

of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

SA 4060. Mr. SESSIONS (for Mr. ROBERTS (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2386, *supra*.

SA 4061. Ms. LANDRIEU (for herself, Mr. BOND, Mr. JEFFORDS, Mrs. MURRAY, Mr. GRAHAM of South Carolina, Mr. ROCKEFELLER, Mr. SESSIONS, Mr. NELSON of Florida, Mr. WARNER, Mr. DURBIN, Mr. KERRY, Mrs. BOXER, and Ms. MIKULSKI) proposed an amendment to the bill H.R. 1779, to amend the Internal Revenue Code of 1986 to allow penalty-free withdrawals from retirement plans during the period that a military reservist or national guardsman is called to active duty for an extended period, and for other purposes.

SA 4062. Mr. FRIST (for Mr. CONRAD) proposed an amendment to the concurrent resolution S. Con. Res. 136, honoring and memorializing the passengers and crew of United Airlines Flight 93.

SA 4063. Mr. FRIST (for Mr. FITZGERALD) proposed an amendment to the bill S. 2688, to provide for a report of Federal entities without annually audited financial statements.

SA 4064. Mr. FRIST (for Mr. LIEBERMAN) proposed an amendment to the bill S. 2691, to establish the Long Island Sound Stewardship Initiative.

SA 4065. Mr. FRIST (for Mr. SMITH) proposed an amendment to the concurrent resolution S. Con. Res. 113, recognizing the importance of early diagnosis, proper treatment, and enhanced public awareness of Tourette Syndrome and supporting the goals and ideals of National Tourette Syndrome Awareness Month.

SA 4066. Mr. FRIST (for Mr. SMITH) proposed an amendment to the concurrent resolution S. Con. Res. 113, *supra*.

SA 4067. Mr. FRIST (for Mr. SMITH) proposed an amendment to the concurrent resolution S. Con. Res. 113, *supra*.

#### TEXT OF AMENDMENTS

**SA 4058.** Mr. SESSIONS (for Mrs. FEINSTEIN) proposed an amendment to the bill S. 1129, to provide for the protection of unaccompanied alien children, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

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

(a) **SHORT TITLE.**—This Act may be cited as the “Unaccompanied Alien Child Protection Act of 2004”.

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

Sec. 1. Short title; table of contents.  
Sec. 2. Definitions.

#### TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

Sec. 101. Procedures when encountering unaccompanied alien children.

Sec. 102. Family reunification for unaccompanied alien children with relatives in the United States.

Sec. 103. Appropriate conditions for detention of unaccompanied alien children.

Sec. 104. Repatriated unaccompanied alien children.

Sec. 105. Establishing the age of an unaccompanied alien child.

Sec. 106. Effective date.

#### TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL

Sec. 201. Guardians ad litem.

Sec. 202. Counsel.

Sec. 203. Effective date; applicability.

#### TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

Sec. 301. Special immigrant juvenile visa.

Sec. 302. Training for officials and certain private parties who come into contact with unaccompanied alien children.

Sec. 303. Report.

Sec. 304. Effective date.

#### TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

Sec. 401. Guidelines for children’s asylum claims.

Sec. 402. Unaccompanied refugee children.

Sec. 403. Exceptions for unaccompanied alien children in asylum and refugee-like circumstances.

#### TITLE V—AUTHORIZATION OF APPROPRIATIONS

Sec. 501. Authorization of appropriations.

#### TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

Sec. 601. Additional responsibilities and powers of the Office of Refugee Resettlement with respect to unaccompanied alien children.

Sec. 602. Technical corrections.

Sec. 603. Effective date.

#### SEC. 2. DEFINITIONS.

(a) **IN GENERAL.**—In this Act:

(1) **COMPETENT.**—The term “competent”, in reference to counsel, means an attorney who complies with the duties set forth in this Act and—

(A) is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia;

(B) is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting the attorney in the practice of law; and

(C) is properly qualified to handle matters involving unaccompanied immigrant children or is working under the auspices of a qualified nonprofit organization that is experienced in handling such matters.

(2) **DIRECTOR.**—The term “Director” means the Director of the Office.

(3) **DIRECTORATE.**—The term “Directorate” means the Directorate of Border and Transportation Security established by section 401 of the Homeland Security Act of 2002 (6 U.S.C. 201).

(4) **OFFICE.**—The term “Office” means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act (8 U.S.C. 1521).

(5) **SECRETARY.**—The term “Secretary” means the Secretary of Homeland Security.

(6) **UNACCOMPANIED ALIEN CHILD.**—The term “unaccompanied alien child” has the same meaning as is given the term in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)).

(7) **VOLUNTARY AGENCY.**—The term “voluntary agency” means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children, as certified by the Director of the Office of Refugee Resettlement.

(b) **AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.**—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

“(51) The term ‘unaccompanied alien child’ means a child who—

“(A) has no lawful immigration status in the United States;

“(B) has not attained the age of 18; and

“(C) with respect to whom—

“(i) there is no parent or legal guardian in the United States; or

“(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

“(52) The term ‘unaccompanied refugee children’ means persons described in paragraph (42) who—

“(A) have not attained the age of 18; and

“(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.”.

(c) **RULE OF CONSTRUCTION.**—A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

#### TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

##### SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) **UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.**—

(1) **IN GENERAL.**—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the officer shall—

(A) permit such child to withdraw the child’s application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and

(B) return such child to the child’s country of nationality or country of last habitual residence.

(2) **SPECIAL RULE FOR CONTIGUOUS COUNTRIES.**—

(A) **IN GENERAL.**—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), if a determination is made on a case-by-case basis that—

(i) such child is a national or habitual resident of a country described in subparagraph (A);

(ii) such child does not have a fear of returning to the child’s country of nationality or country of last habitual residence owing to a fear of persecution;

(iii) the return of such child to the child’s country of nationality or country of last habitual residence would not endanger the life or safety of such child; and

(iv) the child is able to make an independent decision to withdraw the child’s application for admission due to age or other lack of capacity.

(B) **RIGHT OF CONSULTATION.**—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child’s country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right in the child’s native language.

(3) **RULE FOR APPREHENSIONS AT THE BORDER.**—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

(b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subparagraphs (B) and (C) and subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of an unaccompanied alien child if the Secretary has substantial evidence, based on an individualized determination, that such child could personally endanger the national security of the United States.

(D) TRAFFICKING VICTIMS.—For purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) and this Act, an unaccompanied alien child who is eligible for services authorized under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386), shall be considered to be in the custody of the Office.

(2) NOTIFICATION.—

(A) IN GENERAL.—The Secretary shall promptly notify the Office upon—

(i) the apprehension of an unaccompanied alien child;

(ii) the discovery that an alien in the custody of the Directorate is an unaccompanied alien child;

(iii) any claim by an alien in the custody of the Directorate that such alien is under the age of 18; or

(iv) any suspicion that an alien in the custody of the Directorate who has claimed to be over the age of 18 is actually under the age of 18.

(B) SPECIAL RULE.—In the case of an alien described in clause (iii) or (iv) of subparagraph (A), the Director shall make an age determination in accordance with section 105 and take whatever other steps are necessary to determine whether or not such alien is eligible for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in subparagraph (B) or (C) of paragraph (1), not later than 72 hours after a determination is made that such child is an unaccompanied alien child;

(ii) in the case of a child whose custody and care has been retained or assumed by the Directorate pursuant to subparagraph (B) or (C) of paragraph (1), immediately following a determination that the child no longer meets the description set forth in such subparagraphs; or

(iii) in the case of a child who was previously released to an individual or entity described in section 102(a)(1), upon a determination by the Director that such individual or entity is no longer able to care for the child.

