)(3); or

"(iii) in the case of an organization to which paragraph (3) applies, the head of an agency designated by the state attorney general as having primary responsibility for overseeing the solicitation of funds for charitable purposes.

(b) Conforming amendments.—

(1) section 6103(f) is amended—

(A) by inserting ‘or any appropriate state officer who has or had access to returns or return information under section 6104(c),’ after ‘this section,’ and

(B) by striking ‘or subsection (n)’ in paragraph (3) and inserting ‘subsection (n), or section 6104(c)’ after ‘section’ in the first sentence.

(2) Paragraph (a) of section 6103(p)(3) is amended by inserting ‘or subsection (n),’ after ‘section’ in the first sentence.

(3) Paragraph (4) of section 6103(p), as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 961), is amended by striking ‘or (17)’ after ‘any other person described in subsection (l)(16)’ and inserting ‘or (17)’ after ‘any appropriate state officer (as defined in section 6104(c))’.

(4) The heading for paragraph (1) of section 6104(c) is amended by inserting ‘for charitable organizations’.

(5) Paragraph (2) of section 7213(a) is amended by inserting ‘or under section 6104(c)’ after ‘6103’.

(6) Paragraph (2) of section 7213(a) is amended by inserting ‘or 6104(c)’ after ‘6103’.

(7) Paragraph (2) of section 7413(a) is amended by striking ‘any disclosure in violation of section 6104(c)’ after ‘6103’.

(c) Effective date.—The amendments made by this section shall take effect on the date of the enactment of this Act but shall not apply to requests made before such date.

SEC. 411. Treatment of public records.

(a) In general.—Section 6103(b) (relating to returns and return information) is amended by adding at the end the following new paragraph:

"(12) Treatment of public records.—Returns and return information shall not be subject to subsection (a) if disclosed—

(1) in the course of any judicial or administrative proceeding or pursuant to tax administration activities, and

(B) properly made part of the public record.

(b) Effective date.—The amendment made by this section shall take effect before, on, and after the date of the enactment of this Act.

SEC. 412. Employee identity disclosures.

(a) In general.—Section 6103 (confidentiality and disclosure of returns and return information) is amended by redesignating subsection (a) as subparagraph (a) of subsection (a) if disclosed—

(1) by a taxpayer's employer, and

(2) to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration.

(b) Construction.—The amendments made by this section shall not be construed to create any inference with respect to the information, or any provision of law as such provision was in effect on the day before the date of enactment of this Act.

(c) Effective date.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 413. Taxpayer identification number requirements.

(a) In general.—Section 6103(k) (relating to disclosure of certain returns and return information for tax administration purposes) is amended by striking ‘section’ in the first sentence.

(b) Effective date.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 414. Form 8300 disclosures.

(a) In general.—Section 6103(p)(4) (relating to disclosure to law enforcement agencies) is amended by adding at the end the following new paragraph:

"(v) taxpayer identification.—For purposes of this paragraph, a taxpayer’s identity shall not be treated as taxpayer return information.

(b) Effective date.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 415. Disclosure to law enforcement agencies regarding terrorist activities.

(a) In general.—Section 6103(t)(7)(A) (relating to disclosure to law enforcement agencies) is amended by adding at the end the following new clause:

"(v) taxpayer identity.—For purposes of this subparagraph, a taxpayer’s identity shall not be treated as taxpayer return information.

(b) Effective date.—The amendment made by this section shall take effect on the date of the enactment of this Act.

TITLE V—SIMPLIFICATION

Subtitle A—Uniform Definition of Child

SEC. 501. UNIFORM DEFINITION OF CHILD, ETC.

Section 152 is amended to read as follows:

"SEC. 152. DEFINED.

"(a) In general.—Substitutes of this title, the term ‘dependent’ means—

(1) a qualifying child, or

(2) a qualifying relative.

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

(1) Dependents ineligible.—If an individual is a dependent of a taxpayer for any taxable year of such individual, such individual shall be treated as having no dependents for any taxable year of such individual beginning in such calendar year, and

(2) Married dependents.—An individual shall not be treated as a dependent of a taxpayer under subsection (a) if such individual has made a joint return with the individual’s spouse under section 6103 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

"(c) Citizens or nationals of other countries.—

(1) In general.—The term ‘dependent’ does not include an individual who is not a citizen or national of the United States unless such individual is a resident of the United States or a country contiguous to the United States.

(2) Exception for adopted child.—Subparagraph (A) shall not exclude a child of a taxpayer (within the meaning of subsection (1)(B)) from the definition of ‘dependent’ if—

(i) for the taxable year of the taxpayer, the child is a dependent of the taxpayer or of any other taxpayer for any taxable year beginning after such calendar year and

(ii) the taxpayer is a citizen or national of the United States.

(d) Qualifying child.—For purposes of this section—

(1) In general.—The term ‘qualifying child’ means, with respect to any taxpayer for any taxable year, an individual—

(A) who bears a relationship to the taxpayer described in paragraph (2), and

(B) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year.

(2) Relationship.—For purposes of paragraphs (1)(A) and (B), an individual bears a relationship to the taxpayer described in paragraph (1) if the taxpayer is—

(A) a parent of such a child, or

(B) a brother, sister, stepbrother, or stepsister of the taxpayer or of any other dependent of such a child.

"(e) Age requirements.—

(1) In general.—For purposes of paragraph (1)(C), an individual may be and is claimed as a qualifying child by 2 or more taxpayers for a taxable year beginning in the same calendar year, such individual shall be treated as the qualifying child of the taxpayer who—

(i) a parent of the individual, or

(ii) if clause (i) does not apply, the taxpayer with the highest adjusted gross income for such taxable year.

(2) Special rule relating to 2 or more claiming qualifying child.—

(A) In general.—Except as provided in subparagraph (B) and subsection (e), if (but for this paragraph) an individual may be and is claimed as a qualifying child by 2 or more taxpayers for a taxable year beginning in the same calendar year, such individual shall be treated as the qualifying child of the taxpayer who—

(i) a parent with whom the child resided for the longest period of time during the taxable year, or

(ii) if the child resides with both parents for the same amount of time during such taxable year, the parent with the highest adjusted gross income.

(3) Qualifying relative.—For purposes of this section—

(A) In general.—The term ‘qualifying relative’ means, with respect to any taxpayer for any taxable year, an individual—

(A) a brother, sister, stepbrother, or stepsister of the taxpayer or of any other dependent of such a child.

(B) who has not provided over one-half of such individual’s own support for the calendar year in which the taxable year of the taxpayer begins, and

(C) who meets the age requirements of paragraph (2), and

(D) who has not provided over one-half of such individual’s own support for the calendar year in which the taxable year of the taxpayer begins.

(2) Relationship.—For purposes of paragraphs (1)(A) and (B), an individual bears a relationship to the taxpayer described in paragraph (1) if the taxpayer is—

(A) a child of the taxpayer or a descendant of such a child, or

(B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.

"(f) Construction.—The amendments made by this section—

(1) in the case of an organization to which paragraph (3) applies, to the extent that the Secretary may dis-
May 20, 2004

CONGRESSIONAL RECORD — SENATE

SEC. 502. MODIFICATIONS OF DEFINITION OF HEAD OF HOUSEHOLD.

(a) HEAD OF HOUSEHOLD.—Clause (i) of section 152(b)(1)(A)(i) is amended to read as follows:

"(i) A qualifying child of the individual (as defined in section 152(c), determined without regard to section 152(e), but not if such child—

(1) is married at the close of the tax year of the taxpayer, and

(2) is not a dependent of such individual by reason of section 152(b)(2) or 152(b)(3), or both, respectively.

(b) CONFORMING AMENDMENTS.—

(1) Section 2(b)(2) is amended by striking subsection (A) and by redesignating subparagrapghs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively.

(2) Section 2(b)(3)(C) is amended by striking subsection (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(3) Section 2(b)(3)(D) is amended by striking paragraph (2) and redesignating paragraph (3) as paragraph (2).

(4) Section 2(b)(4) is amended by redesigning subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively.
(2) Clauses (i) and (ii) of section 2(b)(3)(B) are amended to read as follows:

"(i) subparagraph (H) of section 152(d)(2), or

(ii) paragraph (3) of section 152(d)."

SEC. 506. MODIFICATIONS OF DEFERRED CREDIT.

SEC. 507. MODIFICATIONS OF child tax CREDIT.

SEC. 508. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to taxable years beginning after December 31, 2004.

Subtitle B—Simplification Through Elimination of Inoperative Provisions

SEC. 511. SIMPLIFICATION Through ELIMINATION OF INOPERATIVE PROVISIONS.

(a) In General—

(1) Adjustments in Tax Tables so that Inflation Will Not Result in Tax Increases.—Section 3(f) of the amendment made by section 2(b)(2) of the Tax Reform Act of 1993 is amended by striking "tax tables" and inserting "tax laws".

(b) Credit for Producing Fuel From Non-CONVENTIONAL Sources.—Section 26(d)(2)(A) of the code is amended by striking paragraph (4) and inserting ""(4) credit for certain advanced biofuels.""

(c) Carryback and Carryforward of Unused Credits.—Paragraph (d) of section 33 of the code is amended by striking introductory text and subsections (A) through (D) and inserting "the Secretary may, at the election of the taxpayer, designate for purposes of the carryback and carryforward provisions of this section an amount of the unused credit for which the term "taxable year" begins shall be determined under paragraph (1) of section 152(a)."

(d) Adjustments Based on Adjusted Current earnings.—Clause (ii) of section 56(g)(4)(F) of the code is amended by striking "in the case of any taxable year beginning after December 31, 1992" and inserting "in the case of any taxable year beginning after December 31, 2004."
(9) ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.—Section 72 is amended—
(A) in subsection (c)(4) by striking "except that in the case of any annuity that begins before January 1, 1954, then the annuity starting date is January 1, 1954", and
(B) in subsection (g)(3) by striking "January 1, 1954, or" and whichever is later.
(10) ACCIDENT AND HEALTH PLANS.—Section 105(f) is amended by striking "or (d)".
(11) TERRITORIAL ARRANGEMENTS.—Section 106(c)(1) is amended by striking "Effective on and after January 1, 1997, gross" and inserting "Gross'.
(12) CERTAIN COMBAT ZONE COMPENSATION MEMBERS OF THE ARMED FORCES.—Subsection (c) of section 112 is amended—
(A) by striking "(after June 24, 1990)" in paragraph (2),
(B) striking "such zone;" and all that follows in paragraph (3) and inserting "such zone;".
(13) PRINCIPAL RESIDENCE.—Section 121(b)(6) is amended—
(A) by striking subparagraph (B); and
(B) in subparagraph (A) by striking "In general," and moving the text 2 ems to the left.
(14) CERTAIN REDUCED UNIFORMED SERVICES RETIREMENT PAY.—Section 122(b)(1) is amended by striking subparagraph (2).
(15) GREAT PLAINS CONSERVATION PROGRAM.—Section 126(a) is amended by striking paragraph (6) and paragraphs (7), (8), and (9), respectively.
(16) MORTGAGE REVENUE BONDS FOR RESIDENCES IN FEDERAL DISASTER AREAS.—Section 143(k) is amended by striking paragraph (11).
(17) TIRE DAMAGE PAYMENTS UNDER THE ANTITRUST LAW.—Section 162(a) is amended by striking paragraph (6),
(18) STATE LEGISLATORS’ TRAVEL EXPENSES AWAY FROM HOME.—Paragraph (4) of section 162(h) is amended by striking "For taxable years beginning after December 31, 1969, this" and inserting "This".
(19) HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—Paragraph (1) of section 162(l) is amended to read as follows:
"(1) ALLOWANCE OF DEDUCTION.—In the case of an individual who is an employee within the meaning of section 401(c) (1), there shall be al-
lowed as a deduction under this section an amount equal to 100 percent of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer and the taxpayer’s spouse and dependents.".
(20) INTEREST.—
(A) Section 163 is amended by striking paragraph (d) and paragraph (g) (relating to phase-in of limitation) of subsection (h).
(B) Section 56(b)(1)(C) is amended by striking clause (ii) and by redesignating clauses (iii), (iv), and (v) as clauses (ii), (iii), and (iv), respectively.
(21) CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.—Section 170 is amended by striking subsection (a) (1),
(22) AMORTIZABLE BOND PREMIUM.—Subpara-
graph (B) of section 171(b)(1) is amended to read as follows:
"(B)(i) in the case of a bond described in subsection (a)(2), with reference to the amount payable on maturity or earlier call date, and
(ii) in the case of a bond described in subsection (a)(1), with reference to the amount payable on maturity (or if it results in a smaller amortization, the attributable portion of any period of earlier call date, with reference to the amount payable on earlier call date), and"
(23) THE DEPRECIATING LOSS CARRYBACKS AND CARRYOVERS.—
(A) Section 172 is amended—
(i) by striking subparagraph (D) of section (b)(5) (as redesignated by subparagraphs (E), (F), (G), and (H) as subparagraphs (D), (E), (F), (G), respectively,
(ii) by striking "ending after August 2, 1989" in subsection (b)(1)(D)(i)(II) (as redesignated by clause (i),
(iii) by striking "paragraph (F)" in subsection (b)(2) (as redesignated by clause (i) and inserting "paragraph (E)",
(iv) by striking subparagraph (g), and
(v) by striking subparagraph (F) of section (b)(2).
(B) Section 172(h)(4) is amended by striking "subsection (b)(1)(E) each place it appears and inserting "subsection (b)(1)(D)" each place it appears and inserting "subsection (b)(1)(F)".
(C) Section 172(i)(3) is amended by striking "subsection (b)(1)(G)" each place it appears and inserting "subsection (b)(1)(H)".
(D) Section 172(j) is amended—
(i) by redesignating subsections (h), (i), and (j) as subsections (g), (h), and (i), respectively,
(ii) by striking "subsection (g)" each place it appears and inserting "subsection (g)",
(iii) by striking "subsection (i)" each place it appears and inserting "subsection (h)".
(24) EMPLOYEE STOCK PURCHASE PLANS.—Paragraph (1) of section 172(r) is amended to read as follows:
"(1) IN GENERAL.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this subsection for his first taxable year for which expenditures described in paragraph (a) are paid or incurred.
(25) AMORTIZATION OF CERTAIN RESEARCH AND EXPERIMENTAL EXPENDITURES.—Paragraph (2) of section 174(b)(2) is amended by striking "beginning after December 31, 1957".
(26) SOIL AND WATER CONSERVATION EXPENDITURES.—Paragraph (1) of section 175(d) is amended to read as follows:
"(1) WITHOUT CONSENT.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this section for his first taxable year for which expenditures described in subsection (b)(1)(D) are paid or incurred.
(27) ACTIVITIES NOT ENGAGED IN FOR PROFIT.—
Section 183(e)(1) is amended by striking the last sentence.
(28) DIVIDENDS RECEIVED ON CERTAIN PREFERRED STOCK; AND DIVIDENDS PAID ON CERTAIN PREFERRED STOCK OF PUBLIC UTILITIES.—
(A) Section 246 is hereby repealed and the table of sections for part VIII of chapter B of title I is amended by striking the item relating to sections 244 and 247.
(B) Paragraph (5) of section 172(d) is amended to read as follows:
"(5) COMPUTATION OF DEDUCTION FOR DIVI-
DENDS RECEIVED.—The deductions allowed by paragraphs (4) (reduced dividends received by corporations) and (245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions)."
(C) Paragraph (1) of section 243(c) is amended to read as follows:
"(1) IN GENERAL.—In the case of any dividend received from a 20-percent owned corporation, subsection (a)(1) shall be applied by substituting "30 percent" for "70 percent".
(D) Section 243(d) is amended by striking paragraph (4).
(E) Section 246 is amended—
(i) by striking "244(a)," in subsection (a)(1),
(ii) in subsection (b)(1)—
(I) by striking "sections 243(a)(1), and 244(a)," the first place it appears and inserting "section 243(a)(1), and" (II) by striking "244(a)," the second place it appears therein, and
(III) by striking subsection (a) or (b) of section 245, and "247," and inserting "subsection (a) or (b) of section 245, and" (III) by striking "244(a) and 247," both places it appears in subsections (a) and (e).
(29) ORGANIZATION EXPENSES.—Section 248(c) is amended by striking "beginning after December 31, 1953," and by striking the last sentence.
(30) AMOUNT OF GAIN OF SECTION 249(b)(1) IS AMENDED BY STRIKING "", in the case of bonds or other evidences of indebtedness issued after February 28, 1913,
(31) AMOUNTS WHERE LOSS PREVIOUSLY DISALLOWED.—Section 267(d) is amended by striking "(relating to dividends on certain preferred stock of public utilities)."
(32) ACQUISITIONS MADE TO ESTATE OR AVOID INCOME TAX.—Paragraphs (1) and (2) of section 267(d) are each amended by striking "or acquired on or after October 6, 1940, or"
(33) INTEREST ON INDEBTEDNESS INCURRED BY CORPORATIONS TO ACQUIRE STOCK OR ASSETS OF ANOTHER CORPORATION.—Section 279 is amended—
(A) by striking "after December 31, 1967," in subsection (a)(2),
(B) by striking "after October 9, 1969," in subsection (b),
(C) by striking "after October 9, 1969," and in subsection (d)(5),
(D) by striking subsection (i) and by redesignating subsection (j) as subsection (i).
(34) SPECIAL RULES RELATING TO CORPORATE PREFERENCE ITEMS.—Paragraph (4) of section 291(a) is amended by striking "In the case of taxable years beginning after December 31, 1984, section" and inserting "Section".
(35) QUALIFICATIONS FOR TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLAN.—Section 409 is amended by striking subsections (a), (g), and (q).
(36) FUNDING STANDARDS.—Section 412(m)(4) is amended—
(A) by striking "the applicable percentage" in subparagraph (A) and inserting "25 percent", and
(B) by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).
(37) RETIREE HEALTH ACCOUNTS.—Section 420 is amended—
(A) by striking paragraph (4) in subsection (b) and by redesignating paragraph (5) as paragraph (4), and
(B) by amending paragraph (2) of subsection (c) to read as follows:
"(2) REQUIREMENTS RELATING TO PENSION BENEFITS ACCRUING BEFORE TRANSFER.—The require-
ments of this paragraph are met if the plan provides that the accrued benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated immediately before the qualified transfer (or in the case of a participant who separated during the 1-year period ending on the date of the transfer, immediately before such separa-
tion).
(38) EMPLOYEE STOCK PURCHASE PLANS.—Section 424(a) is amended by striking "after December 31, 1963,
(39) LIMITATION ON DEDUCTIONS FOR CERTAIN FARMING.—Section 464 is amended—
(A) by striking "any farming syndicate as defined in subsection (c)" both places it appears in subsections (a) and (b) and inserting "any taxpayer to whom subsection (f) applies", and
(54) PROPERTY USED IN THE TRADE OR BUSINESS AND INVENTORY CONVERSIONS.—Subparagraph (A) of section 1231(c)(2) is amended by striking ‘‘beginning after December 31, 1981’’.