(B) TRANSFER TO THE DIRECTORATE.—Upon determining that a child in the custody of the Office is described in subparagraph (B) or

(C) of paragraph (1), the Director shall transfer the care and custody of such child to the Directorate.

(C) PROMPTNESS OF TRANSFER.—In the event of a need to transfer a child under this paragraph, the sending office shall make prompt arrangements to transfer such child and the receiving office shall make prompt arrangements to receive such child.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about the age of such alien would affect the alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act, a determination of whether or not such alien meets such age requirements shall be made by the Director in accordance with section 105.

**SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.**

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the discretion of the Director under section 462(b)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(2)) and under paragraph (4) of this subsection and section 103(a)(2) of this Act, an unaccompanied alien child in the custody of the Office shall be promptly placed with 1 of the following individuals or entities in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An individual or entity designated by the parent or legal guardian that is capable and willing to care for the well-being of the child.

(E) A State-licensed juvenile shelter, group home, or foster care program willing to accept physical custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the Office shall decide who is a qualified adult or entity and promulgate regulations in accordance with such decision.

(2) SUITABILITY ASSESSMENT.—Notwithstanding paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid suitability assessment conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such an assessment, or by an appropriate voluntary agency contracted with the Office to conduct such assessments has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Program of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—

(A) POLICIES AND PROGRAMS.—

(i) IN GENERAL.—The Director shall establish policies and programs to ensure that unaccompanied alien children are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

(ii) WITNESS PROTECTION PROGRAMS INCLUDED.—The programs established pursuant to clause (i) may include witness protection programs.

(B) CRIMINAL INVESTIGATIONS AND PROSECUTIONS.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects any individual of being involved in any activity described in subparagraph (A) shall report such individual to Federal or State prosecutors for criminal investigation and prosecution.

(C) DISCIPLINARY ACTION.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects an attorney of being involved in any activity described in subparagraph (A) shall report the individual to the State bar association of which the attorney is a member, or to other appropriate disciplinary authorities, for appropriate disciplinary action that may include private or public admonition or censure, suspension, or disbarment of the attorney from the practice of law.

(5) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director may make grants to, and enter into contracts with, voluntary agencies to carry out section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or to carry out this section.

(6) REIMBURSEMENT OF STATE EXPENSES.—Subject to the availability of appropriations, the Director may reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person described in subparagraphs (A), (B), and (C) of subsection (a)(1) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

(c) REQUIRED DISCLOSURE.—The Secretary of Health and Human Services or the Secretary of Homeland Security shall provide the information furnished under this section, and any other information derived from such furnished information, to—

(1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or

(2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(d) PENALTY.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than \$10,000.

**SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.**

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not

be placed in an adult detention facility or a facility housing delinquent children.

(2) **DETENTION IN APPROPRIATE FACILITIES.**—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) **STATE LICENSURE.**—In the case of a placement of a child with an entity described in section 102(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) **CONDITIONS OF DETENTION.**—

(A) **IN GENERAL.**—The Director and the Secretary of Homeland Security shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma, physical and sexual violence, or abuse;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) **NOTIFICATION OF CHILDREN.**—Regulations promulgated in accordance with subparagraph (A) shall provide that all children are notified orally and in writing of such standards in the child's native language.

(b) **PROHIBITION OF CERTAIN PRACTICES.**—The Director and the Secretary shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under *Flores v. Reno*.

**SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.**

(a) **COUNTRY CONDITIONS.**—

(1) **SENSE OF CONGRESS.**—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party, and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) **ASSESSMENT OF CONDITIONS.**—

(A) **IN GENERAL.**—The Secretary of State shall include each year in the State Department Country Report on Human Rights, an assessment of the degree to which each country protects children from smugglers and traffickers.

(B) **FACTORS FOR ASSESSMENT.**—The Directorate shall consult the State Department Country Report on Human Rights and the Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.

(b) **REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.**—

(1) **IN GENERAL.**—Not later than 18 months after the date of enactment of this Act, and

annually thereafter, the Secretary of Homeland Security shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate on efforts to repatriate unaccompanied alien children.

(2) **CONTENTS.**—The report submitted under paragraph (1) shall include, at a minimum, the following information:

(A) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(B) A description of the type of immigration relief sought and denied to such children.

(C) A statement of the nationalities, ages, and gender of such children.

(D) A description of the procedures used to effect the removal of such children from the United States.

(E) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(F) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

**SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.**

(a) **IN GENERAL.**—The Director shall develop procedures to make a prompt determination of the age of an alien in the custody of the Department of Homeland Security or the Office, when the age of the alien is at issue. Such procedures shall permit the presentation of multiple forms of evidence, including testimony of the child, to determine the age of the unaccompanied alien for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge. The Secretary of Homeland Security shall permit the Office to have reasonable access to aliens in the custody of the Secretary so as to ensure a prompt determination of the age of such alien.

(b) **PROHIBITION ON SOLE MEANS OF DETERMINING AGE.**—Neither radiographs nor the attestation of an alien shall be used as the sole means of determining age for the purposes of determining an alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(c) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to place the burden of proof in determining the age of an alien on the government.

**SEC. 106. EFFECTIVE DATE.**

This title shall take effect 90 days after the date of enactment of this Act.

**TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL**

**SEC. 201. GUARDIANS AD LITEM.**

(a) **ESTABLISHMENT OF GUARDIAN AD LITEM PROGRAM.**—

(1) **APPOINTMENT.**—The Director may, in the Director's discretion, appoint a guardian ad litem who meets the qualifications described in paragraph (2) for an unaccompanied alien child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) **QUALIFICATIONS OF GUARDIAN AD LITEM.**—

(A) **IN GENERAL.**—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) **PROHIBITION.**—A guardian ad litem shall not be an employee of the Directorate, the Office, or the Executive Office for Immigration Review.

(3) **DUTIES.**—The guardian ad litem shall—  
(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) take reasonable steps to ensure that the best interests of the child are promoted while the child participates in, or is subject to, proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

(F) take reasonable steps to ensure that the child understands the nature of the legal proceedings or matters and determinations made by the court, and ensure that all information is conveyed in an age-appropriate manner; and

(G) report factual findings relating to—

(i) information gathered pursuant to subparagraph (B);

(ii) the care and placement of the child during the pendency of the proceedings or matters; and

(iii) any other information gathered pursuant to subparagraph (D).

(4) **TERMINATION OF APPOINTMENT.**—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed;

(B) the child departs the United States;

(C) the child is granted permanent resident status in the United States;

(D) the child attains the age of 18; or

(E) the child is placed in the custody of a parent or legal guardian; whichever occurs first.

(5) **POWERS.**—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings or interviews involving the child that are held in connection with proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), and shall be given a reasonable opportunity to be present at such hearings or interviews;

(E) shall be permitted to consult with the child during any hearing or interview involving such child; and

(F) shall be provided at least 24 hours advance notice of a transfer of that child to a different placement, absent compelling and unusual circumstances warranting the transfer of such child prior to notification.

(b) **TRAINING.**—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the—

(1) circumstances and conditions that unaccompanied alien children face; and

(2) various immigration benefits for which such alien child might be eligible.

(c) **PILOT PROGRAM.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Director shall establish and begin to carry

out a pilot program to test the implementation of subsection (A).

(2) **PURPOSE.**—The purpose of the pilot program established pursuant to paragraph (1) is to—

(A) study and assess the benefits of providing guardians ad litem to assist unaccompanied alien children involved in immigration proceedings or matters;

(B) assess the most efficient and cost-effective means of implementing the guardian ad litem provisions in this section; and

(C) assess the feasibility of implementing such provisions on a nationwide basis for all unaccompanied alien children in the care of the Office.

(3) **SCOPE OF PROGRAM.**—

(A) **SELECTION OF SITE.**—The Director shall select 3 sites in which to operate the pilot program established pursuant to paragraph (1).

(B) **NUMBER OF CHILDREN.**—To the greatest extent possible, each site selected under subparagraph (A) should have at least 25 children held in immigration custody at any given time.

(4) **REPORT TO CONGRESS.**—Not later than 1 year after the date on which the first pilot program is established pursuant to paragraph (1), the Director shall report to the Committees on the Judiciary of the Senate and the House of Representatives on subparagraphs (A) through (C) of paragraph (2).

#### **SEC. 202. COUNSEL.**

(a) **ACCESS TO COUNSEL.**—

(1) **IN GENERAL.**—The Director shall ensure that all unaccompanied alien children in the custody of the Office, or in the custody of the Directorate, who are not described in section 101(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) **PRO BONO REPRESENTATION.**—To the maximum extent practicable, the Director shall utilize the services of competent pro bono counsel who agree to provide representation to such children without charge. To the maximum extent practicable, the Director shall ensure that placements made under subparagraphs (D), (E), and (F) of section 102(a)(1) are in cities where there is a demonstrated capacity for competent pro bono representation.

(3) **DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.**—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(4) **CONTRACTING AND GRANT MAKING AUTHORITY.**—

(A) **IN GENERAL.**—The Director shall enter into contracts with or make grants to nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out the responsibilities of this Act, including but not limited to such activities as providing legal orientation, screening cases for referral, recruiting, training, and overseeing pro bono attorneys. Nonprofit agencies may enter into subcontracts with or make grants to private voluntary agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) **CONSIDERATIONS REGARDING GRANTS AND CONTRACTS.**—In making grants and entering into contracts with agencies in accordance with subparagraph (A), the Director shall take into consideration whether the agencies in question are capable of properly administering the services covered by such grants or contracts without an undue conflict of interest.

(5) **MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.**—

(A) **DEVELOPMENT OF GUIDELINES.**—The Executive Office for Immigration Review, in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings based on the children's asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

(B) **PURPOSE OF GUIDELINES.**—The guidelines developed in accordance with subparagraph (A) shall be designed to help protect a child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

(C) **IMPLEMENTATION.**—The Executive Office for Immigration Review shall adopt the guidelines developed in accordance with subparagraph (A) and submit them for adoption by national, State, and local bar associations.

(b) **DUTIES.**—Counsel shall—

(1) represent the unaccompanied alien child in all proceedings and matters relating to the immigration status of the child or other actions involving the Directorate;

(2) appear in person for all individual merits hearings before the Executive Office for Immigration Review and interviews involving the Directorate; and

(3) owe the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

(c) **ACCESS TO CHILD.**—

(1) **IN GENERAL.**—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) **RESTRICTION ON TRANSFERS.**—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(d) **NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.**—

(1) **IN GENERAL.**—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) **OPPORTUNITY TO CONSULT WITH COUNSEL.**—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(e) **ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.**—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

#### **SEC. 203. EFFECTIVE DATE; APPLICABILITY.**

(a) **EFFECTIVE DATE.**—This title shall take effect 180 days after the date of enactment of this Act.

(b) **APPLICABILITY.**—The provisions of this title shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this title.

### **TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN**

#### **SEC. 301. SPECIAL IMMIGRANT JUVENILE VISA.**

(a) **J VISA.**—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

“(J) an immigrant who is 18 years of age and under on the date of application who is present in the United States—

“(i) who by a court order, which shall be binding on the Secretary of Homeland Security for purposes of adjudications under this subparagraph, was declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State or juvenile court located in the United States, due to abuse, neglect, or abandonment, or a similar basis found under State law;

“(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

“(iii) with respect to a child in Federal custody, for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Director of the Bureau of Citizenship and Immigration Services that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien; except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;”.

(b) **ADJUSTMENT OF STATUS.**—Section 245(h)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)(A)) is amended to read as follows:

“(A) paragraphs (4), (5)(A), (6)(A), and (7) of section 212(a) shall not apply; and”.

(c) **ELIGIBILITY FOR ASSISTANCE.**—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), shall be eligible for all funds made available under section 412(d) of that Act (8 U.S.C. 1522(d)) until such time as the child attains the age designated in section 412(d)(2)(B) of that Act (8 U.S.C. 1522(d)(2)(B)), or until the child is placed in a permanent adoptive home, whichever occurs first.

(d) **TRANSITION RULE.**—Notwithstanding any other provision of law, any child described in section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) who filed an application for a visa before the date of enactment of this Act and who was 19, 20, or 21 years of age on the date such application was filed shall not be denied a visa after the date of enactment of this Act because of such alien's age.

#### **SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.**

(a) **TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.**—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a

core curriculum that can be incorporated into education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF DIRECTORATE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Directorate who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States borders or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 101(a)(2).

**SEC. 303. REPORT.**

Not later than 1 year after the date of enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall submit a report for the previous fiscal year to the Committees on the Judiciary of the House of Representatives and the Senate that contains—

(1) data related to the implementation of section 462 of the Homeland Security Act (6 U.S.C. 279);

(2) data regarding the care and placement of children in accordance with this Act;

(3) data regarding the provision of guardian ad litem and counsel services in accordance with this Act; and

(4) any other information that the Director or the Secretary of Health and Human Services determines to be appropriate.

**SEC. 304. EFFECTIVE DATE.**

The amendment made by section 301 shall apply to all aliens who were in the United States before, on, or after the date of enactment of this Act.

**TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS**

**SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.**

(a) SENSE OF CONGRESS.—Congress commends the Immigration and Naturalization Service for its issuance of its "Guidelines for Children's Asylum Claims", dated December 1998, and encourages and supports the implementation of such guidelines by the Immigration and Naturalization Service (and its successor entities) in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice to adopt the "Guidelines for Children's Asylum Claims" in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary shall provide periodic comprehensive training under the "Guidelines for Children's Asylum Claims" to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

**SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.**

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) of the Immigration and Nationality Act (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

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

"(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region, which shall include an assessment of—

"(A) the number of unaccompanied refugee children, by region;

"(B) the capacity of the Department of State to identify such refugees;

"(C) the capacity of the international community to care for and protect such refugees;

"(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

"(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

"(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible."

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) of the Immigration and Nationality Act (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking "and" after "countries,"; and

(2) inserting before the period at the end the following: ", and instruction on the needs of unaccompanied refugee children".

**SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHILDREN IN ASYLUM AND REFUGEE-LIKE CIRCUMSTANCES.**

(a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any unaccompanied alien child apprehended by the Directorate, except for an unaccompanied alien child subject to exceptions under paragraph 1(A) or (2) of section 101(a) of this Act, shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(b) EXCEPTION FROM TIME LIMIT FOR FILING ASYLUM APPLICATION.—Section 208(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended by adding at the end the following:

"(E) APPLICABILITY.—Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child as defined in section 101(a)(51)."

**TITLE V—AUTHORIZATION OF APPROPRIATIONS**

**SEC. 501. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security, the Department of Justice, and the Department of Health and Human Services, such sums as may be necessary to carry out—

(1) section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279); and

(2) this Act.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

**TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002**

**SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.**

(a) ADDITIONAL RESPONSIBILITIES OF THE DIRECTOR.—Section 462(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)) is amended—

(1) in subparagraph (K), by striking "and" at the end;

(2) in subparagraph (L), by striking the period at the end and inserting ", including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements; and"; and

(3) by adding at the end the following:

"(M) ensuring minimum standards of care for all unaccompanied alien children—

"(i) for whom detention is necessary; and

"(ii) who reside in settings that are alternative to detention."