(55) SALE OF PATENTS.—Subsection (a) of section 1235 is amended—

(B) by striking subsection (c) and by redesignating subsections (d) and (e) as (c) and (d), respectively.

(56) DEALERS IN SECURITIES.—Subsection (b) of section 1236 is amended by striking ‘‘after December 31, 1962’’.

(57) GAIN FROM DISPOSITION OF FARM LAND.—Paragraph (1) of section 1237 is amended by striking ‘‘after December 31, 1969’’ both places it appears.

(58) TREATMENT OF AMOUNTS RECEIVED ON RE堡垒MENT OR SALE OR EXCHANGE OF DEBT INSTRUMENTS.—Subsection (c) of section 1271 is amended to read as follows:

‘‘(c) Special Rule for Certain Obligations With Respect to Which Original Issue Discount Not Currently Included.—’’

‘‘(1) In General.—On the sale or exchange of debt instruments issued by a government or political subdivision thereof after December 31, 1954, and before July 2, 1982, or by a corporation after December 31, 1954, and on or before May 27, 1969, any gain realized which does not exceed—

(A) an amount equal to the original issue discount, or

(B) if at the time of original issue there was no intention to call the debt instrument before maturity, an amount which bears the same ratio to the original issue discount as the number of complete months from the date of original issue to the date of maturity shall be considered as ordinary income.

(2) Subsection (a)(1) NOT TO APPLY.—Subsection (a)(2)(A) shall not apply to any debt instrument referred to in subparagraph (A) of this paragraph.

(3) Cross Reference.—For current inclusion of original issue discount, see section 1272.’’.

(59) AMOUNT AND METHOD OF ADJUSTMENT.—Section 1238 is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(60) ELECTION; REVOCATION; TERMINATION.—Clause (iii) of section 1239 is amended by striking ‘‘unless’’ and all that follows and inserting ‘‘unless the corporation was an S corporation for the taxable year’’.

(61) Election; Revocation; Termination.—Clause (iii) of section 1239 is amended—

(D) in subsection (i)(2) by striking ‘‘beginning after December 31, 1954, and before July 2, 1982’’, and inserting ‘‘at 3 percent per annum’’.

(62) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—Clause (i) of section 1242 is amended—

(D) in subsection (b)(2)(A) by striking ‘‘at 4 percent per annum to December 31, 1954, and on or before May 27, 1969, any gain realized which does not exceed—

(A) an amount equal to the original issue discount, or

(B) if at the time of original issue there was no intention to call the debt instrument before maturity, an amount which bears the same ratio to the original issue discount as the number of complete months from the date of original issue to the date of maturity shall be considered as ordinary income.

(2) Subsection (a)(1) NOT TO APPLY.—Subsection (a)(2)(A) shall not apply to any debt instrument referred to in subparagraph (A) of this paragraph.

(3) Cross Reference.—For current inclusion of original issue discount, see section 1272.’’.

(63) HOSPITAL INSURANCE.—Subsection (b) of section 1248 is amended by striking ‘‘the following percent’’ and all that follows and inserting ‘‘2.9 percent of the amount of the self-employment income for such taxable year’’.

(64) MINISTERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTICERS.—Paragraph (3) of section 1249 is amended by striking ‘‘whichever of the following dates is later: (A) May 1, 1963;’’ and all that follows and by inserting a period.

(65) WITHHOLDING OF PAY FOR NONRESIDENT ALIENS.—The first sentence of subsection (b) of section 1249 is amended—

(A) by striking (f)(2) and (g)(2); and

(B) by inserting ‘‘(b) in subsection (g)(2) by striking ‘‘or pursuant to section 1106(d) of the Internal Revenue Code of 1939’’.’’.

(66) AFFILIATED GROUP DEFINED.—Paragraph (A) of section 1250(a)(3) is amended by striking ‘‘for a taxable year which includes any period after December 31, 1984’’ in clause (i) and by striking ‘‘in a taxable year beginning after December 31, 1984’’ in clause (ii).

(67) INSURANCE OF SOCIAL SECURITY BENEFITS OF THE GRADUATED CORPORATE RATES AND ACCUMULATED EARNINGS CREDIT.—

(A) Subsection (a) of section 1251 is amended by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(B) Paragraph (3) of section 1251(b) is amended—

(i) by striking ‘‘(or ‘‘2’’ in paragraph (1), and

(ii) by striking ‘‘(a)(3)’’ in paragraph (2) and inserting ‘‘(a)(2)’’.

(68) SURFACE NAVIGATION.—Subsection (a) of section 1251(b) is amended by striking paragraph (17).

(69) CREDITS AGAINST TAX.—

(A) Paragraph (4) of section 392(f) is amended by striking paragraph (4) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively, and by moving the text of such subparagraphs (as so redesignated) 2 ems to the left.

(B) Paragraph (5) of section 392(f) is amended by striking subparagraphs (D) and by redesignating subparagraph (B) as subparagraph (D).

(70) DOMESTIC SERVICE EMPLOYMENT TAXES.—Section 3510(b) is amended by striking paragraph (4).
SEC. 601. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) In General.—Part I of subchapter B of chapter 68 of title 26 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

"SEC. 6701A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RESPECT TO 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 section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

"(b) Amount of Penalty.—

"(1) In General.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

"(2) Exception.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

"(3) Increase in Penalty for Large Entities and High Net Worth Individuals.—

"(A) In General.—In the case of a failure under subsection (a) by—

"(i) a large entity, or

"(ii) a high net worth individual, the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

"(B) Large Entity.—For purposes of paragraph (A), the term 'large entity' means, with respect to any taxable year, a person (other than a natural person) with gross receipts for the taxable year in which the reportable transaction occurs or the preceding taxable year, Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 446(c) shall apply for purposes of this subparagraph.

"(C) High Net Worth Individual.—For purposes of paragraph (A), the term 'high net worth individual' means, with respect to a reportable transaction, a natural person whose net worth exceeds $2,000,000 immediately before the transaction.

"(c) Definitions.—For purposes of this section—

"(1) Reportable Transaction.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, under regulations prescribed under section 6661, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

"(2) Listed Transaction.—The term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6661.

"(3) Authority to rescind penalty.—

"(1) In General.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

"(A) it is shown that the violation is due to an unintentional mistake of fact;

"(B) imposing the penalty would be against equity and good conscience, and

"(C) rescinding the penalty would promote compliance with the requirements of this title.

"(2) Discretion.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

"(3) No appeal.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

"(d) Records.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

"(1) the facts and circumstances of the transaction,

"(2) the reasons for the rescission, and

"(3) the amount of the penalty rescinded.

"(e) Report.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

"(1) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

"(2) a description of each penalty rescinded under this subsection and the reasons therefor.

"(f) Penalties Reported to SEC.—In the case of a person—

"(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidedated with another person for purposes of such reports, and

"(2) which—

"(A) is required to pay a penalty under subsection (a) with respect to a listed transaction, or

"(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662(c),

the requirement to pay such penalty shall be disclosed in such reports filed by such person for periods as the Secretary shall specify. Failure 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.

"(g) Coordination with Other Penalties.—The penalty imposed by this section is in addition to any penalty imposed under this title.

"(h) Effective Date.—The amendments made by this section shall apply to returns and statements for which is after the date of the enactment of this Act.

SEC. 602. ACCURACY-RELATED PENALTIES FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

(a) In General.—Subchapter A of chapter 68 of title 26 is amended by inserting after section 6662 the following new section:

"SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTIES FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

"(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) Reportable Transaction Understatement.—For purposes of this section—

"(1) In General.—The term 'reportable transaction understatement' means the sum of—

"(i) the amount of the increase (if any) in taxable income which 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 (section 11 in the case of a taxpayer which is a corporation), and

"(ii) 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 in the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses 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) any 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 NonDisclosure 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 6664(d)(2)(A) is not met.

"(2) Rules Applicable to Assertion and Confirmation Understated Under Section 6662.

"(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 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. If such a letter is provided to the taxpayer, only the Commissioner of Internal Revenue may compromise or in any manner reduce any portion of such penalty.

(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6672(d) shall apply to the interpretation of the phrase ‘‘reasonable belief’’ in section 6664(d)(2).”

SEC. 603. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NON-REPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATION.—Section 6662(d)(1)(B)(ii) (relating to special rule for corporations) is amended to read as follows:

(1) 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 (ii), or

(ii) the opinion is described in clause (iii).

(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 with respect to any taxable year if the amount of the understatement for the tax 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.

(2) REDUCTION FOR UNDERSTATEMENT OF TAX PAYER DUE TO PORTION OF TAXPAYER OR DISCLOSED ITEM.—(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or

(II) 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 6664 is amended by inserting “FOR UNDERPAYMENTS” after “EXCEPTION”.

SEC. 604. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7225 (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

(1) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

(1) between a federally authorized tax practitioner and—

(A) any person,

(B) any director, officer, employee, agent, or representative of the person,

(C) any other person holding a capital or profits interest in the person, and

(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).
SEC. 605. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

"SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.—

"(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

"(1) information identifying and describing the transaction,

"(2) information describing any potential tax benefits expected to result from the transaction, and

"(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

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

"(1) MATERIAL ADVISOR.—

"(A) IN GENERAL.—The term ‘material advisor’ means—

"(i) who provides any material aid, assistance, or advice with respect to organizing, managing, implementing, or carrying out any reportable transaction, and

"(ii) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice.

"(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

"(i) $50,000 in the case of a reportable transaction relating to 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’ means—

"(A) an intentional failure or act described in subparagraph (A), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

"(B) a failure to file a return under section 6111(a) with respect to such transaction, the Secretary with respect to such transaction, and

"(C) a failure to pay a penalty with respect to such transaction.

"(C) REGULATIONS.—The Secretary may prescribe regulations which provide—

"(1) that only 1 person shall be required to meet 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 subchapter 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 KEEP LISTS OF ADVISEES.

"(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 prescribe, a list—

"(1) of every 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 prescribe.

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).

(C) Section 6112(b), as redesignated by subparagraph (b), is amended—

(i) by inserting ‘written’ 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 subchapter B of chapter 61 is amended to read as follows:

"Sec. 6112. Material advisors of 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 subchapter B of chapter 68 is amended to read as follows:

"Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.

(c) REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.—Subparagraph (A) of section 6112(b)(1), 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 transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(ii) of the Internal Revenue Code as amended by this section is provided after the date of the enactment of this Act.

"(2) NO CLAIM OF CONFIDENTIALITY AGAINST DUE DILIGENCE.—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 142 of the Deficit Reduction Act of 1984.

SEC. 606. MODIFICATION OF PENALTY FOR FRAUDULENT FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

"(1) fails to file such return on or before the date prescribed therefor, or

"(2) files false or incomplete information with the Secretary with respect to such transaction, such person shall pay a penalty with respect to such transaction in the amount determined under subsection (b).