(b) ADDITIONAL POWERS OF THE DIRECTOR.—Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)) is amended by adding at the end the following:

"(4) POWERS.—In carrying out the duties under paragraph (3), the Director shall have the power to—

"(A) contract with service providers to perform the services described in sections 102, 103, 201, and 202 of the Unaccompanied Alien Child Protection Act of 2004; and

"(B) compel compliance with the terms and conditions set forth in section 103 of the Unaccompanied Alien Child Protection Act of 2004, including the power to—

"(i) declare providers to be in breach and seek damages for noncompliance;

"(ii) terminate the contracts of providers that are not in compliance with such conditions; and

"(iii) reassign any unaccompanied alien child to a similar facility that is in compliance with such section."

**SEC. 602. TECHNICAL CORRECTIONS.**

Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)), as amended by section 601, is amended—

(1) in paragraph (3), by striking "paragraph (1)(G)" and inserting "paragraph (1)"; and

(2) by adding at the end the following:

"(5) STATUTORY CONSTRUCTION.—Nothing in paragraph (2)(B) may be construed to require that a bond be posted for unaccompanied alien children who are released to a qualified sponsor."

**SEC. 603. EFFECTIVE DATE.**

The amendments made by this title shall take effect as if enacted as part of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.).

**SA 4059.** Mr. SESSIONS (for Mr. ROBERTS (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2386, to authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; as follows:

On page 16, strike lines 1 through 16.

**SA 4060.** Mr. SESSIONS (for Mr. ROBERTS (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2386, to authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; as follows:

On page 9, line 16, add at the end the following: "Such funds shall remain available until September 30, 2005."

On page 16, between lines 16 and 17, insert the following:

**SEC. 307. INTELLIGENCE ASSESSMENT ON SANCTUARIES FOR TERRORISTS.**

(a) ASSESSMENT REQUIRED.—Not later than the date specified in subsection (b), the Director of Central Intelligence shall submit to Congress an intelligence assessment that identifies and describes each country or region that is a sanctuary for terrorists or terrorist organizations. The assessment shall be based on current all-source intelligence.

(b) SUBMITTAL DATE.—The date of the submission of the intelligence assessment required by subsection (a) shall be the earlier of—

(1) the date that is six months after the date of the enactment of this Act; or

(2) June 1, 2005.

**SEC. 308. ADDITIONAL EXTENSION OF DEADLINE FOR FINAL REPORT OF THE NATIONAL COMMISSION FOR THE REVIEW OF THE RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY.**

Section 1007(a) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107-306; 50 U.S.C. 401 note) is amended by striking “September 1, 2004” and inserting “September 1, 2005”.

**SEC. 309. FOUR-YEAR EXTENSION OF PUBLIC INTEREST DECLASSIFICATION BOARD.**

Section 710(b) of the Public Interest Declassification Act of 2000 (title VII of Public Law 106-567; 114 Stat. 2856; 50 U.S.C. 435 note) is amended by striking “4 years” and inserting “8 years”.

On page 19, strike lines 7 through 15 and insert the following:

“(1) IN GENERAL.—The Director may establish and administer a nonofficial cover employee retirement system for designated employees (and the spouse, former spouses, and survivors of such designated employees). A des-

On page 21, strike line 18 and all that follows through page 22, line 1, and insert the following:

“(iii) in the case of a designated employee who participated in an employee investment retirement system established under paragraph (1) and is converted to coverage under subchapter III of chapter 84 of title 5, United States Code, the Director may transmit any or all amounts of that designated employee in that employee investment retirement system (or similar

On page 22, strike line 24 and all that follows through page 23, line 5, and insert the following:

“(1) IN GENERAL.—The Director may establish and administer a nonofficial cover employee health insurance program for designated employees (and the family of such designated employees). A designated employee

On page 25, strike lines 6 through 12 and insert the following:

“(1) IN GENERAL.—The Director may establish and administer a nonofficial cover employee life insurance program for designated employees (and the family of such designated employees). A designated employee may not

On page 27, line 8, strike “(B)(iii)” and insert “(B)(iv)”.

On page 30, strike lines 10 through 16.

**SA 4061.** Ms. LANDRIEU (for herself, Mr. BOND, Mr. JEFFORDS, Mrs. MURRAY, Mr. GRAHAM of South Carolina, Mr. ROCKEFELLER, Mr. SESSIONS, Mr. NELSON of Florida, Mr. WARNER, Mr. DURBIN, Mr. KERRY, Mrs. BOXER, and Ms. MIKULSKI) proposed an amendment to the bill H.R. 1779, to amend the Internal Revenue Code of 1986 to allow penalty-free withdrawals from retirement plans during the period that a military reservist or national guardsman is called to active duty for an extended period, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Guardsmen and Reservists Financial Relief Act of 2004”.

**SEC. 2. PENALTY-FREE WITHDRAWALS FROM RETIREMENT PLANS FOR INDIVIDUALS CALLED TO ACTIVE DUTY FOR AT LEAST 179 DAYS.**

(a) IN GENERAL.—Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 (re-

lating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new subparagraph:

“(G) DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY.—

“(i) IN GENERAL.—Any qualified reservist distribution.

“(ii) QUALIFIED RESERVIST DISTRIBUTION.—For purposes of this subparagraph, the term ‘qualified reservist distribution’ means any distribution to an individual if—

“(I) such distribution is from any qualified retirement plan (as defined in section 4974(c)),

“(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)), ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

“(III) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

“(iii) APPLICATION OF SUBPARAGRAPH.—This subparagraph applies to individuals ordered or called to active duty after September 11, 2001, and before September 12, 2005.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after September 11, 2001.

**SEC. 3. INCOME TAX WITHHOLDING ON DIFFERENTIAL WAGE PAYMENTS.**

(a) IN GENERAL.—Section 3401 of the Internal Revenue Code of 1986 (relating to definitions) is amended by adding at the end the following new subsection:

“(i) DIFFERENTIAL WAGE PAYMENTS TO ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.—

“(1) IN GENERAL.—For purposes of subsection (a), any differential wage payment shall be treated as a payment of wages by the employer to the employee.

“(2) DIFFERENTIAL WAGE PAYMENT.—For purposes of paragraph (1), the term ‘differential wage payment’ means any payment which—

“(A) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services while on active duty for a period of more than 30 days, and

“(B) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to remuneration paid after December 31, 2004.

**SEC. 4. TREATMENT OF DIFFERENTIAL WAGE PAYMENTS FOR RETIREMENT PLAN PURPOSES.**

(a) PENSION PLANS.—

(1) IN GENERAL.—Section 414(u) of the Internal Revenue Code of 1986 (relating to special rules relating to veterans’ reemployment rights under USERRA) is amended by adding at the end the following new paragraph:

“(11) TREATMENT OF DIFFERENTIAL WAGE PAYMENTS.—

“(A) IN GENERAL.—Except as provided in this paragraph, for purposes of applying this title to a retirement plan to which this subsection applies—

“(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

“(ii) the differential wage payment shall be treated as compensation, and

“(iii) the plan shall not be treated as failing to meet the requirements of any provision described in paragraph (1)(C) by reason of any contribution which is based on the differential wage payment.

“(B) SPECIAL RULE FOR DISTRIBUTIONS.—

“(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), for purposes of section 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), or 457(d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401(i)(2)(A).

“(ii) LIMITATION.—If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

“(C) NONDISCRIMINATION REQUIREMENT.—Subparagraph (A)(iii) shall apply only if all employees of an employer performing service in the uniformed services described in section 3401(i)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5), of section 410(b) shall apply.

“(D) DIFFERENTIAL WAGE PAYMENT.—For purposes of this paragraph, the term ‘differential wage payment’ has the meaning given such term by section 3401(i)(2).”.

(2) CONFORMING AMENDMENT.—The heading for section 414(u) of such Code is amended by inserting “AND TO DIFFERENTIAL WAGE PAYMENTS TO MEMBERS ON ACTIVE DUTY” after “USERRA”.

(b) DIFFERENTIAL WAGE PAYMENTS TREATED AS COMPENSATION FOR INDIVIDUAL RETIREMENT PLANS.—Section 219(f)(1) of the Internal Revenue Code of 1986 (defining compensation) is amended by adding at the end the following new sentence: “The term ‘compensation’ includes any differential wage payment (as defined in section 3401(i)(2)).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2004.

(d) PROVISIONS RELATING TO PLAN AMENDMENTS.—

(1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment—

(A) such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i), and

(B) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of the Internal Revenue Code of 1986 or the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(2) AMENDMENTS TO WHICH SECTION APPLIES.—

(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

(i) pursuant to any amendment made by this section, and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2007.

(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and

(ii) such plan or contract amendment applies retroactively for such period.

**SEC. 5. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT AND READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.**

(a) READY RESERVE-NATIONAL GUARD CREDIT.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business-related credits) is amended by inserting after section 45I the following new section:

**“SEC. 45J. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT.**

“(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible taxpayer, the Ready Reserve-National Guard employee credit determined under this section for any taxable year with respect to each Ready Reserve-National Guard employee of such taxpayer is an amount equal to 50 percent of the lesser of—

“(1) the actual compensation amount with respect to such employee for such taxable year, or

“(2) \$30,000.

“(b) DEFINITION OF ACTUAL COMPENSATION AMOUNT.—For purposes of this section, the term ‘actual compensation amount’ means the amount of compensation paid or incurred by an eligible taxpayer with respect to a Ready Reserve-National Guard employee on any day when the employee was absent from employment for the purpose of performing qualified active duty.

“(c) LIMITATIONS.—No credit shall be allowed with respect to any day that a Ready Reserve-National Guard employee who performs qualified active duty was not scheduled to work (for reason other than to participate in qualified active duty).

“(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) ELIGIBLE TAXPAYER.—

“(A) IN GENERAL.—The term ‘eligible taxpayer’ means a small business employer.

“(B) SMALL BUSINESS EMPLOYER.—

“(i) IN GENERAL.—The term ‘small business employer’ means, with respect to any taxable year, any employer who employed an average of 50 or fewer employees on business days during such taxable year.

“(ii) CONTROLLED GROUPS.—For purposes of clause (i), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

“(2) QUALIFIED ACTIVE DUTY.—The term ‘qualified active duty’ means—

“(A) active duty under an order or call for a period in excess of 179 days or for an indefinite period, other than the training duty specified in section 10147 of title 10, United States Code (relating to training requirements for the Ready Reserve), or section 502(a) of title 32, United States Code (relating to required drills and field exercises for the National Guard), in connection with which an employee is entitled to reemployment rights and other benefits or to a leave of absence from employment under chapter 43 of title 38, United States Code, and

“(B) hospitalization incident to such duty.

“(3) COMPENSATION.—The term ‘compensation’ means any remuneration for employment, whether in cash or in kind, which is paid or incurred by a taxpayer and which is deductible from the taxpayer’s gross income under section 162(a)(1).

“(4) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term ‘Ready Reserve-National Guard employee’ means an employee who is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as described in sections 10142 and 10101 of title 10, United States Code.

“(5) CERTAIN RULES TO APPLY.—Rules similar to the rules of section 52 shall apply.

“(e) TERMINATION.—This section shall not apply to any amount paid or incurred after December 31, 2005.”.

(2) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 of the Internal Revenue Code of 1986 (relating to general business credit) is amended by striking “plus” at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting “, plus”, and by adding at the end the following:

“(20) the Ready Reserve-National Guard employee credit determined under section 45J(a).”.

(3) DENIAL OF DOUBLE BENEFIT.—Section 280C(a) of the Internal Revenue Code of 1986 (relating to rule for employment credits) is amended by inserting “45J(a),” after “45A(a).”.

(4) CONFORMING AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 45I the following:

“Sec. 45J. Ready Reserve-National Guard employee credit.”.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after September 30, 2004, in taxable years ending after such date.

(b) READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.—

(1) IN GENERAL.—Paragraph (1) of section 51(d) of the Internal Revenue Code of 1986 (relating to members of targeted groups) is amended by striking “or” at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting “, or” and by adding at the end the following new subparagraph:

“(I) a qualified replacement employee.”.

(2) QUALIFIED REPLACEMENT EMPLOYEE.—Section 51(d) of the Internal Revenue Code of 1986 is amended by redesignating paragraphs (10), (11), and (12) as paragraphs (11), (12), and (13), respectively, and by inserting after paragraph (9) the following new paragraph:

“(10) QUALIFIED REPLACEMENT EMPLOYEE.—

“(A) IN GENERAL.—The term ‘qualified replacement employee’ means an individual who is certified by the designated local agency as being hired by an eligible taxpayer to replace a Ready Reserve-National Guard employee of such taxpayer, but only with respect to the period during which such Ready Reserve-National Guard employee participates in qualified active duty, including time spent in travel status.

“(B) GENERAL DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

“(i) ELIGIBLE TAXPAYER.—The term ‘eligible taxpayer’ means a small business employer.

“(ii) SMALL BUSINESS EMPLOYER.—

“(I) IN GENERAL.—The term ‘small business employer’ means, with respect to any taxable year, any employer who employed an average of 50 or fewer employees on business days during such taxable year.

“(II) CONTROLLED GROUPS.—For purposes of subclause (I), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

“(iii) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term ‘Ready Reserve-National Guard employee’ has the meaning given such term by section 45J(d)(3).

“(iv) QUALIFIED ACTIVE DUTY.—The term ‘qualified active duty’ has the meaning given such term by section 45J(d)(1).

“(C) DISALLOWANCE FOR FAILURE TO COMPLY WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—No credit shall be allowed under subsection

(a) by reason of paragraph (1)(I) to a taxpayer for—

“(i) any taxable year, beginning after the date of the enactment of this section, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of such title, and

“(ii) the 2 succeeding taxable years.”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred to an individual who begins work for the employer after September 30, 2004.

(c) STUDY BY GAO.—

(1) IN GENERAL.—The Comptroller General of the United States shall study the following:

(A) What, if any, problems exist in recruiting individuals for a reserve component of an Armed Force of the United States.

(B) What, if any, problems exist as the result of providing differential wage payments (as defined in section 3401(i)(2) of the Internal Revenue Code of 1986 (as added by this Act)) to individuals described in subparagraph (A) in the recruitment and retention of individuals as regular members of the Armed Forces of the United States.

(C) Whether the credit allowed under section 45J of the Internal Revenue Code of 1986 (as added by this section) is an effective incentive for the hiring and retention of employees who are individuals described in subparagraph (A) and whether there exists any compliance problems in the administration of such credit.

(2) REPORT.—The Comptroller General of the United States shall report on the results of the study required under paragraph (1) to the Committee of Finance of the Senate and the Committee on Ways and Means of the House of Representatives before July 1, 2005.

**SEC. 6. PENALTY FREE WITHDRAWALS FROM RETIREMENT PLANS FOR VICTIMS OF FEDERALLY DECLARED NATURAL DISASTERS.**

(a) IN GENERAL.—Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans), as amended by this Act, is amended by adding at the end the following new subparagraph:

“(H) DISTRIBUTIONS FROM RETIREMENT PLANS TO VICTIMS OF FEDERALLY DECLARED NATURAL DISASTERS.—

“(i) IN GENERAL.—Any qualified disaster-relief distribution.