"(b) AMOUNT OF PENALTY.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

"(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

"(i) $200,000, or

"(ii) 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 listed transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting ‘5 percent’ for ‘50 percent’ in the case of an intentional failure or act described in subsection (a).

(c) CERTAIN RULES TO APPLY.—The provisions of section 6707A(d) shall apply to any penalty imposed under this subsection.

(d) CONFORMING AMENDMENTS.—

(1) 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 subchapter 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.

SEC. 608. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive 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) AUTHORITY 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 may be brought in the district court of the United States for the district in which such person resides, has its principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

"(b) JUDICIARY AND DECREE.—In any action under subsection (a), if the court finds—

"(1) that the person that has engaged in any specified conduct, and

"(2) 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 section 6709, 6701, 6707, or 6706.

"(b) CONFORMING AMENDMENTS.—

(1) 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.

SEC. 609. UNDERSTANDING TAXPAYER LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STATEMENTS.—Section 6094(a) (relating to understatements due to unrealistic positions) is amended—
S6042

CONGRESSIONAL RECORD — SENATE
May 20, 2004

(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”;
(2) by striking “or was frivolous” in paragraph (3) and inserting “or there was no reasonable basis for the tax treatment of such position”;
(3) by striking “UNREALISTIC” in the heading and inserting “IMPROPER”.

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

SEC. 613. DENIAL OF DEDUCTION FOR INTEREST ATTRIBUTABLE TO TAX-TRIGGERED TRANSACTIONS.

(a) In General.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) Interest on Unpaid Taxes Attributable To Nonclassified Reportable Transactions.—No deduction shall be allowed under this chapter for any unpaid tax or accrued under section 6651 on any underpayment of tax which is attributable to the portion of any reportable transaction, as defined in section 6707A(c)(2), which is required under section 6662 to be taken into account for purposes of the accuracy-related tax deficiencies and shall be equal to 50 percent of the gross income with respect to which a penalty imposed under such section 6662 to a listed transaction (as defined in section 6701) with respect to which the period for assessing a deficiency did not expire before the earlier of—

“(A) the date on which the Secretary is furnished the information so required; or

“(B) the date that a material advisor (as defined in section 6662) meets the requirements of section 6662 with respect to a request by the Secretary for written advice with respect to such transaction with respect to such taxpayer.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

SEC. 614. AUTHORIZATION OF APPROPRIATIONS FOR TAX LAW ENFORCEMENT.

There is authorized to be appropriated $300,000,000 for each fiscal year beginning after September 30, 2001, for the purpose of carrying out tax law enforcement to combat tax avoidance transactions and other tax shelters, including the use of offshore financial accounts to conceal taxable income.

PART II—OTHER CORPORATE GOVERNANCE PROVISIONS

SEC. 621. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) In General.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end the following new sentence: “The Secretary may prescribe rules applicable to corporations filing consolidated returns under section 1501 that are different from other provisions of this title that provide that such corporations filed separate returns.”

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

SEC. 622. DECLARATION BY CHIEF EXECUTIVE OF CORPORATION RELATING TO FEDERAL ANNUAL INCOME TAX RETURN OF A CORPORATION.

(a) In General.—The Federal annual tax return of a corporation with respect to income taxed under section 162 shall include a declaration signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary of the Treasury may designate if the corporation does not have a chief executive officer), under penalties of perjury, that the corporation has in place processes and procedures to ensure that such return complies with the Internal Revenue Code and that such chief executive officer was provided reasonable assurance of the accuracy of all material aspects of such return. The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851 of such Code) for any taxable year.

(b) EFFECTIVE DATE.—This section shall apply to the Federal annual tax return of a corporation with respect to income for taxable years ending after the date of the enactment of this Act.

SEC. 623. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) In General.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

“(f) FINES, PENALTIES, AND OTHER AMOUNTS—

“(1) In General.—Except as provided in paragraphs (2), (3), and (4), no deduction shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

“(2) Exception for Amounts Constituting Restitution.—Paragraph (1) shall not apply to any amount which constitutes restitution (including remediation of property) for damage or harm caused by or which may be caused by the violation of any law. This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

“(3) Exception for Amounts Paid or Incurred as the Result of Certain Court Orders or Agreements.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

“(4) Exception for Amounts Paid or Incurred in Punitive Damages.—An entity is described in this paragraph if it is—

“(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

“(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

“(5) Exception for Taxes Due.—Paragraph (1) shall not apply to any amount paid or incurred as taxes due.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after April 27, 2003, except that such amendment 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 entered into after the date of the enactment of this Act unless the approval was obtained on or before April 27, 2003.

SEC. 624. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) DISALLOWANCE OF DEDUCTION.—

“(1) In General.—Section 162(g) (relating to punitive damages) is amended by adding at the end the following new paragraph:

“(G) PUNITIVE DAMAGES.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages under the antitrust laws.”

(b) CONFORMING AMENDMENTS.—

(A) Section 162(g) is amended—

(1) by striking “I[H]” and inserting “I[T]”;

(2) by redesigning paragraphs (1) and (2) as subparagraphs (A) and (B), respectively.

(3) by redesigning paragraph (3) as paragraph (4); and

(4) by redesigning paragraph (4) as paragraph (5).
(b) INCLUSION IN INCOME OF PUNITIVE DAMAGES PAID BY INSURER OR OTHERWISE.—

(1) IN GENERAL.—Part II of subsection B of chapter I (relating to items specifically included in gross income) is amended by adding at the end the following new section:

**SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.**

"Gross income shall include any amount paid to or on behalf of another person as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages."

(2) REPORTING REQUIREMENTS.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

((f) TO APPLY TO PUNITIVE DAMAGES COMPENSATED.—This section shall apply to payments to a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages.

(c) CONFORMING AMENDMENT.—The table of sections for part II of subsection B of chapter I 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 damages paid or incurred on or after the date of the enactment of this Act.

**SEC. 625. INCREASE IN CRIMINAL MONETARY PENALTY FOR INDIVIDUALS TO THE AMOUNT OF THE TAX AT ISSUE.**

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking "Any person who—" and inserting "(a) IN GENERAL.—Any person who—"

(2) by adding at the end the following new subsection:

"(b) INCREASE IN PENALTY FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6203(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall not be less than an amount equal to such portion. A rule similar to the rule under subsection (a) shall apply for purposes of determining the portion so attributable.

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7206 is amended—

(A) by striking "$100,000" and inserting "$250,000";

(B) by striking "$500,000" and inserting "$1,000,000"; and

(C) by striking "5 years" and inserting "10 years".

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking "misdemeanor" and inserting "felony";

(ii) by striking "1 year" and inserting "10 years"; and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking "$100,000" and inserting "$250,000";

(B) by striking "$500,000" and inserting "$1,000,000"; and

(C) by striking "3 years" and inserting "5 years".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments attributable to actions occurring after the date of the enactment of this Act.

**SEC. 626. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.**

(a) GENERAL RULE.—

(1) A taxpayer who—

(A) the Department of the Treasury's Offshore Voluntary Compliance Initiative, or

(B) the Department of the Treasury's voluntary disclosure initiative as to which any interest or applicable penalty is imposed with respect to any arrangement described in paragraph (1) applied to or any underpayment of Federal income tax attributable to items arising in connection with any arrangement described in paragraph (1), then, notwithstanding any other provision of law, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

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

(1) APPLICABLE PENALTY.—The term "applicable penalty" means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) VOLUNTARY OFFSHORE COMPLIANCE INITIATIVE.—The term "Voluntary Offshore Compliance Initiative" means the program established by the Department of the Treasury in January of 2003 under which any taxpayer was eligible to voluntarily disclose previously undisclosed income on assets placed in offshore accounts and accessed through credit card and other financial arrangements.

(3) PARTICIPATION.—A taxpayer shall be treated as having participated in the Voluntary Offshore Compliance Initiative if the taxpayer submitted the request in a timely manner and all information requested by the Secretary of the Treasury or his delegate within a reasonable period of time following the request.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if as of the date of the enactment of this Act or, in the case of an activity described in paragraph (1), the interest, penalty, or addition to tax with respect to such taxable year is not prevented by the operation of any law or rule of law.

**PART II—EXTENSION OF IRS USER FEES**

**SEC. 631. EXTENSION OF IRS USER FEES.**

(a) IN GENERAL.—Section 7528(c) (relating to termination) is amended by striking "Sec. 6043A. Returns relating to taxable mergers and acquisitions.

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

**PART IV—OTHER REVENUE PROVISIONS**

**SEC. 641. REPORTING OF TAXABLE Mergers AND ACQUISITIONS.**

(a) IN GENERAL.—Part III of chapter A of chapter 61 is amended by inserting after section 6043 the following new section:

**SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.**

(1) a description of the acquisition;

(2) the name and address of each shareholder of the acquired corporation who is required to recognize gain (if any) as a result of the acquisition;

(3) the amount of money and the fair market value of other property transferred to each such shareholder, and

(4) such other information as the Secretary may prescribe.

To the extent provided by the Secretary, the requirements of this section applicable to the acquiring corporation shall be applicable to the acquired corporation and not to the acquiring corporation.

(b) NOMINEE REPORTING.—Any person who holds stock as a nominee for another person shall furnish in the manner prescribed by the Secretary to such other person the information provided by the corporation under subsection (d).

(c) TAXABLE ACQUISITION.—For purposes of this section, the term "taxable acquisition" means any acquisition by a corporation of stock in or property of another corporation if any shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

(d) STATEMENTS TO BE FURNISHED TO SHAREHOLDERS.—Every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth in such return a written statement showing—

(1) the name, address, and phone number of the information contact of the person required to make such return;

(2) the information required to be shown on such return with respect to such shareholder, and

(3) such other information as the Secretary may prescribe.

The written statement required under the preceding sentence shall be furnished to the shareholder on or before January 31 of the year following the calendar year during which the taxable acquisition occurred.

(b) ASSESSABLE PENALTIES.—

(1) Paragraph (2) of section 6724(d)(1) (relating to information return) is amended by redesignating clauses (ii) through (viii) as clauses (iii) through (xi), respectively, and by inserting after clause (i) the following new clause:

(i) the information return relating to taxable mergers and acquisitions.

(2) Paragraph (2) of section 6724(d) (relating to information return) is amended by redesignating subparas (F) through (BB) as subparas (F) through (GG), respectively, and by inserting after subparagraph (E) the following new subparagraph:

"(F) subsections (b) and (d) of section 6043A relating to returns relating to taxable mergers and acquisitions.

(c) VOLUNTARY OFFSHORE COMPLIANCE INITIATIVE.—The term "Voluntary Offshore Compliance Initiative" means the program established by the Secretary of the Treasury or his delegate within a reasonable period of time following the request.

**PART IV—OTHER REVENUE PROVISIONS**

**SEC. 641. REPORTING OF TAXABLE Mergers AND ACQUISITIONS.**

(a) IN GENERAL.—Section 1563(f) (relating to information return) is amended by redesignating clauses (ii) through (viii) as clauses (iii) through (xi), respectively, and by inserting after clause (i) the following new clause:

(i) the information return relating to taxable mergers and acquisitions.

(b) ASSESSABLE PENALTIES.—

(1) Paragraph (2) of section 6724(d) (relating to information return) is amended by redesignating subparas (F) through (BB) as subparas (F) through (GG), respectively, and by inserting after subparagraph (E) the following new subparagraph:

"(F) subsections (b) and (d) of section 6043A relating to returns relating to taxable mergers and acquisitions.

(c) VOLUNTARY OFFSHORE COMPLIANCE INITIATIVE.—The term "Voluntary Offshore Compliance Initiative" means the program established by the Secretary of the Treasury or his delegate within a reasonable period of time following the request.

**PART IV—OTHER REVENUE PROVISIONS**

**SEC. 641. REPORTING OF TAXABLE Mergers AND ACQUISITIONS.**

(a) IN GENERAL.—Section 1563(a)(2) (relating to other-sister-controlled group) is amended by striking "possessing—" and all that follows 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 DEFINITIONS FOR PROVISIONS OTHER THAN THIS PART.

"(A) IN GENERAL.—Except as specifically provided in an applicable provision, subsection (a) shall be applied to an applicable provision as if it read as follows:

"(5) BROTHER-SISTER CONTROLLED GROUP.

(5) BROTHER-SISTER CONTROLLED GROUP.—Two or more corporations if 5 or fewer persons own or control, directly or indirectly, through financial arrangements, the voting power and the value of the securities of the corporation in the aggregate, greater than 50 percent of the voting power and value of the securities of the corporation.
CONGRESSIONAL RECORD — SENATE
May 20, 2004

S6044

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 366) supporting May 2004 as National Better Hearing and Speech Month.

Resolved by the Senate (the Senate concurring), That when the Senate adjourns on the legislative day of Thursday, May 20, 2004, or Friday, May 21, 2004, it stand adjourned until 2 p.m. on Tuesday, June 1, 2004, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate adjourns on Thursday, May 20, 2004, or Friday, May 21, 2004, or Saturday, May 22, 2004, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Tuesday, June 1, 2004, or at such other time on that day as may be specified by its Majority Leader or his designee in the motion to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

Sec. 2. The Speaker of the House and the Majority Leader of the Senate, or their respective designees, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, the members of the House and the Senate, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

NATIONAL TRANSPORTATION WEEK

Mr. FRIST. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of H. Con. Res. 420 and the Senate now proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 420) approving the Senate and House leadership in their efforts to secure minor reassembly or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, or at such other time on June 1, 2004, or at such other time on that day as may be specified by the Majority Leader of the House or his designee in the motion to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

Sec. 2. The Speaker of the House and the Majority Leader of the Senate, or their respective designees, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, the members of the House and the Senate, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

SUPPORTING MAY 2004 AS NATIONAL BETTER HEARING AND SPEECH MONTH

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 366) supporting May 2004 as National Better Hearing and Speech Month, and commending those States that have implemented routine hearing screenings for every newborn before the newborn leaves the hospital.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. COLEMAN. Mr. President, every day, more than 10 million older Americans will miss important pieces of conversation. Every day, more than 1.2 million children will hear their teacher’s voice for the first time as they learn to read and write. With your support, ten million older Americans will be able to hear their grandchild’s voices and continue working despite age-related hearing loss. With your support, we can give millions the gift of sound.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table, and that statements relating to the measure be printed in the RECORD.

The resolution (S. Res. 366) was agreed to.

The preamble was agreed to.
Whereas 30 percent of people in the United States suffering from hearing loss cite financial constraints as an impediment to hearing aid use;  
Whereas hearing loss is among the most common congenital birth defects;  
Whereas a delay in diagnosing the hearing loss of a newborn can affect the social, emotional, and academic development of the child;  
Whereas the average age at which newborns with hearing loss are diagnosed is between the ages of 22 to 25 months;  
Whereas May 2004 is National Better Hearing and Speech Month, providing Federal, State, and local governments, members of the private and nonprofit sectors, hearing and speech professionals, and all people in the United States an opportunity to focus on preventing, mitigating, and treating hearing impairments; Now, therefore, be it

Resolved, That the Senate—  
(1) supports the goals and ideals of May 2004 as National Better Hearing and Speech Month;  
(2) commends those States that have implemented routine hearing screenings for every newborn before the newborn leaves the hospital;  
(3) encourages all people in the United States to have their hearing checked regularly.