“(ii) QUALIFIED DISASTER-RELIEF DISTRIBUTION.—For purposes of this subparagraph, the term ‘qualified disaster-relief distribution’ means any distribution to an individual who has sustained a loss in excess of \$100 as a result of a major disaster declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act—

“(I) if such distribution is made from any qualified retirement plan (as defined in section 4974(c)) during the 1-year period beginning on the date such declaration is made, and

“(II) to the extent such distribution does not exceed the amount of such loss and is not compensated for by insurance or otherwise.

For purposes of subclause (II), the amount of any loss shall be determined using the greater of the fair market value of the property on the day before the date of such disaster or the adjusted basis of the property as provided in section 1011, less any compensation for such loss that the individual has received as of the date of such distribution and any compensation for such loss that the individual expects to receive, based on a reasonable estimate. Any difference between the

amount of compensation that an individual expects to receive on the basis of such an estimate and actually receives shall not be included in the individual's gross income."

(b) EXEMPTION OF DISTRIBUTIONS FROM WITHHOLDING.—Paragraph (4) of section 402(c) of the Internal Revenue Code of 1986 (relating to eligible rollover distribution) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by inserting at the end the following new subparagraph:

"(D) any qualified disaster-relief distribution (within the meaning of section 72(t)(2)(H))."

(c) CONFORMING AMENDMENTS.—

(1) Section 401(k)(2)(B)(i) of the Internal Revenue Code of 1986 is amended by striking "or" at the end of subclause (III), by striking "and" at the end of subclause (IV) and inserting "or", and by inserting after subclause (IV) the following new subclause:

"(V) the date on which a period referred to in section 72(t)(2)(H)(i)(I) begins (but only to the extent provided in section 72(t)(2)(H)), and".

(2) Section 403(b)(7)(A)(ii) of such Code is amended by inserting "sustains a loss as a result of a major disaster declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (but only to the extent provided in section 72(t)(2)(H))," before "or".

(3) Section 403(b)(11) of such Code is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by inserting after subparagraph (B) the following new subparagraph:

"(C) for distributions to which section 72(t)(2)(H) applies."

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

**SA 4062.** Mr. FRIST (for Mr. CONRAD) proposed an amendment to the concurrent resolution S. Con. Res. 136, honoring and memorializing the passengers and crew of United Airlines Flight 93; as follows:

Beginning on page 2, strike line 10 and all that follows through page 3, line 8, and insert the following:

(3) not later than January 1, 2006, the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate shall select an appropriate memorial that shall be located in the United States Capitol Building and that shall honor the passengers and crew of Flight 93, who saved the United States Capitol Building from destruction; and

(4) the memorial shall state the purpose of the honor and the names of the passengers and crew of Flight 93 on whom the honor is bestowed.

**SA 4063.** Mr. FRIST (for Mr. FITZGERALD) proposed an amendment to the bill S. 2688, to provide for a report of Federal entities without annually audited financial statements; as follows:

On page 2, line 10, strike "60 days" and insert "120 days".

On page 3, line 2, insert after "temporary commissions" the following: "in existence at least 12 months".

On page 3, strike beginning with line 9 through page 4, line 4, and insert the following:

(3) an assessment of the capability of and the costs that would be incurred for Federal

entities of the categories listed under paragraphs (1) and (2) to prepare annual financial statements and to have such statements independently audited;

(4) an assessment of how to reduce the costs of preparing the financial statements and performing independent audits for Federal entities of the categories listed under paragraphs (1) and (2); and

(5) an assessment of the benefits of improved financial oversight encompassing the executive branch, including the Federal entities of the categories listed under paragraphs (1) and (2), and an assessment of the feasibility of preparing annual financial statements and independently audited statements for the Federal entities in the categories listed under paragraphs (1) and (2).

**SA 4064.** Mr. FRIST (for Mr. LIEBERMAN) proposed an amendment to the bill S. 2691, to establish the Long Island Sound Stewardship Initiative; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Long Island Sound Stewardship Act of 2004".

**SEC. 2. FINDINGS AND PURPOSE.**

(a) FINDINGS.—Congress finds that—

(1) Long Island Sound is a national treasure of great cultural, environmental, and ecological importance;

(2) 8,000,000 people live within the Long Island Sound watershed and 28,000,000 people (approximately 10 percent of the population of the United States) live within 50 miles of Long Island Sound;

(3) activities that depend on the environmental health of Long Island Sound contribute more than \$5,000,000,000 each year to the regional economy;

(4) the portion of the shoreline of Long Island Sound that is accessible to the general public (estimated at less than 20 percent of the total shoreline) is not adequate to serve the needs of the people living in the area;

(5) existing shoreline facilities are in many cases overburdened and underfunded;

(6) large parcels of open space already in public ownership are strained by the effort to balance the demand for recreation with the needs of sensitive natural resources;

(7) approximately 1/3 of the tidal marshes of Long Island Sound have been filled, and much of the remaining marshes have been ditched, dyked, or impounded, reducing the ecological value of the marshes; and

(8) much of the remaining exemplary natural landscape is vulnerable to further development.

(b) PURPOSE.—The purpose of this Act is to establish the Long Island Sound Stewardship Initiative to identify, protect, and enhance sites within the Long Island Sound ecosystem with significant ecological, educational, open space, public access, or recreational value through a bi-State network of sites best exemplifying these values.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) ADAPTIVE MANAGEMENT.—The term "adaptive management" means a scientific process—

(A) for—

(i) developing predictive models;

(ii) making management policy decisions based upon the model outputs;

(iii) revising the management policies as data become available with which to evaluate the policies; and

(iv) acknowledging uncertainty, complexity, and variance in the spatial and temporal aspects of natural systems; and

(B) that requires that management be viewed as experimental.

(2) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(3) COMMITTEE.—The term "Committee" means the Long Island Sound Stewardship Advisory Committee established by section 5(a).

(4) REGION.—The term "Region" means the Long Island Sound Stewardship Initiative Region established by section 4(a).

(5) STATES.—The term "States" means the States of Connecticut and New York.

(6) STEWARDSHIP SITE.—The term "stewardship site" means a site that—

(A) qualifies for identification by the Committee under section 8; and

(B) is an area of land or water or a combination of land and water—

(i) that is in the Region; and

(ii) that is—

(I) Federal, State, local, or tribal land or water;

(II) land or water owned by a nonprofit organization; or

(III) privately owned land or water.

(7) SYSTEMATIC SITE SELECTION.—The term "systematic site selection" means a process of selecting stewardship sites that—

(A) has explicit goals, methods, and criteria;

(B) produces feasible, repeatable, and defensible results;

(C) provides for consideration of natural, physical, and biological patterns,

(D) addresses reserve size, replication, connectivity, species viability, location, and public recreation values;

(E) uses geographic information systems technology and algorithms to integrate selection criteria; and

(F) will result in achieving the goals of stewardship site selection at the lowest cost.

(8) THREAT.—The term "threat" means a threat that is likely to destroy or seriously degrade a conservation target or a recreation area.

**SEC. 4. LONG ISLAND SOUND STEWARDSHIP INITIATIVE REGION.**

(a) ESTABLISHMENT.—There is established in the States the Long Island Sound Stewardship Initiative Region.

(b) BOUNDARIES.—The Region shall encompass the immediate coastal upland and underwater areas along Long Island Sound, including those portions of the Sound with coastally influenced vegetation, as described on the map entitled the "Long Island Sound Stewardship Region" and dated April 21, 2004.

**SEC. 5. LONG ISLAND SOUND STEWARDSHIP ADVISORY COMMITTEE.**

(a) ESTABLISHMENT.—There is established a committee to be known as the "Long Island Sound Stewardship Advisory Committee".

(b) CHAIRPERSON.—The Chairperson of the Committee shall be the Director of the Long Island Sound Office of the Environmental Protection Agency, or a designee of the Director.