DESIGNATING MAY 2004 AS OLDER AMERICANS MONTH

Mr. FRIST. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further action on S. Res. 333 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the resolution by title. The legislative clerk read as follows:

A resolution (S. Res. 333) designating May 2004 as “Older Americans Month.”

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 333) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 333

Whereas today’s older Americans are living longer, healthier, and more productive lives than any other time in our history;  
Whereas older Americans exemplify the theme of “Aging Well, Living Well” by continuing to give their time to our communities, their knowledge to our children, their experience to our workplace, and their wisdom to all of us;  
Whereas there are now more than 50,000 people in the United States 100 years old or older;  
Whereas more than 47 million Americans are now 60 years old or older;  
Whereas the opportunities and challenges that await our Nation require our Nation to continue to set the goal of improving the quality of life for all older Americans; and

HONORING THE LIFE OF MILDRED McWILLIAMS JEFFREY

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 353, as earlier today by Senators STABENOW and LEVIN.

The PRESIDING OFFICER. The clerk will state the resolution by title. The legislative clerk read as follows:

A resolution (S. Res. 367) honoring the life of Mildred McWilliams “Millie” Jeffrey (1910-2004) and her contributions to her community and to the United States.

There being no objection, the Senate proceeded to the immediate consideration of the resolution.

Ms. STABENOW. Mr. President, today I rise to honor the life of a very dear friend who passed away on March 24 of this year. Millie Jeffrey is an icon in the State of Michigan and in our country. The Jeffersonian idea is that every generation fights for its own rights, and worker’s rights. Her life has epitomized the principles by which we all strive to live our lives—justice, equality, and compassion.

Although small in stature, Millie has been a force in the lives of many people. Her words and actions have touched the lives of all who have known her. Words cannot express the depth of affection and respect in which Millie is held, nor can words quantify the lives that she has touched.

Mildred McWilliams Jeffrey, social justice advocate, and UAW Director of the Consumer Affairs Department and a Governor Emerita of Wayne State University, died peacefully surrounded by her family early this morning in the Metro Detroit area. She was 93. In 2000, President William Clinton awarded her the Medal of Freedom, the highest civilian award bestowed by the United States government.

In seeking world peace by ensuring equality for all, Millie spent a lifetime working on workers’ rights, education, health care, youth employment, and recreation issues. She brought inspiration and humor to the many people she touched—and did so with optimism and undaunted spirit.

Millie’s list of accomplishments and awards is long but what she is most remembered for is her zest for organizing. She mentored legions of women and men in the labor, civil rights, women’s rights, and peace movements. As President Clinton noted: “Her impact will be felt for generations, and her example never forgotten.”

Born in Alton, IA, on December 29, 1910, Millie was the oldest of seven children. She graduated from the University of Minnesota in 1932 with a bachelor’s degree in psychology and received a master’s degree in social economy and social research in 1934 from Bryn Mawr College. In graduate school, she realized that to improve the lives of women and men returning from war, she would have to change the system. In the 1930s, that meant joining the labor movement.

Millie became an organizer for the Amalgamated Clothing Workers of America in Philadelphia and then Educational Director of the Pennsylvania Joint Board of Shirt Workers. In 1936, she married fellow Amalgamated organizer Homer Newman Jeffrey, and they traveled throughout the South and East organizing textile workers. During World War II, the Jeffreys worked in Washington, DC, as consultants to the War Labor Board, where they became close friends with Walter, Victor, and Roy Reuther.

Herman and Newman Jeffrey moved to Detroit in 1944 when Victor Reuther offered Millie a job as director of the newly formed UAW Women’s Bureau. Millie’s commitment to equal rights fueled her career here at the UAW. She organized the first UAW women’s conference in response to the massive postwar layoffs of women production workers replaced by returning veterans. From 1949 until 1954, Millie ran the union’s radio station. She moved on to direct the Community Relations Departments. She was director of the Consumer Affairs Department from 1968 until her retirement in 1976.

Millie joined the NAACP in the 1940s and marched in the South with Dr. Martin Luther King Jr. in the 1960s. Former executive secretary of the Detroit Branch of the NAACP, Arthur Johnson, said that “in the civil rights movement, she knew how to fight without being disagreeable.”

Millie was a very active in the Democratic Party, preferring to work behind the scenes organizing, canvassing, consulting, and fundraising. She was the consummate strategist. Millie provided savvy advice to Democratic officeholders and(stated person’s name)

As a founding member and chair of the National Women’s Political Caucus, Millie supported female candidates for public office. Twenty years ago she led the effort to nominate Geraldine Ferraro as Walter Mondale’s running mate. Most recently, Millie delighted in being represented by Michigan women she supported, Governor Jennifer Granholm, and myself. Millie is the “political godmother” for many of us, and we are extremely grateful for her guidance and support.

As a founding member and chair of the National Women’s Political Caucus, Millie supported female candidates for public office. Twenty years ago she led the effort to nominate Geraldine Ferraro as Walter Mondale’s running mate. Most recently, Millie delighted in being represented by Michigan women she supported, Governor Jennifer Granholm, and myself. Millie is the “political godmother” for many of us, and we are extremely grateful for her guidance and support. Millie was one of the most important mentors in my life and I will always be very, very grateful to her.
Millie ran for public office in 1974 and was elected by the people of the State of Michigan to the Wayne State University Board of Governors, an office she held for 16 years—1974–1990. She was so proud of her role in supporting this wonderful university. She served three terms as chairman. Millie loved Wayne State University and was a long-time resident on campus. She never tired of showing visitors around her “neighborhood”—the Adaman University Undergraduate Library, the Hilberry Theatre, her favorite Radisson Hotel, and the University Library. Millie thrived in the academic environment enriched by Wayne State University students.

Her friendships extended worldwide across all ages and nationalities. Whether discussing math with teenagers in Wayne State’s Math Corps, or strategizing at the UN Conference on Women about the plight of sweatshop workers, Millie’s capacity for connecting with people was unmatched.

Millie’s capacity for connecting with people was unmatched. As one who traveled with her to the Fourth World Conference on Women in Beijing, it was amazing to see people from all over the world, hearing we were from Michigan, asking if we knew Millie Jeffrey and if we could tell them where she was; or that her grandmother, their aunt, we could tell them she was; or that her grandmother, their aunt, or their mother who developed and nourished their creativity and curiosity in her two son and a daughter and adoring grandchildren.

Millie was into the Michigan Women’s Hall of Fame and was an original board member of the Michigan Women’s Foundation. She served in various leadership roles in a wide variety of national and State organizations such as the Michigan Women’s Political Caucus, the Coalition for Labor Union Women, Americans for Democratic Action, National Abortion Rights Action League, Equal Choice, EMILY’s List, and the American Civil Liberties Union. She served on the peer review board of Blue Cross and was an active member of the First Unitarian Universalist Church in Detroit.

She was also an adoring mother of a son and a daughter and adoring grandmother who developed and nourished creativity and curiosity in her two grandchildren who she loved dearly, Erica Jeffrey and Thomas Jeffrey. She encouraged Erica’s love of ballet. She urged Thomas to travel to learn about the world and was so proud of his AmeriCorps Service.

All of these lists of awards, duties, responsibilities, and accomplishments do not say what Millie is all about: Millie Jeffrey was a one-of-a-kind woman of great passion, of great commitment, of life which was celebrated and honored by her family and friends through photos, speech, and song. Many of her friends gave heartwarming accounts on how she helped them as well as our country. As the memorial service concluded, one thing became very clear. Millie is no longer with us, but she will be with us forever because her spirit will continue in all of us.

I thank my colleagues for the support of this resolution.

I yield the floor to Mr. LEVIN. Today, Mr. President, I join Senator STABENOW in introducing a resolution to celebrate and to honor the life of an extraordinary American woman, Mildred Jeffrey. Millie Jeffrey was a shining star in the firmament of our State and Nation. Her legendary courage and her incredible tenacity were an inspiration to all who came within her orbit.

Throughout her life, Millie fought tenaciously to advance civil rights and workers’ rights and other causes that divided us. She fought for workers’ rights, making sure that the people who make up the backbone of our business and industry are given a voice and afforded fair treatment. She was a pioneer for women’s rights, opening doors and providing opportunities for women that were merely a dream for women before her. We can all say that our world is more just and more humane because of Millie.

We couldn’t begin to count all of the people she assisted, all of the careers she helped launch, and all of the walls she broke down. She was a major force in the election of Michigan’s first female Senator and first female governor; how wonderful it is that she lived to see both Senator DEBBIE STABENOW and Governor Jennifer Granholm take office.

It is a mystery how her larger-than-life passion, energy, enthusiasm, and determination fit in a tiny frame. Every person who ever met with her or talked with her felt her spirit was left with them. She was a deep sense of awe and respect for her extraordinarily good nature and her commitment to good deeds. It is a badge of honor to be able to say I knew Millie Jeffrey.

Millie famously said that she would retire only when she died, and she certainly lived up to that promise, working and fighting until the very end. We all wish her retirement could have been later, but her legacy and her inspiration will be a major presence in Michigan and the Nation forever.

I know all of my colleagues will join me in celebrating her life and honoring her memory.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the measure be printed in the Record, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 367) was agreed to.

The preamble was agreed to. The resolution, with its preamble, reads as follows:

Millie McNally’s contributions to the labor, civil rights, education, health care, youth employment, and recreation issues.

Yesterday, 250 people came to Washington, DC, from all over the country to remember Millie and to share how Millie had touched their lives. Millie’s
 Whereas Former Executive Secretary of the Detroit Branch of the NAACP, Arthur Johnson, said that “in the civil rights movement, she knew how to fight without being disagreeable”;

 Whereas Millie ran for public office in 1974 and was elected by the people of Michigan to the Wayne State University Board of Governors, an office she held for 16 years (1974–1990);

 Whereas Millie served 3 terms as chair of the Wayne State University Board of Governors;

 Whereas Millie loved Wayne State University and was a long-time resident on campus;

 Whereas Millie never tired of showing visitors around the Adamany Undergraduate Library, the Hilberry Theatre, and the Walter P. Reuther Library of Wayne State University;

 Whereas Millie thrived in the academic environment enriched by Wayne State University students;

 Whereas whether discussing mathematics with teenagers in Wayne State University's Math Corps or strategizing at the United Nations Conferences on Women about the plight of sweatshop workers, Millie's capacity for connecting with people was unmatched;

 Whereas Millie was inducted into the Michigan Women's Hall of Fame and was an original member of the board of the Michigan Women’s Foundation;

 Whereas Millie served in various leadership roles in a wide variety of national and state organizations;

 Whereas Millie served on the peer review board of Blue Cross;

 Whereas Millie also was an active member of the First Unitarian Universalist Church in Detroit; and

 Whereas the United States mourns the death of Mildred McWilliams “Millie” Jeffrey;

 Whereas the United States recognizes that Millie is remembered for connecting with people; and

 Whereas Millie was an icon for connecting with people around her “neighborhood”—the Adamany Undergraduate Library, the Hilberry Theatre, and the Walter P. Reuther Library of Wayne State University;

 Whereas the Senate, by unanimous consent, that the concurrent resolution be printed in the Federal Register.

 The concurrent resolution (H. Con. Res. 424) was agreed to.

 The preamble was agreed to.

 MEASURES READ THE FIRST TIME—S. 2451 and H.R. 4279

 Mr. FRIST. Mr. President, I understand there are two bills at the desk, and I ask that they be read for the first time, en bloc.

 The PRESIDING OFFICER. Without objection, the clerk will read the titles of the bills for the first time, en bloc.

 The legislative clerk read as follows:

 A bill (S. 2451) to amend the Agricultural Marketing Act of 1946 to restore the application date of country of origin labeling.

 A bill (H.R. 4279) to amend the Internal Revenue Code of 1986 to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements, to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system, and to amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs who start businesses with respect to medical care for their employees.

 Mr. FRIST. I now ask for their second reading and, in order to place the bills on the calendar under rule XIV, I object to further proceedings of these matters, en bloc.

 The PRESIDING OFFICER. Objection is heard. The bills will receive their second reading on the next legislative day.

 MEASURES PLACED ON THE CALENDAR—H.R. 2728 and S. 2448

 Mr. FRIST. Mr. President, I understand there are two bills at the desk due for their second reading. I ask unanimous consent that the bills be given their second reading, en bloc.

 The PRESIDING OFFICER. Without objection, the clerk will read the titles of the bills for the second time, en bloc.

 The legislative clerk read as follows:

 A bill (H.R. 2728) to amend the Occupational Safety and Health Act of 1970 to provide for adjudicative flexibility with regard to an employer filing of a notice of contest following the issuance of a citation by the Occupational Safety and Health Administration; to provide for greater efficiency at the Occupational Safety and Health Review Commission; to provide for an independent review of citations issued by the Occupational Safety and Health Administration; to provide for the award of attorney's fees and costs to very small employers when they prevail in litigation prompted by the issuance of citations by the Occupational Safety and Health Administration; and to amend the Paperwork Reduction Act and titles 5 and 21, United States Code, to reform Federal paper- work and regulatory processes.

 A bill (S. 2448) to coordinate rights under the Uniformed Services Employment and Re-employment Rights Act of 1994 with other Federal laws.

 Mr. FRIST. I object to further proceedings on the measures, en bloc, at this time.

 The PRESIDING OFFICER. Under the rule, the bills are placed on the calendar.

 APPOINTMENT OF CONFEREES—H.R. 3550

 The PRESIDING OFFICER. The Chair appoints the following conferees on behalf of the Senate:

 The President appoints (Mr. Coleman) appointed Mr. Inhofe, Mr. Warner, Mr. Bond, Mr. Voinovich, Mr. Grassley, Mr. Hatch, Mr. Nickles, Mr. Lott, Mr. Enzi, Mr. Johanns, Mr. McConnell, Mr. Jeffords, Mr. Reid, Mr. Graham of Florida, Mr. Lieberman, Mrs. Boxer, Mr. Daschle, Mr. Hollings, Mr. Sarbanes, Mr. Baucus, and Mr. Conrad.

 ORDERS FOR FRIDAY, MAY 21, 2004

 Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Friday, May 21. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date and the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of Calendar No. 503, S. 2400, the Department of Defense authorization bill.

 The PRESIDING OFFICER. Without objection, it is so ordered.

 PROGRAM

 Mr. FRIST. Mr. President, tomorrow the Senate will resume consideration of the Department of Defense authorization bill. There will be no votes tomorrow, but Senators WARNER and LEVIN will have a series of cleared amendments. Following that action, we will proceed to a period for morning business to accommodate Senators who do wish to make statements.

 As I stated earlier, there will be no votes during tomorrow’s session. The next vote will occur on Tuesday, June 1, the day we return from recess. I will have more to say tomorrow on the post-recess schedule.

 ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

 Mr. FRIST. 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 7:30 p.m., adjourned until Friday, May 21, 2004, at 9:30 a.m.

 NOMINATIONS

 Executive nominations received by the Senate May 20, 2004:

 OFFICE OF PERSONNEL MANAGEMENT

 EDWIN D. WILLIAMSON, OF SOUTH CAROLINA, TO BE DIRECTOR OF THE OFFICE OF GOVERNMENT ETHICS FOR A TERM OF FIVE YEARS, VICE AMY L. COMSTOCK, RESIGNED.

 CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

 MARK D. GRIERAN, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM OF ONE YEAR (NEW POSITION);

 LEONA WHITE HAT, OF SOUTH DAKOTA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM OF THREE YEARS.
To be colonel

To be lieutenant colonel

To be captain

To be lieutenant

To be major

To be second lieutenant

To be ensign

To be midshipman
CONGRESSIONAL RECORD — SENATE

May 20, 2004

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

RICHARD L ARCHEY, 0000
VERNON D BASHAW, 0000
JEFFREY L CASPER, 0000
EDWIN J DAUM JR., 0000
KREB O DAVID, 0000
KEVIN C DAVIS, 0000
ROBERT V HOPPA, 0000
STEPHEN R KAPPE, 0000

MATT C DEPOLS, 0000
JAMES F EDWARDS, 0000
RICHARD K EVANS, 0000
TIMOTHY B FENZ, 0000
ROXANNE M FINCH, 0000
JOHN W HOFF, 0000
DINAH R KNUDSON, 0000
JAMES E LAMADON, 0000
THOMAS L LEW, 0000
TIMOTHY D McGUIRE, 0000
MICHAEL W O’DONNELL, 0000
EUGENE DEE PARDO, 0000
STEPHEN J PASK, 0000
STEPHEN B RICHER, 0000
STEPHEN J SANDOVAL, 0000
KENT S SCHECHTER, 0000
ULYSSES O ZALAMEA, 0000
JASON B ZIMMERMAN, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

THOMAS H. BOND JR., 0000
PATRICIA COLE, 0000
ALICE L RAND, 0000
LAWRENCE R. SLADE, 0000
CARL L. WALLSTEDT, 0000
DIANE E. H. WEBBER, 0000
CARLENE D. WILSON, 0000
PAMELA J. WYNFIELD, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

KENNETH R. CAMPITELLI, 0000
JON C. HARDING, 0000
TIMOTHY A. HOLLAND, 0000
CINDY L. JAYNES, 0000
TIMOTHY S. MATTHEWS, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

JEFFREY J. BURTCH, 0000
STEVEN O. CARDER, 0000
KEVIN R. HOOLEY, 0000
MARK C. JOHNSON, 0000
CHARLES B. JOHNSTON, 0000
FORBES O. MACVANE, 0000
JEFFREY D. PROPER, 0000
JAN E. TIGHE, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

EDWIN J. BURDICK, 0000
LEW R. JOHNSON, 0000
ROBERT J. PETRY, 0000
STEPHEN K. TIBBETTS, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

ANDREW BROWN III, 0000
JESSIE C. CARMAN, 0000
JOHN D. COUSINS, 0000
PAUL K. DEIM, 0000
STEVEN W. WARREN, 0000
JONATHAN W. WHITE, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be captain

JERRY R. ANDERSON, 0000
JANE A. BARCLIFT, 0000
KAY L. DINOVA, 0000
ROBERT J. FIERHAMMER JR., 0000
ROBERT J. GAINES, 0000
ANNE MARIE HARDEN, 0000
JAMES E. KNAPP JR., 0000

THE JUDICIARY

LAURA A. CORDERO, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF FIFTEEN YEARS, VICE SHELLIE FOUNTAIN BOWERS, RETIRING.

JULIET JOANN MCKENNA, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF FIFTEEN YEARS, VICE NAN R. SHUKER, RETIRING.

DEPARTMENT OF JUSTICE

ROBERT CLARK CORRENTE, OF RHODE ISLAND, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF RHODE ISLAND FOR THE TERM OF FOUR YEARS, VICE MARGARET EILEEN CUBIAN.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 20, 2004:

THE JUDICIARY

RAYMOND W. GRUENDER, OF MISSOURI, TO BE UNITED STATES CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT.

FRANKLIN S. VAN ANTWERPEN, OF PENNSYLVANIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE THIRD CIRCUIT.
A TRIBUTE IN HONOR OF 2004 STATE OF MICHIGAN VOLUNTEER LEADERSHIP AWARD WINNER DORRENE GILBERT, OF GRAND LEDGE, MI

HON. NICK SMITH OF MICHIGAN IN THE HOUSE OF REPRESENTATIVES Thursday, May 20, 2004

Mr. SMITH of Michigan. Mr. Speaker, it is with great respect and admiration that I rise today to recognize Dorrene Gilbert, whose generosity of spirit, intelligence, responsible citizenship, and capacity for human service has earned her the 2004 State of Michigan Volunteer Award.

Dorrene is an enthusiastic and energetic promoter of Grand Ledge, especially its historic and cultural projects. For forty years, she has notably spearheaded activities for the Grand Ledge Area Historical Society, the Art Guild, Ledge’s Playhouse, Ledge Craft Lane, the Garden Club, Lincoln Brick Park, Michigan Week, and her church. Dorrene is extremely creative and well known for her cultural endeavors and bringing beauty to the community.

A founder of the Art Guild, Dorrene served as its president in the 1960s. She was Artist of the Month chairman for Ledge Craft Lane, a non-profit arts and crafts center, in the 1970s and still serves there as a volunteer. Known for her talent as a writer who has been publicity or promotion chairman for many groups in town, Dorrene has written and produced plays for church and for several style shows as fundraisers for the Opera House and Historical Society.

Having always been interested in gardens and nature, Dorrene has devoted a great deal of time and effort to the Garden Club and its projects. She has served as president twice, and program chairman many times, while retaining a long time geranium sale promoter and working on the gardens at the restored Opera House in downtown Grand Ledge. Dorrene has also been involved with the Memorial Tree Trail, where over 300 crab trees have been planted on the streets and in the parks in Grand Ledge in honor of or as memorials to residents.

When Dorrene’s husband passed away, she decided that she wanted to do something special in his memory. She wanted to promote recreation and historical traditions at the Lincoln Brick Park, which, at the time, was just being developed. The Brick Factory on the park’s grounds had been a part of his family’s heritage. Working with the park staff, she helped develop the Ashley Gilbert Memorial Historical Trail. When her son passed away, Dorrene wanted to add something educational and beautiful to Lincoln Brick Park once again. The David Gilbert Memorial Sugar Bush, with 105 maples and dogwoods, was born from memorial funds, family contributions and a grant. She has also encouraged the Garden Club to plant at Lincoln Brick Park and is a contributor and supporter of the Lincoln Brick 100 Club.

Furthermore, as a board member of the Grand Ledge Area Historical Society, Dorrene has chaired and presented several programs on the history of Grand Ledge over the years. She is currently planning a vintage clothing style show as a fundraiser for the Historical Society. Dorrene has also spearheaded Festive Tables at the Opera House during the Historical Society Annual Holiday Home Tour for several years. She has served her church as the Sunday School Superintendent, a Church Council Member, Fine Arts and Decoration Chairman, and often handles its publicity. Dorrene also wrote and produced a play on the 125 years of the church. She has served on Michigan Week Committees for nearly forty years as promotion and publicity chairman, hospitability chairman, and in recent years, on the Awards Committee. The list of her activities is vast, diverse, and always growing.

On behalf of the United States Congress, I join her many friends, admirers, fellow volunteers, and the people of Grand Ledge in extending our highest praise and congratulations to Dorrene Gilbert for winning the 2004 State of Michigan Volunteer Leadership Award. Her personal interest and active participation in her community are deeply appreciated and should serve as an example for us all.

TRIBUTE TO DR. MILLER WICK-LIFFE “WICK” LAWRENCE, JR.

HON. RODNEY ALEXANDER OF LOUISIANA IN THE HOUSE OF REPRESENTATIVES Thursday, May 20, 2004

Mr. ALEXANDER. Mr. Speaker, I rise today to pay tribute to an outstanding individual from my district, Dr. Miller Wickliffe “Wick” Lawrence, Jr., who was just inducted post mortem into the Corney Creek Hall of Fame. Dr. Wick’s tireless service and genuine commitment to his patients, family and community were truly remarkable and inspiring.

Born in 1912 and raised in Bernice, Louisiana, he was a graduate of Bernice High School and Louisiana Tech University. While he aspired to a career in dentistry, the nation was suffering through the Depression, and his career was postponed while he taught chemistry at Bernice High School. In 1934, he entered the Atlanta Southern Dental College, marrying Cortez Hicks along the way. Dr. Wick and his new bride returned to Bernice upon his graduation and he set up a practice, which he maintained for 40 years.

Dr. Wick served in the United States Army Dental Corp, enlisting at Fort Watters, Texas with assignments at Camp Livingston, Louisiana; Fort Lewis, Washington; Brigham City, Utah; Camp Beale, California and Schofield Barracks, Hawaii. He was honorably discharged in 1946 with the rank of Major.

Dr. Wick was a member of the Fifth District Dental Society, the American Dental Association, the Fellowship in the Academy of General Dentistry, the Louisiana Dental Association, and the Phi Omega Dental Fraternity. He was a founding member of the Bernice Volunteer Fire Department and served as town councilman for Bernice for 24 years. An avid horseman, he held membership jobs in the Louisiana Quarter Horse Association, the American Hereford Association and the American Junior Quarter Horse Association. Dr. Wick was also involved with the Louisiana Farm Bureau, the Union Parish Farm Bureau, the Louisiana Forestry Association and the Louisiana Cattleman’s Association.

Dr. Wick was also heavily involved and supportive of youth programs in Union Parish. As a former Boy Scout, he donated money and volunteered as a merit badge counselor to Troop 48 of Bernice and Troop 59 of Ruston. His generosity was also bestowed in time and money to the Ouachita Valley Council and the Thunderbird District. Dr. Wick strongly believed that every child who wanted an education should have one, and he provided financial assistance to many young people for college and business school. He opened his office doors to dental graduates to work in his practice until they were secure enough to establish practices in neighboring towns.

Dr. Wick passed away in September of 1999 at the age of 87. He was a father and grandfather and was married to his wife Cortez for nearly 63 years. His life was rich, and he enriched the lives of others by the charitable giving of his time and money to so many community and youth organizations.

Dr. Wick deserves the honor of Congressional recognition, for his outstanding contributions to his family, our community and our state and I am proud to recognize his notable accomplishments and manifold contributions.

TRIBUTE TO MR. ROBERT DE LA VINA ON HIS 90TH BIRTHDAY

HON. RUBE´N HINOJOSA OF TEXAS IN THE HOUSE OF REPRESENTATIVES Thursday, May 20, 2004

Mr. HINOJOSA. Mr. Speaker, I rise today to pay tribute to a great American and one of my constituents, Mr. Robert F. De la Vina. Mr. De la Vina’s life has been one of dedication. Dedication to his country, his community, his family, and his faith. Born in Edinburg, Texas on April 9, 1914, Robert De la Vina made a name for himself early in his youth as a self taught musician and award winning trumpet soloist. After high school, Mr. De la Vina received his Bachelor of Arts degree from Texas A&M College in Kingsville, Texas in 1937. It was after this period, that he returned to the Rio Grande Valley and started his long career in public education.

After teaching five years, however, his career as an educator was interrupted by the call...
of World War II. Mr. De la Viña was assigned to the United States Air Force and honorably served his country as a staff sergeant and mechanic for the B–26 Bomber. Later, he was assigned to B–29 squadrons participating in the Pacific Theater and was stationed in Guam and Tinian Island. After the war, he returned to Edinburg and the familiar surroundings of the classroom. It was then soon after, Mr. De la Viña met and married a fellow educator, Miss Grace Watkins. From this loving marriage of 39 years, came one son and three grandsons.

Robert’s dedication to the Edinburg public schools spans more than four decades. He served not only as a teacher, but as an Assistant Principal and Director of Special Services for the school district. After 37 years of commitment to the education and enrichment of the children from the Edinburg school district, he retired with numerous honors. Within a couple years of his retirement, Mr. De la Viña took his vision and passion for public education back to the community and ran for School Board Trustee. He served his community as Trustee for six years, giving a total of 43 years to the Edinburg School District and the community of Edinburg. His legacy and those of fellow De la Viña educators in South Texas, however, lives on, as March 23, 1986, marked the dedication of De la Viña Elementary School in Edinburg. On Robert’s 85th birthday, the Mayor of Edinburg officially recognized his commitment to the city and people of Edinburg and proclaimed April 9, 1999: “Robert De la Viña Sr. Day.”

Another phase of Robert De la Viña’s life has been his devotion to his faith. Growing up in one of the founding family’s of El Buen Pastor Methodist Church in Edinburg, Robert has helped the Church expand from the few families that assembled at his father’s house to the hundreds that congregate today. Robert has actively participated in all phases of the Church’s activities since his confirmation in 1926, such as Board Member, Choir and Youth Director and Sunday school teacher, a position he cherished for more than 30 years. Even to this day, Mr. De la Viña can be heard performing many of his original religious musical compositions on the piano at El Buen Pastor.

Mr. Speaker, Mr. Robert R. De la Viña, as the oldest living member of a family that was designated a “Bicentennial Family” in 1976 by the American Historical Society, has touched the lives of so many people in South Texas. On April 9th of this year, Mr. De La Viña celebrated his 90th birthday. I urge my colleagues to join me in recognizing his dedication to public education and his decades of service to South Texas and this nation.

WALNUT CANYON STUDY ACT OF 2004
HON. RICK RENZI
OF ARIZONA
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 20, 2004

Mr. RENZI. Mr. Speaker, I rise today to introduce the Walnut Canyon Study Act of 2004. The Walnut Canyon National Monument was originally designated by Presidential proclamation on November 30, 1915, to protect Sinagua cliff dwellings. Since the original designation, the Walnut Canyon National Monument has been expanded to include 3,580 acres to protect additional ruins adjacent to the Monument.

In the past few years, several groups have proposed expanding the Monument with surrounding Forest Service land and designating that area as a National Park. To further explore the options of the Walnut Canyon National Monument and potential inclusion of this expanded area, I have introduced the Walnut Canyon Study Act.

The Walnut Canyon Study Act of 2004 directs the Secretary of the Interior and the Secretary of Agriculture to jointly conduct a study on the management of certain land adjacent to the Walnut Canyon National Monument. Coconino County and the City of Flagstaff have both passed resolutions supporting further review and study of the management options for the Walnut Canyon National Monument. In both resolutions, support for maintaining certain public uses in the Monument was relayed, as well as the need for the protection of the resources in the Monument.

Mr. Speaker, this legislation provides for public input into any recommendation that is forwarded by the Secretary of the Interior and the Secretary of Agriculture. Within the study, the legislation requires the Secretaries to look at the management objectives of the Forest Service and the National Park Service, as well as the opportunities for maintaining existing public uses, such as grazing, hunting and recreation. In addition, my version of this legislation ensures that any appropriation made available in this legislation will not affect the amounts made available for Forest Service or National Park Service activities in the State of Arizona.

Mr. Speaker, I urge my colleagues to support the Walnut Canyon Study Act of 2004. My intent in introducing this legislation is to help resolve the question of future management of the Walnut Canyon National Monument.

TRIBUTE TO FLOYD STEWART
HON. JOE BACA
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 20, 2004

Mr. BACA. Mr. Speaker, it is with great pride that I pay tribute today to a close, personal friend of mine, Floyd Stewart. He is a man of great integrity and character, and I join today with family and friends in honoring his remarkable achievements throughout his life.

Floyd served admirably in the armed forces during WWII, and fought on the front lines of our military for 11 months. He was stationed in Normandy and Luxembourg during this time and was a member of the Combat Engineers, Unit 148. He was also a soldier in the Battle of the Bulge, the largest land battle of World War II featuring over 500,000 Americans and over 80,000 casualties.

Throughout his time serving our nation, Floyd exhibited tremendous passion, pride, and a deep resolve to fight for the freedoms that we, as Americans, have been fortunate to experience. He continues to be respected member of our community and beloved member of his family. His kind and passionate spirit are an incredible resource and blessing to those who know him.

I have had the distinct privilege of enjoying Floyd Stewart’s friendship for several years now. I have played golf with him at El Rancho Verde Golf Club, where he is a member, and seen firsthand his generosity of spirit and love for his fellow man.

It gives me no greater pleasure than joining today with family and friends in paying tribute to this great man. His unselfish duty to our country should not be overlooked. He is a symbol of all that we, as Americans, strive to be and I present to him today my steadfast thanks for his service.

IN RECOGNITION OF FALLEN SOLDIERS FOR SPECIAL MEMORIAL DAY TRIBUTE
HON. HOWARD L. BERMAN
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 20, 2004

Mr. BERMAN. Mr. Speaker, ninety years ago this month, President Woodrow Wilson stood in the Brooklyn Navy Yard and said of America’s fallen soldiers: “We are expected to put the utmost energy, of every power that we have, into the service of our fellow men, never sparing ourselves, not condescending to think of what is going to happen to ourselves, but ready, if need be, to go to the utter length of self-sacrifice.”

Today, American troops are again in harm’s way risking their lives in defense of freedom and democracy. In Afghanistan and Iraq, we are confronting forces opposed to these values. They represent the darkness of oppression, fanaticism and fear. But America—led by its troops—will prevail. To those brave men and women who have given their lives in this pursuit, I join my colleagues in recognizing their noble sacrifice.

A TRIBUTE IN HONOR OF THE GRAND LEDGE ISLAND RESTORATION PROJECT FOR WINNING THE 2004 STATE OF MICHIGAN COMMUNITY ACHIEVEMENT AWARD
HON. NICK SMITH
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 20, 2004

Mr. SMITH of Michigan. Mr. Speaker, I rise today to congratulate the community of Grand Ledge, Michigan for the successful completion of the Island Park Restoration Project. For the past five years, countless individuals and groups have persistently worked with patience and pride to restore the luster of the cultural, recreational, and economic gem nestled in the heart of Grand Ledge.

The Island Park is a 2.5-acre recreation facility in downtown Grand Ledge. It is an integral part of Grand Ledge’s history and culture, and it serves as one of the city’s main tourist attractions. Beginning in the 1870s, Grand Ledge was characterized as a charming summer resort town situated on the banks of the majestic Grand River. The principal attraction was the picturesque Grand Island, a windswept cliff, river, and island views. As many as 12 trainloads of visitors from across the state would visit the city each day.
Deputy Marshal Glen Devanie was responding to a call for backup from the Alexandria City Marshal's Office and was killed in an automobile accident. Deputy Sheriff Randy Smith was shot and killed while trying to apprehend a parish jail escapee in Mamou, Louisiana. The names of Deputy Marshal Devanie and Deputy Sheriff Smith were unveiled to their families and colleagues at the Candlelight Vigil at the National Law Enforcement Officers Memorial. We will never adequately express our gratitude, and our sympathies, to the sacrifice of these two officers.

I wish to extend to the families of Deputy Marshal Devanie and Deputy Sheriff Smith my sympathy for their loss and the recognition of these two men as true heroes. I express to the men and women in law enforcement our profound gratitude, for their exhibitions of bravery and the sacrifices they are called to make. As these noble men and women sacrifice for a pledge to protect and to serve, it is our duty to honor them, past, present and future, to the highest degree.

HONORING THE LIFE OF PAULINE GONZALEZ

HON. RUBÉN HINOJOSA
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 20, 2004

Mr. HINOJOSA. Mr. Speaker, it is a great honor to stand before you to pay tribute to Pauline Gonzalez, a dedicated public servant, a loving wife and mother, and a role model for all. Pauline Gonzalez of Edinburg passed away on Monday, April 26, after a long illness. She will be remembered for her dedication to her family, her commitment to public service, and her passion for politics. She will be deeply missed by all.

Mrs. Gonzalez was born in Edinburg, Texas on March 16, 1927, to Francisco and Paula Garza. She was orphaned at a young age and was reared by her maternal grandmother, Gregoria Perez, her aunt, Segunda Perez, and her eldest sister, Hermencia. Her experiences as a young girl instilled the importance of family in her, and her commitment to those she loved never faltered.

In 1948, Mrs. Gonzalez married Jose Noe Gonzalez Jr. and together they had three children: Jose Noe Jr., Lucy, and Martha. Along with her dedication to family, Mrs. Gonzalez was a firm believer in the value of a good education. She attended Edinburg public schools, graduated from Edinburg High School, and went on to pursue higher education at Edinburg Junior College. She instilled in her children the importance of education and it paid off. Her three children followed her example. Martha Salazar is Hidalgo County's purchasing agent, Lucy Canales is an Edinburg-based attorney, and Noe Gonzalez Jr. is a successful businessman.

In 1982, once her children were enrolled in college, she returned to the world of work and politics. Mrs. Gonzalez ran for and was elected District Clerk of Hidalgo County. Her victory made her one of the first women elected to office in the county. She broke through the barrier of a male dominated political world, but in her own special way. Her trademark high heels and lipstick were the perfect symbol for a woman whose elegance was not overshadowed by her ability to get things done. Her willingness to listen, her honesty and sincerity, and her commitment to her constituents to instill a confidence in their public officials, and she was solidly elected year after year.

Mrs. Gonzalez's work ethic earned her the respect of her colleagues and the admiration of the people she dutifully served. She epitomized what every public servant should strive to be—accessible and willing to go the extra mile.

Above everything, it was Pauline's near perfect balance of determination and graciousness that made her a beloved member of her community. She was a dear friend, a lovely lady, and a devoted public servant who will be greatly missed by all. May she rest in peace.

COMPETITIVENESS AGENDA

HON. RICK RENZI
OF ARIZONA
IN THE HOUSE OF REPRESENTATIVES
Thursday, May 20, 2004

Mr. RENZI. Mr. Speaker, last week Republicans kicked off an eight-week Competitiveness Agenda by bringing legislation to the floor that addressed staggering health care costs faced by American businesses. This week, we voted to streamline the government compliance process and increase competitiveness in today's worldwide economy. By eliminating unnecessary government regulation, we took action, helping business owners across the nation to reduce countless hours and resources sacrificed to comply with unnecessary red tape.

Mr. Speaker, small businesses disproportionately bear the burden of government regulation costs. The U.S. Small Business Association estimates that in 2000, small businesses with 20 or fewer employees faced an annual regulatory burden of approximately $6,975 per employee. That is almost two thirds more than the $4,463 estimated for large firms. We also know that these small businesses are the Number One jobs creators in the United States accounting for 60 to 80 percent of new jobs. In other words, nearly 8 out of 10 jobs created in this economy come from the very business owners being strangled by regulation costs.

Common-sense regulatory reforms will help reduce costs to American businesses, allowing them to compete in the global market and bring careers to those bright Americans seeking them. Mr. Speaker, I thank my colleagues for voting to eliminate unnecessary bureaucratic red tape.
Mr. BACA. Mr. Speaker, I ask unanimous consent to revise and extend my remarks.

I rise in opposition to the Republican Budget Resolution conference report. For the first time since the Congressional Budget Act was enacted, the Republicans are bringing only a 1-year budget resolution to the floor. This 1-year conference agreement provides no plan to reduce the deficit and no commitment to provide critical resources for defense, homeland security, education, veterans, and other priorities in future years.

The budget agreement cuts funding for key priorities to help fund another round of Republican tax cuts totaling $55.2 billion. After 3 years of the Bush administration's fiscal policies, we are facing a $363 billion deficit in 2005, and that is before any new tax cuts or other policies the President is proposing. Republicans have managed to turn a project $5.6 trillion surplus into a projected $3 trillion deficit.

This budget also fails to protect Social Security. The conference agreement not only fails to attempt to restore the budget surpluses to begin to protect the Social Security trust fund, but it also spends every penny of the $1 trillion Social Security surplus over the next 5 years.

If that's not enough, the Republican budget shortchanges education and health programs. It provides $81 billion for education and training programs, which is $2.9 billion less than the Senate budget. The conference agreement provides $8.8 billion less for education than was promised in the No Child Left Behind Act. It represents the smallest increase in education spending in 9 years, cutting $1.4 billion in critical education programs, including those that improve family literacy, and provide school counselors to elementary school children.

It fails to provide any new money to help the 43 million Americans who are without health insurance. There are over 12 million Hispanic Americans without health insurance and millions more who can barely pay their premiums, yet Republicans do nothing to hold costs down.

The budget cuts spending for mandatory health programs by $905 million over 5 years. Medicaid constitutes over 90 percent of the dollars for these programs, so it is likely that disabled Americans, children and the elderly would bear the brunt of these spending cuts, if enacted. The budget also does nothing to hold down prescription drug costs. This administration and the Republican Party are failing the 2 million Hispanic seniors and all seniors on Medicare.

The budget cuts and underfunds critical housing programs. At this funding level, approximately 250,000 low-income families with children, senior citizens, and people with disabilities could lose their Section 8 vouchers.

The Republican budget leaves our veterans behind. The conference agreement provides only $31 billion for appropriated veterans programs for 2005, which is $1.3 billion less than the Veterans Affairs Committee, on a bipartisan basis, stated is needed for these vital veterans' health care programs. It shortchanges veterans' health care, raising health care costs for 1 million veterans. It makes it harder for veterans to get their disability, education, pension, housing, and employment benefits by eliminating critically needed staff that process claims for veterans' benefits. The Republicans talk about patriotism, yet how quickly they forget about the men and women who are coming back from Iraq and Afghanistan, and the over 1 million Hispanic veterans.

The conference report before us is a failure of our fiscal and moral responsibility. We should reject this conference report and ask the conferees to go back to the drawing board. I yield back the balance of my time.

Mr. BERMAN. Mr. Speaker, Mr. WAXMAN and I rise today to pay tribute to Dena Schechter, a good friend and wonderful person. Dena is being honored by the University of Judaism (UJ) at its annual dinner on May 20, 2004, for her leadership in Jewish education and her many outstanding contributions to worthy causes.

The UJ is one of the leading institutions of higher education in our community. It maintains a proud tradition of academic excellence and a progressive viewpoint. Dena shares the University's intellectual and spiritual vision—maintaining Judaism's traditional beliefs and values in a way that is relevant to our increasingly complex and modern world.

In 1947, Dena's grandparents helped found the University. In the late 1950s, her grand-parents endowed the University's first public lecture series. Throughout the years, Dena has continued her family's dedication and support for the UJ, serving on the Board of Directors and for the last five years as Chair. Under Dena's leadership the UJ's College of Arts and Science, the Ziegler School of Business and the Fingerhut School of Education have seen tremendous growth and development. Dena has helped underwrite an innovative community service component to the UJ's undergraduate curriculum. In addition, she helped establish the Sid Levine Service Learning Program—a feature in UJ's College of Arts and Sciences that emphasizes the critical nature of community service.

To know Dena is to be greatly blessed. She is the sister of our good friend and former colleague, Mel Levine and we feel extremely fortunate to know her personally. We are inspired by her belief that "participation in the community is not something you choose but something you are obligated to do." In addition to her contributions to the UJ, she actively works on behalf of the Federation Family and Jewish Family Services.

A native of Los Angeles and a graduate of UCLA with a degree in Philosophy, Dena successfully balances family, a career in business and a strong commitment to community service. She is married to Irving Schechter and is the mother of four.

Mr. Speaker, distinguished colleagues, we ask you to join us in saluting Dena Schechter and congratulating her upon receiving this richly deserved honor.
HIGHLIGHTS:

Senate agreed to H. Con. Res. 432, Adjournment Resolution.

The House agreed to H. Con. Res. 651, expressing the gratitude of the House of Representatives to its Parliamentarian, the Honorable Charles W. Johnson.


Senate

Chamber Action

Routine Proceedings, pages S5893–S6049

Measures Introduced: Twenty-two bills were introduced as follows: S. 2451–2472.

Measures Reported:

S. 1687, to direct the Secretary of the Interior to conduct a study on the preservation and interpretation of the historic sites of the Manhattan Project for potential inclusion in the National Park System, with an amendment in the nature of a substitute. (S. Rept. No. 108–270)

S. 1778, to authorize a land conveyance between the United States and the City of Craig, Alaska, with an amendment in the nature of a substitute. (S. Rept. No. 108–271)

S. 1791, to amend the Lease Lot Conveyance Act of 2002 to provide that the amounts received by the United States under that Act shall be deposited in the reclamation fund. (S. Rept. No. 108–272)

H. Con. Res. 409, recognizing with humble gratitude the more than 16,000,000 veterans who served in the United States Armed Forces during World War II and the Americans who supported the war effort on the home front and celebrating the completion of the National World War II Memorial on the National Mall in the District of Columbia.

S. 1933, to promote effective enforcement of copyrights, with amendments.

S. 2453, to authorize the Secretary of Homeland Security to award grants to public transportation agencies to improve security.

Measures Passed:

Adjournment Resolution: Senate agreed to H. Con. Res. 432, providing for a conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate.

National Transportation Week: Committee on Commerce, Science, and Transportation was discharged from further consideration of H. Con. Res. 420, applauding the men and women who keep America moving and recognizing National Transportation Week, and the resolution was then agreed to.

National Better Hearing and Speech Month: Senate agreed to S. Res. 366, supporting May 2004 as National Better Hearing and Speech Month and commending those States that have implemented routine hearing screenings for every newborn before the newborn leaves the hospital.

Older Americans Month: Committee on the Judiciary was discharged from further consideration of S. Res. 353, designating May 2004, as “Older Americans Month”, and the resolution was then agreed to.