(c) MEMBERSHIP.—

(1) COMPOSITION.—

(A) APPOINTMENT OF MEMBERS.—

(i) IN GENERAL.—The Chairperson shall appoint the members of the Committee in accordance with this subsection and section 320(c) of the Federal Water Pollution Control Act (33 U.S.C. 1330(c)).

(ii) ADDITIONAL MEMBERS.—In addition to the requirements described in clause (i), the Committee shall include—

(I) a representative from the Regional Plan Association;

(II) a representative of the marine trade organizations; and

(III) a representative of private landowner interests.

(B) REPRESENTATION.—In appointing members to the Committee, the Chairperson shall consider—

- (i) Federal, State, and local government interests;
- (ii) the interests of nongovernmental organizations;
- (iii) academic interests; and
- (iv) private interests.

(2) DATE OF APPOINTMENTS.—Not later than 180 days after the date of enactment of this Act, the appointment of all members of the Committee shall be made.

(d) TERM; VACANCIES.—

(1) TERM.—

(A) IN GENERAL.—A member shall be appointed for a term of 4 years.

(B) MULTIPLE TERMS.—A person may be appointed as a member of the Committee for more than 1 term.

(2) VACANCIES.—A vacancy on the Committee shall—

(A) be filled not later than 90 days after the vacancy occurs;

(B) not affect the powers of the Committee; and

(C) be filled in the same manner as the original appointment was made.

(3) STAFF.—

(A) IN GENERAL.—The Chairperson of the Committee may appoint and terminate personnel as necessary to enable the Committee to perform the duties of the Committee.

(B) PERSONNEL AS FEDERAL EMPLOYEES.—

(i) IN GENERAL.—Any personnel of the Committee who are employees of the Committee shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(ii) MEMBERS OF COMMITTEE.—Clause (i) does not apply to members of the Committee.

(e) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Committee have been appointed, the Committee shall hold the initial meeting of the Committee.

(f) MEETINGS.—The Committee shall meet at the call of the Chairperson, but no fewer than 4 times each year.

(g) QUORUM.—A majority of the members of the Committee shall constitute a quorum, but a lesser number of members may hold hearings.

#### SEC. 6. DUTIES OF THE COMMITTEE.

The Committee shall—

(1) consistent with the guidelines described in section 8—

(A) evaluate applications from government or nonprofit organizations qualified to hold conservation easements for funds to purchase land or development rights for stewardship sites;

(B) evaluate applications to develop and implement management plans to address threats;

(C) evaluate applications to act on opportunities to protect and enhance stewardship sites; and

(D) recommend that the Administrator award grants to qualified applicants;

(2) recommend guidelines, criteria, schedules, and due dates for evaluating information to identify stewardship sites;

(3) publish a list of sites that further the purposes of this Act, provided that owners of sites shall be—

(A) notified prior to the publication of the list; and

(B) allowed to decline inclusion on the list;

(4) raise awareness of the values of and threats to these sites; and

(5) leverage additional resources for improved stewardship of the Region.

#### SEC. 7. POWERS OF THE COMMITTEE.

(a) HEARINGS.—The Committee may hold such hearings, meet and act at such times

and places, take such testimony, and receive such evidence as the Committee considers advisable to carry out this Act.

(b) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—The Committee may secure directly from a Federal agency such information as the Committee considers necessary to carry out this Act.

(2) PROVISION OF INFORMATION.—

(A) IN GENERAL.—Subject to subparagraph (C), on request of the Chairperson of the Committee, the head of a Federal agency shall provide the information requested by the Chairperson to the Committee.

(B) ADMINISTRATION.—The furnishing of information by a Federal agency to the Committee shall not be considered a waiver of any exemption available to the agency under section 552 of title 5, United States Code.

(C) INFORMATION TO BE KEPT CONFIDENTIAL.—

(i) IN GENERAL.—For purposes of section 1905 of title 18, United States Code—

(I) the Committee shall be considered an agency of the Federal Government; and

(II) any individual employed by an individual, entity, or organization that is a party to a contract with the Committee under this Act shall be considered an employee of the Committee.

(ii) PROHIBITION ON DISCLOSURE.—Information obtained by the Committee, other than information that is available to the public, shall not be disclosed to any person in any manner except to an employee of the Committee as described in clause (i), for the purpose of receiving, reviewing, or processing the information.

(c) POSTAL SERVICES.—The Committee may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government.

(d) DONATIONS.—The Committee may accept, use, and dispose of donations of services or property that advance the goals of the Long Island Sound Stewardship Initiative.

#### SEC. 8. STEWARDSHIP SITES.

(a) INITIAL SITES.—

(1) IDENTIFICATION.—

(A) IN GENERAL.—The Committee shall identify 20 initial Long Island Sound stewardship sites that the Committee has determined—

(i) (I) are natural resource-based recreation areas; or

(II) are exemplary natural areas with ecological value; and

(ii) best promote the purposes of this Act.

(B) EXEMPTION.—Sites described in subparagraph (A) are not subject to the site identification process described in subsection (d).

(2) EQUITABLE DISTRIBUTION OF FUNDS FOR INITIAL SITES.—In identifying initial sites under paragraph (1), the Committee shall exert due diligence to recommend an equitable distribution of funds between the States for the initial sites.

(b) APPLICATION FOR IDENTIFICATION AS A STEWARDSHIP SITE.—Subsequent to the identification of the initial stewardship sites under subsection (a), owners of sites may submit applications to the Committee in accordance with subsection (c) to have the sites identified as stewardship sites.

(c) IDENTIFICATION.—The Committee shall review applications submitted by owners of potential stewardship sites to determine whether the sites shall be identified as exhibiting values consistent with the purposes of this Act.

(d) SITE IDENTIFICATION PROCESS.—

(1) NATURAL RESOURCE-BASED RECREATION AREAS.—The Committee shall identify additional recreation areas with potential as

stewardship sites using a selection technique that includes—

(A) public access;

(B) community support;

(C) areas with high population density;

(D) environmental justice (as defined in section 385.3 of title 33, Code of Federal Regulations (or successor regulations));

(E) connectivity to existing protected areas and open spaces;

(F) cultural, historic, and scenic areas; and

(G) other criteria developed by the Committee.

(2) NATURAL AREAS WITH ECOLOGICAL VALUE.—The Committee shall identify additional natural areas with ecological value and potential as stewardship sites—

(A) based on measurable conservation targets for the Region; and

(B) following a process for prioritizing new sites using systematic site selection, which shall include—

(i) ecological uniqueness;

(ii) species viability;

(iii) habitat heterogeneity;

(iv) size;

(v) quality;

(vi) connectivity to existing protected areas and open spaces;

(vii) land cover;

(viii) scientific, research, or educational value;

(ix) threats; and

(x) other criteria developed by the Committee.

(3) PUBLICATION OF LIST.—After completion of the site identification process, the Committee shall—

(A) publish in the Federal Register a list of sites that further the purposes of this Act; and

(B) prior to publication of the list, provide to owners of the sites to be published—

(i) a notification of publication; and

(ii) an opportunity to decline inclusion of the site of the owner on the list.

(4) DEVIATION FROM PROCESS.—

(A) IN GENERAL.—The Committee may identify as a potential stewardship site, a site that does not meet the criteria in paragraph (1) or (2), or reject a site selected under paragraph (1) or (2), if the Committee—

(i) selects a site that makes significant ecological or recreational contributions to the Region;

(ii) publishes the reasons that the Committee decided to deviate from the systematic site selection process; and

(iii) before identifying or rejecting the potential stewardship site, provides to the owners of the site the notification of publication, and the opportunity to decline inclusion of the site on the list published under paragraph (3)(A), described in paragraph (3)(B).

(5) PUBLIC COMMENT.—In identifying potential stewardship sites, the Committee shall consider public comments.