Honoring Mildred McWilliams: Senate agreed to S. Res. 367, honoring the life of Mildred
McWilliams “Millie” Jeffrey (1910–2004) and her contributions to her community and to the United States.

Honoring Members of the Armed Forces: Senate agreed to H. Con. Res. 424, honoring past and current members of the Armed Forces of the United States and encouraging Americans to wear red poppies on Memorial Day.

Measures Passed—Correction: The Daily Digest of Wednesday, May 19, 2004, incorrectly carried the passage of H.R. 3505, to amend the Bend Pine Nursery Land Conveyance Act to specify the recipients and consideration for conveyance of the Bend Pine Nursery. (H.R. 3505 remains pending on the Senate Calendar.)

Department of Defense Authorization Act: Senate continued consideration of S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, taking action on the following amendments proposed thereto:

Pending:

Graham (SC) Amendment No. 3170, to provide for the treatment by the Department of Energy of waste material.

Crapo Amendment No. 3226 (to Amendment No. 3170), of a perfecting nature.

A unanimous-consent agreement was reached providing for further consideration of the bill at 9:30 a.m., on Friday, May 21, 2004.

Federal Highway Reauthorization—Conferees: Pursuant to the order of May 19, 2004, regarding H.R. 3550, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, the Chair appointed the following conferees on the part of the Senate: Inhofe, Warner, Bond, Voinovich, Grassley, Hatch, Nickles, Lott, Shelby, McCain, McConnell, Jeffords, Reid (NV), Graham (FL), Lieberman, Boxer, Daschle, Hollings, Sarbanes, Baucus, and Conrad.

Messages From the President: Senate received the following messages from the President of the United States:

Transmitting, pursuant to law, a report of the continuation of the national emergency protecting the Development Fund for Iraq and certain other property in which Iraq has an interest; which was referred to the Committee on Banking, Housing, and Urban Affairs. (PM–78)

Transmitting, pursuant to law, the United States Arctic Research Plan; which was referred to the Committee on Governmental Affairs. (PM–79)

Transmitting, pursuant to law, the 2004 Comprehensive Report on U.S. Trade and Investment Policy for Sub-Saharan Africa and Implementation of the African Growth and Opportunity Act; which was referred to the Committee on Finance. (PM–80)

Nominations Confirmed: Senate confirmed the following nominations:

By 97 yeas 1 nay (Vote No. Ex. 102), Raymond W. Gruender, of Missouri, to be United States Circuit Judge for the Eighth Circuit. Pages S5926–28

By unanimous vote of 96 yeas (Vote No. Ex. 103), Franklin S. Van Antwerpen, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

Nominations Received: Senate received the following nominations:

Edwin D. Williamson, of South Carolina, to be Director of the Office of Government Ethics for a term of five years.

Mark D. Gearan, of New York, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of one year. (New Position)

Leona White Hat, of South Dakota, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term expiring October 6, 2008.

Milton Aponte, of Florida, to be a Member of the National Council On Disability for a term expiring September 17, 2006. (Reappointment)

Robert Davila, of New York, to be a Member of the National Council On Disability for a term expiring September 17, 2006. (Reappointment)

Young Woo Kang, of Indiana, to be a Member of the National Council on Disability for a term expiring September 17, 2006. (Reappointment)

Kathleen Martinez, of California, to be a Member of the National Council on Disability for a term expiring September 17, 2006. (Reappointment)

Linda Wetters, of Ohio, to be a Member of the National Council on Disability for a term expiring September 17, 2006. (Reappointment)

Laura Cordero, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

Juliet JoAnn McKenna, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.
Robert Clark Corrente, of Rhode Island, to be United States Attorney for the District of Rhode Island for the term of four years.

Routine lists in the Army, Marine Corps, Navy.

Messages From the House:

Measures Placed on Calendar:

Measures Read First Time:

Executive Communications:

Executive Reports of Committees:

Additional Cosponsors:

Statements on Introduced Bills/Resolutions:

Additional Statements:

Amendments Submitted:

Authority for Committees to Meet:

Record Votes: Two record votes were taken today. (Total—103)

Adjournment: Senate convened at 10 a.m., and adjourned at 7:39 p.m., until 9:30 a.m., on Friday, May 21, 2004. (For Senate’s program, see the remarks of the Majority Leader in today’s Record on page S6047.)

Committee Meetings

(Committees not listed did not meet)

EXTENDED CUSTODIAL INVENTORY PROGRAM

Committee on Banking, Housing, and Urban Affairs: Committee concluded an oversight hearing to examine the Federal Reserve’s Extended Custodial Inventory Program (ECI), focusing on recent events involving the Union Bank of Switzerland-Zurich which violated its ECI Agreement with the Federal Reserve Bank of New York by engaging in U.S. dollar banknote transactions with countries subject to sanctions by the U.S. Department of Treasury’s Office of Foreign Assets Control, which administers and enforces economic sanctions against targeted foreign countries, after receiving testimony from R. Richard Newcomb, Director, Office of Foreign Assets Control, Department of the Treasury; and Thomas C. Baxter, Jr., Executive Vice President and General Counsel, Federal Reserve Bank of New York, New York City.

CAN–SPAM ACT REVIEW

Committee on Commerce, Science, and Transportation: Committee concluded a hearing to examine the implementation of the Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN–SPAM Act) (P.L. 108–187), focusing on new federal efforts to address unsolicited commercial email (“spam”) to better protect consumers and businesses, after receiving testimony from Timothy Muris, Chairman, Federal Trade Commission; Jana D. Monroe, Assistant Director, Cyber Division, and Dan Larkin, Unit Chief, Internet Crime Complaint Center, both of Federal Bureau of Investigation, Department of Justice; Ted Leonsis, America Online, Inc., Dulles, Virginia; Shinya Akamine, Postini, Inc., Redwood City, California; Hans Peter Brondmo, Digital Impact, Inc., San Mateo, California; James Guest, Consumers Union, Yonkers, New York; and Ronald Scelson, MicroEvolutions.com, Montgomery, Texas.

NATIONAL HISTORIC SITES

Committee on Energy and Natural Resources: Subcommittee on National Parks concluded a hearing to examine S. 1672, to expand the Timucuan Ecological and Historic Preserve, Florida, S. 1789 and H.R. 1616, bills to authorize the exchange of certain lands within the Martin Luther King, Junior, National Historic Site for lands owned by the City of Atlanta, Georgia, S. 2167, to establish the Lewis and Clark National Historical Park in the States of Washington and Oregon, and S. 2173, to further the purposes of the Sand Creek Massacre National Historic Site Establishment Act of 2000, after receiving testimony from Paul Hoffman, Deputy Assistant Secretary of the Interior for Fish and Wildlife and Parks; Steve Brady, Sr., Northern Cheyenne Sand Creek Descendants, Lame Deer, Montana; Carol J. Alexander, Ritz Theatre & LaVilla Museum, Jacksonville, Florida; and Rex Ziak, Naselle, Washington.

NUCLEAR REGULATORY COMMISSION

Committee on Environment and Public Works: Subcommittee on Clean Air, Climate Change, and Nuclear Safety resumed oversight hearing to examine the Nuclear Regulatory Commission, focusing on how the NRC and the industry will move forward with credibility and safety to ensure that nuclear power continues to be an important part of meeting economic, energy, and environment needs in the United States, after receiving testimony from Nils J. Diaz, Chairman, Edward McGaffigan, Jr., Commissioner, and Jeffrey S. Merrifield, Commissioner, all of the U.S. Nuclear Regulatory Commission; Marvin S. Fertel, Nuclear Energy Institute, and David Lochbaum, Union of Concerned Scientists, both of Washington, D.C.; Marilyn C. Kray, Exelon Nuclear, Kimberton, Pennsylvania, on behalf of NuStart Energy Development LLC; and Barclay G. Jones,
University of Illinois at Urbana-Champaign Department of Nuclear and Radiological Engineering, Urbana.

BUSINESS MEETING

Committee on Finance: Committee ordered favorably reported the nominations of Juan Carlos Zarate, of California, to be Assistant Secretary for Terrorist Financing, and Stuart Levey, of Maryland, to be Under Secretary for Enforcement, both of the Department of the Treasury, and John O. Colvin, of Virginia, to be a Judge of the United States Tax Court.

PRESCRIPTION DRUG REIMPORTATION

Committee on Health, Education, Labor, and Pensions: Committee concluded a hearing to examine prescription drug reimportation, focusing on efforts to reduce drug costs, patient safety concerns, recent state action, fraudulent and counterfeit drugs, an international comparison of rising prescription drug expenditures, and S. 2328, to amend the Federal Food, Drug, and Cosmetic Act with respect to the importation of prescription drugs, after receiving testimony from John M. Taylor, Associate Commissioner for Regulatory Affairs, and William Hubbard, Associate Commissioner for Policy and Planning, both of the Food and Drug Administration, Department of Health and Human Services; John A. Vernon, University of Connecticut Center for Healthcare and Insurance Studies, Storrs; Philip Lee, Stanford University, Stanford, California; and Tim Malone, Livermore, California.

NATIVE AMERICAN CONNECTIVITY ACT

Committee on Indian Affairs: Committee held a hearing to examine S. 2382, to establish grant programs for the development of telecommunications capacities in Indian country, receiving testimony from J.D. Williams, National Congress of American Indians, Washington, D.C.; and Kade L. Twist, Native Networking Policy Center, Reston, Virginia.

Hearing recessed subject to the call of the Chair.

FBI OVERSIGHT OF TERRORISM

Committee on the Judiciary: Committee concluded an oversight hearing to examine the FBI, counterterrorism, and intelligence arenas, focusing on steps the FBI has taken to put critical capabilities in place by reforming counterterrorism and intelligence programs, as well as overhauling information technology, after receiving testimony from Robert S. Mueller III, Director, Federal Bureau of Investigation, Department of Justice.

BUSINESS MEETING

Committee on the Judiciary: Committee ordered favorably reported the following business items:

S. 1933, to promote effective enforcement of copyrights, with amendments;
S. Res. 362, expressing the sense of the Senate on the dedication of the National World War II Memorial on May 29, 2004, in recognition of the duty, sacrifices, and valor of the members of the Armed Forces of the United States who served in World War II;
H. Con. Res. 409, recognizing with humble gratitude the more than 16,000,000 veterans who served in the United States Armed Forces during World War II and the Americans who supported the war effort on the home front and celebrating the completion of the National World War II Memorial on the National Mall in the District of Columbia; and

BUSINESS MEETING

Committee on Veterans’ Affairs: Committee ordered favorably reported Pamela M. Iovino, of the District of Columbia, to be an Assistant Secretary of Veterans Affairs.

BUSINESS MEETING

Select Committee on Intelligence: Committee met in closed session to consider pending intelligence matters.

Committee recessed subject to the call.

House of Representatives

Chamber Action

Measures Introduced: 10 public bills, H.R. 4409–4469; and 11 resolutions, H. Con. Res. 432–438, and H. Res. 651–654 were introduced.

Additional Cosponsors: Pages H3440–41

Reports Filed: Reports were filed today as follows:

Supplemental report on H.R. 4200 to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, to prescribe
military personnel strengths for fiscal year 2005, (H. Rept. 108–491, Pt. 2);
S. 1301, to amend title 18, United States Code, to prohibit video voyeurism in the special maritime and territorial jurisdiction of the United States, amended (H. Rept. 108–504);
H.R. 1678, to amend title 18, United States Code, with respect to false communications about certain criminal violations, amended (H. Rept. 108–505);
H.R. 2991, to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Inland Empire regional recycling project and in the Cucamonga County Water District recycling project (H. Rept. 108–506);
H.R. 3378, to assist in the conservation of marine turtles and the nesting habitats of marine turtles in foreign countries (H. Rept. 108–507);
H.R. 1014, to require Federal land managers to support, and to communicate, coordinate, and cooperate with, designated gateway communities, to improve the ability of gateway communities to participate in Federal land management planning conducted by the Forest Service and agencies of the Department of the Interior, and to respond to the impacts of the public use of the Federal lands administered by these agencies, amended (H. Rept. 108–508, Pt. 1);
H.R. 3846, 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, amended (H. Rept. 108–509, Pt. 1);
H.R. 3504, to amend the Indian Self-Determination and Education Assistance Act to redesignate the American Indian Education Foundation as the National Fund for Excellence in American Indian Education (H. Rept. 108–510, Pt. 1);
H.R. 3247, to provide consistent enforcement authority to the Bureau of Land Management, the National Park Service, the United States Fish and Wildlife Service, and the Forest Service to respond to violations of regulations regarding the management, use, and protection of public lands under the jurisdiction of these agencies, to clarify the purposes for which collected fines may be used, amended; referred sequentially to the House Committee on the Judiciary for a period ending not later than June 30, 2004 for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k), rule X. (Rept. 108–511, Pt. 1);
H.R. 3874, to convey for public purposes certain Federal lands in Riverside County, California, that have been identified for disposal, amended (H. Rept. 108–512); and
H.R. 2966, to preserve the use and access of pack and saddle stock animals on public lands, including wilderness areas, national monuments, and other specifically designated areas, administered by the National Park Service, the Bureau of Land Management, the United States Fish and Wildlife Service, or the Forest Service where there is a historical tradition of such use, amended (H. Rept. 108–513, Pr. 1).

Pages H3436–37

Chaplain: The prayer was offered today by Rev. Michael Bentley, Pastor, First Baptist Church in Brevard, North Carolina.

Page H3393


Page H3394

House Parliamentarian Appointed: The Speaker appointed John V. Sullivan as Parliamentarian of the House of Representatives to succeed Charles W. Johnson, resigned.

Page H3394

Expressing Gratitude to the Honorable Charles W. Johnson, Parliamentarian: The House agreed to H. Res. 651, expressing the gratitude of the House of Representatives to its Parliamentarian, the Honorable Charles W. Johnson Pages H3394–H3404


Rejected the Waxman motion to recommit the bill to the Committee on Armed Services with instructions to report it back to the House forthwith with an amendment, by a recorded vote of 202 ayes to 224 noes, Roll No. 205. (See next issue.)

The amendment in the nature of a substitute recommended by the Committee on Armed Services printed in the bill was considered as an original bill for the purpose of amendment. (See next issue.)

Pursuant to section 4 of H. Res. 648, it was agreed on Wednesday, May 19, that the Slaughter amendment (No. 14 printed in H. Rept. 108–499) be considered out of the order printed in H. Rept. 108–499. (See next issue.)

Pursuant to H. Res. 648, it was agreed on Wednesday, May 19, that certain amendments be placed in order as though printed in H. Rept. 108–499 and numbered 29, 30, 31, and 32; that
amendment numbered 13 in H. Rept. 108–499 be modified in the form that was placed at the desk; and that the amendments and the modification placed at the desk be considered as read. Page H3406

Agreed To:

Weldon of Pennsylvania (No. 4 printed in H. Rept. 108–499) amendment that was debated on Wednesday, May 19, that expresses the sense of Congress that the Secretary of Defense should assist the Iraqi Government in destroying the Abu Ghraib prison and replacing it with a modern detention facility (by a recorded vote of 308 ayes to 114 noes, Roll No. 201); Pages H3411–12

Skelton amendment (No. 14 printed in H. Rept. 108–499) that was debated on Wednesday, May 19, that requires the Secretary of Defense to develop a comprehensive policy for the Department of Defense on the prevention of and response to sexual assaults involving members of the Armed Forces and requires the DoD to take related measures to address sexual assaults involving members of the Armed Forces (by a recorded vote of 410 ayes with none voting “no,” Roll No. 202);

Hunter en bloc amendment consisting of amendments printed in H. Rept. 108–499 and numbered 10, that makes a variety of substantive changes to the bill and makes a technical cite correction; No. 12, that clarifies provisions in the bill relating to tanker procurement; No. 13, that restores funds to the Department of Energy’s Defense Site Acceleration Completion account for “Waste Incidental to Reprocessing”; No. 15, that directs the Secretary of Defense to eliminate the backlog in forensic evidence collection kits and to provide an adequate supply of forensic evidence collection kits at all domestic and overseas U.S. military installations, military academies, and theaters of operation; No. 16, that requires that sureties would be treated in the same manner as financing institutions when contractors default; No. 17, that allows procurement officials within the Department of Defense to include the creation of jobs in the United States as an evaluation factor; No. 18, that authorizes landscaping services and pest control for inclusion in the Comp Demonstration program; No. 19, that permits firefighter’s Federal Excess Property Program, administered by the U.S. Forest Service, to screen Department of Defense excess property at the same level of law enforcement, defense contractors, defense-related organizations, and humanitarians services for combating forest fires and other fire suppression purposes; No. 20, that expands the Department of Defense Excess Personal Property Disposal Program to include health agencies; No. 21, that requires the Secretary of Defense, when submitting a budget request for construction of a military medical treatment facility and the Secretary of Veteran’s Affairs when proposing construction of a new or replacement medical facility, to certify that the facility was evaluated, with the consultation of the other Secretary, for the feasibility of establishing a joint DoD–VA medical facility; No. 22, that provides authority for removal of remains of certain persons interred in United States Military Cemeteries overseas; No. 23, that requires the Secretary of Defense to study various aspects of mental health services available to U.S. military personal deployed to combat theaters and requires the Secretary to submit a report of the study; No. 24, that specifies the membership of the Board of Visitors to the United States Air Force Academy and sets certain recommendations and requirements for meetings of the Board; No. 26, that corrects an Army regulation that requires South Korea-based combat troops to be involved in 5 firefighting in order to qualify for their combat recognition medals; No. 27, that allows the Secretary of the Army to establish a Combat Service Recognition Ribbon to recognize participation in combat by members of the Army, regardless of branch; No. 28, that allows the Department of Defense, Nisqually Tribe, and Bonneville Power Administration to complete their agreement to move power lines currently crossing the Nisqually Indian Reservation to land on the Fort Lewis Army base; No. 29, that directs placement of a memorial at Arlington National Cemetery honoring noncitizen service members killed in the line of duty while serving in the U.S. Armed Forces; No. 30, that increases funds authorized for construction at Robins Air Force Base in Georgia, offset by a reduction in funds for Air Force Reserve land acquisition and construction; No. 31, that provides additional funds for the procurement of the Aircraft Wireless Intercom System and for bladefoil kits for Apache helicopters; and No. 32, that establishes a college financial assistance program for the DC National Guard; Pages H3418–27

Wamp amendment (No. 11 printed in H. Rept. 108–499) that makes changes to the Energy Employees Occupational Illness Compensation Program; and Pages H3427–29

Ryun of Kansas amendment (No. 25 printed in H. Rept. 108–499) that requires the Secretary of Defense to initiate senior officer official educational programs with Taiwan (by a recorded vote of 290 ayes to 132 noes, Roll No. 204).

Pages H3429–31 (continued next issue)

Rejected:

Kennedy of Minnesota amendment (No. 8 printed in H. Rept. 108–499) that sought to eliminate the 2-year BRAC delay containing in the bill and require that certain reports be submitted to Congress approximately six months before any potential vote
to disapprove the recommendations of the BRAC Commission in order to review and hold hearings on the report (by a recorded vote of 162 ayes to 259 noes, Roll No. 200; and

Tauscher amendment (No. 9 printed in H. Rept. 108–499) that sought to transfer funds from the Department of Energy's Robust Nuclear Earth Penetrator and Advanced Concepts programs to increase both intelligence capabilities to get at hard and deeply buried targets and improved conventional bunker-busting capabilities (by a recorded vote of 204 ayes to 214 noes, Roll No. 203).

Agreed to amend the title so as to read: to authorize appropriations for fiscal year 2005 for military activities of the Department of Energy, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

H. Res. 648, the rule providing for consideration of the bill was agreed to on Wednesday, May 19.

Agreed to amend in the nature of a substitute printed in H. Rept. 108–1167, S. 1516, and S. 1848 were referred to the Committee on Energy and Commerce; and S. 15, S. 1107, S. 1577, and S. 2178 were referred to the Committee on Resources; S. 1576 was referred to the Committee on Energy and Commerce; and S. 15, S. 1167, S. 1516, and S. 1848 were held at the desk.

H. Res. 644, the rule providing for consideration of the bill was agreed to by a voice vote.

Agreed to the Levin amendment in the nature of a substitute printed in H. Rept. 108–496 by a yea and nay vote of 187 yeas to 226 nays, Roll No. 208.

Agreed that when the House adjourns today, it adjourn to meet at 4 p.m. on Monday, May 24, unless it sooner has received a message from the Senate transmitting its concurrence in H. Con. Res. 432, in which case the House shall stand adjourned pursuant to that concurrent resolution.

Calendar Wednesday: Agreed to dispense with the Calendar Wednesday business of Wednesday, June 2.

Speaker Pro Tempore: Read a letter from the Speaker wherein he appointed Representative Gilchrest or, if not available to perform this duty, Representative Thornberry to act as Speaker pro tempore for sign enrolled bills and joint resolutions through June 1, 2004.

Presidential Messages: Read a letter from the President wherein he notified the Congress of the continuation of the national emergency protecting the Development Fund for Iraq—referred to the Committee on International Relations and ordered printed (H. Doc. 108–187); and

Read a letter from the President wherein he transmitted the 8th biennial revision (2004–2008) to the United States Arctic Research Plan—referred to the Committee on Science.

Senate Message: Message received from the Senate today appears on page H3393.

Senate Referral: S. 213, S. 524, S. 943, S. 960, S. 1107, S. 1577, and S. 2178 were referred to the Committee on Resources; S. 1576 was referred to the Committee on Energy and Commerce; and S. 15, S. 1167, S. 1516, and S. 1848 were referred to the Committee on Science.

Quorum Calls—Votes: Two yea and nay votes and eight recorded votes developed during the proceedings of today and appear on pages H3411, H3412, H3413 (continued next issue). There were no quorum calls.

Adjournment: The House met at 10 a.m. and pursuant to the provisions of H. Con. Res. 432, the House stands adjourned until 4 p.m. on Monday,
May 24, 2004, unless it sooner has received a message from the Senate transmitting its adoption of H. Con. Res. 432, in which case the House shall stand adjourned until 2 p.m. on Tuesday, June 1.

Committee Meetings

FARM SECURITY AND RURAL INVESTMENT ACT REVIEW

Committee on Agriculture: Subcommittee on General Farm Commodities and Risk Management held a hearing to review the Farm Security and Rural Investment Act of 2002. Testimony was heard from Keith Collins, Chief Economist, USDA; and public witnesses.

FOREIGN OPERATIONS, EXPORT FINANCING AND RELATED PROGRAMS APPROPRIATIONS

Committee on Appropriations: Subcommittee on Foreign Operations, Export Financing and Related Programs held a hearing on Department of the Treasury (International Affairs). Testimony was heard from John Taylor, Under Secretary, International Affairs, Department of the Treasury.

TRANSPORTATION, TREASURY, AND INDEPENDENT AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Transportation, Treasury, and Independent Agencies held a hearing on the Secretary of the Treasury. Testimony was heard from John W. Snow, Secretary of the Treasury.

EPA’S RESOURCE CONSERVATION CHALLENGE

Committee on Energy and Commerce: Subcommittee on Environment and Hazardous Materials held a hearing entitled “EPA’s Resource Conservation Challenge.” Testimony was heard from Matthew Hale, Deputy Director, Office of Solid Waste, EPA.

MEDICARE PRESCRIPTION DRUG DISCOUNT CARDS

Committee on Energy and Commerce: Subcommittee on Health held a hearing entitled “Medicare Prescription Drug Discount Cards: Immediate Savings for Seniors.” Testimony was heard from Mark B. McClellan, M.D., Administrator, Centers for Medicare and Medicaid Services, Department of Health and Human Services; and public witnesses.

OVERSIGHT—HUD’S BUDGET

Committee on Financial Services: Held an oversight hearing on the Department of Housing and Urban Development, including the Department’s budget request for fiscal year 2005. Testimony was heard from Alphonso Jackson, Secretary of Housing and Urban Development.

FEDERAL CHILD WELFARE PROGRAMS

Committee on Government Reform: Held a hearing entitled “Redundancy and Duplication in Federal Child Welfare Programs: A Case Study on the Need for Executive Reorganization Authority.” Testimony was heard from Representative DeLay; Wade Horn, Assistant Secretary for Children and Families, Department of Health and Human Services; J. Robert Flores, Administrator, Office of Juvenile Justice and Delinquency Prevention, Department of Justice; and Collien Hefferan, Administrator, Cooperative State Research, Education, and Extension Service, USDA.

“HISTORIC PRESERVATION OF THE PEOPLING OF AMERICA”

Committee on Government Reform: Subcommittee on Criminal Justice, Drug Policy and Human Resources held a hearing entitled “Historic Preservation of the Peopling of America.” Testimony was heard from Janet Snyder Matthews, Associate Director, Cultural Resources, National Park Service, Department of the Interior; and public witnesses.

OVERSIGHT—FEC AND THE 527 RULEMAKING PROCESS

Committee on House Administration: Held an oversight hearing on the Federal Election Commission and the 527 Rulemaking Process. Testimony was heard from the following officials of the Federal Election Commission: Bradley A. Smith, Chairman; Ellen L. Weintraub, Vice Chair; Scott E. Thomas and Michael Toner, both Commissioners.

ADMINISTRATIVE CONFERENCE OF THE U.S. REAUTHORIZATION

Committee on the Judiciary: Subcommittee on Commercial and Administrative Law held an oversight hearing entitled “Reauthorization of the Administrative Conference of the United States.” Testimony was heard from the following Associate Justices of the Supreme Court: Antonin Scalia and Stephen G. Beyer.

OVERSIGHT

Committee on the Judiciary: Subcommittee on Courts, Internet, and Intellectual Property held an oversight hearing entitled “Derivative Rights, Moral Rights, and Movie Filtering Technology.” Testimony was heard from public witnesses.

OVERSIGHT—DRAFT REPORT OF THE COMMISSION ON OCEAN POLICY

Committee on Resources: Held an oversight hearing on the “Draft Report of the U.S. Commission on Ocean
Policy.” Testimony was heard from ADM James D. Watkins, USN (Ret.), Chairman, U.S. Commission on Ocean Policy.

STEEL AND ALUMINUM ENERGY CONSERVATION AND TECHNOLOGY COMPETITIVENESS ACT

Committee on Science: Subcommittee on Energy held a hearing on An Examination of H.R. 3890, to reauthorize the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988. Testimony was heard from Douglas L. Faulkner, Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy, Department of Energy; and public witnesses.

REFORMING REGULATION

Committee on Small Business: Subcommittee on Regulatory Reform and Oversight held a hearing on Reforming Regulation to Keep America’s Small Businesses Competitive. Testimony was heard from Representative Hayworth; and public witnesses.

OVERTIME REGULATIONS’ EFFECT ON SMALL BUSINESS

Committee on Small Business: Subcommittee on Workforce, Empowerment, and Government Programs held a hearing on the Department of Labor’s Overtime Regulations’ Effect on Small Business. Testimony was heard from Alfred B. Robinson, Deputy Administrator, Wage and Hour Division, Department of Labor; and public witnesses.

OVERSIGHT—GREAT LAKES WATER QUALITY AND RESTORATION EFFORTS

Committee on Transportation and Infrastructure: Subcommittee on Water Resources and Environment held an oversight hearing on Great Lakes Water Quality and Restoration Efforts. Testimony was heard from Thomas V. Skinner, Manager, Great Lakes National Program Office, EPA; Gerald W. Barnes, Director of Programs, Great Lakes and Ohio River Division, U.S. Army Corps of Engineers; Stephen B. Brandt, Director, Great Lakes Environmental Research Laboratory, NOAA, Department of Commerce; R. Mack Gray, Deputy Under Secretary, Natural Resources and Environment, USDA; and Robyn Thorson, Regional Director, Midwest Region, U.S. Fish and Wildlife Service, Department of the Interior.

Hearings continue tomorrow.

SSI PROGRAM

Committee on Ways and Means: Subcommittee on Human Resources held a hearing on the SSI program. Testimony was heard from Robert E. Robertson, Director, Education, Workforce, and Income Security Issues, GAO; Patrick O’Carroll, Acting Inspector General, SSA; David Podoff, member, Social Security Advisory Board; and public witnesses.

BRIEFING—DETAINEE ISSUES RELATED TO GLOBAL WAR ON TERRORISM

Permanent Select Committee on Intelligence: Met in executive session to receive a briefing on detainee issues related to the Global War on terrorism. The Committee was briefed by MG Jeffery Miller, USA, Deputy Commander for Detainee Operations, Commander Joint Task Force 7, Department of Defense.

COMMITTEE MEETINGS FOR FRIDAY, MAY 21, 2004

Senate

No meetings/hearings scheduled.

House

Committee on Armed Services, hearing on the conduct and support of Operation Iraqi Freedom, 9 a.m., 2118 Rayburn.

Committee on Government Reform, hearing entitled “Thirsty for Results: Lessons Learned From the District of Columbia’s Lead Contamination Experience,” 10 p.m., 2154 Rayburn.

Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, to continue oversight hearings on Great Lakes Water Quality and Restoration Efforts, 10 a.m., 2167 Rayburn.
Next Meeting of the SENATE
9:30 a.m., Friday, May 21

Senate Chamber

Program for Friday: Senate will continue consideration of S. 2400, Department of Defense Reauthorization Act.

Next Meeting of the HOUSE OF REPRESENTATIVES
2 p.m., Tuesday, June 1

House Chamber

Program for Tuesday: To be announced.

Extensions of Remarks, as inserted in this issue

HOUSE

Alexander, Rodney, La., E925, E927
Baca, Joe, Calif., E926, E928
Berman, Howard L., Calif., E926, E928
Hinojosa, Ruben, Tex., E925, E927
Renzi, Rick, Ariz., E926, E927
Smith, Nick, Mich., E925, E926

(House proceedings for today will be continued in the next issue of the Record.)