(e) GENERAL GUIDELINES FOR MANAGEMENT.—

(1) IN GENERAL.—The Committee shall use an adaptive management framework to identify the best policy initiatives and actions through—

(A) definition of strategic goals;

(B) definition of policy options for methods to achieve strategic goals;

(C) establishment of measures of success;

(D) identification of uncertainties;

(E) development of informative models of policy implementation;

(F) separation of the landscape into geographic units;

(G) monitoring key responses at different spatial and temporal scales; and

(H) evaluation of outcomes and incorporation into management strategies.

(2) APPLICATION OF ADAPTIVE MANAGEMENT FRAMEWORK.—The Committee shall apply the adaptive management framework to the process for updating the list of recommended stewardship sites.

#### SEC. 9. REPORTS.

(a) IN GENERAL.—For each of fiscal years 2006 through 2013, the Committee shall submit to the Administrator an annual report that contains—

(1) a detailed statement of the findings and conclusions of the Committee since the last report;

(2) a description of all sites recommended by the Committee to be approved as stewardship sites;

(3) the recommendations of the Committee for such legislation and administrative actions as the Committee considers appropriate; and

(4) in accordance with subsection (b), the recommendations of the Committee for the awarding of grants.

(b) GENERAL GUIDELINES FOR RECOMMENDATIONS.—

(1) IN GENERAL.—The Committee shall recommend that the Administrator award grants to qualified applicants to help to secure and improve the open space, public access, or ecological values of stewardship sites, through—

(A) purchase of the property of the site;

(B) purchase of relevant property rights of the site; or

(C) entering into any other binding legal arrangement that ensures that the values of the site are sustained, including entering into an arrangement with a land manager or owner to develop or implement an approved management plan that is necessary for the conservation of natural resources.

(2) EQUITABLE DISTRIBUTION OF FUNDS.—The Committee shall exert due diligence to recommend an equitable distribution of funds between the States.

(c) ACTION BY THE ADMINISTRATOR.—

(1) IN GENERAL.—Not later than 90 days after receiving a report under subsection (a), the Administrator shall—

(A) review the recommendations of the Committee; and

(B) take actions consistent with the recommendations of the Committee, including the approval of identified stewardship sites and the award of grants, unless the Administrator makes a finding that any recommendation is unwarranted by the facts.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Administrator shall develop and publish a report that—

(A) assesses the current resources of and threats to Long Island Sound;

(B) assesses the role of the Long Island Sound Stewardship Initiative in protecting Long Island Sound;

(C) establishes guidelines, criteria, schedules, and due dates for evaluating information to identify stewardship sites;

(D) includes information about any grants that are available for the purchase of land or property rights to protect stewardship sites;

(E) accounts for funds received and expended during the previous fiscal year;

(F) shall be made available to the public on the Internet and in hardcopy form; and

(G) shall be updated at least every other year, except that information on funding and any new stewardship sites identified shall be published more frequently.

#### SEC. 10. PRIVATE PROPERTY PROTECTION.

(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this Act—

(1) requires any private property owner to allow public access (including Federal, State, or local government access) to the private property; or

(2) modifies any provision of Federal, State, or local law with regard to public access to or use of private property, except as entered into by voluntary agreement of the owner or custodian of the property.

(b) LIABILITY.—Approval of the Long Island Sound Stewardship Initiative Region does not create any liability, or have any effect on any liability under any other law, of any private property owner with respect to any person injured on the private property.

(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this Act modifies the authority of Federal, State, or local governments to regulate land use.

(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS IN THE LONG ISLAND SOUND STEWARDSHIP INITIATIVE REGION.—Nothing in this Act requires the owner of any private property located within the boundaries of the Region to participate in or be associated with the Initiative.

(e) EFFECT OF ESTABLISHMENT.—

(1) IN GENERAL.—The boundaries approved for the Region represent the area within which Federal funds appropriated for the purpose of this Act may be expended.

(2) REGULATORY AUTHORITY.—The establishment of the Region and the boundaries of the Region does not provide any regulatory authority not in existence on the date of enactment of this Act on land use in the Region by any management entity, except for such property rights as may be purchased from or donated by the owner of the property (including the Federal Government or a State or local government, if applicable).

#### SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act \$25,000,000 for each of fiscal years 2006 through 2013.

(b) USE OF FUNDS.—For each fiscal year, funds made available under subsection (a) shall be used by the Administrator, after reviewing the recommendations of the Committee submitted under section 9, for—

(1) acquisition of land and interests in land;

(2) development and implementation of site management plans;

(3) site enhancements to reduce threats or promote stewardship; and

(4) administrative expenses of the Committee.

(c) FEDERAL SHARE.—The Federal share of the cost of an activity carried out using any assistance or grant under this Act shall not exceed 75 percent of the total cost of the activity.

#### SEC. 12. LONG ISLAND SOUND AUTHORIZATION OF APPROPRIATIONS.

Section 119(f) of the Federal Water Pollution Control Act (33 U.S.C. 1269(f)) is amended by striking “2005” each place it appears and inserting “2009”.

#### SEC. 13. TERMINATION OF COMMITTEE.

The Committee shall terminate on December 31, 2013.

**SA 4065.** Mr. FRIST (for Mr. SMITH) proposed an amendment to the concurrent resolution S. Con. Res. 113, recognizing the importance of early diagnosis, proper treatment, and enhanced public awareness of Tourette Syndrome and supporting the goals and ideals of National Tourette Syndrome Awareness Month; as follows:

Strike all after the resolving clause and insert the following:  
That Congress—

(1) recognizes the impact that Tourette Syndrome can have on people living with the disorder;

(2) recognizes the importance of an early diagnosis and proper treatment of Tourette Syndrome;

(3) recognizes the need for enhanced public awareness of Tourette Syndrome; and

(4) supports the goals and ideals of National Tourette Syndrome Awareness Month.

**SA 4066.** Mr. FRIST (for Mr. SMITH) proposed an amendment to the concurrent resolution S. Con. Res. 113, recognizing the importance of early diagnosis, proper treatment, and enhanced public awareness of Tourette Syndrome and supporting the goals and ideals of National Tourette Syndrome Awareness Month; as follows:

Strike the preamble and insert the following:

Whereas Tourette Syndrome is an inherited neurological disorder characterized by involuntary and sudden movements or repeated vocalizations;

Whereas approximately 200,000 people in the United States have been diagnosed with Tourette Syndrome and many more remain undiagnosed;

Whereas lack of public awareness has increased the social stigma attached to Tourette Syndrome;

Whereas early diagnosis and treatment of Tourette Syndrome can prevent physical and psychological harm;

Whereas there is not known cure for Tourette Syndrome and treatment involves multiple medications and therapies; and

Whereas May 15 through June 15 has been designated as National Tourette Syndrome Awareness Month, the goal of which is to educate the public about the nature and effects of Tourette Syndrome; Now, therefore, be it ...

**SA 4067.** Mr. FRIST (for Mr. SMITH) proposed an amendment to the concurrent resolution S. Con. Res. 113, recognizing the importance of early diagnosis, proper treatment, and enhanced public awareness of Tourette Syndrome and supporting the goals and ideals of National Tourette Syndrome Awareness Month; as follows:

Amend the title so as to read “Recognizing the importance of early diagnosis, proper treatment, and enhanced public awareness of Tourette Syndrome and supporting the goals and ideas of National Tourette Syndrome Awareness Month.”

#### ORDER OF BUSINESS

Mr. FRIST. Mr. President, we have had a very long day, a long day yesterday, and a long day the day before—a very, very long day today. We are going to be wrapping up here fairly quickly. But I have a lot of business to go through. So we will go through it, and I will make some comments after that.

#### UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR NO. 915

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that on Tuesday, November 16, at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session to consider the following nomination on today's Executive Calendar, Calendar No. 915, the